

**ORDINANCE NO. 23-30**

**An Ordinance of the City Council of the City of Whitefish, Montana, amending Title 13, Lake and Lakeshore Protection Regulations, of the Whitefish City Code.**

WHEREAS, best practices in erosion control have shown that riprap and retaining walls can be detrimental to lake quality and that natural erosion control solutions such as dynamic gravel beaches, bioengineering, and soft structure armoring are superior solutions; and

WHEREAS, to reflect best practices in erosion control, city planning staff drafted a text amendment to the Lake and Lakeshore Protection Regulations set forth in Title 13 of the Whitefish City Code; and

WHEREAS, the Lake and Lakeshore Protection Regulations have not had a significant update since 2009, and staff has also suggested updated graphics, updated definitions, fixed minor errors and omissions, and made numerous clarifications; ; and

WHEREAS, at a lawfully noticed hearing on November 8, 2023, the Whitefish Lakeshore Protection Committee received an oral report from Planning staff, reviewed Staff Report WLTA 23-01, invited public comment, and thereafter voted to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on December 4, 2023, the Whitefish City Council received an oral report and a written report from Planning staff, reviewed Staff Report WLTA 23-01, and letter of transmittal, invited public input, and thereafter voted to approve the text amendments attached as Exhibit A; and

WHEREAS, at a second reading on January 2, 2024, the City Council, on their consent agenda, approved the attached Ordinance; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to adopt the proposed amendments to the Lake and Lakeshore Protection Regulations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

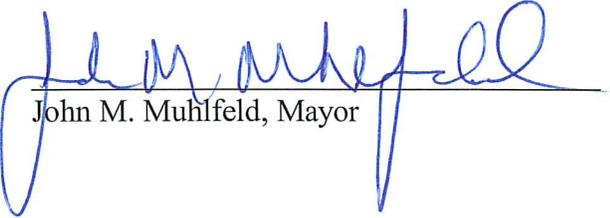
Section 2: Staff Report WLTA 23-01 dated November 8, 2023, together with letter of transmittal from the Whitefish Planning & Building Department dated December 4, 2023, are hereby adopted as Findings of Fact.

Section 3: The amendments to Title 13, Lake and Lakeshore Protection Regulations, as set forth in Exhibit A, are hereby adopted.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section, or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

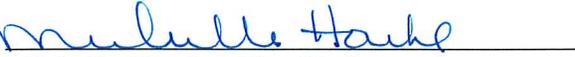
Section 5: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 2ND DAY OF JANUARY 2024.



John M. Muhlfeld, Mayor

ATTEST:



Michelle Howke, City Clerk

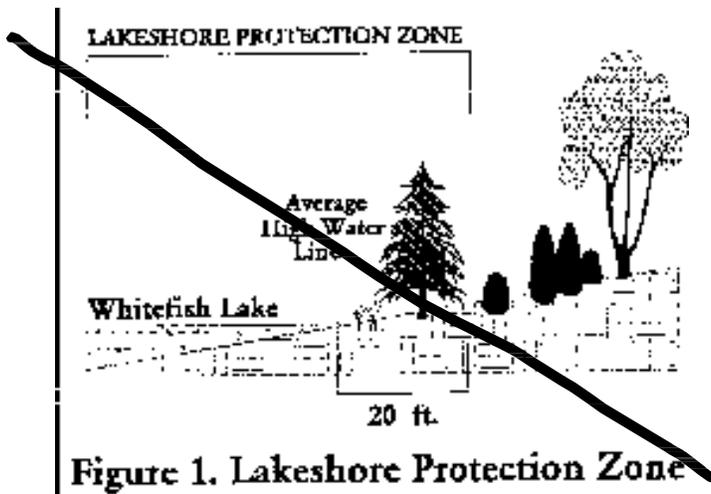
## EXHIBIT A

### TITLE 13, LAKE AND LAKESHORE PROTECTION REGULATIONS AMENDMENT

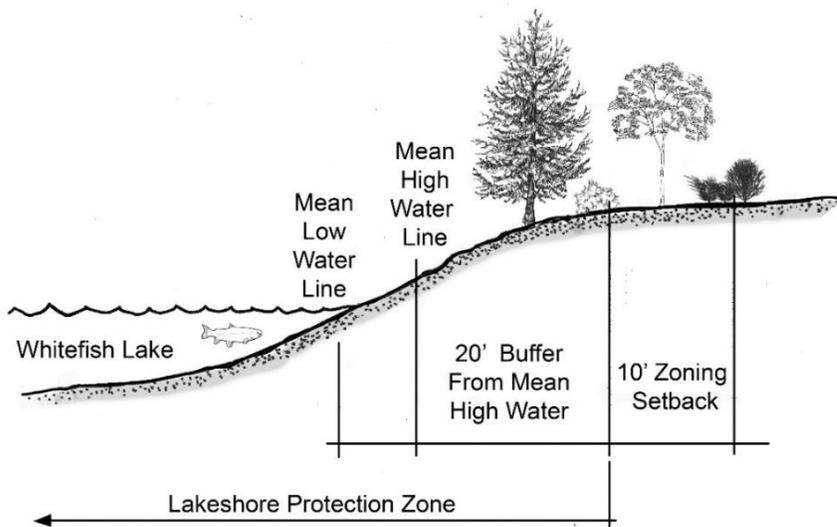
The following definitions, sections and subsections are being amended. Definitions and sections with no changes have been omitted. New language is red and underlined, deletions are shown as ~~struck out~~. Updated or removed illustrations are shown as ~~struck out~~ with updated illustrations shown below the original in black.

#### 13-1-1 : TITLE AND AUTHORITY:

These regulations shall will be known and referred to as the *WHITEFISH AREA LAKE AND LAKESHORE PROTECTION REGULATIONS*, and are adopted under the authority of the state of Montana, Montana Code Annotated 75-7-207, 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 of this section). These regulations went into effect on May 1, 1975.



*(replace Figure 1 Lakeshore Protection Zone with updated Figure 1 below)*



**Figure 1. Lakeshore Protection Zone**

13-1-2 : PURPOSE:

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.

13-1-3 : JURISDICTION:

These regulations govern any work which alters Whitefish Lake, Lost Coon Loon Lake, and the land which is within twenty (20) horizontal feet of the mean annual high water elevation of these lakes. For properties along Whitefish Lake located outside of Whitefish city limits, these regulations govern any work or floating structures which extends extend below the mean lower low water elevation of 2996.44 msl. The mean annual high water elevation for Whitefish Lake has been established according to Montana Code Annotated 75-7-202(4) 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 (2,997.00') msl (NGVD 1929). The mean annual high water elevation on Lost Coon Lake is three thousand one hundred four feet (3,104') msl (NAVD 1988), which is equivalent to 3,100.21 feet msl (NGVD 1929).

#### 13-1-4 : 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~~ entities 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.

#### 13-1-5 DEFINITIONS

Whenever the following words or phrases appear in this title, they ~~shall~~ must be given meanings 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~~" "must" is always mandatory, and the word "may" indicates a use of discretion in making a decision.

ADMINISTRATIVE PERMIT: A document issued by the administrator for such activities and projects, when constructed within the approved design guidelines, are deemed to have an insignificant impact on the lake and lakeshore per subsections [13-2-5B5](#) and B6 of this title.

ADMINISTRATOR: Administrator of the planning office for the governing body (Whitefish city council) which has jurisdiction over that portion of the lakeshore for which the permit application is made.

APPLICANT: The person or persons making applications to the city or city council ~~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~~ will be considered to be the applicant.

**BIOENGINEERING: See Natural Shoreline Restoration.**

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 percent (10%) of any side or end wall area enclosed. A breakwater adjoining a shelter ~~shall~~ is not be considered a part of a wall.

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

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

**BUOY:** A float moored to the bottom, used to moor boats, mark channels, etc.

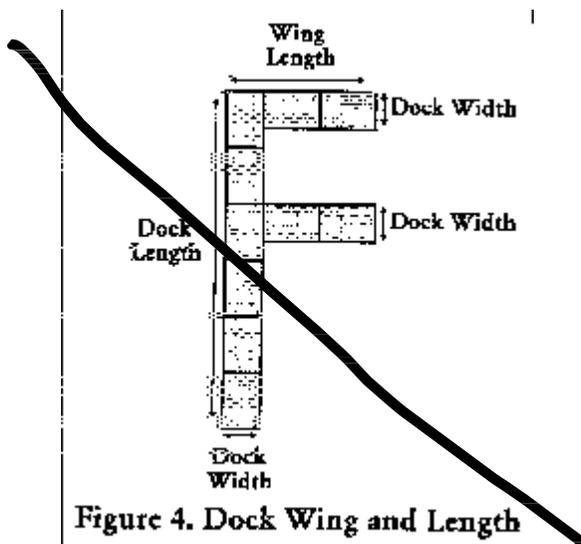
**CITY LIMITS:** The city limits of Whitefish include all properties annexed into the city limits as well as the entirety of Whitefish Lake to the low water elevation of 2996.44.

