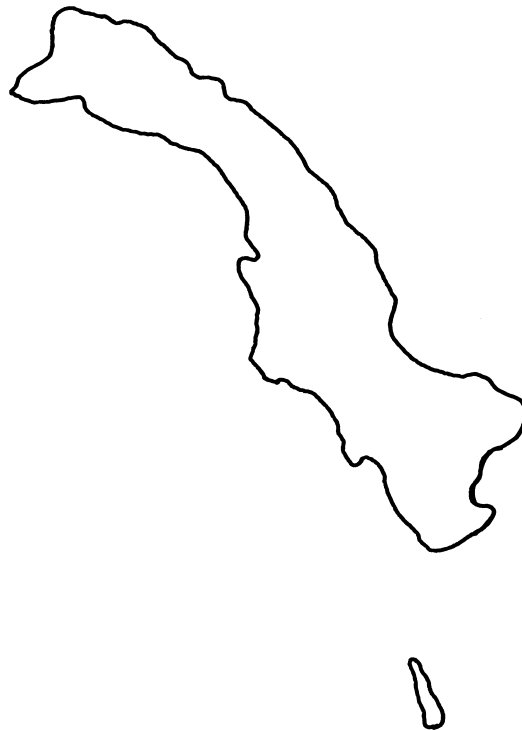


# WHITEFISH & LOST COON

## LAKE AND LAKESHORE PROTECTION REGULATIONS



ADDRESSING WHITEFISH AND LOST COON  
LAKES WITHIN THE CITY OF WHITEFISH &  
FLATHEAD COUNTY, MT.

Updated: **MARCH 29, 2009 FINAL DRAFT**

# WHITEFISH AREA LAKE AND LAKESHORE PROTECTION REGULATIONS

ADOPTED BY:

CITY OF WHITEFISH

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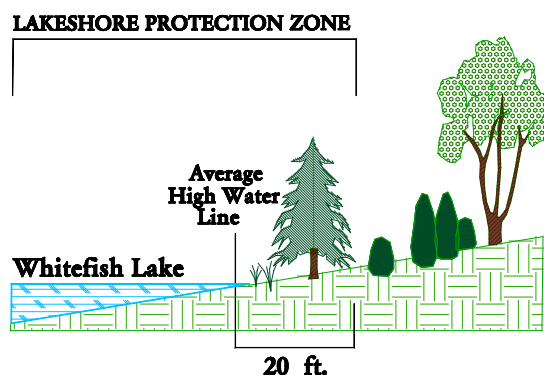
## CHAPTER 1 - GENERAL PROVISIONS

### 1.1 TITLE

These regulations shall be known and referred to as the "Whitefish Area Lake and Lakeshore Protection Regulations."

### 1.2 AUTHORITY

These regulations are adopted under the authority of the State of Montana, 75-7-207, M.C.A., which requires local governing bodies to adopt regulations regarding the issuance or denial of permits for work in lakes within their jurisdiction, including land which is within twenty (20) horizontal feet of the mean annual high water elevation (See Figure #1).



### 1.3 PURPOSE

**Figure 1. Lakeshore Protection Zone**

The purpose of these regulations is to:

- A. Protect the fragile, pristine character of Whitefish area lakes and the intertwined adjacent riparian and upland areas.
- B. Conserve and protect natural lakes because of their high scenic and resource value;
- C. Conserve and protect the value of lakeshore property;
- D. Conserve and protect the value of the lakes for the State's residents and visitors who use and enjoy them.

### 1.4 JURISDICTION

These regulations govern any work which alters Whitefish Lake and Lost Coon Lake, and the land which is within twenty (20) horizontal feet of the mean annual high water elevation of these lakes. The mean annual high-water elevation for Whitefish Lake has been established according to Statute 75-7-202 (4) at \*3000.6' msl (~~'88 Datum~~) three thousand and seventy nine-hundredths feet (3,000.79') msl

(NAVD 1988), which is equivalent to two thousand nine hundred ninety seven feet (2997.00') msl (NGVD 1929). The mean annual high-water elevation on Lost Coon Lake is 3104' msl (NAVD 1988), which is equivalent to 3100.21' msl (NGVD 1929).  
**(NOTE: Correction and clarification.)**

#### 1.5 SEVERABILITY

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

#### 1.6 INTERPRETATION

These regulations supplement all other regulations, and the permit issued hereunder does not supersede or negate the necessity for obtaining floodplain permits or other permits as may be required by other governmental units having jurisdictional responsibilities over a lake or its lakeshore. Where any provision of these regulations imposes more stringent regulations, requirements or limitations than imposed or required by any other regulation, resolution, ordinance or statute, the provisions of these regulations shall govern.

## CHAPTER 2 - PERMITS

### 2.1 PERMIT REQUIRED

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 physical possession of a valid "Lakeshore Construction Permit" from the governing body.

The person who performs or authorizes such work, and property owner, are responsible for assuring that a valid permit has been obtained from the governing body.

The permit issued shall be displayed, during work activity so that it is conveniently visible to the public.

Without limitation, the following activities, when conducted within the lake, lakebed or lakeshore protection zone, are examples of work for which a permit is required:

- A. Construction of channels or ditches;
- B. Excavation;
- C. Dredging: To remove muck, silt sediment, rock or vegetation;
- D. Filling, including artificial beach creation;
- E. Construction of lagoons;
- F. Construction of living quarters, buildings, or other impervious surfaces;
- G. Construction of boat service facilities, including the installation of fuel pumps or sewage pump out facilities;
- H. Construction of elevated structures, (ex. decks, overhangs), including extensions into the air space;
- I. Construction of retaining walls and breakwaters;
- J. Construction, installation or additions to docks;
- K. Installation of boat and personal watercraft shore stations, boat rail systems, boat ramps, boat storage and parking facilities, buoys and floating docks, and floating trampolines;

- L. Installation of water lines, sewer lines or other utility lines or facilities;
- M. Any major clearing or removal of natural vegetation;
- N. Reconstruction of existing facilities;
- O. Stockpiling brush, trees, vegetation, construction materials or debris;
- P. Moving a dock, shore station, or buoy to another location on the lake;
- Q. Operation of machinery, with the exception of recreational watercraft and equipment used for seasonal removal/installation of dock.
- R. Any other work, not herein mentioned, that may have an impact on a lake, lakebed or lakeshore.

## 2.2 EXEMPTIONS FROM PERMIT REQUIREMENTS

The following types of work are not required to obtain a permit, but shall comply with the construction criteria of these regulations:

- A. Repair work which qualifies as routine maintenance [see Section 7 Definitions] or, if a nonconforming structure, complies with Section 5.1.Z. (NOTE: Amended for consistency.) ~~or normal maintenance work, provided that:~~
  - ~~• The materials comply with the construction criteria of these regulations.~~
  - ~~• The repair work does not exceed fifty percent (50%) of the value and/or size of the structure.~~
  - ~~• The existing facility is not reconstructed or changed in size, shape, use or bulk.~~
  - The work does not include any dredging, filling or excavation.
- B. Buoys placed in a lake on a temporary basis (not exceeding ten (10) days) in a calendar year.
- C. Emergency work where a condition exists that poses an imminent threat to property, structures, or improvements provided that:
  - The work being done is only what is necessary to mitigate the immediate threat; and



- The conditions which constitute the threat were caused by extenuating circumstances which could not be readily anticipated and which do not re-occur on an annual basis.

The following procedures shall be followed where emergency work is performed:

- The person proposing to do emergency work shall notify the governing body as to the nature of the emergency, description of the work to be done and the location of the site. If the work date falls on a normal working day (Monday through Friday, excluding holidays), notification must be made prior to beginning work. If the work date falls on a non-working day (Saturday, Sunday and holidays), notification must be made on the next working day. Notification shall be made by phone and in writing.
- The Administrator shall review the notification. If the Administrator determines that the work is emergency work, the Administrator shall sign the notification and send a copy of it to the applicant and the Lakeshore Protection Committee.
- If work done under the emergency provision goes beyond the minimum necessary to mitigate the danger, or if work is done where no emergency condition existed, such work shall be considered a violation of these regulations.

D. Real estate signs less than 6 square feet in size.

### 2.3 CONSTRUCTION OR INSTALLATIONS PROHIBITED

The following types of work, new construction, and installations are prohibited in the lakeshore protection zone:

- A. Boat Houses;
- B. Boat Shelters;
- C. Pump Houses;
- D. Crib Dock;
- E. Pilings;
- F. Covering Beach with Impervious Non-native Material (material which does

not allow water absorption);

- G. Any Installation of Asphalt;
- H. Satellite Dishes;
- I. Permanent or Temporary Buildings;
- J. Hot Tubs;
- K. Fuel Storage Tanks;
- L. Decks;
- M. Roads, Driveways, or Parking Areas; and
- N. Signs.

#### 2.4 RESTORATION

A person who performs work in the lake, lakebed or lakeshore without a permit for that work shall, if required by the governing body, restore the lake, lakebed, or lakeshore to its condition before he/she disturbed it.

#### 2.5 PROPERTY RIGHTS

Work or development approved by permit under these regulations shall not create a vested property right in the permitted development, other than in the physical structure, if any, so developed.

#### 2.6 PERMISSION TO ENTER

The person making application for a permit grants the governing body, Lakeshore Protection Committee, planning ~~board~~ department, their staff and/or their consultants permission to enter upon his/her land or upon the waters of the lake to evaluate the site and verify compliance with any Lakeshore Construction Permit issued under these regulations both during the application process and upon completion of construction.

#### 2.7 EASEMENT HOLDER RIGHTS

Easement holders (individuals or groups who have easement access or easement rights within the lakeshore protection zone) are not eligible to apply for or obtain a Lakeshore Construction Permit and shall not perform work within the Lakeshore Protection Zone.

## CHAPTER 3-APPLICATION REVIEW PROCEDURE

### 3.1 APPLICATION

Depending on the jurisdiction, any person seeking a Lakeshore Construction Permit shall submit a complete application to the Administrator of the Planning Office of the jurisdictional governing body either the Flathead County Planning & Zoning Office or the Tri-City Planning and Zoning Office on an approved form provided by the Administrator. The application shall be accompanied by a vicinity map with directions to the property, photographs of the shoreline (including docks and all structures in the lakeshore protection zone), a scaled site plan, detailed project drawings, and fee established by the governing body.

The applicant may be required to submit additional information where the Administrator, Lakeshore Protection Committee or governing body determine that additional information is necessary to adequately evaluate the proposal.

