LAKE AND LAKESHORE PROTECTION REGULATIONS
FLATHEAD COUNTY, MONTANA

ADOPTED BY THE FLATHEAD COUNTY BOARD OF COMMISSIONERS

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CHAPTER 1 - GENERAL PROVISIONS

1.1 TITLE

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

1.2 AUTHORITY

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

1.3 PURPOSE

The purpose of these regulations is to:

A. Protect the fragile, pristine character of Flathead County's lakes and recognize that the ecosystem of these lakes are inseparably intertwined with the adjacent riparian corridor and uplands area;

B. Conserve and protect natural lakes because of their high scenic and resource value;

C. Conserve and protect the value of the lakeshore property;

D. Conserve and protect the value of the lakes for the State's residents and visitors who use and enjoy them.

1.4 JURISDICTION

These regulations govern any work which alters the character of any lake, and the area within the lakeshore, 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. Such lakes in Flathead County, Montana include, without limitation, the following:

Abbot Lake
Ashley Lake
Beaver Lake
Big Salmon Lake
Black Lake
Blanchard Lake
Bootjack Lake
Boyle Lake
Clayton Lake
Cyclone Lake
Dahl Lake
Dog Lake
Duck Lake
Echo Lake
Flathead Lake
Flotilla Lake
Foy Lake
Garnet Lake
Half Moon Lake
Handkerchief Lake
Lagoni Lake
Lake Blaine
Lake Five
Lake Monroe
Lake of the Woods
Little Beaver Lake
Little Bitterroot Lake
Little McGregor Lake
Lone Lake
Loon Lake
Lore Lake
Lost ~~Coon~~ **Loon** Lake*
Lower Stillwater Lake
Lynch Lake
Marion Lake
McGilvrey Lake
McGregor Lake
McWennegar Slough
Middle Foy Lake
Moose Lake
Morning Slough
Mud Lake
Murray Lake
Northwestern Lake
Parker Lake
Peterson Lake
Rogers Lake
Scott Lake
Skyles Lake
Smith Lake
Spencer Lake
Stanton Lake
Sunburst Lake
Tally Lake
Teepee Lake
Upper Stillwater Lake
Upper Whitefish Lake
Weaver Slough
Whitefish Lake**

*The mean annual high-water elevation on Lost Coon Lake is 3,104' (NAVD88).

**Effective September 15, 2005, the City of Whitefish annexed "that body of water known as "Whitefish Lake," extending only to the low water mark of Whitefish Lake" (Resolution #05-25). Therefore, Flathead County jurisdiction of rural properties on Whitefish Lake extends up from the low water mark. The low water mark of Whitefish Lake is 2996.44' (NAVD88), which is the 10th percentile low water elevation value calculated from a 2015 Whitefish Lake Institute analysis of best available low water elevation data. The mean annual high-water elevation for Whitefish Lake has been established at 3,000.63' (NAVD88).

1.5 SEVERABILITY

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

1.6 INTERPRETATION

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

CHAPTER 2 - GENERAL PROCEDURES

2.1 PERMIT REQUIRED

No person shall proceed with any work on, or alteration or disturbance of a lake, lakebed, or lakeshore as outlined in Section 2.5 until he/she has obtained, and has physical possession of a valid "Lakeshore Construction Permit" from the governing body.

The person who performs such work is responsible for assuring that a valid permit has been obtained from the governing body.

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

2.2 RESTORATION

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

2.3 PROPERTY RIGHTS

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

B. 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.

2.4 PERMISSION TO ENTER

The governing body, planning board, their staff and/or their consultants, may conduct such investigations, examinations and site evaluations as they may deem necessary to verify information supplied as a requirement of these regulations.

The filing of a Lakeshore Construction Permit application with Flathead County and its designated staff by a property owner or his authorized agent shall constitute a grant by the property owner to the governing body, planning board, their staff and/or their consultants permission to

enter upon his/her land or upon the waters of the lake for review and evaluation purposes both during the application process and upon completion of construction.

2.5 WORK REQUIRING A PERMIT

Without limitation, the following activities, when conducted within the Lakeshore Protection zone including the lake, lakeshore and all land within 20 feet of average high water, are covered by these regulations and are examples of work for which a permit is required:

A. Construction of channels or ditches;

B. Excavation;

C. Dredging: To remove muck, silt sediment, rock or vegetation;

D. Filling, including artificial beach creation;

E. Construction of lagoons;

F. Construction of building*s*, or other impervious surfaces;

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

H. Construction of aerial structures, including extensions into the air space;

I. Construction of retaining walls and breakwaters;

J. Construction of docks;

K. Installation of shore stations, boat rail systems, boat ramps, boat shelters, boat storage and parking facilities, buoys and floating docks;

L. Installation of water lines or other utility lines or facilities;

M. Any major clearing or removal of natural vegetation;

N. Reconstruction of existing facilities;

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

P. The construction of decks, ramps, stairways, and walkways;

Q. The development of roads, roadways, and driveways to serve boat ramps;

R. Pilings;

S. Any operation of mechanized equipment; and,

T. Any other work, not herein mentioned, that may have an impact on a lake, lakebed or lakeshore.

2.6 EXEMPTIONS FROM REGULATIONS

The following types of work are exempted from the permit provisions of these regulations:

A. Repair work, provided that (See definition for Repair and Maintenance):

1. The repair work does not exceed fifty (50) percent of the value and/or size of the structure;

2. Materials to be used do not differ, in type, from existing materials; and,

3. The existing facility is not to be reconstructed, expanded or changed in size, shape, character or bulk.

B. Normal maintenance work for existing facilities which will have insignificant or minimal environmental effects upon the lake, lakebed or lakeshore. (See definition for maintenance on Page 52.) Any work involving dredging, filling or excavation shall not be considered as normal maintenance.

C. Emergency Work. Work shall be considered of an emergency nature if: a condition exists where there is an eminent threat to property or improvements; the work being done is only what is necessary to mitigate the immediate threat; and the conditions which constitute the threat are caused by extenuating circumstances which could not be readily anticipated and which do not re-occur on an annual basis. The following procedures shall be followed where emergency work, as stated herein, is involved:

1. The person proposing to do emergency work shall notify the governing body as to the nature of the emergency, description of the work to be done and the location of the site. Such notification may be by phone but shall proceed in the following manner. If the work date falls on a normal working day (Monday through Friday, excluding holidays), notification must be accomplished prior to beginning work. If the work date falls on a non-working day (Saturday, Sunday and holidays), notification shall be accomplished on the next working day.

2. Written notification shall also be made to the governing body. Such notification shall be made prior to the beginning work, if possible, but under no circumstances

later than seven (7) days after the work is started.

3. The governing body shall review the written notification. If accepted as bona-fide emergency work, the governing body shall sign the notification and send a copy of it to the applicant.

4. If work done under the emergency provision goes beyond the minimum necessary to mitigate the danger, or if work is done where no emergency condition existed, such work shall be considered a violation of these regulations and appropriate action shall be commenced by the governing body pursuant to Section 5.3 of these regulations.

D. Signs. No greater than six (6) square feet in size.

2.7 NON-CONFORMING BUILDINGS, STRUCTURES, AND USES

A. There may be a change in ownership or management of an existing non-conforming building, structure or use, provided there is no change in the nature or character of such non-conforming building, structure, or use.

B. A non-conforming building, structure or use may be maintained, repaired or replaced as long as the dimension, location and historical use remain the same. (Requires a permit)

C. Existing dwelling units in the lakeshore protection zone may be remodeled and maintained in accordance to the requirements of Section 4.3.J.2.