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

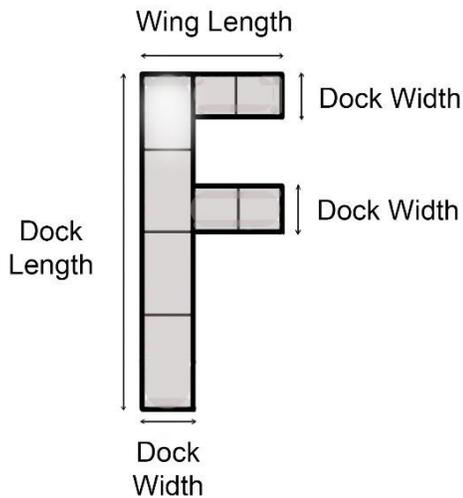
**DOCK:** A platform, either non-floating or floating, which extends into, over or across the water to provide for boat moorage, access to a moorage area, swimming facilities or other related activities.

**DOCK LENGTH:** The total length of the dock including any access gangways (see ~~figure-4~~ Figure 2 of this section).

**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~~ Figure 2 of this section).



*(Replace Figure 4 with updated Figure 2 below:)*



**Figure 2. Dock Wing and Length**

**DREDGING:** The process of excavating material from the lake bottom and thereby increasing the depth of a portion of the lake bottom. The term ~~shall include~~ **includes** 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.

**DWELLING UNIT:** All permanent, semipermanent 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.

**DYNAMIC GRAVEL BEACH:** The addition or re-introduction of prescriptive substrate including sand and/or gravel to a shoreline beach and its underwater extension to engineer a wave break that adjusts to storm waves and restores lake ecology and naturally dissipates wave action. Also known as a dynamic equilibrium beach.

**ENVIRONMENTAL IMPACT ASSESSMENT:** A written analysis by a certified environmental professional of the potential environmental consequences of a project on water quality, habitat, navigation and recreation, public safety, scenic values of predominant landscape elements, and alterations of shoreline characteristics.

**FAIR MARKET VALUE:** The price that a willing purchaser would pay a willing seller, assuming that both parties are well informed and well advised, and neither is under a particular compulsion to buy or sell.

**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. This term ~~shall include~~ **includes** the process of discharging material

onto the lakeshore protection zone and thereby raising the elevation of that 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 Whitefish city council.

GRAVEL WAVE BREAK: The addition or re-introduction of prescriptive substrate offshore to create a shoal to naturally dissipate wave action as part of a dynamic gravel beach.

HABITAT ENHANCEMENT: Strengthening ecosystem integrity of the shoreline by re-establishing or improving habitat for native aquatic plants and macroinvertebrates including aquatic insects and fish.

HAND TOOLS: For the purpose of routine or seasonal work on a nonconforming structure (see definition of Maintenance), hand tools would generally include implements that can be readily carried and operated by a single person, including power tools that operate with a battery, electricity or gasoline/diesel fuel.

HOUSEBOAT: Any boat or vessel which is designed or used primarily for living or as a house, domicile or dwelling rather than for water transport or recreational purposes.

IMPERVIOUS: Not permeable, impenetrable by water.

IMPROVEMENT: An addition made to property (real estate) or a change in its condition which is intended to enhance its value, 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~~ is 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~~ is defined as multiple contiguous lots under one family or related ownership, including fractional ownership in a corporation, partnership or other legal entity. Lake frontage ~~shall be~~ is 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.

LAKESHORE PROTECTION ZONE: The lake, lake bed and the land area which is within twenty (20) horizontal feet of the parameter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation (see figure [Figure 1 above 6](#) of this section).

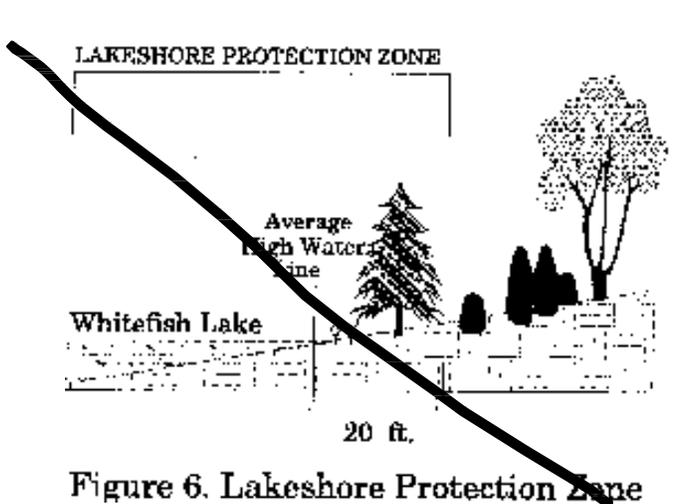


Figure 6. Lakeshore Protection Zone

*(Delete Figure 6 Lakeshore Protection Zone)*

MAINTENANCE: Routine or seasonal work or upkeep involving tightening, adjusting or minor replacement of boards, shingles, broken windows, cleanup of debris such as branches and leaves, restacking fallen rock, or similar activities that do not require a building permit. Painting or staining is allowed only on nonconforming structures built prior to 1978 and located landward of the mean high water line. Routine maintenance only requires hand tools. Any dredging, filling or excavation is not considered maintenance, nor is replacement or changes to structural, weight bearing, or foundation components or adding improvements not previously present on structure.

MARINA, 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.

MARINA, PUBLIC: A marina facility which provides boat slips and/or services, without restriction, to the general public.

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 toward 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 (2,997.00') msl (NGVD 1929). The mean annual high water elevation on Lost ~~Coon~~ Loon Lake is three thousand one hundred four feet (3,104') msl (NAVD 1988), which is equivalent to three thousand one hundred and twenty one hundredths feet (3,100.21') msl (NGVD 1929).

MEAN ANNUAL LOW WATER ELEVATION: For the purpose of these regulations, the mean annual low water elevation for Whitefish Lake has been established at two thousand nine hundred and ninety-six and forty-four hundredths feet (2996.44') msl (NAVD 1988), anything below which is within Whitefish city limits and under the city's jurisdiction.

NATURAL SHORELINE RESTORATION OR BIOENGINEERING: Using natural materials to restore and create living shorelines utilizing fiber coir logs, sills, groins, live staking, encapsulated soil lifts, breakwaters, or other natural components in combination with gravel and other natural substrate materials and/or native vegetation to protect, restore, enhance, or create natural shoreline habitat.

NATIVE PLANTS: A terrestrial plant species that has persisted within one hundred feet (100') of mean high water of ~~Whitefish or Lost Coon Lakes~~ along lakes in Northwest Montana prior to influence by humans. A resource file on native plants is available from the ~~jurisdictional~~ planning office.

NON-CONFORMING STRUCTURE: For the purposes of these regulations, a non-conforming or grandfathered structure is a structure built and installed prior to the original adoption of these lakeshore regulations in 1976, or was legal prior to any later amendments to these regulations that subsequently made the structure non-conforming.

QUALIFIED PROFESSIONAL, BEACH DESIGN: A person with professional experience and training as a scientific expert in the design and engineering of dynamic gravel beaches to restore lake ecology and naturally dissipate wave action, including licensed engineers and landscape architects.

PERMIT: A document issued by ~~the governing body~~ city staff or the city council 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 ~~planning board~~ community development board.

PRESCRIPTIVE SUBSTRATE: Appropriately sized substrate such as rocks, gravel and/or sand as identified by a qualified professional to successfully implement a dynamic gravel beach, gravel wave break, or other gravel application.

REAL VALUE: For the purpose of maintenance and/or repair of a nonconforming structure, the real value shall must be determined to be the fair market value of the

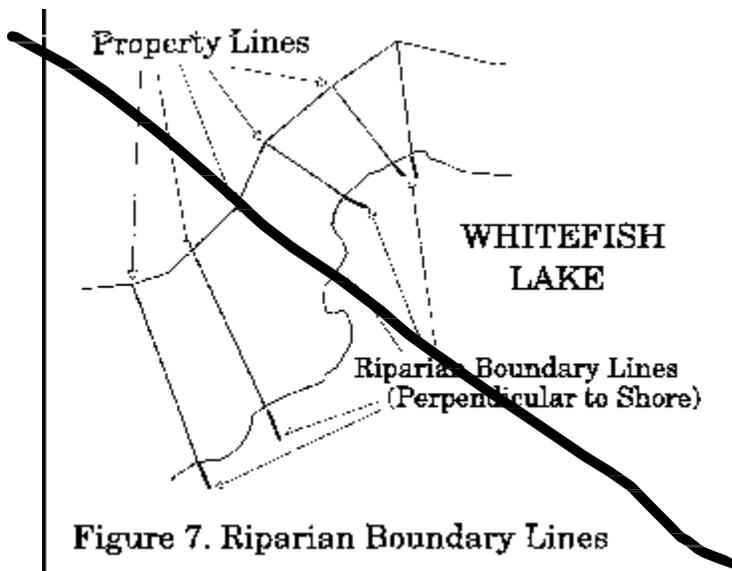
structure in its existing condition as determined by a certified property appraiser or tax assessor, exclusive of foundation or location, prior to any changes or damage.