### 3.2 APPLICATION PROCEDURE

1. An applicant shall file an application with the Administrator.
2. An application is deemed as accepted when a complete application, required accompaniments and fee are presented to the Administrator. The application must be either signed by the property owner or a letter of authorization from the owner must be attached.
3. Upon acceptance of an application, the Administrator shall schedule it for review at the next regular meeting of the Whitefish Lake & Lakeshore Protection Committee ~~advise all Lakeshore Protection Committee members that the application is ready for review.~~
4. The Chairman shall be responsible to see that all pending applications are brought before the committee for comment and action.
5. The committee shall have ~~40~~ up to 60 days from the date of acceptance of the completed application to review and forward comments to the governing body for final action. If no comment is received after ~~40~~ 60 days, the application will be forwarded to the Administrator for final action by the governing body with no comment. If the application is incomplete, the Administrator or Lakeshore Protection Committee shall notify the applicant within (40) days of receipt of the application. Incomplete applications will

not be processed until resolved and deemed complete. This also applies to new applications on properties with active lakeshore violations.

6. Upon review and approval of a permit application by the committee, the administrator may issue an administrative permit specifically for floating docks which do not exceed sixty feet (60') in length (including gangway), for shore stations, and for buoys, providing that such permit complies with all other regulation standards and does not require a variance. (NOTE: Easing of regulation for Administrative Permits for docks.) ~~The Administrator may issue an administrative permit specifically for floating docks which do not exceed 30 feet in length, (excluding gangways of 2 feet or less in width) for shore stations, for buoys, for burning in the lakeshore protection zone, and for buried domestic water lines installed during low water when such activities are found by the Administrator to have a minimal or insignificant impact on the lake or lakeshore and to comply with the construction standards found in Chapter 5 of these regulations. The Administrator will notify the committee when these permits are issued.~~
7. The administrator may issue an administrative permit for burning in the lakeshore protection zone or for buried domestic water lines installed during low water when such activities are found by the administrator to have a minimal or insignificant impact on the lake or lakeshore and to comply with the construction standards found in Chapter 5 of this title. The administrator will notify the committee when these permits are issued.

### 3.3 REVIEW PERIOD

Review of a permit application and its approval, conditional approval or denial by the governing body, shall take place within ninety (90) days from the date of acceptance by the Administrator unless the application is deemed incomplete by the Administrator or the Lakeshore Protection Committee, or the applicant agrees to an extension of the review period. ~~An application that is not acted on by the governing body within the specified review period shall be deemed approved and work may proceed according to the plans submitted provided that the work conforms to the construction standards contained in Chapter 5 of these regulations.~~

### 3.4 PERMIT VALIDITY

A permit is valid for a period of twelve (12) months from the date of issuance unless otherwise approved by the governing body. All construction shall be completed prior to expiration of the permit. The permit may be renewed without

submission of a new application or plans if the applicant requests a permit renewal in writing from the Administrator before the original permit expires and the Administrator grants a renewal. The Administrator, at their discretion, may grant more than one renewal.

## CHAPTER 4-PERMIT ISSUANCE AND EVALUATION CRITERIA

### 4.1 POLICY CRITERIA FOR ISSUANCE OF A PERMIT

All Lakeshore Construction Permits shall be evaluated against the policy criteria for issuance of a permit. A permit shall only be issued when it is found that the proposed action 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 public safety hazard;
- E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
- F. Alter the characteristics of the shoreline.

### 4.2 POLICY CONSIDERATIONS AND VIOLATION RESTORATION

(NOTE: The following Sections 4.2.A and 4.2.B are clarification of enforcement policy - not a regulation change.)

- A. Except for work specifically allowed by lakeshore permit, or work that is exempt from permit requirements, the lakeshore protection zone shall be maintained in its pre-existing condition. ~~as documented by the July 1990 baseline video tape of the shoreline on Whitefish Lake, or archive photos taken of Whitefish Lake or Lost Coon Lake on file at the Planning Office.~~
- B. ~~Conditions which are found to exist that do not conform to archive video or photos, or were not allowed by permit, may be prosecuted as a violation, which may include, but not be limited to, full restoration of the lakeshore protection zone shoreline, vegetation, and tree replacement.~~
- C. Archive photos or baseline videos on file at the jurisdictional Planning Office may be used in enforcing regulations and prosecuting violations.
- D. Areas where vegetation has been destroyed in the lakeshore protection zone shall be restored in accordance with Section 5.1.D.

## CHAPTER 5 - CONSTRUCTION STANDARDS

Sections 4.2, 5.1, 5.2, and 6.4 have been merged into this new Chapter 5.1 AMENDED - CONSTRUCTION STANDARDS below. Editing additions are underlined in the new Chapter below. Editing deletions and changes are shown in the original text in 2004 PRE-MERGED CHAPTERS 4.2-5.1-5.2-6.4.DOC

### 5.1 AMENDED - CONSTRUCTION STANDARDS:

Any proposed project or action shall be in compliance with the following construction standards, and these policy considerations shall be used in evaluating any variance from the adopted construction standards.

#### A. Construction Materials:

##### 1. General:

- a. Any building material should be stable and free of silts, sands, fines, chemical preservatives, grease, oil or any surface application that could immediately or eventually contaminate water quality.

##### 2. Wood:

- a. Wood preservatives leach over time and degrade water quality. All wood used in 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 pressure treated preservatives, are allowed. This prohibition shall not prohibit the application of paint or stain as a routine maintenance measure for any structure built prior to 1978 located landward of the high water line which has been painted and stained on a routine basis in the past.
- b. Where wood is used for any project which would at sometime be in, or over, the water, only solid wood shall be used. This specifically excludes plywood, particleboard, chipboard, etc.

##### 3. Metal:

- a. While metals are generally inert, except for oxidation, surface applications of some foreign material (i.e., wet paint, grease, oil, etc.) can degrade water quality. Any 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 installation.

- b. Minimum lubrication of critical metal components to allow movement is allowed.
- c. No metal used in the lakeshore protection zone may contain deposits or a surface application of any of the following:
  - (1) Grease or oil (other than this subsection 5.1.A.3.b);
  - (2) Paint, varnish or coatings which have not been allowed to thoroughly cure or dry outside the lakeshore protection zone.
  - (3) Any chemical or substance that will wash off or dissolve when in contact with water.

4. Styrofoam Flotation Logs:

- a. All dock flotation Styrofoam shall be extruded closed cell polystyrene (blue or pink logs) unless encased in rotomolded floats (a specific manufacturing process utilizing heavy gauge plastic covering).
- b. All Styrofoam flotation logs shall be completely encased in solid wood (excluding particleboard, plywood, etc.) or in metal, fiberglass or plastic. Drain holes or a maximum of one-half inch (1/2") spacing between wood boards may be allowed.

5. Asphalt:

- a. Asphalt or similar petroleum based construction products are prohibited, except for replacement shingles on nonconforming structures.

6. Concrete:

- a. Concrete may be utilized only where structural strength and location dictate no other alternative.
- b. In all cases, concrete shall be aesthetically shielded by the creative use of rock or wood.



- c. Wet concrete shall not be poured into or allowed to come in contact with the lake.
- d. Concrete is expressly prohibited as a walkway or patio surface within the lakeshore protection zone. (NOTE: Amended to conform with Section 5.1.W.5)

7. Rock Or Stone:

- a. Rock or stone is a preferred natural material for construction.
- b. All rock or stone that will come in contact with the lake shall be free of silts, sands or fines.
- c. Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays or fines.

B. Excavation Or Filling Of Materials:

- 1. The lakebed or lakeshore should be preserved in its natural condition to the greatest extent possible, in order to protect water quality, aquatic wildlife habitat, and the aesthetic value of the natural shoreline.
- 2. For all construction and projects in the lake or lakeshore protection zone, sedimentation in the lake shall be minimized to the greatest extent possible, as a protection for aquatic habitat and water quality.
- 3. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner so as to prohibit re-entry of the material into the lake.
- 4. 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 that will prevent introduction of the materials into the lake. Large cobbles and boulders lying on the lake bottom and not part of the lakebed armament may be hand picked, provided that such hand picking can be done without excavating any fine lakebed materials and that an armament of rock or gravel remains on the lakebed in the affected areas.

5. The interface of fill materials, such as riprap, with the lake water shall be sloped at no greater than one horizontal, two vertical (1:2) ratio in order to dissipate wave energy. The face of the slope shall be covered with suitable materials to discourage soil erosion and slumping of banks.

C. Erosion, Sedimentation And Storm Runoff:

1. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible. Any construction activity which will affect the lakeshore protection zone shall incorporate all necessary means to prevent pollution of the lake, including erosion, sediment and storm runoff controls.
2. The proposed activity shall not cause, directly or indirectly, increased sedimentation, an increase in suspended sediments, or an increased discharge of nutrients into the lake either during its construction or utilization.
3. Any point source runoff which is diverted to the lake shall be terminated and filtered prior to entering the lakeshore protection zone.

D. Vegetation

1. Native plant species are an important biological and aesthetic component of the lakeshore, and shall be preserved wherever possible. Natives may be more difficult to reestablish than cultivars, since natives generally do not grow well in pots, are smaller and not as widely available as cultivars and are adapted to specific sites and plant communities. Once established, however, natives tend to grow better and require less maintenance.
2. New vegetation shall be provided, if required, as a means of stabilizing erosive areas. Topsoil may be allowed in quantities necessary for establishing and maintaining new plantings.
3. New plants introduced into the lakeshore protection zone must be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at the jurisdictional Planning Office.

4. A finely ground bark (less than 1/2" in size) or compost is recommended for ground cover in conjunction with the native plants.
5. Flower gardens are prohibited.
6. Application of fertilizer, pesticide, insecticide, or herbicide, is prohibited in the lakeshore protection zone.
7. Healthy trees three inches (3") or more in diameter as measured at eight inches (8") above ground shall be preserved. In cases where a tree presents a safety hazard to persons or property, the tree may be removed (by lakeshore permit) provided a similar tree species of three inches (3") in diameter, as measured at eight inches (8") above the ground, is planted within five feet (5') of the old tree or an alternate location determined by the Planning Office and maintained for a period of ten (10) years. If the tree dies within the ten (10) year maintenance period, it shall be replaced subject to this section.
8. Denuding of trees is prohibited. A tree on which all limbs have been removed over a height of twenty five feet (25'), and over forty percent (40%) of trunk height, shall require the planting and maintenance of a future replacement tree in accordance with subsection 5.1.D.7 of this section. The old tree cannot be removed until the new replacement tree has reached a height of over twenty five feet (25').
9. A dead tree three inches (3") or more in diameter as measured eight inches (8") above the ground may be removed with approval from the jurisdictional Planning Office. If there are no other trees over three inches (3") in diameter within eight feet (8') of the dead tree, then a new tree must be planted and maintained in accordance with subsection 5.1.D.7 of this section.
10. Dead trees which must be removed shall generally be felled away from the lake unless circumstances prohibit. If a tree must be felled into the lake, all material and debris must be immediately removed from the lake. All stumps shall be cut off at, ~~or below,~~ ground level and not removed from the lakeshore protection zone. (NOTE: Clarification of policy.)
11. Sprinkler systems with exposed spray heads are prohibited in the lakeshore protection zone, Buried one-half inch (1/2") drip lines are

allowed. (NOTE: Easing of regulations to allow sprinkler drip lines.)