2.8 CONSTRUCTION OR INSTALLATIONS NOT ALLOWED IN THE LAKESHORE PROTECTION ZONE:

A. Boat houses;

B. Wells;

C. Pump houses;

D. Sewage mains and service lines;

E. Storage buildings;

F. Elevated or cantilevered decks either free-standing or extending from a house or other structure;

G. Covering Beach with Impervious Non-native Material (material which does not allow water absorption);

H. Permanent or Temporary Living Quarters;

I. Hot Tubs;

J. Large Barbecue Pits;

K. Any Asphalt Application;

L. Fuel Storage Tanks;

M. Roads or driveways except to serve boat ramps, and

N. Construction of Lagoons.

CHAPTER 3 - REVIEW PROCEDURE

3.1 APPLICATION

Any person who proposes any activity or work, as outlined in Section 2.5, shall submit to the planning office an application for a permit, together with an application fee and one (1) set of such drawings, plans, specifications and other supplemental material as specified below:

A. Application Fee: The application fee allowed under M.C.A. 75-7-207 and as duly authorized by the Flathead County Board of Commissioners.

B. Vicinity Map

A vicinity map of the site on which the proposed work will be done. Such map will clearly show:

1. The location of the proposed project site in relation to the nearest roads, highways and other landmarks.

2. All lakeshore developments (improvements, docks, boat ramps, buoys, etc.), within one hundred (100) feet on both sides of the property or site on which the proposed work shall be done;

3. North point, scale of the map, and adjacent property owners and house numbers.

C. Site Plan

A site plan of the entire site with which the proposed work is associated. The site plan shall be drawn to a convenient scale and shall show:

1. Dimensions and area of the property or properties on which the proposed project is located;

2. Exact location of the project on, or in reference to the property. All distances from the property line should be indicated on the site plan;

3. North point and scale of the site plan;

4. Topography of the site, drawn at two (2) foot intervals may be required, if necessary; and,

5. Location of high water line on lakeshore.

D. Project Drawings

Drawings showing plans, elevations, cross-sections and other details of the proposed project shall be submitted. These drawings shall be drawn to a convenient scale and shall indicate:

1. All dimensions of the proposed construction;

2. Materials of the proposed construction;

3. Any proposed treatment (preservative, paint, etc.) and the color, to be applied to any portion of the structure. (Note: No treatment is permitted for construction in the lakeshore protection zone built after May 1, 1990.)

E. Additional Information

1. An erosion/sedimentation/storm water runoff management plan may be required. Such plan shall include;

   a. The location and description of existing topographic features and soil characteristics of the site using the best available information;

   b. A general description of the proposed changes to the site; and,

   c. A general description of measures which shall be taken for the control of soil erosion, sedimentation and storm water runoff.

2. Any additional information deemed necessary for adequate review may also be required.

3.2 APPLICATION **AND REVIEW** PROCEDURE

A. An applicant shall file an application with the County Planning Office or other agent as designated by the Flathead County Commissioners.

B. An application is deemed as accepted when the complete application and fee are presented.

C. The planning staff shall review the application and other information for compliance with the requirements of these regulations and, based on this review, **the application shall be processed as follows:** ~~shall process the application as follows:~~

   a. Projects will receive summary review **(76-7-207(3), M.C.A.)** ~~(Section 3.3)~~ if the

project is in compliance with the construction requirements and design standards of these regulations or if proper design modifications and necessary conditions can be incorporated into the project to bring it into compliance.

b. **The governing body shall review the application, other information and the planning staff findings and recommendations in order to determine whether the proposed project will have a minimal or a significant impact on the lake, lakebed, or its lakeshore.** ~~If the planning staff or governing body determines that a project will create a significant impact to the lake or lakeshore protection zone, the application will be forwarded to the Planning Board for review and recommendation (Section 3.4) prior to forwarding the application to the governing body for final action (Section 3.3).~~

c. **If the governing body or planning staff determines that the proposed project may have a significant impact on the lake, lakebed, or lakeshore, or the project will require a major variance pursuant to Section 5.1, B.2 of these regulations, it shall first seek a recommendation from the planning board for review in accordance to Section 3.3 of these regulations.**

d. Projects requiring minor or major variances will be reviewed according to Section 5.1.B.

e. **The governing body, based on its findings, shall approve, conditionally approve, or deny the application.**

~~f. Projects which have been predetermined to have an insignificant impact on the lake or lakeshore protection zone shall receive administrative review (Section 3.5).~~

~~3.3 REVIEW PROCEDURE~~

~~A. The governing body shall review the application, other information and the planning staff findings and recommendations in order to determine whether the proposed project will have a minimal or a significant impact on the lake, lakebed or its lakeshore.~~

~~B. If the governing body determines that the proposed project may have a significant impact on the lake, lakebed or lakeshore, or; the project will require a major variance pursuant to Section 5.1, B.2 of these regulations, it shall first seek a recommendation from the planning board for review in accordance to Section 3.4 of these regulations.~~

~~C. The governing body, based on its findings, shall approve, conditionally approve or deny the application.~~

3.43 PLANNING BOARD REVIEW PROCEDURE, WHEN REQUIRED

A. When the planning director, his designee and/or governing body determines that a proposed project will require planning board review, it will forward the application, all submitted information and staff findings and recommendations to the planning board.

B. The planning board shall review the application, other information and the planning staff report and shall submit recommendations to the governing body.

C. After receiving the recommendation of the planning board, the governing body shall approve, conditionally approve or deny the permit application as provided for in Section 3.3 above.

~~3.5 ADMINISTRATIVE PERMIT PROCEDURE~~

~~A. Certain activities and projects, by their very nature, when constructed within the approved design guidelines as found in Section 4.2-4.3 of these regulations are found to have an insignificant impact on the lake and lakeshore, the planning director may issue an administrative lakeshore construction permit for the following activities when (a) the Director finds in each specific case that the proposed activity or activities will have an insignificant impact on the lake or lakeshore and (b) said activities comply with Section 4.2 and 4.3 of these regulations:~~

~~Single residential docks,~~
~~Utility lines,~~
~~Rip rap,~~
~~Free-standing pilings adjacent to dock,~~
~~Ground mounted decks,~~
~~Walkways,~~
~~Shorestations,~~
~~Small-scale tree and vegetation removal as determined on a case by case basis.~~

3.64 REVIEW PERIOD

A. Review period of a permit application and its approval, conditional approval or denial by the governing body, shall take place within a ninety (90) day period unless the applicant agrees to an extension of the review period. The ninety (90) day period shall commence upon submittal of the application for review, provided that all required information and review fees have been properly submitted.

B. If an application is incomplete, the Planning Office shall so notify the applicant and the review period shall not commence until the application requirements stated in Section 3.1 are fully met.

3.~~7~~5 PERMIT VALIDITY

A permit issued under the authority of these regulations is valid for a period of twelve (12) months from the date of issuance. All construction shall also be completed within this twelve (12) month period. The permit, and subsequent construction, may be renewed without submission of a new application or plans if the applicant requests the governing body for a renewal before the original permit expires and the governing body grants a renewal. The governing body, at its discretion, may grant more than one such extension.

3.~~8~~6 MASTER PLAN

An applicant who proposes a large or complex project to be completed in phases or who proposes a project which involves multiple ownerships with a unifying theme or bond such as a homeowner's association and either of which may have an extended or long-term completion date may request Master Plan approval. The overall project would be approved in detail as per Sections 3.1-3.3 above. However, a negotiated time frame would be imposed and project participants would only have to show to the administrative officer compliance with the Master Plan Permit. The administrative officer would then issue an administrative permit upon a verification of compliance. Deviation from the approved Master Plan would necessitate a rehearing of the specific request and could result in a rehearing of the entire Master Plan should the deviation be substantial in nature.