RECONSTRUCTION: To rebuild an existing facility structure such that at the time of reconstruction in excess of fifty percent (50%) of the real value of the facility, excluding foundation, is replaced. Reconstruction of a nonconforming structure is prohibited. See definitions of Maintenance and Repair.

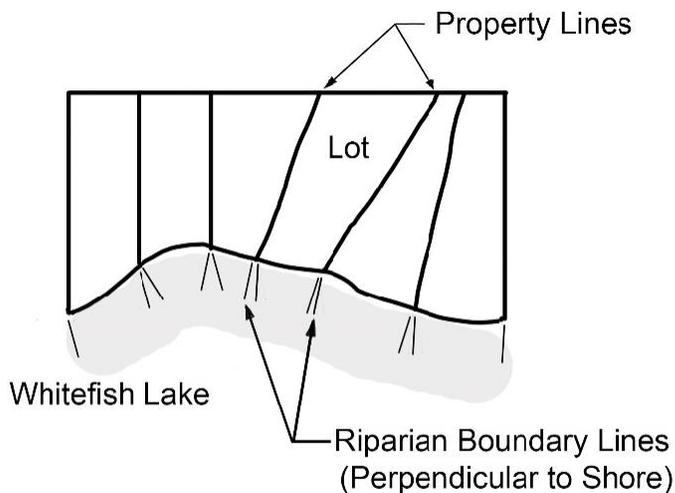
REPAIR: To restore an existing facility to sound condition by replacing component parts of the facility and maintaining the exact design, size and configuration as was original prior to repair. All repair materials shall must conform with subsection 13-3-1A, "Construction Materials", of this title.

RETAINING WALL: Any structure built essentially parallel and contiguous to the shoreline of a lake which is designed to protect the landmass inland from the structure, from erosion or wave action and protect the lake from siltation. Retaining walls can disperse active shoreline erosion onto adjacent properties and impact lake ecology.

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), lakeward at right angles to the natural shoreline. Where a structure has been built into the lake and the structure has caused the buildup of an artificial shoreline, the artificial shoreline cannot be utilized to establish the riparian boundary (see ~~figure 7~~ Figure 3 of this section).



*(Replace Figure 7 Riparian Boundary Lines with updated image below:)*



**Figure 3. Riparian Boundary**

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. The placement of riprap can disperse active shoreline erosion onto adjacent properties and impact lake ecology. Riprap shall be is limited to areas where active shoreline erosion is clearly present, and requires a permit variance.

RIPRAP, VEGETATED: A rock and roots approach to reinforcement against ice and wave action where natural looking rocks are typically set at a 2:1 (two feet horizontal, one foot vertical) slope and vegetation such as live dormant cuttings are placed among rocks and at the top of bank, with biodegradable filter fabric and a layer of clean washed crushed gravel placed behind the rock to help prevent further loss of sediment from a bank. Also known as vegetated rock revetment.

SEWAGE PUMPOUT FACILITY: A facility specifically provided to pump out and receive the contents of holding tanks onboard 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 side wall of that portion of a dock which is generally perpendicular to the shoreline.

SOFT STRUCTURE ARMORING: Using live native plants, logs, root wads, vegetative mats, and other methods to protect shorelines while creating habitat and eliminating or reducing the need for hard armoring with riprap, stone blocks, sheet-pile, or other hard structures and materials.

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 definition of Dock).

WATER DEPTH PROFILE: A profile drawing done by a dock installer or other professional that accurately measures the water depth perpendicular from the center of a lakefront property every ten feet (10') at sixty feet (60') from shore out to one hundred feet (100') from shore measured at low water between August 15<sup>th</sup> and April 15<sup>th</sup>.

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 manmade barriers or natural berms. The water elevation of a wetland area is related to the elevation of the lake water.

WORK: Activity that changes the condition of the lakeshore protection zone or structures within the lakeshore protection zone.

#### 13-1-6 : BURDEN OF PROOF:

In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest ~~rest~~ rests with the applicant, permittee or appellant, as applicable.

#### 13-2-1 : PERMIT REQUIRED:

No person shall ~~will~~ will proceed with any work on, or alteration or disturbance of, a lake, lake bed, or lakeshore within city limits until he/she has obtained, and has physical possession of a valid "lakeshore construction permit" from the city. The person who performs or authorizes such work, and the property owner, are responsible for assuring that a valid permit has been obtained.

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

- A. Standard Permit. Without limitation, the following activities, when conducted within the lake, lake bed or lakeshore protection zone, are examples of work for which a lakeshore construction permit is required, which must be reviewed by the

Lake and Lakeshore Protection Committee and approved by the Whitefish City Council:

~~A. Construction of channels or ditches;~~

1.B. Excavation for walkways paths or stairs or removal of non-conforming structures;

~~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;~~

2G. Construction of boat service facilities, including the installation of fuel pumps or sewage pumpout facilities;

~~H. Construction of elevated structures (example: decks, overhangs), including extensions into the airspace;~~

~~I. Construction of retaining walls and breakwaters;~~

3J. Construction, installation of, or additions to docks over sixty feet (60') in length, including gangways;

~~4K. Installation of boat and personal watercraft shore stations, boat rail systems, public boat ramps, and 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;~~

5M. Any major clearing or removal of natural live vegetation;

6 Installation of stairways, walkways, and paths, including stepping stones, dry laid stone, or untreated timbers;

~~7N. Repair or Reconstruction reconstruction of existing buildings or facilities;~~

~~O. Stockpiling brush, trees, vegetation, construction materials or debris;~~

~~P. Moving a dock, shore station, or buoy to another location on the lake;~~

8Q. Operation of machinery, with the exception of recreational watercraft and equipment used for seasonal removal/installation of docks;

9. Adding gravel and other substrates for swim beach restoration or engineered dynamic gravel wave break installations.

~~10R. Any other work not herein mentioned that may have an impact on a lake, lake bed or lakeshore~~

B. Administrative Permit. Without limitation, the following activities, when conducted within the lake, lake bed, or lakeshore protection zone, are examples of activities for which an administrative lakeshore permit is required, which may be approved

by the zoning administrator or designee, providing the permit complies with all other regulations and construction standards, has minimal or insignificant impact on the lake and lakeshore, and does not require a variance:

1. Construction, installation of, or additions to docks up to sixty feet (60') in length, including gangways;
2. Installation of boat and personal watercraft shore stations, buoys, swim docks, and floating trampolines;
3. Moving a floating dock, shore station, or buoy to another location on the lake;
4. Stockpiling and/or open burning of piles of brush, trees, vegetation, construction materials or debris;
5. Dead, dangerous, or fallen tree removal;
6. Soft structure armoring that doesn't involve other activities for a which a permit is required;
7. Installation of underground domestic water lines, sewer lines or other utility lines or facilities installed during low water;
8. Scientific research, education, or outreach activities.

#### 13-2-2 : EXEMPTIONS FROM PERMIT REQUIREMENTS:

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

A. Repair Work: Repair work which qualifies as routine maintenance (see section [13-1-5](#), "Definitions", of this title) or, if a nonconforming structure, complies with subsection [13-3-1Z](#) of this title.

B. Buoys: Buoys placed in a lake on a temporary basis (not exceeding 10 days) in a calendar year if the planning office is notified of the location and time frame prior to its placement.

C. Emergency Work:

1. Emergency work where a condition exists that poses an imminent threat to property, structures, or improvements, provided that:

a. The work being done is only what is necessary to mitigate the immediate threat; and

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

2. The following procedures shall **must** be followed ~~where~~ **before** emergency work is performed:

a. The person proposing to do emergency work shall **must** notify the governing body planning department 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 nonworking day (Saturday, Sunday and holidays), notification must be made on the next working day. Notification shall must be made by phone and in writing.

b. The administrator or designee shall will review the notification. If the administrator or designee determines that the work is emergency work, he/she the administrator shall will sign the notification issue a permit and send provide a copy of it to the applicant and the lakeshore protection committee.

c. 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 will be considered a violation of these regulations.

D. Real Estate Signs: ~~Real estate signs~~ One temporary sign is allowed on properties for sale or rent less than six (6) square feet in size or less per face.

### 13-2-3 : PROHIBITED CONSTRUCTION OR INSTALLATIONS:

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

- A. Boathouses;
- B. Boat shelters;
- C. Pump houses;
- D. Crib dock;
- E. Pilings and helical piers;
- F. Covering beach with impervious nonnative material (material which does not allow water absorption);
- G. Any installation of asphalt;
- H. Construction of channels or ditches;
- I. Excavation below the mean annual high water elevation;
- J. Dredging, to remove muck, silt sediment, rock or vegetation;
- K. Filling, including the addition of rocks and riprap, with the exception of swim beach restoration and engineered dynamic gravel beaches and wave breaks;
- L. Construction of lagoons;
- M. Construction of living quarters, buildings, or other impervious surfaces, with the exception of dry set stone or untreated timbers for stairs, walkways, and paths;
- NH. Construction of elevated structures (example: decks, overhangs), including extensions into the lakeshore protection zone airspace;

- Q I. Construction of retaining walls and breakwaters;
- P H. Satellite dishes;
- Q I. Permanent or temporary buildings and structures;
- R J. Hot tubs;
- S K. Fuel storage tanks;
- T L. Decks;
- U M. Roads, driveways, or parking areas; and
- V N. Signs, with the exception of one temporary sign on properties for sale or rent six (6) square feet or less per face.