E. Lawns and Grasses

1. Grass seeding, placement of sod, or the establishment of a new lawn in the lakeshore protection zone is prohibited.
2. Grandfathered lawns which existed prior to the establishment of lakeshore regulations, may be maintained by mowing, but not fertilized or treated with any chemicals or pesticides. (NOTE: Clarification.)
3. Turf grass or nonnative vegetation, including grandfathered lawns, once removed from or destroyed in the lakeshore protection zone must be replaced with native vegetation as described in subsection 5.1.D of this section. (NOTE: Clarification.)
4. The existence of lawns or dense native grasses maintained as lawns, which did not exist prior to the establishment of lakeshore regulations, may be prosecuted as a lakeshore violation. Restoration may require removal of all grasses in the lakeshore protection zone, and revegetation according to lakeshore regulations. (NOTE: Amendment to allow consistency of enforcement.)

NOTE: Grandfathered lawns in the lakeshore protection zone have been identified as a significant point source of pollution (particularly phosphates) on Whitefish Lake. The Whitefish Lake Institute has issued a letter in support of a 5-year Sunset Clause on maintaining manicured lawns in the lakeshore protection zone. However, the Whitefish Lakeshore Protection Committee feels that more data should be collected before addressing this potentially contentious regulation which would prohibit the maintenance of existing lawns. Consequently, the following proposed Lawn Maintenance Sunset Clause is deleted, and this issue will likely have to be revisited at some future date.

5. LAWN MAINTENANCE SUNSET CLAUSE:  
~~As of January 1, 2013, the manicured maintenance of existing lawns or grasses shall be prohibited in the lakeshore protection zone. Maintenance of grasses in the lakeshore protections zone shall be limited to cutting by hand tools or by a hand held trimmer no more than once per month, with a minimum length of six inches (6"). Repeated violations may require removal of all grasses in the~~

lakeshore protection zone, and revegetation according to lakeshore regulations.

- F. Constructed Area:
1. The total of all constructed areas within the lake and lakeshore protection zone shall not exceed eight (8) square feet per each lineal foot of shoreline.
  2. Excess constructed area and impervious cover is prohibited as it may affect water quality, detract from the aesthetic values of the shoreline or alter natural shoreline characteristics.
  3. Impervious construction which increases the intensity or amount of run-off channeled into the lake or adjoining areas is prohibited.
  4. Dry-laid stone used for pathways or on pre-existing level patio areas shall be included in the calculated constructed surface area. (NOTE: Clarification - Not a regulation change.)
- G. Material Storage and Debris:
1. Construction materials shall not be stored in the lakeshore protection zone unless no other alternative exists. A lakeshore permit specifically allowing storage of materials in the lakeshore protection zone is required. (NOTE: Clarification - Not a regulation change.)
  2. 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. All construction debris shall be immediately disposed of outside the lake and lakeshore protection zone in such a manner and in such a location so as to prohibit its reentry into the lake.
- H. Burning:
1. Burning of materials on the lakebed or lakeshore will cause a degradation of water quality, and may create safety hazards or detract from aesthetic characteristics of the shoreline. No burning is allowed lakeward of the mean high water line.
  2. Burning in the twenty foot (20') setback zone requires a lakeshore construction permit and may only be allowed as a last resort where there is no physical way to access or remove the debris from the lakeshore protection zone.

3. This subsection is not intended to prohibit small campfires above the average high water line.
4. Burning may also be subject to restrictions or require a permit under City or County Code.

I. Setback Requirements:

1. All structures shall meet the minimum setback requirements for the type of structure proposed, as specified in subsequent sections of this chapter. Greater setbacks may be required by other zoning or ordinance provisions.
2. Common facilities, constructed and shared by two (2) or more property owners, are encouraged, as they would reduce the number of facilities on the lake, thereby reducing potential impacts. Where such a situation exists, setback requirements from the common property or riparian boundary lines may be waived, provided that the application clearly specifies that the facilities are to be used in common by such owners. A permit issued for common facilities is granted on a conditional basis, and is valid only for the duration of ownership by the original parties. (NOTE: Clarification - Not a regulation change.)
3. Stream and spring outlets on lakeshores are valuable aquatic and aesthetic resources, as they provide spawning and rearing habitat for numerous fish species, as well as a variety of food organisms. Structures shall be set back a minimum of twenty five feet (25') from ordinary stream high water for streams and springs having a flow less than twenty five cubic feet per second (25 cfs). Streams and springs with higher flow volumes will be assessed on an individual basis. Swift Creek, the Whitefish River, Lazy Creek and Hellroaring Creek have flows above twenty five cubic feet per second (25 cfs) at some times during the year. Greater setbacks may be required by other zoning or ordinance provisions.
4. Structures or activities adjacent to rivers and streams may also be subject to floodplain regulations. Portions of the lakeshore protection zone are also subject to floodplain regulations.
5. Where no specific setback requirements for the specific type of structure proposed have been established, the structure(s) shall be set back from the side property lines and/or riparian boundary lines based on the property's lakeshore frontage. The setbacks shall be as follows:

<u>Lakeshore Frontage (ft.)</u>	<u>Minimum Setback (ft.)</u>
60 or less	10.0
More than 60 but less than 75	12.5
75 or more	15.0

J. Use of Mechanical Equipment:

1. Use of mechanical equipment has significant potential for damaging the natural armament of the lakeshore and lakebed, exposing sediments, damaging vegetation and scarring of sloped terrain and the lakeshore. The use of mechanical equipment or any motorized vehicle in the lakeshore protection zone requires a lakeshore permit. Limited use of a vehicle or mechanical equipment for the seasonal removal or installation of permitted docks is exempt from this requirement, but still subject to the following regulations.
2. Use of mechanical equipment in the lakeshore protection zone is permitted only if the equipment does not come in contact with the lake; expose silts or fines; or gouge, rut or otherwise damage the lakeshore or vegetation.
3. The lakeshore shall be immediately restored to its condition prior to construction. All equipment tracks shall be raked or otherwise removed by hand.
4. Temporary storage of vehicles, trailers, other equipment or construction materials in the lakeshore protection zone is prohibited.
5. As a condition of the permit, the governing body may require that hand tools be used in lieu of mechanical equipment, based on the scope (size) of the project or possible damage to the lakeshore zone due to excessive slope or terrain.

K. Docks, Swim Docks, and Floating Trampolines:

1. Only one dock is allowed per common waterfront property ownership, unless an individual dwelling is constructed on each

separate and legally defined lot with independent water and sewage disposal, in which case one dock is allowed per independent dwelling unit/lot. Common waterfront property ownership shall be defined as multiple contiguous lots under one family or related ownership, including fractional ownership in a corporation, partnership or other legal entity. (This does not apply to marina applications.)

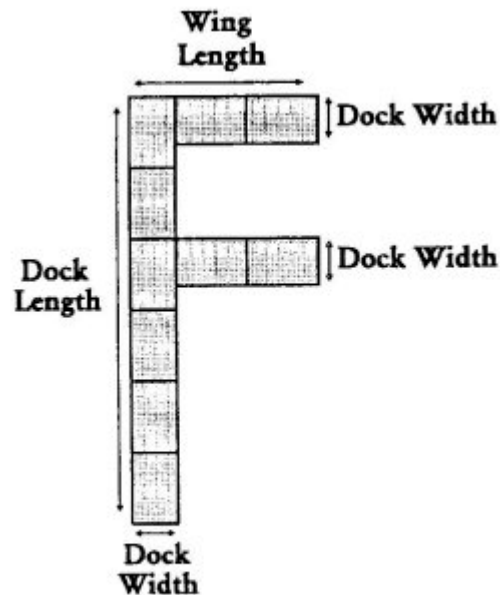
2. Usage of a dock is limited to the properties applied for in the permit application when the dock is nonconforming, or is granted under variance, or is an expanded shared dock granted under subsection 5.1.K.14 of this chapter.
3. Solid docks (i.e., rock filled crib dock) or structures which essentially block the transfer of water beneath the dock shall not be permitted, as they impede current flows and, therefore, create stagnant water.
4. Docks shall be placed in the middle of the property ownership. Where this is not practical, the setback may be reduced to a minimum of twenty feet (20') between any portion of the dock and the riparian boundary property line. For setbacks from streams, creeks, rivers, etc., see subsection 5.1.I.3 of this chapter.
5. Docks shall not exceed sixty feet (60') in length, including any access ramp or gangway.

For docks on Whitefish Lake:

- a. If the water depth at sixty (60) foot from low water (measured after August 15<sup>th</sup>) is less than four feet (4') in depth, and cannot be moved to a location on the property to achieve four feet (4') depth, then the total dock length may be increased to the point at which water depth equals four feet (4'), but not to exceed one hundred feet (100') in maximum length, including gangway.
- b. On docks exceeding sixty feet (60') in length, dock slips, shore stations, and mooring cleats shall be limited to the outer forty feet (40') of the overall length.
- c. On docks exceeding sixty feet (60') in length, a water depth profile from sixty (60) to one hundred feet (100') is required with the dock permit application.



- d. Due to the high potential for interference with public navigation and recreation, no dock shall exceed one hundred feet (100') in total length, including gangways.
6. The wing length of a dock (see figure #2), whether it is a T, F, 4 or L shaped dock, shall not exceed thirty percent (30%) of the lot frontage or thirty feet (30'), whichever is less.



**Figure 2. Dock Dimensions**

7. The maximum width of all dock sections, wings, and gangways shall not exceed eight feet (8').
8. If foam or similar easily damaged flotation systems are incorporated into the dock design, the material shall be completely encased in solid wood or a suitable impervious, noncorrosive material such as aluminum or galvanized sheet metal so as to avoid the breakup or scattering of materials. Plywood, particleboard, etc., shall not be used. Boards may be spaced up to one-half inch (1/2") apart on the bottom or drain holes may be incorporated into other materials to aid in drainage. All foam encased floating docks shall be maintained according to these standards or else be immediately and completely removed from the lakeshore protection zone.
9. All floating docks shall be suitably anchored to the lake bottom to avoid drift. Anchoring methods are limited to cable, galvanized chain or nylon or polypropylene rope attached to a suitable clean weight such as solid clean concrete, rock or steel blocks or a

temporary pipe and post system which allows the dock sections to slide up and down.