CHAPTER 4 - CRITERIA FOR ISSUANCE OF A PERMIT

4.1 POLICY CRITERIA FOR ISSUANCE OF A PERMIT

The proposed action shall 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;

E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,

F. Alter the characteristics of the shoreline.

4.2 GENERAL CONSTRUCTION STANDARDS

Any proposed project or action shall be in compliance with the following requirements:

A. CONSTRUCTION SEASON

1. Policy Considerations

   Lake levels tend to seasonally fluctuate thus exposing more dry shoreline area than at other times of the year. Construction impacts associated with projects are more controllable and negative impacts such as siltation, contamination or spread of debris can be reduced, mitigated, or eliminated when work is done during low pool times and most importantly on dry land.

2. Standards

   a. All work undertaken at or lakeward of the average high water line shall be done when the lake level is at low pool and the construction site is dry.

      1) Flathead Lake is typically at low pool during the months of January - May.
      2) Contact the Montana Department of Fish, Wildlife and Parks for

determination of seasonal low pool for other lakes.

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

1) The placement of pre-built structures such as shore stations, deck surfaces, floating docks, etc. using a barge, land mounted crane or hand placement.

2) The driving of pilings by a barge, land mounted machine or hand tools.

3) The assembly of pre-cut items such as the decking of a dock or components of a shore station.

4) Placement of buoys.

B. GENERAL CONSTRUCTION MATERIALS

1. Policy Considerations

a. Wood preservatives leach over time and degrade water quality.

b. 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.

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

2. Standards.

a. Wood.

1) All wood used in the Lakeshore Protection Zone shall be untreated and left in its natural state. No preservatives including varnish, stain, paint, linseed oil, diesel fuel, creosote or any other surface or pressure treated preservatives are allowed.

2) This prohibition shall not prohibit the application of paint or stain as a routine maintenance measure for any structure built prior to

1982 located landward of the highwater line which has been painted or stained on a routine basis in the past.

3) Where wood is used for any project which would at sometime be in, or over the water, only solid wood shall be used. This specifically excludes plywood, particle board, chipboard, etc.

b. Composite.

1) Any composite material subject to frequent submersion or inundation must be marine grade.

c. Metal.

1) 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 use.

2) Minimal lubrication of critical metal components to allow movement is allowed.

3) However, no metal used in the lakeshore protection zone may contain deposits or a surface application of any of the following:

a) Grease or oil (other than #2 above);

b) Paint, varnish or coatings which have not thoroughly cured or dried; or

c) Any chemical or substance which will wash off or dissolve when in contact with water.

c. Foam Flotation Logs.

1) Styrofoam logs, as a method of flotation are prohibited. Extruded polystyrene (blue logs) or similar single cell foam is allowed.

2) All foam flotation logs shall be completely encased in solid wood (excluding particle board, plywood, etc.) or in metal. Drain holes or a maximum of 1/2 inch spacing between wood boards may be allowed.

d. Asphalt.

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

e. Concrete.

1) Concrete is the least desirable construction material in relation to wood, stone and concrete and should be utilized only where structural strength and location dictate no other alternative.

2) In all cases, concrete shall be aesthetically shielded by the creative use of rock or wood.

3) Wet concrete shall not be poured into or allowed to come in contact with the lake water. On a case by case basis, concrete poured within water tight forms may be approved.

f. Rock or Stone.

1) Rock or stone is a preferred natural material for construction.

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

3) Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays or fines.

C. EXCAVATION OR FILLING OF MATERIALS

1. Policy Considerations

a. The lakebed or lakeshore should be preserved in its natural condition to the greatest extent possible, in order to preserve its aesthetic value, protect fish and wildlife habitat and water quality.

b. Increased sedimentation in the lake should be minimized to the greatest extent possible, as a protection for fish habitat and water quality.

2. Standards

a. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner so as to prohibit re-entry of the material into

the lake.

b. Temporary stockpiling of excavated materials anywhere in the Lakeshore Protection Zone is prohibited.

c. Any materials used for fill shall be free of fine materials (i.e., clays, silts and sands), unless the material is placed behind a retaining wall which will prevent introduction of the materials into the lake. Large cobbles and boulders lying on the lake bottom and not part of the lakebed armament may be handpicked, provided that such hand picking can be done without excavating any fine lakebed materials and that an armament of rock or gravel remains on the lakebed in the affected areas.

D. EROSION, SEDIMENTATION AND STORM RUNOFF

1. Policy Considerations

a. Any construction activity which will affect the lakeshore protection zone should incorporate all necessary means to prevent pollution of the lake, including erosion, sediment and storm runoff controls.

b. The proposed activity should 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.

2. Standards

a. The interface of fill materials, such as rip rap, with the lake water shall be sloped at an average of one horizontal to two vertical (2:1) ratio in order to dissipate wave energy. The face of the slope shall be covered with suitable materials to discourage soil erosion and slumping of banks.

b. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.

c. Natural vegetation shall be preserved wherever possible. Healthy trees three (3) inches in diameter or larger shall be preserved except where approved on a case by case basis.

d. Natural vegetation shall be provided, if required, as a means of stabilizing erosive areas.

e. The establishment of a new lawn in the lakeshore protection zone is

prohibited. Such prohibited actions include grass seeding, placement of sod, the routine mowing and maintenance of native grasses as a lawn, and the application of fertilizer, pesticide, insecticide, or herbicide.

f. Mechanized equipment may be allowed in the Lakeshore Protection Zone as part of a permitted project; however, at no time shall any vehicle slice, gouge, or rut the beach or shoreline, expose silts or fines or come in contact with the lake.

E. IMPERVIOUS COVER (Constructed Area)

1. Policy Considerations

a. Excessive impervious cover should be discouraged as it may effect water quality, detract from the aesthetic values of the shoreline or alter natural shoreline characteristics.

b. Porous or permeable materials should be preferred to impervious materials as they reduce the intensity and amount of runoff channeled to adjoining areas.

2. Standards

a. The total of all constructed impervious surface areas over the body of water, at high water elevation, shall not exceed eight hundred (800) square feet per one hundred (100) feet of shoreline.

b. The total of all constructed impervious surface areas within the lake and lakeshore protection area shall not exceed one thousand (1000) square feet per one hundred (100) feet of shoreline.

c. Calculation of the total of all constructed impervious surface area shall include all constructed coverage within Flathead County Jurisdiction.

F. REMOVAL OF DEBRIS

1. Policy Considerations

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

2. Standards

All construction *materials and* debris shall be stored and disposed of outside the lake and lakeshore protection zone in such a manner and in such a location so as to prohibit its re-entry into the lake.

G. BURNING

1. Policy Considerations

a. Burning of materials on the lakebed or lakeshore will cause a degradation of water quality, and may create safety hazards or detract from the aesthetic characteristics of the shoreline.

2. Standards

a. Burning of weeds, grass, shrubs, brush, trees, old construction materials, debris from new construction or similar materials on the lakebed or lakeshore shall be reviewed on a case by case basis.

b. No burning will be allowed below the average high water line.

c. Burning in the 20 foot setback zone 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.

d. This section is not intended to prohibit small "campfires" above the average high water line.