13-2-4 : ADDITIONAL REQUIREMENTS:

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

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

C. Permission To Enter: The person making application for a permit grants the governing body city council, lakeshore protection committee, planning department, their staff and/or their consultants permission to enter upon his/her land or upon the waters of the lake upon reasonable notice to evaluate the site and verify compliance with any lakeshore construction permit issued under these regulations while the permit is in an active state.

D. 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 must not perform work within the lakeshore protection zone.

13-2-5 : APPLICATION REVIEW PROCEDURES:

A. Application: Any person seeking a lakeshore construction permit shall must submit a complete application to the administrator of the planning office of the city of Whitefish. The application shall must be accompanied by both paper and digital copies of 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, calculations of the square footage of all existing impervious surfaces of constructed area in the Lakeshore Protection Zone (including docks, covered shore stations, existing structures and patios, retaining walls, stairways and stone paths), and the fee established by the governing body city council.

The applicant may be required to submit additional information where the administrator or designee, lakeshore protection committee or governing body city council determines that additional information is necessary to adequately evaluate the proposal.

B. Application Review Procedure Process:

~~1. An applicant shall file an application with the administrator.~~

~~2~~1. An application is deemed as accepted when a complete application, required accompaniments and fee are presented to the administrator or designee. The application must be either signed by the property owner or a letter of authorization from the owner must be attached. If the application is incomplete, the administrator or designee will notify the applicant within forty (40) days of receipt of the application. Incomplete applications will not be processed until deemed complete. Applications will not be processed until active lakeshore violations are resolved, with the exception of cases where an approved application will resolve or partially resolve the violation.

~~3~~2. Upon acceptance of an application, the administrator or designee shall will either issue the permit or schedule it for review at the next regular meeting of the ~~Whitefish Lake and lakeshore protection committee~~, depending on the type of permit.

3. Directly adjacent (excluding right-of-way) neighbors with lake frontage will be notified by city staff via mail at least ten (10) days prior to hearings before the lakeshore protection committee for applications for minor or major variances.

~~4. The committee shall will have up to sixty (60) calendar days from the date of acceptance of the completed application to review and forward comments to the governing body city council for final action. If no comment is received after sixty (60) days, the application will be forwarded to the administrator or designee for final action by the governing body city council with no comment. If the application is incomplete, the administrator or lakeshore protection committee shall notify the applicant within forty (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.~~

~~5. Upon review and approval of a permit application, the administrator or designee will have up to thirty (30) calendar days to 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 and standards and does not require a variance. The administrator will notify the committee when these permits are issued.~~

~~6. Upon review and approval of a permit application, the administrator may also 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 3 of this title. The administrator will notify the committee when these permits are issued.~~

C. Review Period: Review of a permit application and its approval, conditional approval or denial by the governing body city council, shall will be placed on the governing body's council's agenda and take place within ninety (90) days from the date of acceptance by the administrator unless the application is deemed incomplete by the administrator or designee or the lakeshore protection committee, or the applicant agrees to an extension of the review period.

D. 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 city council or administrator. All construction shall must 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.

#### 13-2-6 : POLICY CRITERIA FOR ISSUANCE OF A PERMIT:

All lakeshore construction permits shall must be evaluated against the policy criteria for issuance of a permit. A permit shall will 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.

#### 13-2-7 : POLICY CONSIDERATIONS:

A. A person who performs work in the lake or lakeshore protection zone ~~after May 1, 1975,~~ without a permit for that work shall must restore the lake or lakeshore protection zone to its condition before ~~he~~ they disturbed it.

B. Archive photos or baseline videos ~~on file at the jurisdictional planning office~~ may be used in enforcing these regulations and prosecuting violations.

C. Areas where vegetation has been destroyed in the lakeshore protection zone shall must be restored in accordance with subsection 13-3-1D of this title.

#### 13-3-1: GENERAL CONSTRUCTION STANDARDS

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

A. Construction Materials:

1. General:

a. Any building material used in the lakeshore protection zone should be stable and free of silts, ~~sands~~, fine materials, 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 **must** 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 **does** 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 **can** 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 A3);

(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 **must** 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 **must** 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 **must** be aesthetically shielded by the creative use of rock or wood.

c. Wet concrete shall **must** 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.

7. Rock ~~Or~~ **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 **must** be free of silts, sands or fine materials.

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 fine materials.

B. Excavation ~~Or~~ **or** Filling ~~Of~~ **of** Materials:

1. The lake bed 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 **must** be minimized to the greatest extent possible, as a protection for aquatic habitat and water quality.

~~3. Any material which is excavated from the lake bed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner so as to prohibit reentry of the material into the lake.~~

~~43. 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 lake bed armament may be handpicked~~ or moved with a permit if for swimmer or boater safety, provided that such handpicking can be done without excavating any fine lake bed materials and that an armament of rock or gravel remains on the lake bed in the affected areas.

~~54. The interface of fill materials, such as riprap, with the lake water shall~~ must be sloped at no greater than ~~one~~ two horizontal to ~~two~~ one vertical (4:~~2~~2:1) ratio in order to dissipate wave energy. The face of the slope shall must be covered with suitable materials and/or native vegetation to discourage soil erosion and slumping of banks.

C. Erosion, Sedimentation ~~And~~ and Storm Runoff:

1. The natural protective armament of the lake bed and lakeshore shall must be preserved wherever possible. Any construction activity which will affect the lakeshore protection zone shall must incorporate all necessary means to prevent pollution of the lake, including erosion, sediment and storm runoff controls.

2. The proposed activity shall must 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 must be terminated and filtered prior to entering the lakeshore protection zone.

D. Vegetation:

1. Preservation ~~Of~~ of Native Plants: Native plant species are an important biological and aesthetic component of the lakeshore, and shall must 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 and water.

2. Stabilization ~~Of~~ of Erosive Areas: ~~New~~ Adding native vegetation and soft structure armoring shall be provided, if required, as a is the preferred means of stabilizing erosive areas. Topsoil may be allowed in quantities necessary for establishing and maintaining new plantings.

3. Introduction ~~Of~~ of New Plants: New plants introduced into the lakeshore protection zone must be native to the Flathead Valley or ~~cultivars~~ nativars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at the jurisdictional planning office.

4. Ground Cover: A finely ground bark (less than 1/2 inch in size) or compost is recommended for ground cover in conjunction with the native plants.

5. Flower Gardens Prohibited: Flower gardens are prohibited in the lakeshore protection zone.

6. Fertilizer Prohibited: Application of fertilizer, pesticide, insecticide, or herbicide, is prohibited in the lakeshore protection zone.

7. Preservation ~~Of~~ of Healthy Trees: Healthy trees three inches (3") or more in diameter as measured at eight inches (8") aboveground shall must be preserved and removal is not permitted. In cases where a tree presents a safety hazard to persons or property due to a structural defect or abnormal leaning as confirmed by a professional arborist, the tree may be removed (by with an approved lakeshore permit) provided a similar native 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 must be replaced subject to this section.

8. Denuding ~~Of~~ of Trees Is Prohibited: Dead branches can be removed from trees. Removing live branches over 10' from the ground unless touching a structure or powerline or creating a hazard requires an administrative permit, and no live branches may be removed over 25' high. A tree on which all limbs have been removed up to and over a height of twenty five feet (25'), and or over forty percent (40%) of trunk height, shall will require the planting and maintenance of a future replacement tree in accordance with subsection D7 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. Removal ~~Of~~ of Dead Trees: 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 D7 of this section.

10. ~~Dead Trees Felled Away From Lake:~~

- a. Dead trees which must be removed shall must 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 must be cut off at ground level and not removed from the lakeshore protection zone.
- b. A tree is considered dead if it has been damaged beyond repair or is an advanced state of decline where an insufficient amount of live tissue, green leaves, limbs, or branches exist to sustain life as determined by a certified arborist.

~~10.~~ Prohibited Sprinkler Systems: Sprinkler systems with exposed spray heads are prohibited in the lakeshore protection zone. Buried one-half inch (1/2") drip lines are allowed.

E. Lawns ~~And~~ and Grasses:

1. The establishment of a new lawn in the lakeshore protection zone is prohibited. Such prohibited actions include grass seeding, placement of sod, or the routine mowing and maintenance of native grasses as a lawn.

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.

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 D of this section.

F. Constructed Area:

1. The total of all constructed areas within the lake and lakeshore protection zone shall ~~shall~~ **must** not exceed eight (8) square feet per each linear 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 runoff channeled into the lake or adjoining areas is prohibited.

4. Dry laid stone used for pathways or on preexisting level patio areas shall ~~shall~~ **must** be included in the calculated constructed surface area.

G. Material Storage ~~And~~ **and** Debris:

1. Construction materials shall ~~shall~~ **must** 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.

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 ~~shall~~ **must** 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 lake bed 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 **must** meet the minimum setback requirements for the type of structure proposed, as specified in subsequent subsections 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 mutual agreement by the respective property owners to the conditions of the original permit.