10. Docks which have deteriorated to the extent that they may contaminate the lake, such as having exposed white Styrofoam, shall be immediately repaired as necessary to eliminate the risk of contamination or shall be removed from the lakeshore protection zone.
11. It is a violation of these regulations to abandon docks or to otherwise allow docks or dock remnants to float out onto the lake unsecured.
12. Repair or replacement of materials on existing docks shall be in accordance with these regulations.
13. After a permitted dock is installed, a licensed survey of the property riparian boundaries may be required if the governing body receives a complaint about possible setback encroachment.  
(NOTE: Amendment to allow enforcement.)
14. Shared docks shall comply with the standards found in this Section 5.1.K, except as otherwise specified below:
  - a. Multiple contiguous property owners or a single property owner with multiple contiguous properties that combined exceeds two hundred (200) lineal feet of lake frontage ~~and two hundred feet (200') of average lot width~~, may apply for a shared dock under this section.
  - b. The total width of a shared dock shall not exceed sixty feet (60'), regardless of configuration.
  - c. A minimum setback of forty feet (40') is required between both riparian boundaries and any portion of a shared dock that exceeds thirty feet (30') in total width.
  - d. Common shoreline dock facilities shared by two (2) or more owners should be encouraged, as such facilities will reduce the overall environmental impacts on the lakebed and lakeshore and ease navigational congestion on the lake.
15. Swim docks shall comply with the following:

- a. Swim docks shall comply with all standards applicable to conventional docks, except as described in subsections below.
- b. No part of a swim dock may be located more than sixty feet (60') from the shoreline at the current lake level.
- c. The size of swim docks shall not exceed one hundred (100) square feet with no one dimension exceeding twelve feet (12').
- d. Swim docks shall have a minimum of eight inches (8") of visible freeboard.
- e. Only one swim dock or one conventional dock, but not both, is permitted on property ownerships with less than one hundred feet (100') of lake frontage. On property ownerships with one hundred feet (100') or more of lake frontage, only one swim dock and one conventional dock is permitted.
- f. A minimum setback of thirty five feet (35') is required between both riparian boundaries and a swim dock.
- g. Swim docks may be prohibited based on considerations of public safety and congestion. Owners are advised that swim docks may create a significant hazard for navigation. Flathead County and the City of Whitefish shall assume no liability for navigational accidents involving swim docks.

16. Floating Trampolines:

- a. Floating trampolines and similar items are regulated under this provision because of the large amount of lake coverage and tall profile.
- b. The entire surface area of a floating trampoline and accessory attachments shall be included in the coverage calculation as provided for in subsection 5.1.F of this chapter.
- c. A minimum setback of thirty five feet (35') is required between both riparian boundaries and any portion of the floating trampoline and attachments.

- d. No part of a floating trampoline may be located more than sixty feet (60') from the shoreline at the current water level.
- e. Floating trampolines shall be anchored to prevent encroachments into the setbacks.
- f. Floating trampolines may be prohibited based on considerations of public safety and congestion. Owners are advised that floating trampolines may create a significant hazard for navigation. Flathead County and the City of Whitefish shall assume no liability for navigational accidents involving floating trampolines.

L. Marinas:

1. Due to their size and concentration of public activity, marinas have a high potential to impact the lake, lakeshore, open water navigation, and neighboring property owners. A marina permit may be denied or additional restrictions imposed, based on assessment of this impact. (NOTE: Clarification.)
2. A marina shall be designed to accommodate only anticipated sizing and capacity needs, to protect the navigational rights and safety of neighboring property owners and recreational users of the lake, to ensure general compatibility with the character of the area so as not to create an unwarranted disturbance or nuisance, and to protect the quality of the water and aquatic and wildlife habitat.
3. A marina may not be located immediately lakeward of a wetland area. (NOTE: Amendment to prohibit a marina adjacent to a wetland area without a variance.)
4. A minimum of one hundred feet (100') shall remain open between any portion of the marina dock structure and the side riparian boundaries.
5. Minimum twenty five foot (25') travel lanes shall be provided between dock structures for boats to travel.
6. Private marinas are defined as any dock facility serving the needs of a homeowners' association, private housing development, resort facility, or other limited group, and providing overnight dockage or moorage, and shall comply with the following: (NOTE: Amended to conform to Chapter 7 - Definitions.)

- a. Each marina shall have a minimum of two hundred fifty feet (250') of lake frontage.
  - b. The design standards for dockage shall be limited by and must comply with subsection 5.1.K of this section unless otherwise modified below.
  - c. If a marina meets all regulation criteria without requiring a variance, and does not exceed 60' in length, then an additional gangway up to 3' x 12' may be installed to access the dock. This gangway shall be included in the constructed surface area for the marina.
  - d. The maximum length of each individual boat slip shall not exceed twenty-six feet (26').
  - e. The total amount of constructed surface per property in the lakeshore protection zone shall not exceed ten (10) square feet for each lineal foot of lakeshore frontage.
  - f. The amount of constructed surface located below the mean annual high water line shall not exceed eight (8) square feet for each lineal foot of lakeshore frontage.
  - g. The overall density of boats/boat slips provided shall not exceed one boat/boat slip per twenty (20) lineal feet of lakeshore frontage.
  - h. Overnight mooring is only allowed in designated slips.  
(NOTE: Clarification - Not a regulation change.)
  - i. Private marinas may not incorporate boat ramps.
  - j. No retail sales or rental facilities shall be allowed on the site.
7. Public marinas are defined as providing boat slips and/or services, without restriction, to the general public, and shall comply with the following: (NOTE: Amended to conform to Chapter 7 - Definitions.)
- a. Each marina shall have a minimum of three hundred feet (300') of lake frontage.
  - b. In addition to subsection 5.1.K. of this section design standards for docks, the maximum length of that portion of

any dock extending over water shall be one hundred feet (100').

- c. If a marina meets all regulation criteria without requiring a variance, and does not exceed 60' in length, then an additional gangway up to 3' x 12' may be installed to access the dock. This gangway shall be included in the constructed surface area for the marina.
- d. The length of the individual boat slips shall be sized according to need.
- e. The amount of constructed surface in the lakeshore protection zone per property shall not exceed fifteen (15) square feet for each lineal foot of lakeshore frontage.
- f. The amount of constructed surface located below the mean annual high water line shall not exceed twelve (12) square feet for each lineal foot of lakeshore frontage.
- g. The overall density of boats or boat slips provided shall not exceed one boat or boat slip per ten (10) lineal feet of lakeshore frontage.
- h. Overnight mooring is only allowed in designated slips.  
(NOTE: Clarification - Not a regulation change.)
- i. One boat ramp per ~~commercial~~ public marina may be constructed.
- j. One shoreside sewage facility and one shoreside fuel station per marina may be constructed.
- k. Lake related rental services and retail sales of water use related merchandise, such as boat fuel, oil and lubricants, fishing equipment and personal items, are typically associated with the marina.
- l. A distance of one hundred feet (100') waterward from the dock's end may be required to be identified by buoys placed in the lake to indicate a reduced boat speed so that no wake is produced. The reduction to no wake speed may be required at a distance greater than one hundred feet (100') depending upon the size of the marina and the size of the boats to be berthed.

**NOTE: The following two amendments allow a governing body to establish slip allocation criteria for a public marina.**

m. Annual allocation of boat slips of a public marina shall be on a non-preferential basis, such as a random lottery, and must be approved by the governing body.

n. The governing body may set other slip allocation, usage and rental fee criteria which it may determine necessary to assure equitable access by the general public.

8. If a private or public marina submits an application for reconfiguration, the governing body may require compliance with current lakeshore regulations. **(NOTE: Clarification - Not a regulation change.)**

9. The governing body shall have the right to regularly inspect and require compliance of a marina with its approved permit. **(NOTE: Clarification - Not a regulation change.)**

M. Shore Stations and Floating Boat Lifts:

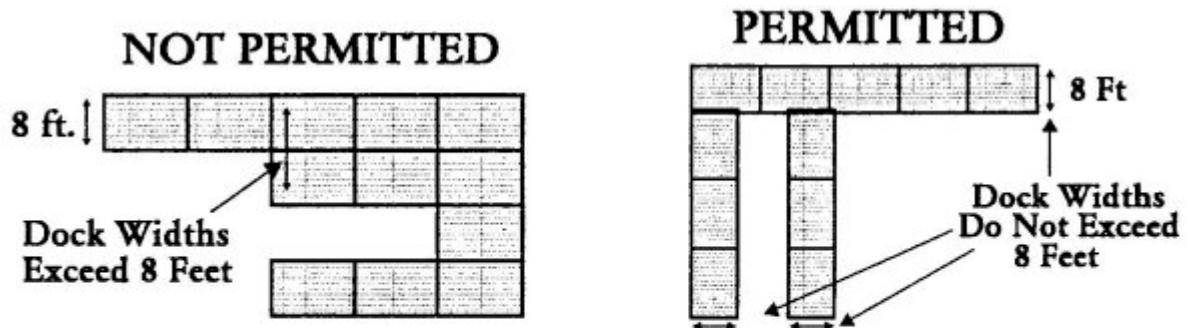
1. Shore stations and floating boat lifts (which include shore stations or floating docking stations designed for personal watercraft) shall not be located farther into the lake than the permitted dock length.

2. Shore stations and floating boat lifts shall be located no closer than twenty five feet (25') from a riparian boundary line. A greater setback distance may be required if, in the opinion of the governing body, the structure would likely infringe on navigation from the adjoining property, or if the shore station would be located more than sixty feet (60') from the existing shoreline.

3. The highest point on a shore station or floating boat lift shall not exceed ten feet (10') in height above the current water elevation of the lake.

4. Shore stations and floating boat lifts may have a roof cover on a seasonal basis which is removed during the late fall, winter and spring periods of nonuse. Said cover will be made of a nonreflective material. Earthtone colors are preferred, such as: green, tan, brown and gray.

5. Shore stations may be placed on ~~both~~ either sides of the dock, provided the required twenty five foot (25') setback can be maintained for both riparian boundaries.
6. When a floating boat lift is installed in conjunction with a dock, no section shall result in an overall dock surface width exceeding eight feet (8'). (See "Figure 3. Floating Boat Lift Placement", of this subsection.)



**Figure 3. Floating Boat Lift Placement**

7. The entire surface area of a floating boat lift or floating personal watercraft docking station shall be included in the coverage calculation as provided for in subsection 5.1.F of this chapter.
8. The entire surface area of canopies that cover shore stations, boat slips, or docks shall be included in the constructed area calculation, as provided in subsection 5.1.F of this chapter. For a property with a grandfathered nonconforming structure in the lakeshore zone, an exemption to this requirement is allowed for a single canopy if the total constructed surface area, excluding the grandfathered nonconforming structure, does not exceed the maximum constructed area as provided for in subsection 5.1.F. of this chapter.
9. An existing shore station may be replaced with a new shore station without a lakeshore permit, provided that placement is identical to, and canopy size is no greater than, the shore station being removed. (NOTE: Easing of regulations.)

N. Boat Ramps and Boat Rail Systems:

1. Private boat ramps are prohibited, as they increase sedimentation in the lake, diminish water quality and alter natural shoreline characteristics.