H. SETBACK REQUIREMENTS

1. Policy Considerations

a. Structures should be adequately setback from the side property lines or riparian boundary lines in order to prevent overcrowding and to maintain the aesthetic values of the shoreline.

b. Common facilities, constructed and shared by two 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 lines may be waived, provided that the application clearly specifies that the facilities are to be used in common by such owners.

c. Stream and spring outlets on lakeshores are valuable aquatic and aesthetic

resources. They provide spawning and rearing habitat for numerous fish species, as well as a variety of food organisms. Structures should be adequately setback from such outlets in order to protect fish habitat.

2. Standards

a. All structures shall meet the setback requirements, as specified in Section 4.3.

b. Where the setback requirements in Section 4.3 are not applicable, the structure(s) shall be set back from the side property lines and/or riparian lines based on the property's lakeshore frontage. The setbacks shall be as follows:

LAKESHORE FRONTAGE (FEET)	MINIMUM SETBACKS (FEET)
Less than 60	10.0
60-75 feet	12.5
More than 75	15.0

c. Structures shall be setback a minimum of twenty-five (25) feet 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.

d. Projects which lack adequate lake frontage to allow for minimum setbacks shall not be allowed.

4.3 DESIGN STANDARDS FOR FACILITIES

Any proposed project shall meet the following design standards:

A. DOCKS, WHARFS, PIERS

1. Policy Considerations

a. Open and floating docks are encouraged as they allow complete water transfer beneath them. Such docks with large free water transfer areas do not impede current flows and, therefore, stagnant water conditions are not created.

b. Partially open docks which provide for restricted water transfer may be

allowed. Partially open docks are those constructed of closely spaced piling or planking, concrete or crib docks having reduced free water areas, or similar structures which impede free water transfer.

c. Solid docks or structures which essentially block the transfer of water beneath the dock should not be permitted.

d. Docks, Wharfs, and piers have a high potential to interfere with public navigation and public recreation. The property owner has a riparian right to lake access; the public has a right to navigation and recreation on public waters. A balance of these two rights should be arrived at by consideration of the water depth at a given location and the distance a structure extends into the public waters.

e. Common shoreline dock facilities shared by two or more owners, should be encouraged, as such facilities shall reduce the overall environmental impacts on the lakebed and lakeshore and ease navigational congestion on the lake. 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.

2. Standards

a. All Facilities

1) Only one dock is allowed per waterfront property ownership.

2) Docks shall not exceed sixty (60) feet in length if there is five (5) feet of water depth at the end of the dock when the lake is at its mean annual high water elevation.

3) Where the depth of the water, for a sixty (60) foot dock is less than five (5) feet, additional length may be allowed. However, no dock shall exceed one hundred (100) feet in length as measured from the mean annual high water line to the farthest extension of the dock into the lake. In such cases, these properties, because of the extreme shallow conditions of the adjacent lake, are not considered suitable for dock construction.

4) Where boat access is provided to a dock structure, a minimum of twenty-five (25) feet shall remain open between the dock structure

and the riparian boundary for safe boat access. Said setback shall also apply to distances between dock structures and stream and spring outlets (see Section 4.2, G.2.c.).

5) The breakwater portion of a dock shall be reasonably parallel to the shoreline and shall not exceed a length equal to thirty (30) percent of the property's shoreline frontage, or thirty (30) feet, whichever is less.

6) Various dock configurations are allowed which provide boat slip access if constructed within the standards of these regulations.

7) Breakwater baffle boards may be placed along the sides of docks to break wave action along open stretches of dock; however, the boards shall be placed no closer than three (3) feet from the existing lake bottom or shoreline to allow for free movement of lake currents.

8) All docks shall be open or partially open. Partially open docks shall meet the following standards:

a)

DOCK LENGTH (FEET)	STANDARD
Less than 20	One or more openings along side wall area as free water area(s).
20-75	Two or more openings which incorporate at least one-half (1/2) of the length of the side wall area as free water area(s).
More than 75	Three or more openings which incorporate at least one-half (1/2) of the length of the side wall area as free water areas.

b) One of the freewater transfer areas shall be located at the ordinary high water line and extend waterward a minimum

of eight (8) feet.

c) No solid portion of any dock extending waterward from the shoreline shall exceed twenty (20) feet in length.

d) No solid section of the breakwater portion of a crib dock shall exceed twenty-five (25) feet in length.

e) The free water area, of partially open docks, shall be at least eight (8) feet wide and the distance between such areas shall be at least eight (8) feet.

9) The width of the deck of a dock shall be limited to eight (8) feet.

b. Additional Standards - Crib and Concrete Docks.

1) All rock fill placed in crib docks shall exceed four (4) inches in diameter. Any fill that is placed in crib docks shall consist of clean rock and be free of any materials such as sand, silt and clay.

2) All fill that is placed in crib docks shall be obtained from a source outside the lake, lakebed, and lakeshore protection zone, except that rock greater than twelve (12) inches in diameter may be obtained from the lakebed if the borrow site is not near a spawning area and it can be removed without disturbing armament.

3) Concrete docks shall be limited to forty (40) cubic yards of concrete and footings shall not exceed more than 200 square feet.

c. Additional Standards - Floating Docks.

1) If foam logs (note - Styrofoam is prohibited) or similar easily damaged flotation systems are incorporated into the dock design, said material shall be completely wrapped and secured by galvanized mesh wiring with a maximum one (1) inch opening and then completely encased in solid wood or a suitable impervious, non-corrosive material such as aluminum or galvanized sheet metal so as to avoid the breakup or scattering of materials. Plywood, particle board, etc. shall not be used. Boards may be spaced up to one-half inch (1/2") apart on the bottom or drain holes may be incorporated into other materials to aid in drainage. All foam encased floating docks shall be maintained according to these standards or else be immediately and completely removed from the lakeshore protection zone.

2) Floating docks should be removed from the water by December 1 and anchored securely to avoid ice damage and improve the appearance of the shoreline.

3) All floating docks shall be suitably anchored to the lake bottom to avoid drift. Anchoring methods are limited to cable; galvanized chain or nylon or polypropylene rope attached to a suitable clean weight such as solid clean concrete, rock or steel blocks or a temporary pipe and post system which allows the dock sections to slide up and down.

d. Additional Standards – Shared Docks

1) 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.

2) The total wing width of a shared dock shall not exceed sixty (60) feet, regardless of configuration.

3) A minimum setback of forty (40) feet is required between both riparian boundaries and any portion of a shared dock that exceeds thirty (30) feet in total width.

B. MARINAS

1. Policy Considerations

a. Marinas, because of their size, have a high potential to impact the lake and lakeshore. A marina should be designed to accommodate only its anticipated sizing and capacity needs, to protect the navigational rights and safety of neighboring property owners and recreational users of the lake, to insure 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 fish and wildlife habitat.

b. A distinction should be made between public or commercial marinas providing services to the general public and meeting the needs of many lake users and a private marina meeting the needs of a homeowners' association or other limited group.

2. All Facilities

a. 1) A minimum of 100 feet shall remain open between any dock structure and the side riparian boundary.

2) Minimum 25 foot travel lanes shall be provided between dock structures for boats to travel.

b. Additional Standards- Private Marinas

1) Each marina shall have a minimum of 250 feet of lake frontage.

2) The design standards for dockage shall be limited by and must comply with Section 4.3.A. unless otherwise modified below.

3) The maximum length of each individual wing dock forming a boat slip shall not exceed 26 feet.

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

5) Private marinas may incorporate a boat ramp.

6) No retail sales or rental facilities shall be allowed on the site.

c. Additional Standards- Commercial/Public Marina.

1) Each marina shall have a minimum of 300 feet of lake frontage.

2) In addition to Section 4.3 A design standards for docks, the maximum length of that portion of any dock extending over water shall be 100 feet.