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 **must** 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 (25) cubic feet per second (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 (25) cubic feet per second (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,~~ **and wetlands** may also be subject to floodplain **and water quality protection** 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 **must** be set back from the side property lines and/or riparian boundary lines based on the property's lakeshore frontage. The setbacks ~~shall be~~ **are** as follows:

Lakeshore Frontage (Feet)	Minimum Setback (Feet)
60 or less	10.0
More than 60 but less than 75	12.5
75 or more	15.0

J. Use ~~Of~~ **of** Mechanical Equipment:

1. Use of mechanical equipment has significant potential for damaging the natural armament of the lakeshore and lake bed, 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 fine materials; or gouge, rut or otherwise damage the lakeshore or vegetation.

3. Any piece of mechanical equipment operating in the lakeshore protection zone must have available on hand a hazardous materials kit to immediately address any leaks of fuel, oil, hydraulic fluid, or any other types of spills of contaminants.

~~4~~3. The lakeshore shall must be immediately restored to its condition prior to construction. All equipment tracks shall must be raked or otherwise removed by hand and any vegetation killed or damaged must be replaced with the largest similar size and type of native plant available on a two for one basis.

~~5~~4. Temporary storage of vehicles, trailers, other equipment or construction materials in the lakeshore protection zone is prohibited.

~~6~~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 and {size} of the project or possible damage to the lakeshore zone due to excessive slope or terrain.

K. Docks, Swim Docks, ~~And~~ and Floating Trampolines:

1. One Dock Allowed: 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~~ is 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~~ of Dock: 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 K14 of this section.

3. Solid Docks: Solid docks (i.e., rock filled crib dock) or structures which essentially block the transfer of water beneath the dock shall are not be permitted, as they impede current flows and, therefore, create stagnant water.

4. Setback ~~Of~~ of Docks: Docks shall must 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 I3 of this section.

5. Length ~~Of~~ of Docks: Docks shall must 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 feet (60') from low water (measured after August 15) 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 with an approved permit 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~~ are limited to the outer forty feet (40') of the overall length.

c. On docks exceeding sixty feet (60') in length, a “to scale” water depth profile drawing from sixty (60) to one hundred feet (100') from high water, prepared by a professional dock installer or other professional, is required with the dock permit application.

d. Due to the high potential for interference with public navigation and recreation, no dock shall can exceed one hundred feet (100') in total length, including gangways.

6. Wing Length Of Dock: The wing length of a dock (see figure 2 of this subsection above), whether it is a T, F, 4 or L shaped dock, shall must not exceed thirty percent (30%) of the lot frontage or thirty feet (30'), whichever is less.

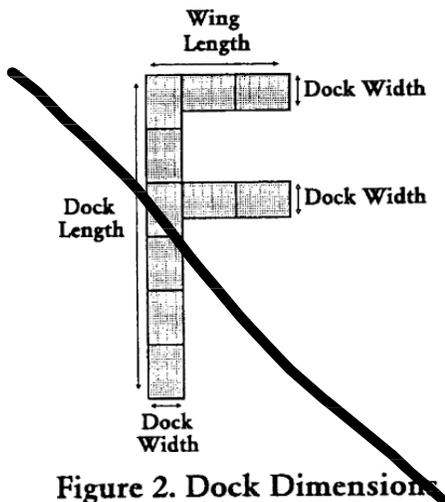
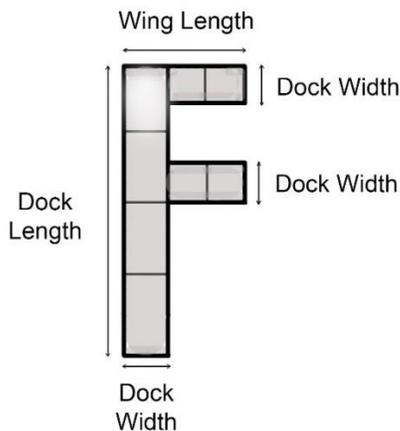


Figure 2. Dock Dimensions

*(Delete Figure 2. Dock Dimensions and replace with Figure 2 below)*



**Figure 2. Dock Wing and Length**

7. Maximum Width Of Dock: The maximum width of all dock sections, wings, and gangways shall **must** not exceed eight feet (8').

8. Flotation Systems ~~in~~ **in** Docks: If foam or similar easily damaged flotation systems are incorporated into the dock design, the material shall **must** 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 **must** 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 **must** be maintained according to these standards or else be immediately and completely removed from the lakeshore protection zone.

9. Anchoring Of Docks: All floating docks shall **must** 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. Deteriorated Docks: Docks which have deteriorated to the extent that they may contaminate the lake, such as having exposed white Styrofoam, shall **must** be immediately repaired as necessary to eliminate the risk of contamination or shall **must** be removed from the lakeshore protection zone.

11. Abandoned Docks: 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. Repairing Materials On Docks: Repair or replacement of materials on existing docks shall **must** be in accordance with these regulations.

13. Licensed Survey: After a permitted dock is installed, a licensed survey of the property riparian boundaries, mean high water boundary, and/or any impervious structures in the lakeshore protection zone may be required if the governing body receives a complaint about a possible setback encroachment or violation of maximum allowed constructed area square footages.

14. Shared Dock Standards: Shared docks shall must comply with the standards found in this subsection 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) linear feet of lake frontage may apply for a shared dock under this section.

b. The total wing width of a shared dock shall must 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 lake bed and lakeshore and ease navigational congestion on the lake.

15. Swim Docks: Swim docks shall must comply with the following:

a. Swim docks shall must 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 must not exceed one hundred (100) square feet with no one dimension exceeding twelve feet (12').

d. Swim docks shall must 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. The city of Whitefish shall ~~assume~~ assumes 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 **must** be included in the coverage calculation as provided for in subsection F of this section.
- 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 **must** 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. The city of Whitefish shall ~~assume~~ **assumes** 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.
2. A marina shall **must** 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.
4. A minimum of one hundred feet (100') shall **must** remain open between any portion of the marina dock structure and the side riparian boundaries.
5. Minimum twenty five foot (25') travel lanes shall **must** 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 **must** comply with the following:
  - a. Each marina shall **must** have a minimum of two hundred fifty feet (250') of lake frontage.
  - b. The design standards for dockage shall ~~be~~ **are** limited by and must comply with subsection K of this section unless otherwise modified below.

c. If a marina meets all regulation criteria without requiring a variance, and does not exceed sixty feet (60') in length, then an additional gangway up to three feet by twelve feet (3' x 12') may be installed to access the dock. This gangway shall be is included in the constructed surface area for the marina.

d. The maximum length of each individual boat slip shall must not exceed twenty six feet (26').

e. The total amount of constructed surface per property in the lakeshore protection zone shall must not exceed ten (10) square feet for each linear foot of lakeshore frontage.

f. The amount of constructed surface located below the mean annual high water line shall must not exceed eight (8) square feet for each linear foot of lakeshore frontage.

g. The overall density of boats/boat slips provided shall must not exceed one boat/boat slip per twenty (20) linear feet of lakeshore frontage.

h. Overnight mooring is only allowed in designated slips.

i. Private marinas may not incorporate boat ramps.

j. No retail sales or rental facilities shall be are allowed on the site.

7. "Public marinas" are defined as providing boat slips and/or services, without restriction, to the general public, and shall must comply with the following:

a. Each marina shall must have a minimum of three hundred feet (300') of lake frontage.

b. In addition to subsection K of this section, design standards for docks, the maximum length of that portion of any dock extending over water shall be is one hundred feet (100').

c. If a marina meets all regulation criteria without requiring a variance, and does not exceed sixty feet (60') in length, then an additional gangway up to three feet by twelve feet (3' x 12') may be installed to access the dock. This gangway shall must be included in the constructed surface area for the marina.

d. The length of the individual boat slips shall may be sized according to need.

e. The amount of constructed surface in the lakeshore protection zone per property shall must not exceed fifteen (15) square feet for each linear foot of lakeshore frontage.

f. The amount of constructed surface located below the mean annual high water line shall must not exceed twelve (12) square feet for each linear foot of lakeshore frontage.

g. The overall density of boats or boat slips provided shall must not exceed one boat or boat slip per ten (10) linear feet of lakeshore frontage.

- h. Overnight mooring is only allowed in designated slips.
- i. One boat ramp per 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.
- m. Annual allocation of boat slips of a public marina shall must be on a nonpreferential basis available to the general public, such as a random lottery, and must be approved by the governing body or city staff.
- 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.

9. The governing body shall will have the right to regularly inspect and require compliance of a marina with its approved permit.

#### 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 must not be located farther into the lake than the permitted dock length.

2. Shore stations and floating boat lifts shall must 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 must 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. Earth tone colors are preferred, such as: green, tan, brown and gray.

5. Shore stations may be placed on either side 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 can result in an overall dock surface width exceeding eight feet (8'). (See "Figure 3 4 Floating Boat Lifts Lift Placement", of this subsection.)