2. Public boat ramps shall comply with the following:
  - a. Footings and/or the base of the boat ramp shall be constructed below the preexisting grade of the shoreline.
  - b. All material excavated from the lakeshore to construct the boat ramp and not used as the ramp foundation material shall be immediately and completely removed from the lakeshore protection zone and deposited in such a manner as to prohibit its reentry into the lake.
  - c. Boat ramps shall be of the same elevation as the preconstruction lakebed and lakeshore elevation.
  - d. No boat ramp shall exceed six hundred (600) square feet in surface area water ward of the average high water line.
  - e. Maximum grade shall not exceed fifteen percent (15%) and no natural slope in excess of thirty percent (30%) grade shall be disturbed by construction of a boat ramp.
  - f. All ramps shall be finished with nonskid surface to ensure maximum traction for vehicles launching and retrieving boats.
  - g. Boat ramp edges, if deemed necessary, shall be riprapped in order to prevent erosive undercutting.
3. Boat rail systems shall comply with the following:
  - a. Rail systems must be manufactured and installed in a manner which permits removal during winter months to avoid ice damage.
  - b. The rails of the rail launching system shall not exceed four inches (4") in height and the rail system shall lie on and follow the grade of the existing lakebed and lakeshore.
  - c. One boat rail system shall be allowed per property ownership. The boat rail carriage may have a canopy (subject to subsections 5.1.M.4 and 5.1.M.8 of this section) if it is stored outside of the lakeshore protection zone when the boat is not in use.

- d. Boat rail systems shall be located no closer than twenty-five feet (25') from a riparian boundary line. (NOTE: Amended to conform to shorestation setback requirements.)

O. Riprap & Retaining Walls:

1. Retaining walls significantly alter shoreline characteristics, create an unnatural shoreline, and cause alteration of wave actions with resulting shoreline erosion on neighboring properties. Consequently, retaining walls are prohibited except as a replacement for an existing retaining wall, or in a situation where bank failure is threatening a dwelling unit or where riprap has been installed and proven inadequate in bank stabilization.
2. In situations where a retaining wall must be constructed, the following standards shall apply:
  - a. Retaining walls shall be built at or landward of the mean annual high water elevation and shall conform to the contours of the existing shoreline.
  - b. Any existing wall shall be completely removed from the lakeshore protection zone and the replacement wall shall be constructed in the same location as the existing wall.
  - c. A replacement retaining wall shall be constructed to the same height, or lower than, the existing wall to be removed. A new retaining wall shall be constructed to the minimum height necessary to stabilize the bank. (NOTE: Clarification to conform with remaining subsections.)
  - d. All material excavated for placement of the footings may be used as backfill behind the wall or else must be deposited outside of the lakeshore protection zone.
  - e. Backfill shall be limited to that amount necessary to reestablish the preexisting slope and contours of the landward side, but shall not extend closer than two inches (2") from the top of the new retaining wall in order to inhibit surface water runoff which may carry fertilizer, herbicides, pesticides, etc.
  - f. When more than twelve inches (12") of retaining wall is exposed in the lakeward side of the wall, riprap complying with conditions above shall be placed on the waterward side

of the wall such that the toe of the riprap shall not extend waterward of high water and the top of the rock shall extend to within at least six inches (6") of the top of the wall.

- g. If removal of an existing retaining wall proves unfeasible or will cause bank failure or threaten a dwelling unit, a new wall may be constructed immediately lakeward of the existing wall.
  - h. Preferred retaining wall construction materials, in order of preference, are: rock-faced concrete retaining wall, interlocking pre-cast concrete stone (i.e., Keystone block).
  - i. A detailed plan showing the exact location of the wall, the cross-section and dimensions of the wall, and proposed facing material shall be included with the permit application.  
(NOTE: Clarification to ensure complete permit application.)
3. Riprap shall constitute the primary method of erosion control, and shall be limited to areas where active shoreline erosion is clearly present. Riprap placement shall meet the following standards:
- a. Riprap shall be placed at or landward of the mean annual high water elevation.
  - b. Riprap placement shall follow the contour of the existing shoreline, and shall be sloped at no greater than one horizontal, two vertical (1:2) ratio in order to dissipate wave energy. ~~be placed on a grade or slope not to exceed 2:1 (2 vertical, 1 horizontal).~~
  - c. Riprap shall be limited to 18" in vertical height. In areas where active erosion clearly exceeds 18", riprap height shall be limited to the varying elevation of the active erosion, which must be surveyed and staked by a licensed surveyor, and clearly documented in a detailed elevation plan included with the lakeshore permit application. A topographical survey showing all proposed riprap placement in the lakeshore protection zone is required as part of a permit requesting riprap.
  - d. Stone used for riprap shall be limited to native rock picked from the shoreline, or non-angular rock whose appearance is similar to native shoreline stone. Size of imported rock shall be 6-12" nominal diameter, 18" maximum diameter, and

shall be free of silts, sands or fines. Imported rock or stone that does not conform to these size requirements, or whose appearance is not similar to native shoreline stone, will result in a violation and be required to be removed and replaced.

- e. Prior to placement of the riprap, filter fabric is required to be placed along the shoreline and incorporated into the riprap design to inhibit erosion and the washing of fines through the riprap.
- f. Gabion baskets are not allowed.

4. Placement of boulders for landscape purposes is prohibited.  
(NOTE: Clarification.)

P. Swim Beaches:

- 1. Addition of gravel to a swimming beach is allowed on a case by case basis, subject to the following requirements:
  - a. Application of gravel is allowed only where the predominant existing surface is gravel.
  - b. Application of gravel is not permitted in the following areas: sites subject to strong wave action or currents; sites covered predominately by vegetation; silts or fines; below average low water.
  - c. Placement of gravel directly into the lake is prohibited.
  - d. All fill shall be clean, washed gravel of three-fourths inch to one and one-half inch (3/4" - 1-1/2") diameter, free of silts, sands and fines. Gravel type and color shall approximate that existing on the adjacent lakeshore.
  - e. Minimum fill depth is four to six inches (4" - 6").
  - f. The volume of fill shall not exceed one cubic yard per eight (8) lineal feet of lake frontage.
  - g. Application of gravel shall be permitted one time only to supplement a stable gravel beach. Reapplication of gravel where it was washed away, silted in or revegetated over time is prohibited.

Q. Dredging and Filling:

NOTE: The following amendment addresses the method of establishing shoreline restoration after a violation where a shoreline has been altered.

1. Altering of a shoreline and/or high water line by removal or addition of material is prohibited. If a shoreline is altered, then restoration shall be to the more stringent of the following two guidelines, as determined by the governing body:
  - a. A uniform topography and high water line as delineated by the immediately adjacent properties on both sides.
  - b. A topography and high water line as can be determined by archive photos taken prior to the alteration.

NOTE: The following is a formal regulation to acknowledge a common practice used by lakeshore property owners.

2. Selectively picking rock from the shoreline is allowed without a permit if all of the following conditions are met:
  - a. A predominantly gravel beach already exists along the shoreline; and
  - b. The gradient of the shoreline and location of mean high water line are not altered; and
  - c. The rock is completely removed from the lakeshore and lakeshore protection zone.
3. Stacking or placement of rock anywhere in the lakeshore protection zone requires a permit [see Section 5.1.O Riprap]. (NOTE: Clarification.)
4. Dredging of a lakebed or lakeshore may have adverse effects due to suspension of fine materials, re-suspension of nutrients and toxic materials, exposure of stable lakebed sediments to unstable conditions, removal of lakebed armament and creation of steep bench areas. All dredging permits require a major variance. (NOTE: Clarification of policy.)
5. Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or lagoon is not permitted.
6. Dredging for the purpose of removing accumulated silt, sand or gravel behind an existing dock or within the confines of an existing

structure is only permitted if all excavated materials are removed entirely from the lake and lakeshore areas and deposited so as to prohibit their reentry into the lake.

7. Dredging for the purpose of removing accumulated silt, sand or gravel which blocks access to a docking area is only permitted if such area to be dredged is less than five hundred (500) square feet, and all excavated materials are removed entirely from the lake and lakeshore areas and deposited so as to prohibit their reentry into the lake.
  8. Dredging and/or filling is only permitted after August 15<sup>th</sup> when the lake is at low water, or a later date to minimize impact on public navigation.
  9. Filling of a portion of a lake may have adverse effects due to destruction of an aquatic environment, loss of habitat for fish and wildlife, creation of an unnatural shoreline, creation of steep bench areas and alteration of current flows and wave actions. Filling of wetlands may have adverse effects due to destruction of an aquatic environment, loss of habitat for fish and wildlife, loss of water storage capacity and loss of the natural storm runoff cleansing functions and the natural nutrient entrapment functions of wetlands. All permits for the purpose of adding fill below the mean high water line, except swim beach maintenance as described in section 5.1.P, requires a major variance. (NOTE: Clarification of policy.)
  10. Fill projects for the purpose of expanding existing land areas shall not be permitted.
  11. Discharge of fill material directly into the lake shall not be permitted.
  12. Filling of wetlands adjacent to a lake is prohibited.
  13. Permits for any dredging and filling may also be required by the Department of Natural Resources and Conservation and the U.S. Army Corps of Engineers. A floodplain permit will be required from the local governing body.
- R. Utility Lines (Electrical, Sewer, Water, Wells):
1. Electrical Lines:

- a. Electrical lines are unsightly and potentially dangerous in or near a water environment. No permanent overhead electrical lines are allowed in the lakeshore protection zone.
- b. All lighting on existing grandfathered structures shall be designed to reflect light away from abutting or adjacent properties and the lakeshore protection zone. **(NOTE: Clarification - See R.1.e.)**
- c. Low voltage pathway lighting, no greater than two feet (2') in height may be permitted. Such lighting shall be downcast and shielded.
- d. No permanent lighting on docks is allowed.
- e. No other lighting is allowed in the lakeshore protection zone, as it can be distracting, hazardous to navigation and contributory to an unnatural setting.

2. Sewer Lines/Disposal Facilities:

- a. Domestic sewer lines or components are prohibited in the lakeshore protection zone.
- b. Municipal/community sewer lines, lift stations and other associated facilities are prohibited in the lakeshore protection zone.
- c. Shoreside pumpout facilities may be placed in public or private marinas or public parks.
  - (1) Such facilities must receive approval of the Montana Department of Health and Environmental Sciences, ~~and~~ the Flathead City/County Health Department and/or any other government body with jurisdiction.
  - (2) Such facilities shall include equipment to pump or otherwise receive and transfer contents of vessel holding tanks into a sewage retention and/or disposal system located outside the lakeshore protection zone.

3. Water Lines:

- a. A water line shall be located no closer than ten feet (10') from either side property/riparian boundary line.
- b. Only the minimum amount of material necessary to lay the line shall be removed from the trench.
  - (1) All material excavated from the trench shall be replaced back into the trench as backfill. Any material which is not replaced back into the trench shall be completely removed from the lakeshore protection zone.
  - (2) In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.
  - (3) In areas where no rock layer exists, the replaced dirt shall be compacted and consolidated in order to prevent erosion. Additional cover, such as gravel, a rock layer or vegetation, may also be required.
- c. Following installation, the lakebed shall be returned to its condition prior to construction.
- d. A trenching machine may extend its bucket or digger into the lake to extend the trench below low water line of the lake.
- e. At no time shall the wheels of any vehicle come in contact with the lake.
- f. That portion of the water line which is not buried and does lie exposed on the bottom of the lakeshore shall be weighted to prohibit flotation or snagging.
- g. Water lines using submersible pumps may incorporate an electrical line, but all such work and installation shall be done in accordance with the state uniform plumbing and electrical codes. State electrical code requires a Ground Fault Interruption (GFI) breaker on all water pumps. The electrical line shall be installed in conduit for protection and maintenance accessibility.