3) The length of the wing docks forming the individual boat slips shall be sized according to need.

4) The amount of impervious (constructed) surface in the lakeshore protection zone per property shall not exceed 15 square feet for each lineal foot of lakeshore frontage.

5) The amount of impervious (constructed) surface located below the mean annual high water line shall not exceed 12 square feet for each lineal foot of lakeshore frontage.

6) The overall density of boats or boat slips provided shall not exceed

one boat or boat slip per ten (10) lineal feet of lakeshore frontage.

7) One boat ramp per commercial marina may be constructed.

8) One shoreside sewage facility and one shoreside fuel station per marina may be constructed.

9) 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.

C. BOAT SHELTERS, FLOATING BOAT LIFTS AND SHORE STATIONS

1. Policy Considerations

a. Boathouses are essentially land based structures and, where built within the lakeshore protection zone, have a high potential to detract from the aesthetic values of the shoreline, block scenic views from neighboring properties, significantly alter the natural characteristics of the shoreline and diminish water quality.

b. Boat shelters and shore stations may detract from or block scenic views from neighboring properties.

2. Standards

a) All Facilities

1) No boat shelter, floating boat lift or shore station shall incorporate a roof deck or other elevated deck.

2) Boat shelters, floating boat lifts and shore stations shall not be located farther than the dock length at that location.

3) Boat shelters, floating boat lifts and shore stations shall be located no closer than fifteen (15) feet to a riparian boundary line, except that a greater set-back distance may be required if, in the opinion of the governing body, the structure would likely infringe on the scenic view or navigation from the adjoining property.

4) The highest point on a boat shelter, floating boat lift or shore station shall not exceed twelve (12) feet in height above the high

water elevation of the lake.

5) The total amount of impervious cover created by a ~~boathouse,~~ boat shelter, floating boat lift or shore station, or any combination thereof, shall not exceed the lessor of forty (40) percent of that allowed in Section 4.2,E.2(a) or 600 square feet.

6) Boat shelters, floating boat lifts and shore stations shall be constructed with materials which are non-reflective and designed, constructed and placed with the adjacent surroundings so as to reduce any negative visual impacts.

b) Additional Standards – Floating Boat Lifts

1) When a floating boat lift is installed in conjunction with a dock, no section shall result in an overall dock surface width exceeding eight (8) feet.

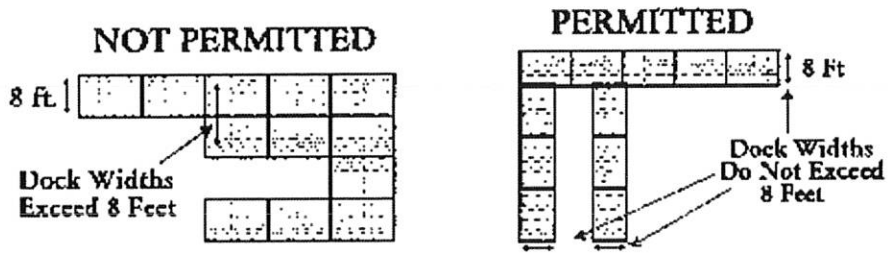

Figure 3. Floating Boat Lift Placement

2) 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.

D. BOAT RAMPS AND BOAT RAIL SYSTEMS

1. Policy Considerations

a. Boat ramps have a potential to increase sedimentations in the lake, diminish water quality and alter natural shoreline characteristics.

b. Boat rail systems, if properly installed, generally have an insignificant impact on the lake and its lakeshore.

c. Facilities designed for removal of boats from a lake, such as rail systems, are preferred to attempting to build a dock, shore station, or boat shelter

for protection of boats, as the overall impacts tend to be less adverse.

2. Standards

a. Boat Ramp Standards

1) Private individual boat ramps within one (1) lake mile or three (3 driving land miles of a public boat ramp are not allowed.

2) Footings and/or the base of the boat ramp shall be constructed below the pre-existing grade of the shoreline.

3) All material excavated from the lakeshore to construct the boat ramp and not used as the ramp foundation material shall be immediately and completely removed from the Lakeshore Protection Zone and deposited in such a manner as to prohibit its re-entry into the lake.

4) Boat ramps shall be of the same elevation as the pre-construction lakebed and lakeshore elevation.

5) No boat ramp shall exceed six hundred (600) square feet of surface area waterward of the mean annual water elevation.

6) Maximum grade shall not exceed 15% and no natural slope in excess of 30% grade shall be disturbed by construction of a boat ramp.

7) All ramps shall be finished with non-skid surface to insure maximum traction for vehicles launching and retrieving boats.

8) Concrete boat ramp edges shall be thickened to a minimum of twice the average thickness of the ramp in order to prevent erosive undercutting or breaking of ramp edges. In addition, the lakeward end of the ramp shall contain a 45^{O} angle lip to allow tires to roll off the end as well as to dissipate wave energy as it rolls up against the ramp.

a. Boat Rail System Standards

1) Launching rails shall be suitably anchored to the lake bottom, except on lakes that necessitate seasonal removal to avoid ice damage.

2) The rails of the rail launching system shall not exceed four (4) inches in height and the rail system shall lie on and follow the grade of the existing lakebed and lakeshore.

3) No portion of the rail shall extend more than 18 inches above the immediately adjacent land.

E. RETAINING WALLS AND RIP RAP

1. Policy Considerations

a. Retaining walls significantly alter shoreline characteristics. They create a totally unnatural shoreline which causes alteration of wave actions, beach dynamics and shoreline erosion patterns.

b. Retaining walls which do not follow the natural contour of the shoreline have a high probability of affecting erosion of neighboring properties and may have adverse impacts to the lake and lakebed.

c. Other alternatives, such as rip rap, should be explored first. Retaining walls should be constructed only as a last resort. When used, retaining walls should be constructed only for the purpose of stopping shoreline erosion.

d. Stone or wood retaining walls are preferred to concrete retaining walls. Only natural rip rap should be used.

2. Standards

a. All Facilities

1) Retaining walls and rip rap are permitted only where active erosion is present.

2) The use of retaining walls and rip rap solely for landscaping is not allowed.

3) Retaining walls and rip rap designed to extend the land area into the lake shall not be permitted.

4) Retaining walls and rip rap shall be built at or landward of the mean annual high water elevation and shall conform to the contours of the existing shoreline.

5) Where active erosion is present and documented, an applicant may propose to regain erosional loss experienced in the past 12 months. No attempt shall be made to extend the land area into the lake any further.

6) Retaining walls and ripraps are exempt from meeting the general setback requirement standards listed in Section 4.2.H.2 of these regulations.

b. Additional Standards – Rip rap

1) Rip rap rock shall be angular and sized properly for the specific task.

2) All rip rap rock shall be free of silts, sands or fines and acquired from a site outside of the Lakeshore Protection Zone.

3) Rock may be hand-picked from the immediate lakeshore but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock which exposes silts, sands or fines is prohibited.

4) Rip rap rock shall be placed at or landward of the mean annual high water line and be placed at a maximum slope of one horizontal to two vertical (2:1). Prior to the placement of rip rap, filter fabric is required to be placed along the shoreline and incorporated into the rip rap design to inhibit erosion and the washing of fines through the rip rap.

c. Additional Standards – Retaining walls

1) In situations where rip rap will not suitably address the erosional process, the following methods in order of preference are allowed: rock-faced concrete wall, wood wall, or bare concrete wall.