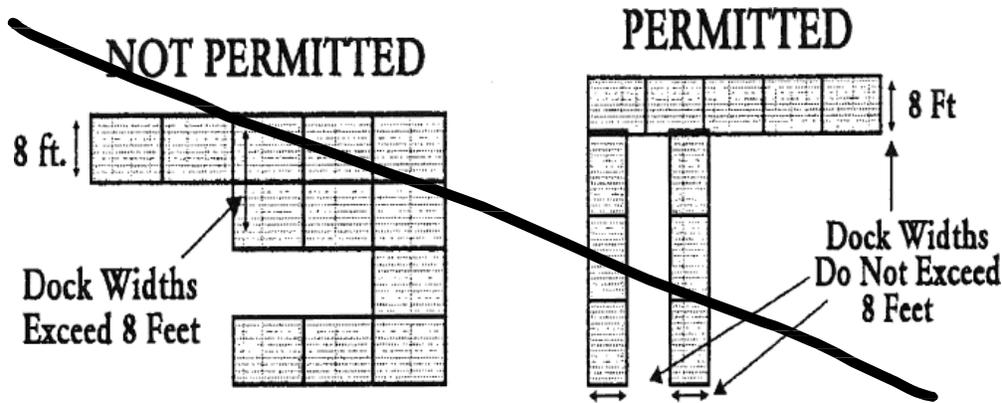


Figure 3. Floating Boat Lift Placement

*(Replace Figure 3 Floating Boat Lift Placement above with new Figure 4 below)*

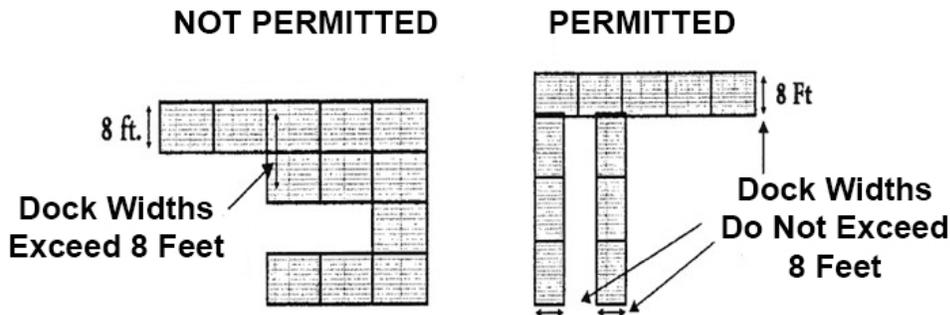


Figure 4. Floating Boat Lifts

7. The entire surface area of a floating boat lift or floating personal watercraft docking station shall must be included in the coverage calculation as provided for in subsection F of this section.

8. The entire surface area of canopies that cover shore stations, boat slips, or docks shall must be included in the constructed area calculation, as provided in subsection F of this section. 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 F of this section.

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.

N. Boat Ramps ~~And~~ 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, and have the potential to introduce aquatic invasive species.

2. Public boat ramps shall must comply with the following:

a. Footings and/or the base of the boat ramp shall must 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 must 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 must be of the same elevation as the preconstruction lake bed and lakeshore elevation.

d. No boat ramp shall can exceed six hundred (600) square feet in surface area waterward of the average high water line.

e. Maximum grade shall must not exceed fifteen percent (15%) and no natural slope in excess of thirty percent (30%) grade shall may be disturbed by construction of a boat ramp.

f. All ramps shall must be finished with nonskid surface to ensure maximum traction for vehicles launching and retrieving boats.

g. Boat ramp edges, if deemed necessary, shall may be rippedraped or soft structure armored in order to prevent erosive undercutting.

3. All existing private and public boat ramps must comply with 13-5-2, Aquatic Invasive Species Prevention, and the City of Whitefish watercraft inspection and decontamination protocols.

a. Aquatic invasive species inspections are required for all launching vessels during standard hours of operation. Watercraft must be inspected via an on-line certification process after standard hours of operation and after the staffing season at the inspection stations.

34. Boat rail systems shall must 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 must not exceed four inches (4") in height and the rail system shall must lie on and follow the grade of the existing lake bed and lakeshore.

c. One boat rail system shall be is allowed per property ownership, subject to a permit. The boat rail carriage may have a canopy (subject to subsections M4 and M8 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 must be located no closer than twenty five feet (25') from a riparian boundary line.

e. Rail systems for trams, planes, or other uses are not permitted in the Lakeshore Protection Zone.

#### O. Riprap, And Retaining Walls, and Soft Structure Armoring:

1. Retaining walls and surface-stacked riprap are at odds with the Policy Criteria of 13-2-6 as they significantly alter shoreline characteristics, create an unnatural shoreline, degrade lake quality and ecology, create a visual impact discordant to natural scenic values, and cause alteration of wave actions with resulting shoreline erosion on neighboring properties. Consequently, such methods are prohibited and require a major variance to install, with the exception that rip rap installed subsurface as part of a dynamic gravel beach or other bioengineered solution is permitted. Retaining walls are prohibited except as a replacement for an existing failing 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. Natural shoreline restoration using soft structure armoring or bioengineering at or above the high-water mark and/or the installation of dynamic gravel beaches are the preferred methods of erosion control and should be used whenever possible. In order to apply for a variance for new or replacement retaining walls or riprap, a licensed engineer must demonstrate that soft-structure armoring, bioengineering or dynamic gravel beaches are ineffective solutions.

2. In situations where a retaining wall ~~must~~ obtains a variance to be constructed, the following standards shall apply:

a. Retaining walls shall must be built at or landward of the mean annual high water elevation and shall must conform to the contours of the existing shoreline.

b. Any existing wall shall must be completely removed from the lakeshore protection zone and the replacement wall shall must be constructed in the same location as the existing wall or further upland.

c. A replacement retaining wall shall must be constructed to the same height, or lower than, the existing wall to be removed. A new retaining wall shall must be constructed to the minimum height necessary to stabilize the bank, but in no case can it exceed four feet (4') in height measured from the downhill finish grade. Where greater heights must occur, a series of terraced or stepped walls must be used. The width of a retaining terrace must be no less than three feet (3') and must incorporate native landscaping.

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 will be limited to that amount necessary to reestablish the preexisting slope and contours of the landward side, but shall must 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~~ is not feasible or will cause bank failure or threaten a dwelling unit, and other preferred solutions are shown by a licensed engineer to be ineffective and a variance is obtained, a new wall may be constructed immediately lakeward of the existing wall.

~~h.~~ Preferred retaining wall construction materials, in order of preference, are: vegetated retaining walls, rock faced concrete retaining wall, interlocking precast 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 and/or vegetative material shall must be included with the permit and variance application.

3. Riprap placed on the shoreline surface is a last resort shall ~~constitute the primary method of erosion control, and shall be~~ is limited to areas where active shoreline erosion is clearly present and endangering conforming structures or mature healthy trees, and where other solutions including dynamic gravel beaches and soft structure armoring have been installed and/or shown to be ineffectual by a licensed engineer or landscape architect. If a variance is approved, surface riprap placement shall must meet the following standards:

a. Vegetated riprap or a combination of riprap and soft structure armoring is the preferred method for any riprap application.

ab. Riprap shall must be placed at or landward of the mean annual high water.

bc. Riprap placement shall must follow the contour of the existing shoreline, and shall be sloped at no greater than one two horizontal to one ~~two~~ vertical (1:2:1) ratio in order to dissipate wave energy.

ed. Riprap shall must be limited to stacked no more than eighteen inches (18") in vertical height. In areas where active erosion clearly exceeds eighteen inches (18"),

riprap height shall be is 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.

~~de.~~ Stone used for riprap shall be is limited to native rock picked from the shoreline and hand stacked, or nonangular rock whose appearance is similar to native shoreline stone. Size of imported rock shall must be six (6) through twelve inch (12") nominal diameter, eighteen inch (18") maximum diameter for exposed rocks, and shall must be free of silts, sands or fine materials unless utilizing vegetated riprap. 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~~ is a violation of these regulations and will be required to be removed and replaced.

~~ef.~~ 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 fine materials through the riprap.

g. Riprap being converted to vegetated riprap or used sub-surface to as part of a dynamic gravel beach requires a standard permit and not a variance.

h. Live trees and native vegetation must be left in place and the riprap placed around it, taking care not to damage the bark or vegetation.

~~fi.~~ Gabion baskets are not allowed.

4. Soft-structure armoring, bioengineering, dynamic gravel beaches, and natural shoreline restoration are the preferred methods of erosion control and must be used in all situations where active lakeshore erosion is present and threatening mature trees or structures.