3. A permitted buoy shall be installed subject to the following conditions:
- a. The buoy shall be at least twelve inches (12") in diameter and constructed of plastic or dense foam which is light colored and reflective for maximum visibility. Logs, wood, metal barrels, and milk cartons are prohibited.
  - b. A buoy which has deteriorated to less than twelve inches (12") in diameter or is failing to float for adequate visibility is a navigational hazard and shall be immediately removed from the lake.
  - c. The buoy shall be suitably anchored to the lake bottom to avoid drift. The anchor shall be clean, solid, nonpolluting material such as concrete, rock or steel blocks.
  - d. The line between the buoy and the anchor shall be cable, galvanized chain or weighted nylon/polypropylene rope to prevent floating.
  - e. The buoy and anchor shall be placed within one hundred feet (100') of the mean annual high water line.
  - f. The distance from the buoy to a moored boat shall not exceed twelve feet (12').
  - g. Buoys are not permitted on lots less than seventy five feet (75') in width. The buoy shall be centered on the property or placed such that the farthest swing of a buoy moored boat in the prevailing winds is twenty five feet (25') from the riparian boundary.
  - h. Only one buoy or boat anchor is allowed per common waterfront property ownership. Common waterfront property ownership shall be defined as multiple contiguous lots under one family or related ownership, including fractional ownership in a corporation, partnership or other legal entity.
  - i. The user of the buoy boat anchor shall be the lakeshore property owner immediately landward and adjacent to the site or an individual who has the owner's specific permission.

j. State law requires any boat or other watercraft attached or anchored to a buoy shall maintain at all times between sunset and sunrise, a thirty two (32) point light (a light visible at all times from all directions for a 360 degree field of view).

4. An existing buoy may be replaced with a new buoy without a lakeshore permit, provided that placement is identical to the buoy being removed. (NOTE: Easing of regulations.)

5. Swim floats secured with lines for the purpose of marking a swim area are only allowed for public beaches, and private or public marinas, and a require a permit. The buoy lines may be located no closer than twenty feet (20') from the riparian property line, and no more than sixty feet (60') from the shoreline.

U. Boathouses and Boat Shelters:

1. Boathouses and boat shelters are not allowed in the lakeshore protection zone.

2. Existing grandfathered boathouses or boat shelters in the lakeshore protection zone shall be maintained subject to section 5.1.Z Nonconforming Structures.

V. Decks

1. Decks, including decks on top of, or balconies cantilevered from, boat houses, storage buildings, dwelling units, etc., are prohibited in the lakeshore protection zone.

2. Existing grandfathered decks in the lakeshore protection zone shall be maintained subject to section 5.1.Z Nonconforming Structures.

W. Stairways, Walkways and Pathways:

1. Stairways, walkways, and pathways shall have a maximum width of four feet (4'), and be designed and constructed in a manner which provides the most direct access to the lake with minimum environmental and visual impact.

2. Pathways on existing grade with embedded steps of stone or untreated timbers are preferred to constructed walkways or elevated stairways. For pathways, only the stone or timber steps

are subject to the maximum allowable constructed area in Section 5.1.F.

3. Stairways and walkways constructed of impervious material, including dry-laid stone, are subject to the maximum allowable constructed area in Section 5.1.F. (NOTE: Clarification.)
4. Elevated stairways shall follow the natural grade of the existing shoreline, and no portion of the walking surface of the stairway or landing shall be situated higher than two (2) vertical feet above the underlying lakeshore.
5. Stairways shall be constructed of wood composite (i.e., Trex) or untreated wood left in its natural (unpainted) condition. Stairways or walkways of poured in place concrete are prohibited.
6. Stairway railings are permitted. Railings shall not extend higher than four feet (4') above the stairway walking surface and shall have a non-ornate, visually open design. Railings shall be constructed of wood composite (i.e. Trex) or untreated wood left in its natural (unpainted) condition, or metal painted an earthtone color by the manufacturer prior to installation.
7. Steep lakeshore properties, where stairway construction standards cannot be met, may lack reasonable access to the lake and shall be considered view lots.

X. Fences and Hedges:

1. Fences or hedges within the lakeshore protection zone shall only be allowed upon a showing of hardship such as where a private residential property abuts a park, resort, commercial, or other incompatible use.
2. The maximum height of a fence or hedge shall be six feet (6'), or lower if determined necessary to protect the viewshed from neighboring properties.
3. All fences must maintain at least fifty percent (50%) open space in their design.
4. Solid fences and barbwire fencing are prohibited.
5. Fences or hedges shall not extend waterward of the mean annual high water level.

Y. Dwelling Units:

1. No permanent or temporary dwelling units, or portions thereof, shall be constructed within the lakeshore protection zone, as they concentrate human activities on the shoreline, obstruct scenic views, create impervious surfaces, increase surface storm runoff into the lake, and diminish water quality.
2. No temporary structures, including commercial tents, shall be erected within the lakeshore protection zone.
3. Existing grandfathered dwelling units, or portions thereof, which are located in the lakeshore protection zone shall be maintained in conformance with subsection 5.1.Z Nonconforming Structures below.

Z. Nonconforming Structures:

~~NOTE: The existing regulations already distinguish between "routine" and "necessary" maintenance in Section 7 Definitions. The following changes carry that distinction into this section on Nonconforming Structures for ease of understanding and use.~~

- ~~1. Any nonconforming structure may be continued and maintained, provided there is no physical change other than routine or necessary maintenance.~~
2. Routine maintenance, not requiring a lakeshore permit, is limited to:
  - ~~a. Partial replacement of boards, damaged shingles or siding, a broken window, or repair of similar minor damage.~~
  - b. ~~Painting and/or staining, provided that the nonconforming structure was built prior to 1978, is located landward of the high water line, and has been painted or stained on a routine basis in the past. All paint or stain must be earthtone colors.~~
3. Necessary maintenance, requiring a lakeshore permit, includes:
  - ~~a. Foundation repairs or replacement.~~
  - b. ~~Any major structural repairs, such as the replacement of footings, support pilings or posts, in the lakeshore protection zone.~~

- c. ~~Replacement of over 25% of siding.~~
  - d. ~~Reroofing over 25% of the roof surface area.~~
  - e. ~~Identical replacement of access stairways. (NOTE: Allows complete replacement under "necessary" maintenance.)~~
  - f. ~~Any other repairs or maintenance designed to maintain a nonconforming structure in its current state of use which does not meet the requirements of "routine" maintenance in subsection 5.1.Z.2.~~
4. ~~Any construction materials used for routine or necessary maintenance shall be of a nonreflective nature and earthtone colors.~~
  5. ~~Any construction or repairs which do not clearly conform to routine or necessary maintenance, as described above, are prohibited and will result in a violation which may require complete removal of the nonconforming structure. (NOTE: Clarification.)~~
  6. ~~Any improvements to a nonconforming structure, including but not limited to the addition of windows, doors, awnings, stone veneer, overhangs, decks or architectural features or embellishments, are prohibited. (NOTE: Clarification.)~~
  7. ~~There may be a change in ownership or management of an existing nonconforming structure, provided there is no change in the physical structure or in the character of use. (NOTE: Clarification.)~~
  8. ~~A nonconforming storage shed or boathouse in the lakeshore protection zone may not be altered or improved in any manner which might result in a change of use to an inhabitable structure. Prohibited changes include, but are not limited to, the addition of windows, changing an overhead garage door to patio or walkway doors, or finishing of the interior. (NOTE: Clarification.)~~
  9. ~~No portion of a nonconforming structure located in the lakeshore protection zone may be enlarged or added to in any manner. (NOTE: Clarification.)~~
  10. ~~A nonconforming structure having been damaged or partially destroyed by fire or an act of nature to an extent not exceeding fifty percent (50%) of its real value, exclusive of foundations, may be~~

~~restored. Whenever a nonconforming structure is damaged in excess of fifty percent (50%), the structure shall be removed from the lakeshore protection zone. All work exceeding routine maintenance needs a permit.~~

11. ~~—A nonconforming structure may not be replaced to an extent exceeding fifty percent (50%) of its real value over any five (5) year period. Violations of this provision shall require removal of the nonconforming structure from the lakeshore protection zone.~~

NOTE: The following are from existing County Regulations, with changes highlighted, amendments underlined, and deletions marked by strike-out.

1. Any nonconforming building or structure may be continued and maintained, provided there is no physical change other than necessary maintenance and repair.
2. Routine or seasonal maintenance may be completed without requiring a permit. See Section 7 Definitions: Maintenance. All materials shall conform with Section 5.1.A Construction Standards - Materials.
3. A permit shall be required when repairs include replacement of structural or foundation components, or include improvements not present in the structure prior to such repair. See Section 7 Definitions: Repair. All materials shall conform with Section 5.1.A Construction Standards - Materials.
4. In the case of ~~There may be~~ a change in ownership or management of an existing nonconforming building or structure, ~~provided there is~~ no changes may be made in the nature or character of such nonconforming use.
5. A nonconforming storage shed or boathouse in the lakeshore protection zone may not be altered or improved in any manner which might result in a change of use.
6. A nonconforming building or structure having been damaged or partially destroyed by fire, or other calamity to an extent not exceeding 50 percent of its real value, exclusive of foundations, at any time, may be restored to its immediately previous use existing at the time of partial destruction. Whenever a nonconforming building or structure is damaged in excess of 50 percent, as stated above, ~~the repair or reconstruction shall conform to the requirements of these regulations.~~ it may be rebuilt to its previous condition if the conditions for a variance are met and it meets other

applicable zoning or floodplain regulations. (All work exceeding routine maintenance requires a permit.)

7. A building or structure which is non-conforming shall not be added to or enlarged in any manner unless such building or structure, including such addition and enlargements, is made to conform to the requirements of these regulations. (Permit required).
8. Any nonconforming use or structure which is eliminated or reduced in size or scale by a means other than natural disaster or calamity ~~can~~ may only be replaced, re-established or enlarged according to these regulations (permit required).
9. Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained in accordance to the following standards:
  - a. Dwelling units represent concentrations of human activities. Such activities are essentially land based with people entering the aquatic environment only for relatively short periods of time for recreational purposes. Dwelling units are potentially harmful through: intrusion of non-aquatic land use in an aquatic environment; creation of impervious surfaces; increasing surface storm runoff into the lake, concentrating human activities on the shoreline; obstruction of scenic views and possible sewer leakage. No permanent or temporary dwelling units or portions thereof, shall be constructed within the lakeshore protection zone. This includes roof overhangs, drip lines, balconies, bay windows, chimney's, ~~elevated (more than 24 inches above ground)~~ decks, etc.
  - b. Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained, provided that the building height is limited to twenty-five (25) feet as measured from the finished grade nearest the shoreline to the highest point on the building, or the existing height, if the structure exceeds twenty-five (25) feet in height.
  - c. Construction materials shall conform with Section 5.1.A., and shall be of a non-reflective nature. If paint is used, it shall be of earth toned colors.
10. A dock provides primary recreational access to the lake. Any significant reduction in a nonconforming dock's size or length



could restrict or impact a property owner's access to the lake and result in an undue hardship. Consequently, a non-conforming dock which exceeds allowable constructed surface area due to other grandfathered nonconforming structures existing in the lakeshore protection zone, or exceeds maximum allowable length which existed prior to establishment of lakeshore regulations, may be replaced without a variance if the following conditions are met:

- a. The replacement dock does not increase overall length, maximum width, or total constructed surface area of the existing dock.
- b. The installation location does not reduce riparian setbacks from the existing dock.
- c. The replacement dock complies with all other regulations.