2) When more than 12 inches of retaining wall is exposed in the lakeward side of the wall, rip rap complying with standards b (1-4) above shall be placed on the waterward side of the wall such that the rock shall extend to within at least six (6) inches of the top of the wall when placed at a maximum slope of one horizontal to two (2) vertical (2:1).

3) The landward side of the retaining wall shall extend at least two (2) inches but not more than eight (8) inches above the level of

backfill to inhibit surface water run-off which may carry fertilizer, herbicides, pesticides, etc.

4) Within five (5) feet landward of any retaining wall, backfill shall consist of easily drained gravel, rock, stone, sand or a combination of the above. Drain or weep holes should be provided for in any wall.

5) All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the Lakeshore Protection Zone.

6) Backfill shall be limited to that amount necessary to re-establish the pre-existing slope and contours of the landward side.

7) If an existing wall has to be replaced, it shall be completely removed from the Lakeshore Protection Zone and the replacement wall shall be constructed in essentially the same location as the existing wall. If removal of the wall proves unfeasible or will cause environmental hazards (sedimentation, bank failure, etc.), a new wall may be constructed up to three (3) feet lakeward of the existing wall. Typically one such extension into the lake is allowed.

F. DREDGE, FILL AND SWIM BEACH CREATION

1. Policy Considerations

a. Dredging of a lakebed or lakeshore may have adverse effects due to suspension of fine materials, re-suspension of nutrients and toxic materials, exposure of stable lakebed sediments to unstable conditions, removal of lakebed armament and creation of steep bench areas.

b. 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.

c. Filling of wetlands creates 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.

2. Standards

a. Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or lagoon is not permitted.

b. Dredging for the purpose of removing accumulated silt, sand or gravel which (1) blocks access to a docking area, (2) is behind an existing dock, or (3) is within the confines of an existing structure is only permitted if the area to be dredged is less than 500 square feet and all excavated materials are removed entirely from the lake and lakeshore areas and deposited so as to prohibit their re-entry into the lake.

c. Dredged areas shall be stabilized with a protective armament as soon as possible after excavation. In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.

d. Dredging and/or filling is only permitted one time per permit at the time of year specified on the permit.

e. Fill projects for the purpose of expanding existing land areas shall not be permitted.

f. Discharge of fill material directly into the lake shall not be permitted.

g. Filling of wetlands adjacent to a lake is prohibited.

h. Addition of rock to the lakebed and lakeshore protection zone is permissible activity but shall be reviewed on a case-by-case basis, subject to the following requirements:

(1) Application of rock is allowed where the predominant existing surface is gravel.
(2) Application of rock is not permitted in the following areas: wetlands and sites subject to strong wave action or currents; sites covered predominately by vegetation; or below average low water.
(3) Placement of fill directly into the waters of any lake is prohibited.
(4) All fill shall be clean, washed rock with a minimum diameter of ¾ inch and a maximum diameter to be determined at the time of on site inspection free of silts, sands and fines. Rock type, size and color shall approximate that existing on the adjacent lakeshore.
(5) Maximum fill depth is four to six inches.
(6) The volume of fill shall not exceed one cubic yard per sixteen lineal feet of lake frontage.
(7) Application of rock shall be permitted one time only to supplement

a stable gravel beach. Reapplication of gravel where it has washed away, silted in, or revegetated over time may be permitted upon reapplication and approval by the Board of County Commissioners.

(8) The Montana Department of Natural Resources & Conservation may also require permits for any dredging and filling. Said permit(s) shall be obtained prior to the application for a County Lakeshore Construction Permit.

(9) The U.S. Army Corps of Engineers may also require permits for any dredging and filling.

(10) Where fill is proposed on the bed of any lake, Flathead County Planning & Zoning Office shall contact the Montana Department of Fish, Wildlife and Parks, whose concerns will be incorporated into the permit application review process.

G. UTILITY LINES (Electrical, Sewer, Water, Wells)

1. Policy Considerations

a. The placement and maintenance of utility lines and wells, if done improperly, can have significant effects on lakes due to disturbance of the lakebed or lakeshore.

b. Electrical lines are unsightly, potentially dangerous in or near a water environment and generally in conflict with the natural setting of the lakeshore protection zone.

c. Unrestricted lighting in the lakeshore protection zone can be distracting hazardous to navigation and contributory to an unnatural setting.

d. Deep wells located outside the lakeshore protection zone are the preferred water source. If this is not feasible, direct lake water may be used.

e. Silt laden water shall not be allowed to flow directly into the lakeshore protection zone and lake.

2. Standards

a. All Facilities

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

2) 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.

3) In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.

4) 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.

5) Following installation, the lakebed or lakeshore shall be returned to its condition prior to construction.

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

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

b. Additional Standards - Electrical Lines and Lighting.

1) No permanent overhead electrical lines are allowed in the lakeshore protection zone.

2) All lighting shall be hooded, screened or directed in a manner such that the light source or the diffuser emitting the light shall not be deleterious to the adjoining property owners or occupants.

3) All electric lines servicing submersible water pumps, aerators, lighting, or any other electrical device shall be installed in conduit and all electric work shall be done in accordance with State Uniform Electrical Code.

c. Additional Standards - Sewer lines/Disposal facilities.

1) Domestic sewer lines or components are prohibited in the lakeshore protection zone.

2) Municipal/community sewer lines, lift stations and other

associated facilities are prohibited in the lakeshore protection zone.

3) Shoreside pump out facilities may be placed in public or private marinas or public parks.

a) Such facilities must receive approval of the Montana Department of Health and Environmental Sciences and the Flathead City-County Health Department.

b) Such facilities shall include equipment to pump or otherwise receive and transfer contents of vessel holding tanks into a sewage retention and/or disposal system located outside the lakeshore protection zone.

d. Additional Standards - Waterlines.

1) A water line shall be located no closer than ten (10) feet from either side property/riparian line.

2) All waterlines shall be covered or buried for safety and aesthetic purposes unless placement is temporary in nature (less than 30 days).That portion of the waterline which is not buried and does lie exposed on the bottom of the lakeshore shall be weighted to prohibit floatation or snagging.

3) Waterlines using submersible pumps may incorporate an electrical line but all such work and installation shall be done in accordance with the State Uniform Plumbing and Electrical Codes. The electrical line shall be installed in conduit for protection and maintenance accessibility.

4) No waterline shall lie on top of or be attached to a floating dock or raft.

5) The applicant shall demonstrate that the necessary water rights as required by the Department of Natural Resources and Conservation are in place.

e. Additional Standards - Wells:.

1) No well shall be drilled or developed in the lakeshore protection zone.

H. FUEL TANKS

1. Policy Considerations

a. Fuel spills into the lake can create serious water quality hazards and may impair fish and wildlife habitat.

b. Fueling stations on or by a dock shall be located away from berthing areas in order to prevent any spread of a possible fire.

2. Standards

a. No bulk fuel tanks shall be placed over the water. All tanks shall be landward of the lakeshore protection zone.

b. A pressure shut-off valve shall be located next to the bulk tank on the line, landward of the lakeshore protection zone.

c. All fuel handling shall 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 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.

d. Fuel stations shall only be allowed in a public or private marina or a public recreation site.

I. BUOYS

1. Policy Considerations

a. Buoys may create a potential safety hazard to navigation and recreation, and so should only be allowed in selective locations.

b. Unregulated buoy placement and the associated attachment of boats, rafts, etc. creates visual pollution, obstruction of open space, and, when done by non-lakeshore owners, an infringement on property owners usable space.

2. Standards

a. All Facilities

(1) Buoys should be securely anchored and well marked for safety reasons.

(2) Buoys shall be at least twelve (12) inches in diameter and made of low-impact plastic. Logs and/or metal barrels should not be allowed.