45. Placement of boulders for ~~landscape~~ landscaping purposes is prohibited.

#### P. ~~Swim Beaches~~ Beach Gravel Applications:

1. Swim Beach Restoration. Addition of gravel for swim beach restoration 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. New material must match the native material as closely as possible.
  - b. Application of gravel for swim beach restoration is not permitted in the following areas: ~~sites subject to strong wave action or currents;~~ sites covered

predominately by vegetation; over existing vegetation above mean high water; sites that are predominantly silts or fine materials; and below average low water;

- c. Placement of gravel directly into the lake is prohibited for swim beach restoration.
  - d. All gravel fill for swim beach restoration shall must be clean, washed gravel of three-fourths inch ( $3/4$ " ) to one and one-half inch ( $1\ 1/2$ " ) diameter, free of silts, sands and fine materials. Mixed sand and pea-gravel is also acceptable. Gravel type and color shall must approximate ~~that~~ the existing materials on the adjacent lakeshore.
  - e. Maximum fill depth for swim beach restoration is ~~four~~ six inches (~~4"~~) (6") to ~~six inches (6")~~ one foot (1'), including existing gravel depth.
  - f. The volume of fill gravel for swim beach restoration shall must not exceed one cubic yard per eight (8) linear feet of lake frontage.
  - g. Application of gravel shall ~~be~~ is permitted ~~one-time only~~ once every ten (10) years to supplement a stable gravel beach. Reapplication of gravel for swim beaches where it ~~was~~ has predominantly either washed away, silted in or revegetated over time is prohibited.
2. Dynamic Gravel Beaches. Addition of prescriptive substrate to create a dynamic gravel beach or wave break to reduce visible shoreline erosion and enhance habitat may be allowed with a permit on a case-by-case basis, subject to the following requirements:
- a. The applicant must use a qualified professional to prepare a technical letter demonstrating any active erosion on site and whether the site is suitable for a dynamic gravel beach or wave break due to its location and existing beach conditions, and the application must be supported with illustrations, sections, and other evidence including engineering formulas showing proposed depth of fill and type of prescriptive substrate materials for the wave break are appropriate to function as a dynamic beach in storm conditions and reduce active beach erosion within the Lakeshore Protection Zone
  - b. Placement of prescriptive substrate directly into the lake is allowed for dynamic beaches, wave breaks and habitat restoration during low water with an approved lakeshore permit and floodplain permit.
  - c. Dynamic gravel beaches must not exceed two cubic yards of fill per each linear foot of lake frontage.
  - d. All fill must be clean and washed. Prescriptive substrate type and color must approximate the existing materials on the adjacent lakeshore.

Q. Dredging ~~And~~ and Filling:

1. Any work that alters a shoreline and/or high water line to extend private property or make a beach wider by removal or addition of material is prohibited unless permitted as a dynamic gravel beach. If a shoreline is altered, then restoration shall must be to the more stringent of the following two (2) 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.
2. Stacking or placement of new rock anywhere in the lakeshore protection zone requires a variance permit (see subsection O, "Riprap And Retaining Walls", of this section) and should only be used when "soft" structure solutions such as the installation of large woody material along the high water elevation and the revegetation of native plants within the lakeshore protection zone have already been applied and are shown to be ineffectual.
3. Dredging of a lake bed or lakeshore may have adverse effects due to suspension of fine materials, resuspension of nutrients and toxic materials, exposure of stable lake bed sediments to unstable conditions, removal of lake bed armament and creation of steep bench areas. All dredging permits require a major variance.
4. Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or lagoon is not permitted.
5. Dredging for the purpose of removing accumulated silt, sand or gravel ~~behind an existing dock or within the confines of~~ directly adjacent to an existing structure is only permitted with a variance if all excavated materials are removed entirely from the lake and lakeshore areas and deposited so as to prohibit their reentry into the lake.
6. Dredging for the purpose of removing accumulated silt, sand or gravel which blocks access to a docking area is only permitted with a variance 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.~~
7. Dredging and/or filling, if permitted through a variance, is only allowed between ~~after August 15~~ and April 15 when the lake is at low water, ~~or a later date to minimize impact on public navigation.~~
8. 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 **or for gravel wave breaks and/or habitat restoration** as described in subsection P of this section, ~~requires~~ **require** a major variance.

9. Fill projects for the purpose of expanding existing land areas shall **are** not be permitted.

10. Discharge of fill material directly into the lake shall **is** not be permitted **unless utilized as part of a permitted dynamic gravel beach installation.**

11. **Fill for engineered dynamic gravel beaches or gravel wave breaks requires a standard lakeshore permit as well as a floodplain permit.**

~~11.~~12. Filling of wetlands adjacent to a lake is prohibited **as it may have adverse effects on water quality 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.**

12. ~~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.~~

**14. Any dredging or filling requires a turbidity curtain be deployed along with an approved turbidity monitoring plan, and in no case can turbidity exceed 2.5 times the natural background conditions as determined by a turbidimeter (NTU).**

#### 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 **must** be designed to reflect light away from abutting or adjacent properties and the lakeshore protection zone.

c. Low voltage pathway lighting, no greater than two feet (2') in height may be permitted. Such lighting shall **must** 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~~ **contribute** to an unnatural setting.

f. All lighting within the lakeshore protection zone shall **must** be dark skies compliant.

## 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 with a permit in public or private marinas or public parks.

(1) Such facilities must receive approval of the Montana Department of Environmental Quality ~~health and environmental sciences~~, the Flathead City-County Health Department ~~city/county health department~~ and/or any other government body with jurisdiction.

(2) Such facilities shall must 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) Such facilities must be designed and maintained using the latest best management practices, and an environmental impact analysis must be submitted with any application for such facility.

## 3. Water Lines:

a. A water line shall must be located ~~no closer than~~ at least ten feet (10') from either side property/riparian boundary line.

b. Directional horizontal underground boring or drilling is the only permitted method of installing waterlines on Whitefish Lake, subject to the following standards:

(1) Surface entrance of boring activity must occur outside the Lakeshore Protection Zone.

(2) Boring must not interfere with, interrupt, or endanger surface and activity thereon, and any surface settlement must be monitored and reported.

(3) If boring operation is discontinued due to obstruction or other reasons, the abandoned portion must be plugged or otherwise filled using best practices.

c. ~~Only the minimum amount of material necessary to lay the line shall be removed from the trench. Trenching in the lakeshore to install waterlines is prohibited unless boring is not possible due to obstructions. If trenching is necessary, a minor variance must first be obtained. The following standards apply:~~

(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 lake bed 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.

e. (4) Following installation, the lake bed shall be returned to its condition prior to construction.

d. (5) A trenching machine may extend its bucket or digger into the lake to extend the trench below low water line of the lake.

e. (6) At no time shall the wheels of any vehicle come in contact with the lake.

(7) Only the minimum amount of material necessary to lay the line shall be removed from the trench.

f.d. That portion of the water line which is not buried and does lie exposed on the bottom of the lakeshore shall must be weighted to prohibit flotation or snagging.

g.e. Water lines using submersible pumps may incorporate an electrical line, but all such work and installation shall must 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 must be installed in conduit for protection and maintenance accessibility.

h.f. No water line shall lie on top of or be attached to a floating dock or raft.

i.g. ~~Water~~ Proof of water rights from the State are required to install a water line.

#### 4. Wells:

a. No well shall can be drilled or developed in the lakeshore protection zone.

b. For wells located outside of the lakeshore protection zone, when originally developing and pumping the well, the silt laden water shall must not be allowed to flow into the lakeshore protection zone and lake.

#### S. Fuel Tanks:

1. Fuel spills into the lake can create serious water quality hazards and may impair fish and wildlife habitat. No bulk fuel tanks shall will be placed over the water. All tanks shall must be landward of the lakeshore protection zone.

2. A pressure shutoff valve shall must be located next to the bulk tank on the line, landward of the lakeshore protection zone.

3. All fuel handling shall must be outside the main berthing area unless weather or lake exposure conditions are unfavorable for such a location. Any fueling stations, other than bulk tanks, shall must be located near an exit by water from the berthing area or at

some location from which, in case of fire aboard an adjoining boat, the stricken craft may be quickly removed without endangering other boats.

4. Fuel stations shall **must** only be allowed in a public marina or a public recreation site.

5. Fuel stations must be designed and maintained using the latest best management practices, and an environmental impact analysis must be submitted with any application for such facility.

#### T. Buoys:

1. Unregulated buoy placement is prohibited **on the lake**, as it creates visual pollution, may obstruct open waters and, when done by non lakeshore owners, infringes on property owners' usable space.

2. A buoy will only be permitted if placement will not cause a potential safety hazard or interfere with navigation and recreation.

3. A permitted buoy shall **must** be installed subject to the following conditions:

a. The buoy shall **must** 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 **must** be immediately removed from the lake.

c. The buoy shall **must** be suitably anchored to the lake bottom to avoid drift. The anchor shall **must** be clean, solid, nonpolluting material such as concrete, rock or steel blocks.

d. The line between the buoy and the anchor shall **must** be cable, galvanized chain or weighted nylon/polypropylene rope to prevent floating.

e. The buoy and anchor shall **must** 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 **must** not exceed twelve feet (12').

g. Buoys are not permitted on lots less than seventy five feet (75') in width. The buoy shall **must** 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~~ **is** 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 **must** 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 **must** 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).

k. "No wake" and similar message sign buoys are subject to the all the same above requirements as mooring and swim buoys.

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. Buoy anchors must be completely removed from the lake when permanently removing buoys. Leaving anchors in the lakebed by cutting buoy ropes or chains is prohibited.

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 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~~ 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 **must** be maintained subject to subsection Z, "Nonconforming Structures", of this section.