## CHAPTER 6 - ADMINISTRATION

### 6.1 WHITEFISH CITY-COUNTY LAKE AND LAKESHORE PROTECTION COMMITTEE

#### A. CREATION, COMPOSITION AND COMPENSATION OF MEMBERS.

1. The Whitefish City-County Lake and Lakeshore Protection Committee is hereby created as a special Planning Board in compliance with Section 75-7-211 MCA empowered to review and comment on all activities within the jurisdiction of the Whitefish Lake and Lakeshore Protection Regulations and shall be known as the Lakeshore Protection Committee.
2. The Committee shall consist of seven (7) voting members. Four (4) members shall constitute a quorum to conduct business.
3. The Whitefish City Council shall appoint three (3) members. All members shall be residents of Whitefish and at least two shall be lakefront property owners or residents.
4. The Flathead County Board of Commissioners shall appoint three (3) members. All members shall be residents of rural Flathead County and at least two shall be lakefront property owners or residents.
5. The seventh member shall be appointed by the Whitefish City-County Planning Board. He/she shall serve for a 2-year term unless he/she requests removal or is removed by a majority vote of the Planning Board. Alternatively, the Planning Board may advertise, interview, and appoint a non-member of the Planning Board who is a resident of Whitefish or rural Flathead County.
6. City appointees and county appointees shall each initially be appointed to a staggered term of 1, 2 and 3 years. Thereafter, each succeeding term shall be three (3) years. Vacancies during the term shall be filled by the appropriate governing body for the duration of the unexpired term.
7. The Committee members shall serve without compensation.

B. DUTIES

1. Advise and work with potential applicants.
2. Review and give recommendations on projects requiring a lakeshore permit.
3. Review and offer amendments to the Lake and Lakeshore Regulations, to keep them current, to improve efficiency and to address problems.
4. Report violations to the proper authorities.

C. ORGANIZATION

The committee shall organize and adopt By-Laws pursuant to these regulations establishing the operating policies and procedures of the committee.

6.2 VARIANCES

A. GENERAL CRITERIA

1. Minor Variance

Minor variances from the construction requirements or design standards of these regulations may be granted when the governing body determines ~~that~~ the following conditions are met:

- a. Due to unusual circumstances, a strict enforcement of such requirements and standards would result in undue hardship;
- b. No reasonable alternatives exist which do meet the standards herein; and,
- c. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the "Policy Criteria for Issuance of a Permit" contained in Chapter 4.
- d. Alternatively to (a) and (b), the granting of a variance would result in a general and universal public benefit.

2. Major Variance

A variance request shall be considered major when any of the

following criteria are met:

- a. The variance request does not meet the requirements of Section 6.2.A.1;
- b. The variance request deviates substantially from the construction requirements or design standards of these regulations; and,
- c. The variance request creates a major environmental impact.

## B. REVIEW PROCEDURE

### 1. Minor Variance

- a. The Lakeshore Protection Committee, if it so determines, shall recommend to the governing body that a minor variance(s) from these regulations should be granted as part of an application's approval.
- b. The governing body shall consider the Lakeshore Protection Committee's recommendation and act upon the application. It may grant, modify or deny the variance request.

### 2. Major Variance

- a. When the Lakeshore Protection Committee determines that a major variance is required, it shall notify the governing body and applicant of said decision.
- b. The determination that a major variance is required shall cause to be prepared, by and at the expense of the applicant, an environmental impact statement. The environmental impact statement shall contain:
  - 1) Description of the proposed project;
  - 2) Description of, and the reason for, the major variance being considered;
  - 3) Description of existing conditions;
  - 4) Description of anticipated impacts as they relate to each of the Policy Criteria in Section 4.1 and 4.2 ;

- 5) Alternatives to the proposed project, which would not require a major variance; and,
  - 6) Any other information that may be required.
- c. Nine (9) copies of the environmental impact statement shall be submitted to the Administrator.
  - d. The Lakeshore Protection Committee shall review the application for major variance and make a recommendation to the planning board.
  - e. The planning board shall review the information and make a recommendation to the governing body.
  - f. The governing body, upon receipt of all materials and recommendations, shall hold a public hearing on the proposed action. Notice of the time and place of the public hearing shall be published at least once in a newspaper of general circulation not less than 15 nor more than 30 days prior to the date of the hearing.
  - g. Following the public hearing, the governing body shall act upon the application and may grant, modify or deny the variance request.

### 6.3 VIOLATIONS - PENALTY

- A. A person, partnership, association, company, corporation or contractor who violates the conditions of a permit issued under these regulations, fails to obtain a permit prior to performing work requiring a permit under these regulations, or who knowingly violates any provision(s) of these regulations, commits a misdemeanor, and on conviction may be sentenced to thirty (30) days in the City/County jail, fined five hundred dollars (\$500.00), or both. Each separate violation of these regulations shall constitute a separate offense. For instance, each tree removed or violation of a different subsection requirement shall constitute a separate offense. Each day that the violation exists beyond a restoration deadline date shall constitute a separate offense. (NOTE: Clarification to match County and City Planning Office interpretation and policy.)
  - 1. The conditions of a permit shall be considered to have been violated if work exceeds the scope and conditions of the permit in dimension, type or quality of materials, type of equipment used, or the extent of the work permitted.

2. Fines collected under this section shall be paid to the general fund of the governing body, for the purpose of administering these regulations.
- B. In the event that any building, structure or improvement is erected, reconstructed, altered, converted, or maintained, or any building, structure, improvement, or land is used in violation of these regulations, the proper legal authorities of the jurisdictional governing body, City of Whitefish (within the City limits) and the Board of County Commissioners (outside the City limits), in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, maintenance, or occupancy of such building, structure, improvement or land, or to prevent an illegal act, conduct, business, or use in or about such building, structure, improvement or land.
  - C. Any person or entity applying for a permit under these regulations, or who is otherwise required to comply with these regulations, shall be responsible for becoming familiar with these regulations and for complying fully with such regulations.
  - D. Any permit issued which has been based on incomplete, incorrect, or false information supplied by the applicant in their permit application shall be deemed to be invalid.

Previous Section 6.4 NONCONFORMING STRUCTURES has been merged into new Chapter 5.1 AMENDED - CONSTRUCTION STANDARDS above (as 5.1.Z). Editing additions are underlined in the new Chapter. Editing deletions and changes are shown in the original text in 2004 PRE-MERGED CHAPTERS 4.2-5.1-5.2-6.4.DOC

#### 6.4 AMENDMENTS

These regulations may be amended. Prior to adopting any proposed amendment, the Whitefish City Council and Flathead County Commissioners shall each hold a public hearing thereon. Notice of the time and place of each public hearing shall be published at least once in a newspaper of general circulation not less than fifteen (15) days nor more than thirty (30) days prior to the date of hearing.

Records of amendments to these regulations shall be maintained by the governing body in a form convenient for use.

#### 6.5 LIABILITY

The permittee shall not hold the governing body or any of its agents liable for any damage that may occur to his/her property as a direct or indirect result of the issuance of a permit.

## CHAPTER 7-DEFINITIONS

Whenever the following words or phrases appear in this ordinance, they shall be given meaning attributed to them by this Section. When not inconsistent 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 a use of discretion in making a decision.

ADMINISTRATOR: Administrator of the planning office for the governing body (Flathead County Commissioners or Whitefish City Council) which has jurisdiction over that portion of the lakeshore for which the permit application is made. The Flathead County Planning & Zoning Office for all unincorporated areas of Flathead County. The Tri-City Planning and Zoning Office for the City of Whitefish.

APPLICANT: The person or persons, making applications to the governing body for a permit. On a permit in which a letter of authorization is provided to allow a contractor or other individual to act on behalf of the property owner, both the property owner and other individual or contractor shall be considered to be the applicant.

BOATHOUSE: A permanent structure which provides housing and shelter for boats and which has more than ten (10) percent of any side or end wall area enclosed.

BOAT RAIL SYSTEM: A facility consisting of tracks extending from or across the lakeshore protection zone into the lake which is designed to facilitate launching or retrieving boats.

BOAT RAMP: A facility consisting of a pad extending from or across the lakeshore protection zone into the lake which is designed to facilitate launching or retrieving boats.

BOAT SHELTER: A permanent structure which provides shelter for boats and which has not more than ten (10) percent of any side or end wall area enclosed. A breakwater adjoining a shelter shall not be considered a part of a wall.

BUILDING: A structure having a roof supported on columns or walls for storage, shelter, support, or enclosure of persons, animals, or chattel.

BUOY: A float; ~~especially a floating object~~ moored to the bottom; used to moor boats, mark channels, etc.

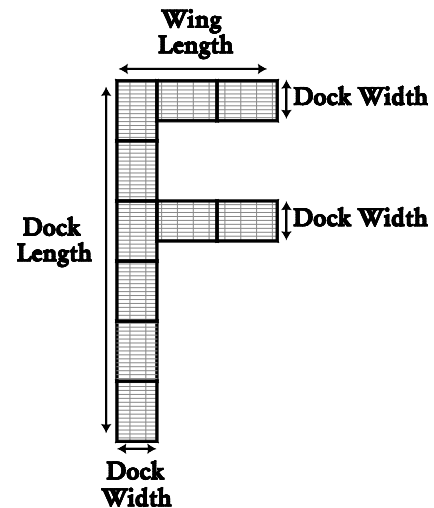
CONSTRUCTED AREA: That portion of the lake and lakeshore protection zone covered by any constructed structure such as a dock, deck, walkway, patio, boat house, boat shelter, water trampolines, shore station cover, floating boatlift or floating personal watercraft docking station or covered by any non-native material or substance that would not naturally occur at this point such as concrete, ~~or asphalt,~~ or drylaid stone.

**DOCK:** A platform, either non-floating or floating, which extends into, over or across the water to provide for boat moorage, access to a moorage area, swimming facilities, or other related activities.

**DOCK LENGTH:** Dock length is the total length of that portion of the dock, including any access gangways, which extends lake ward at any time over water and is measured from the current water level to the farthest water ward end of the dock (See Figure # 4).

**DOCK WING:** That portion of a dock and deck which lies generally parallel to the shoreline with its main function as a wave break or to provide a boat slip or sheltered area as opposed to primarily provide access out to deep water (See Figure # 4).