(3) All buoys shall be clearly marked with flags or reflective materials and contain reflective devices.

b. Additional Standards- Buoy-Boat Anchors

(1) A buoy-boat anchor will only be permitted if placement will not cause a potential safety hazard or interfere with navigation and recreation.

(2) Anchors for the buoy shall be clean, solid non-polluting materials and shall be placed within 100 feet of the mean annual high water line.

(3) The lines between the buoy and the anchor and the buoy and the boat shall be weighted or made of non-floatable material.

(4) The distance from the buoy to a moored boat shall not exceed twenty (20) feet.

(5) The farthest swing of a buoy moored boat in relation to a side property (riparian) line shall be twenty-five (25) feet.

(6) Only one buoy-boat anchor is allowed per lakeshore property.

(7) The user of the buoy-boat anchor shall be the lakeshore property owner immediately landward and adjacent to the site or an individual who has the owners specific permission.

(8) Any boat attached or anchored to a buoy shall maintain, at all times between sunset and sunrise, a 32-point light (a light visible at all times from all directions for 360 degrees field of view).

c. Additional Standards- Swim Float Buoys

(1) 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 (20) feet from the riparian property line, and no more than sixty (60) feet from the shoreline.

(2) Swim floats must be white buoys having international orange markings in conformance with the uniform state waterway marking system.

J. DWELLING UNITS

1. Policy Considerations

a. Dwelling units represent concentrations of human activities. Such activities are essentially land based with people entering the aquatic environment only for relatively short periods of time for recreational purposes. Dwelling units are potentially harmful through: intrusion of non-aquatic land use in an aquatic environment; creation of impervious surfaces; increasing surface storm runoff into the lake, concentrating human activities on the shoreline; obstruction of scenic views and possible sewer leakage.

2. Standards

a. No permanent or temporary dwelling units or portions thereof, shall be constructed within the lakeshore protection zone. This includes roof overhangs, drip lines, balconies, bay windows, chimney's, elevated (more than 24 inches above ground) decks, etc.

b. Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained, provided that the building height is limited to twenty-five (25) feet as measured from the finished grade nearest the shoreline to the highest point on the building, or the existing height, if the structure exceeds twenty-five (25) feet in height.

c. Construction materials shall be of a non-reflective nature. If paint is used, it shall be of earth toned colors.

K. FENCES AND HEDGES

1. Policy Considerations

a. Fences or hedges within the lake or lakeshore protection zone restrict the free movement of people and may detract from the aesthetic value of the

lakeshore.

b. Fences or hedges may be permitted within the lakeshore protection zone provided that they do not restrict the visibility of the neighboring properties, or extend, waterward, beyond the high water elevation.

2. Standards

a. No fence shall exceed six (6) feet in height and within ten (10) feet of average high water shall not exceed four (4) feet six (6) inches.

b. All fences must maintain at least 50% open space in their design (solid fences are prohibited).

c. Barb wire fencing is prohibited.

d. Fences shall not extend waterward of the mean annual high water level except that special consideration shall be taken where private property abuts public or commercially zoned or used land.

e. Fences are exempt from meeting the general setback requirement standards listed in Section 4.2(H)(2) of these regulations.

L. DECKS, WALKWAYS AND STAIRWAYS

1. Policy Considerations

a. Decks, walkways and stairways are all structures which are located landward of high water and are considered as constructed surfaces.

b. These structures tend to extend human activity into the lakeshore protection zone, focus and concentrate such activity and provide access to the lakeshore.

c. If properly placed and constructed so as to minimize visual impact from adjoining properties and the lake said structures typically have minimal impact on the lakeshore and, in some cases, help to protect the fragile shoreline from foot traffic.

d. This is typically accomplished by flush or ground mounting of all decks, stairways and walkways in conjunction with wise use of the topography and landscaping. Elevated or projecting structures are typically prohibited. In addition, the cantilevering of decks and stairways to create level areas on otherwise steeply sloping, hilly or rocky properties is also typically

prohibited.

2. Standards

a. All decks shall be on grade and shall be limited to no more than 200 square feet in size within the Lakeshore Protection Zone.

b. Landscaping, rock or other natural methods may be required to obscure direct view of a deck from the lake or adjoining properties.

c. Stairways shall follow the natural grade of the existing shoreline and should be designed and sized to provide access only. Typically, the stairway will be mounted flush or within a few inches of the adjacent or underlying lakeshore. In no case would a stairway walking surface be situated higher than two (2) feet above the adjacent or immediately underlying ground. Should the shoreline prove to be too steep to adequately follow this standard, the applicants shall discuss alternative methods of accessing the lakeshore or consider the lakeshore inaccessible as opposed to excavating, filling or modifying the lakeshore zone so as to meet the standard.

d. The width of a stairway shall be limited to four (4) feet.

e. Walkways shall be constructed on the existing terrain. The placement of individual stones, gravel or imbedded wood are recommended travel surfaces as opposed to concrete.

f. Decks, patios, walkways and stairways flush with the adjacent natural grade are exempt from meeting the general setback requirement standards listed in Section 4.2.H.2 of these regulations.

M. OTHER PROJECTS

Other types of projects which are not specifically covered by the foregoing design standards shall be reviewed on an individual basis under the "Policy Criteria for Issuance of a Permit" contained in Section 4.1 and the "Construction Standards" contained in Section 4.2 of these regulations.

CHAPTER 5 - ADMINISTRATION

5.1 VARIANCES

A. GENERAL CRITERIA

1. Minor Variance

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

a. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship;

b. No reasonable alternatives exist which do meet the standards herein; and,

c. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the "Policy Criteria for Issuance of a Permit".

2. Major Variance

Major variances from the requirements of these regulations require the preparation of an environmental impact statement, review by the planning board of local jurisdiction and a holding of a public hearing by the governing body. A variance request shall be considered major when either of the following criteria are met:

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

b. The variance request creates a major environmental impact.

B. REVIEW PROCEDURE

1. Minor Variance

a. The planning staff shall indicate to the governing body as part of the staff review that a minor variance is needed. The staff shall make a recommendation to the governing body as to the appropriateness of the minor variance.

b. The governing body shall consider the planning staff recommendation and act upon the application. It may grant or deny the variance request.

2. Major Variance

a. When the **governing body or** planning staff determines that a major variance is involved, it shall notify the governing body and applicant of said decision. The governing body shall determine if said request is a major variance and shall respond, in writing, to the planning staff and applicant of its decision.

b. The determination that a major variance request exists shall cause to be prepared, by and at the expense of the applicant, an environmental impact statement. The environmental impact statement shall contain:

1) Description of the proposed project;

2) Description of and the reason for, the major variance being considered;

3) Description of existing conditions;

4) Description of anticipated impacts as they relate to each of the Policy Criteria in Section 4.1;

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

6) Any other information that may be required.

c. When complete, copies of the environmental impact statement shall be made available, at the expense of the applicant, to persons, agencies or organizations that may have an interest in the proposed project.

d. The planning staff shall review the application, the environmental impact statement and other information and, thereupon, prepare its recommendation. Said materials and recommendation shall be distributed to the planning board for their review.

e. The planning board shall review the information and make a recommendation to the governing body.

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

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

5.2 VIOLATIONS - PENALTY

A. A person who violates an order issued under these regulations, or who knowingly violates any provision(s) of these regulations, commits a misdemeanor, and on conviction may be sentenced to thirty (30) days in the County jail, fined five hundred dollars ($500.00), or both.