V. Decks:

1. Decks, including decks on top of, or balconies cantilevered from, boathouses, storage buildings, dwelling units, etc., are prohibited in the lakeshore protection zone.
2. Existing grandfathered decks in the lakeshore protection zone shall **must** be maintained subject to subsection Z, "Nonconforming Structures", of this section.

W. Stairways, Walkways ~~And~~ and Pathways:

1. Stairways, walkways, and pathways shall **must** 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 subsection F of this section.

3. Stairways and walkways constructed of impervious material, including dry laid stone, are subject to the maximum allowable constructed area in subsection F of this section.

4. Elevated stairways shall must follow the natural grade of the existing shoreline, and no portion of the walking surface of the stairway or landing shall can be situated higher than two (2) vertical feet above the underlying lakeshore.

5. Stairways shall must 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 must not extend higher than four feet (4') above the stairway walking surface and shall must have a nonornate, visually open design. Railings shall must be constructed of wood composite (i.e., Trex) or untreated wood left in its natural (unpainted) condition or metal painted an earth tone 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 must be considered view lots.

#### X. Fences And Hedges:

1. Fences or hedges within the lakeshore protection zone shall are 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 is 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 must not extend waterward of the mean annual high water level.

#### Y. Dwelling Units:

1. No permanent or temporary dwelling units, or portions thereof, shall will 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 tents for commercial use, shall will be erected within the lakeshore protection zone.

3. Existing grandfathered dwelling units, or portions thereof, which are located in the lakeshore protection zone shall must be maintained in conformance with subsection Z, "Nonconforming Structures", of this section.

4. Inhabited houseboats are not permitted to be moored or anchored in Whitefish Lake.

5. No boat or watercraft can be occupied overnight for a period longer than seven (7) days.

Z. Nonconforming Structures:

1. Continued ~~And~~ and Maintained Building Or Structure: Any nonconforming building or structure may be continued and maintained, provided there is no physical change other than necessary maintenance and permitted repair.

2. Routine ~~Or~~ or Seasonal Maintenance: Routine or seasonal maintenance may be completed without requiring a permit. See "maintenance" as defined in section 13-1-5 of this title. All materials shall must conform with subsection A, "Construction Materials", of this section.

3. Repair: A permit ~~shall be~~ is required when repairs include replacement of structural or foundation components or require a building permit, or include Any improvements not present in the non-conforming structure prior to such repair are not permitted other than minor changes in materials. See "repair" as defined in section 13-1-5 of this title. All materials shall must conform with subsection A, "Construction Materials", of this section.

4. Change ~~In~~ in Ownership: In the case of a change in ownership or management of an existing nonconforming building or structure, no changes may be made in the nature or character of such nonconforming use.

5. Storage Shed ~~Or~~ or Boathouse: 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. Change of use includes adding heat, plumbing, roof top decking, or similar improvements.

6. Replacement/Restoration ~~Of~~ of Nonconforming Structures Due ~~To~~ to Fire ~~Or~~ or Other Calamity:

a. A nonconforming building or structure, including a house or boathouse, having been damaged or partially destroyed by fire or other calamity or has otherwise deteriorated to an extent not exceeding ~~ninety~~ fifty percent (~~90%~~ 50%) of its real value, exclusive of the foundations, at any time, may be restored to its immediately previous use existing at the time of partial destruction. Whenever a nonconforming house or boathouse is damaged in excess of ~~ninety~~ fifty percent (~~90%~~ 50%), as stated above, the repair or reconstruction shall must conform to the requirements of these regulations and the floodplain regulations. (All work exceeding routine maintenance requires a permit.)

b. ~~All other nonconforming buildings or structures having been damaged or partially destroyed by fire, or other calamity to an extent not exceeding fifty percent (50%) 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 house or boathouse is damaged in excess of fifty percent (50%), as~~

~~stated above, the repair or reconstruction shall conform to the requirements of these regulations. (All work exceeding routine maintenance requires a permit.)~~

c. b. The percentage of loss resulting from fire or other calamity for a nonconforming structure shall be is defined as the cost to repair divided by the fair market value of the structure (less foundation, and land, and location) prior to the damage. The cost to repair shall ~~include~~ includes the value of all materials, labor and services used for a project.

7. Enlargements: A building or structure which is nonconforming shall must 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. Other Than Natural Disaster: Any nonconforming use or structure which is eliminated or reduced in size or scale by a means other than natural disaster or calamity may only be replaced, reestablished or enlarged according to these regulations (permit required).

9. Remodeling: 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 to the lake due to the following through: intrusion of nonaquatic 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 can be constructed within the lakeshore protection zone. This includes roof overhangs, drip lines, balconies, bay windows, chimneys, decks, etc.

b. Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained, provided the footprint is not expanded and that the building height is limited to twenty five feet (25') as measured from the finished grade nearest the shoreline to the highest point on the building, or is limited to the existing height, if the structure already exceeds twenty five feet (25') in height.

c. Construction materials shall must conform with subsection A of this section, and shall must be of a nonreflective nature. If paint is used, it shall must be of earth toned colors.

10. Grandfathered Dock: 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 nonconforming 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~~ with an approved lakeshore permit 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.
- d. Additional unpermitted constructed area has not been added within the Lakeshore Protection Zone.

11. Concrete Structures: Vertical, nonconforming concrete structures such as retaining walls or foundations in the lakeshore protection zone may be covered with thin stone veneer. The veneer must be no greater than three inches (3") thick, of an earth tone color, irregular size, and a course texture that blends in with the natural stone of the lake and the wooded surroundings. Cultured stone is the preferred product due to lighter weight and less disturbance of the lakeshore protection zone during construction. The exact surfaces to be covered, as well as the final sample selection, must be approved by the lakeshore protection committee and the city council via a standard permit. In adhering the stone or rock, no adhesive, concrete, grout, or other product shall be is allowed to come in contact with the lake. Additional measures may be required to minimize construction impact within the lakeshore protection zone, and any disturbed areas shall must be restored to their preexisting conditions. If during construction it is determined that the veneer cannot be structurally supported, any change to the project must be approved through a permit amendment.

#### 13-4-1 : VARIANCES:

##### A. General Criteria:

1. Minor Variances: Minor variances from the construction requirements or design standards of these regulations may be granted when the governing body determines 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 section 13-2-6, "Policy Criteria For Issuance Of A Permit", of this title.
- d. Alternatively to subsections A-1-a and A-1-b of this section, the granting of a variance would result in a general and universal public benefit.

2. Major Variances: A variance request shall will be considered major when any of the following criteria are met:

- a. The variance request does not meet the requirements of subsection A1 of this section;

b. The variance request deviates substantially from the construction requirements or design standards of these regulations; ~~and~~ or

c. The variance request creates a major environmental impact.

B. Review Procedures:

1. Minor Variances:

a. The lakeshore protection committee will review an application for a minor variance from these regulations for conformity to the above criteria and then make a recommendation to the city council as to whether to approve or deny or to modify the application, ~~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~~ city council will consider the lakeshore protection committee's recommendation and act upon the application. It may grant, modify or deny the variance request.

2. Major Variances:

a. When staff, the lakeshore protection committee, or the governing body determines that a major variance is required, it shall will notify the ~~governing body and~~ applicant of said decision.

b. ~~The determination that~~ If a major variance is required, ~~shall cause to be prepared, by and at the expense of~~ the applicant must prepare and submit, at their expense, an environmental impact statement assessment. The environmental impact statement assessment must 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 13-2-6 of this title;

(5) Alternatives to the proposed project, which would not require a major variance; and

(6) Any other required information ~~that may be required~~.

~~c. Nine (9) copies of the environmental impact statement shall be submitted to the administrator.~~

~~d.c.~~ The lakeshore protection committee shall will review the application for major variance and make a recommendation to the planning community development board.

~~e.d.~~ The planning community development board shall will review the information and make a recommendation to the ~~governing body~~ city council.

~~f.e.~~ The governing body city council, upon receipt of all materials and recommendations, shall will hold a public hearing on the proposed action. Notice of the time and place of the public hearing shall must be published at least once in a newspaper of general circulation not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

~~g.f.~~ Following the public hearing, the governing body shall city council must act upon the application and may grant, modify or deny the variance request.

#### 13-4-2 : AMENDMENTS:

These regulations may be amended. Prior to adopting any proposed amendment, the Whitefish city council shall must hold a public hearing thereon. Notice of the time and place of the public hearing shall must 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 must be maintained by the governing body in a form convenient for use.

#### 13-4-3 : LIABILITY:

The permittee shall can 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.

#### 13-4-4 : 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 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. 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 violates any provision(s) of these regulations, commits a municipal infraction, and is subject to the civil penalties provided in section 1-4-4 of this code. Each separate violation of these regulations shall will constitute a separate offense. For instance, each tree removed or violation of a different subsection requirement shall will constitute a separate offense. Each day that the violation exists beyond a restoration deadline date shall will constitute a separate offense. For each separate incident, the city shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both. If a violation is repeated, the city may treat the initial violation as a misdemeanor and the repeat violation as a municipal infraction, or vice versa.

1. The conditions of a permit shall will 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 and civil penalties collected under this section ~~shall~~ will 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, 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~~ must 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~~ will be deemed to be invalid.