**DREDGING:** The process of excavating material from the lake bottom and thereby lowering the elevation-increasing the depth of a portion of the lake bottom. The term shall include the process of extending the lake area landward by excavating material from the lakeshore protection zone and thereby lowering the elevation of that portion of that zone.



**Figure 4. Dock Wing and Length**

**DWELLING UNIT:** All permanent, semi-permanent, and temporary buildings, guest quarters, cabins, apartments, mobile homes, campers, trailers, motor homes, or similar facilities, including appurtenant structures, which provide sleeping and/or cooking facilities.

**FILLING:** The process of discharging material onto a lake bottom and thereby raising the elevation of a portion of the lake bottom including the elimination of an aquatic environment or a wetland environment by extending the dry land area into such aquatic or wetland area. The term shall include the process of discharging material onto the lakeshore protection zone and thereby raising the elevation of a portion of that zone.

**FLOATING BOAT LIFT:** A single or multi-sectional, self-floating system designed to support a boat or personal watercraft.

**GOVERNING BODY:** The Board of County Commissioners of Flathead County, or the Whitefish City Council, whichever jurisdiction would apply.

**IMPERVIOUS:** Not permeable, impenetrable by water.

**IMPROVEMENT:** ~~A valuable~~ An addition made to property (real estate) or a change in its condition which is intended to ~~protect or enhance its value, beauty~~ aesthetics, utility, or



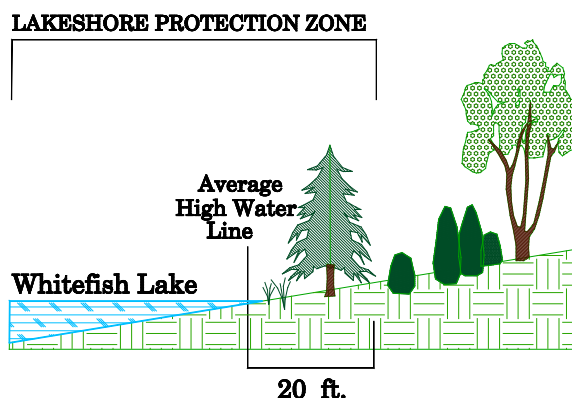
to adapt it for new or further purposes.

LAGOONS: An artificial boat harbor created by excavating the shoreline, removing earth material and thereby extending an aquatic environment into a dry land area.

LAKE: A body of standing water, and the area within its lakeshore, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least twenty (20) acres for at least six (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.

LAKE FRONTAGE: For the purpose of administering these regulations, lake frontage shall be based on the linear feet of lake frontage of the lot or tract to be developed as well as any adjoining undeveloped lots under the same ownership. Common waterfront property ownership shall be defined as multiple contiguous lots under one family or related ownership, including fractional ownership in a corporation, partnership or other legal entity. Lot ownership is measured at high water. Lake frontage shall be determined from records at the Flathead County Assessor's Office, subdivision plats, certificates of survey, or may be measured as a straight line between two (2) lot lines at the point where mean annual high water intersects each lot line. (See Figure # 5) (Note: Figure #5 Removed Due to New Definition: Planning Office Change)

LAKESHORE PROTECTION ZONE: The lake, lakebed, and the land area which is within twenty (20) horizontal feet of the parameter of the lake and adjacent wetlands



**Figure 6. Lakeshore Protection Zone**

when the lake is at the mean annual high water elevation (See Figure #6).

NOTE: Existing definitions for Maintenance-Necessary and Maintenance-Routine were deleted. The definition for Maintenance from the existing County Regulations was substituted, with changes highlighted, amendments underlined, and deletions marked by strike-out.

~~MAINTENANCE, NECESSARY: To keep in existing state through the use of structural repair to improvements such as: foundations, footings, support piling or posts, new roofs, stringers, etc. Generally this work involves motorized equipment and is necessary to prevent the loss of the improvement. This work typically Necessary maintenance requires a permit.~~

~~MAINTENANCE, ROUTINE: To keep in existing state through routine or seasonal work or upkeep involving planting, adjusting, minor replacement of boards, damaged siding or shingles, broken windows, clean up of debris such as branches and leaves, restacking of fallen rock, etc. Typically, only hand tools would be involved. In the case of nonconforming residences or boathouses, painting and staining is also considered routine maintenance, provided the nonconforming structure was built prior to 1978, is located landward of the high water line, and has been painted or stained in the past. Any dredging, filling, or excavation, or use of motorized equipment is not considered routine maintenance.~~

~~MAINTENANCE: Routine or seasonal work or upkeep involving painting, staining, tightening, adjusting or minor replacement of boards, shingles, broken windows, clean up of debris such as branches and leaves, restacking fallen rock, or similar activities. etc. Painting or staining is allowed only on nonconforming structures built prior to 1978 and located landward of the mean high water line. Typically, Routine maintenance only requires hand tools would be involved. Any dredging, filling or excavation is not considered maintenance.~~

~~MARINA: Any waterfront facility which provides for recreational boating and other water related activities. Any facility which provides dock slips or moorage for five (5) or more boats is considered a marina.~~

~~MAINTENANCE, COMMERCIAL OR PUBLIC: A marina facility which provides boat slips and/or services, without restriction, to the general public. is intended to serve the general public beyond the scale of a homeowners' association.~~

~~MAINTENANCE, PRIVATE: A marina facility which serves the needs of a homeowners' association, private housing development, resort facility, or other limited group, and provides overnight dockage or moorage. in which use is specifically limited to an adjacent homeowners' association or similarly restricted group of people.~~

~~MEAN ANNUAL HIGH WATER ELEVATION: The mean average of the highest~~

elevation of a lake of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. A highest elevation caused by operation of a dam or other impoundment counts towards the establishment of the mean annual high water elevation. For the purpose of these regulations, the mean annual high-water elevation for Whitefish Lake has been established at three thousand and seventy nine-hundredths feet (3,000.79') msl (NAVD 1988), which is equivalent to two thousand nine hundred ninety seven feet (2997.00') msl (NGVD 1929). The mean annual high-water elevation on Lost Coon Lake is 3104' msl (NAVD 1988), which is equivalent to 3100.21' msl (NGVD 1929). ~~the mean annual high water elevation of Whitefish Lake is \*3000.6' msl' ('88 Datum), Lost Coon Lake is 3104 feet based on the U.S. Geological Survey Datum.~~

NATIVE PLANTS: A terrestrial plant species that has persisted within 100 feet of mean high water of Whitefish or Lost Coon Lakes prior to influence by humans. A resource file on native plants is available from the jurisdictional planning office, at Whitefish City Hall and the Flathead County Planning and Zoning Office, and the Tri-City Planning and Zoning Office.

PERMIT: A document issued by the governing body verifying compliance with the requirements and provisions of these requirements.

PERSON: Any individual, firm, corporation, partnership, institution, or entity; the state and its departments and any political subdivision of the state.

PLANNING BOARD: The Whitefish City-County Planning Board.

REAL VALUE: For the purpose of maintenance and/or repair of a nonconforming structure, the real value shall be determined to be the estimated appraised value of the structure, exclusive of foundation, prior to any changes or damage.

RECONSTRUCTION: To rebuild an existing facility such that at the time of reconstruction in excess of 50% of the real value of the facility, excluding foundation, is replaced. Reconstruction of a nonconforming structure is prohibited. See Maintenance – Necessary/Routine, Repair.

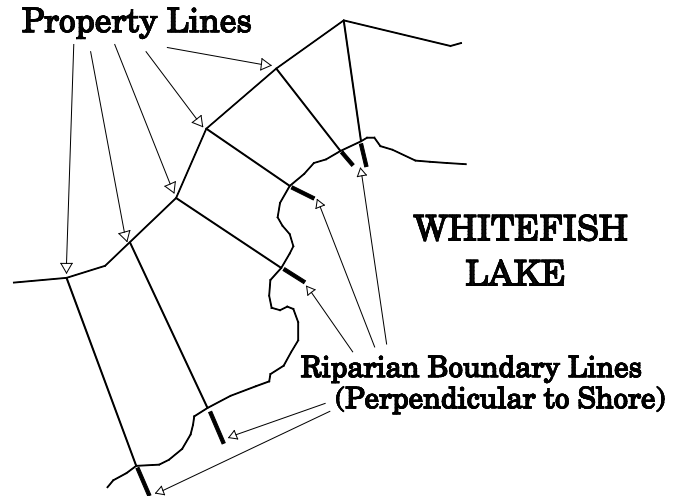
NOTE: Existing definition for Repair was deleted. The definition for Repair from the existing County Regulations was substituted, with changes highlighted, amendments underlined, and deletions marked by strike-out.

REPAIR: ~~To restore an existing facility to sound condition by replacing component parts of the facility. See Maintenance – Necessary/Routine.~~

REPAIR: To restore an existing facility to sound condition by replacing component parts of the facility ~~utilizing the same or similar construction materials~~ and maintaining the exact design, size and configuration as was original prior to repair. All repair materials shall conform with Section 5.1.A Construction Standards – Materials.

**RETAINING WALL:** Any structure built essentially parallel and contiguous to the shoreline of a lake which is designed to protect the land mass inland from the structure, from erosion or wave action and protect the lake from siltation.

**RIPARIAN BOUNDARY:** A projection of the side property lines from their point of intersection with the perimeter of the lake (at its mean annual high water elevations), lake ward at right angles to the natural shoreline. Where a structure has been built into the lake and the structure has caused the build-up of an artificial shoreline, the artificial shoreline cannot be utilized to establish the riparian boundary (See Figure # 7).



**Figure 7. Riparian Boundary Lines**

**RIPRAP:** A layer, facing, or protective mound of stones, or rock or other materials randomly placed to prevent erosion, scour, or sloughing of a structure or embankment. Riprap shall be limited to areas where active shoreline erosion is clearly present, and requires a permit.

**SEWAGE PUMPOUT FACILITY:** A facility specifically provided to pump out and receive the contents of holding tanks on board boats, with holding tanks understood to mean any retention system on a boat which is designed to hold sewage, and which must be emptied from time to time.

**SHORE STATION:** A seasonal, portable, metal or wood frame carriage which is designed to hoist boats or personal watercraft from the water and to store boats or personal watercraft over the water or on the lakeshore.

**SIDE WALL AREA (of a dock):** The sidewall of that portion of a dock which is generally perpendicular to the shoreline.

**STRUCTURE:** That which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and either attached to or supported by the ground or floating on the water (e.g., dock, buoys, etc.).

**SWIMMING DOCK:** A type of dock which does not abut the shoreline or extend above the water to the shoreline, used typically for swimming and related activities. See "Dock".

WETLANDS: Water-land interface areas which are inundated or saturated by surface and/or ground waters at a frequency and duration of time periods sufficient to establish and, under natural conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to: swamps, marshes, bogs, and similar areas. Wetland areas may be separated from the main body of water by man-made barriers or natural berms. The water elevation of a wetland area is related to the elevation of the lake water.

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