B. In the event that any building or structure is erected, reconstructed, altered, converted, or maintained, or any building, structure, or land is used in violation of these regulations, the proper legal authorities of the Board of County Commissioners, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent an illegal act, conduct, business, or use in or about such building, structure or land.

C. Fines collected under this section shall be paid to the general fund of the governing body, for the purpose of administering these regulations.

5.3 AMENDMENTS

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

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

5.4 APPEALS

Any person, unit of government, or agency may file an appeal when aggrieved by a decision or interpretation by the Flathead County Planning and Zoning Director, or his or her designee, provided that the appeal is passed

A. The planning director, or his or her designee, made an error in the interpretation of these regulations, and

B. The erroneous interpretation specifically aggrieves the appellant.

5.5 APPEAL APPLICATION AND PROCEDURE

A. An application of an appeal may be submitted in the form of a letter to the planning and zoning department, stating the nature of the error in interpretation and how the appellant was specifically aggrieved. The appeal request along with the payment of fees shall be submitted within 30 days from the time the official interpretation or determination was made.

B. No part of any fee shall be refundable after an appeal is filed and such fee is paid.

C. The planning director, or his or her designee, shall fix a reasonable time for a hearing before the Flathead County planning board and give public notice of the hearing to the parties of interest and the public by publishing notice in a newspaper of general circulation in the community at least 15 days prior to the hearing.

D. Where an appeal concerns a particular piece of property, all property owners within 150 feet of the subject property shall be notified by mail at least 15 days prior to the hearing. When the subject property abuts a right-of-way, the 150-foot measurement shall be in addition to this right-of-way along the abutting line. The appellant shall submit an additional fee of $75 for the certified list of all adjacent property owners.

E. The planning board shall review the appellant's request, a staff report or analysis of the request, and planning staff recommendation. The planning board may also take comments from the appellant and planning staff as necessary. The Planning Board shall then make a recommendation to the governing body.

F. The governing body will consider the recommendation of the Planning Board and may grant or deny the appeal.

5.45 LIABILITY

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

CHAPTER 6-DEFINITIONS

Whenever the following words or phrases appear in this ordinance, they shall be given meaning attributed to them by this Section. When not inconsistent with the context, words used in the present tense shall include the future, the singular shall include the plural and the plural the singular, the word "shall" is always mandatory, and the word "may" indicates a use of discretion in making a decision.

APPLICANT: The person or persons, making applications to the governing body for a permit.

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

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

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

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

BREAKWATER: A structure which protects a shore area from wave action.

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

CONSTRUCTED AREA: That portion of the lake and lakeshore protection zone covered by any constructed structure such as a dock, deck, walkway, boat house, boat shelter, roofed shore station or covered by any non-native material or substance that would not naturally occur at this point such as concrete, asphalt, washed gravel for swimming areas, etc.

CRIB DOCK: A type of permanent dock consisting of solid wood cribs filled with ballast material such as rock on which a deck is constructed.

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

DOCK LENGTH: Dock length is the length of that portion of the dock including the gangway which extends lakeward at any time over water and is measured from the current water level to the farthest waterward end of the dock.

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.

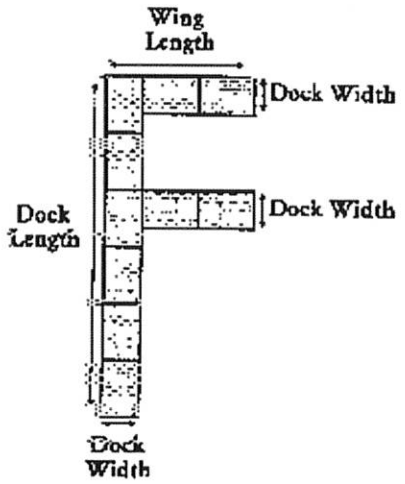

Figure 4. Dock Wing and Length

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

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

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

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

FREE WATER AREA: The open area beneath a dock, wharf, pier, breakwater, or other structure which is totally free of any obstruction to water transfer under the structure.

GOVERNING BODY: The Board of County Commissioners of Flathead County.

GROIN: Any structure designed to arrest water, sand, or gravel movement along the shoreline or along a dock, breakwater, retaining wall, or similar structure.

IMPERVIOUS: Not permeable, impenetrable by water.

JETTIES: Structures, usually in pairs, which extend from the shoreline into the lake at the mouth of rivers or at the entrance to lagoons which are designed to confine the flow of water to a narrow zone.

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: That portion of the property which borders on the lakeshore. For the purpose of measurement, lake frontage shall be the straight distance between side property lines at the water's edge.

LAKESHORE PROTECTION ZONE: The land area which is within twenty (20) horizontal feet of the perimeter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation. Where a shoreline is irregular or erratic or a channel or gorge of a lake juts landward, the lakeshore protection zone shall correspondingly follow these irregularities.

MAINTENANCE: Routine or seasonal work or upkeep involving painting, staining, tightening, adjusting minor replacement of boards, shingles, broken windows, clean up of debris such as branches and leaves, restacking fallen rock, etc. Typically, only hand tools would be involved. Any dredging, filling or excavation is not considered maintenance.

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

MARINA, COMMERCIAL OR PUBLIC: A marina facility which is intended to serve either the general public or a limited group of people beyond the intent or scale of an adjacent homeowners' association.

MARINA, PRIVATE: A marina facility in which use is specifically limited to an adjacent homeowners' association (adjacent is defined as property within one-half mile of said Marina).

MEAN ANNUAL HIGH WATER ELEVATION: The mean average of the highest elevation of a lake

in each of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. A highest elevation caused by operation of a dam or other impoundment counts towards the establishment of the mean annual high water elevation.

MECHANIZED EQUIPMENT: Any mechanized or motorized equipment generally utilized in conjunction with, but not limited to, the installation, removal, construction or deconstruction of a structure in the lakeshore protection zone. This does not include smaller mechanical equipment commonly utilized for lawn maintenance of basic home maintenance and repairs (i.e. lawn mowers, leaf blowers, etc.)

NON-CONFORMING BUILDING, STRUCTURE OR USE: Any building or structure or use of land lawfully constructed or occupied at the time of passage of these regulations or any previous regulations, but which no longer conforms to the regulations. Any building, structure or use which has received an approved variance from these regulations or any previous regulations are considered legal and conforming.

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

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

PLANNING BOARD: The planning board in whose jurisdiction the lake occurs.

PLANNING DIRECTOR: The director of the Flathead County Planning & Zoning Office.

PLANNING OFFICE: The Flathead County Planning & Zoning Office.

PLANNING STAFF: The staff planners in the employ of the Flathead County Planning & Zoning Office.

RECONSTRUCTION: To rebuild an existing facility such that at the time of reconstruction in excess of 50% of the value or size of the facility excluding foundation is replaced.

REPAIR: To restore an existing facility to sound condition by replacing component parts of the facility utilizing the same or similar construction materials and maintaining the exact design, size and configuration as was original prior to repair. Repair work shall not exceed fifty percent (50%) of the value or size of the structures (excluding foundation).

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

RIPARIAN BOUNDARY: A projection of the side property lines from their point of intersection with the perimeter of the lake (at its mean annual high water elevations), lakeward at right angles to the natural shoreline. Where a structure has been built into the lake and the structure has caused the build-up of an

artificial shoreline, the artificial shoreline cannot be utilized to establish the riparian boundary.

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.

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

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

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

SMALL-SCALE TREE AND VEGETATION REMOVAL: The removal of no more than three (3) dead or dying trees and/or the removal of no more than twenty-five (25) square feet of non-native vegetation.

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 attached to the ground.

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