

# WHITEFISH COMMUNITY WASTEWATER MANAGEMENT PROGRAM

*FINAL DRAFT*

31 July 2013



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Prepared for:  
**Whitefish City Council**

Prepared by:  
**the Whitefish Community Wastewater Committee**

This document provides recommendations to Whitefish City Council regarding wastewater management, septic systems, nutrient trading, and wastewater conveyance. Per City of Whitefish Resolution 12-15, this Program Draft includes:

- Implementation Timeline
- Funding Options
- Short-term goals (E&O, planning)
- Long-term goals (expanded E&O, management options & regulations)
- Monitoring component
- *List of Resource Agencies and Decision Makers* included in communications of the committee

The Flathead County Health Department currently manages permitting and all issues pertaining to septic systems in Flathead County. For the purposes of this *Program Draft*, the governing body is identified as "Whitefish Community Wastewater Management Program Administrator." Because this *Program Draft* suggests possible additional efforts regarding septic systems for the City of Whitefish and the 2005 Whitefish Planning Jurisdiction, the potential Whitefish Community Wastewater Management Program Administrator is often identified in addition to the Flathead County Health Department. The Whitefish City Council will review the options provided by the committee regarding program implementation and management, and will engage and work on these issues in conjunction with the Flathead County Health Department.

## COMMITTEE MEMBERS

### Voting Members:

Ben Cavin, Carver Bay/East Lakeshore area representative  
Andy Feury, Community Member at Large, Committee Chair  
Denise Hanson, P.E., Community Member at Large  
Pam Holmquist, Flathead County Commissioner  
Bill Kahle, Whitefish City Councilor  
Jim Laidlaw, Lion Mountain area representative  
John Muhlfeld, Mayor of Whitefish  
Jan Metzmaker, Flathead Basin Commission Board Member  
Ryan Purdy, Lazy Bay area representative  
Point of Pines, never filled

### Ex-officio (Non-Voting) Members:

Greg Acton, Public Works Department designee, Alternate – John Wilson  
Wendy Compton-Ring, Planning Department designee  
Tom Cowan, P.E., Septic-system Engineer  
Carl Denny, M.D., Whitefish Water District  
Rich Knapp, City Manager designee  
Karen Reeves, Whitefish Lake Institute Board Member  
Joe Russell, Flathead County Health Department  
Frank Sweeney, Whitefish Lake Institute Board Member

### Facilitators:

Mike Koopal: Executive Director, Whitefish Lake Institute and Lori Curtis: Science & Education Director, Whitefish Lake Institute

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## 1. INTRODUCTION

### 1.1. Executive Summary

The Whitefish Community Wastewater Committee is an ad hoc committee of the Whitefish City Council tasked with delivering to the City Council recommendations regarding wastewater conveyance and management, septic systems, and nutrient trading. The committee was charged with providing funding considerations, education & outreach options, management options, and a plan for ongoing monitoring. This “Whitefish Community Wastewater Management Program” is the resulting deliverable. Given the scientific evidence provided by the Whitefish Lake Institute’s *Investigation of Septic Leachate to the Shoreline Area of Whitefish Lake* which corroborated several previous studies, the committee agrees that the problem of aging and/or failing septic systems needs to be addressed.

The Program offers three alternatives to address the problem. These alternatives range from a minimal resource program of taking no action with the exception of Education & Outreach to a neighborhood program addressing areas prioritized by the committee, to a comprehensive program that addresses cleaning up the prioritized areas and includes policy approaches to prevent or curtail further contamination. Each alternative has varying resource requirements and varying degrees of potential effectiveness. It is important to note that these alternatives need not be chosen exclusively. Any individual section or combination of sections of the identified alternatives may be implemented in concert with any other alternative. In short, the alternatives are offered as a “menu” of options. If the City decides to act on Alternative 2 or 3, they will likely require the assistance of a contractor to manage the effort.

This Program Draft includes historical wastewater treatment information and background on public health issues. It also includes a description of the current state of the City’s wastewater infrastructure. It briefly defines the various federal, state, county and city regulations. It also details funding options and funding processes critical to addressing issues of septic leachate pollution. These details were included for the purpose of providing the most complete illustration of the current situation. The WCWC is delivering this Program to the Whitefish City Council for review and determination of action.

It was initially planned that the WCWC would sunset after the delivery of this document, and the technical facilitators’ work would be considered complete. Given the timing of the first City Council Working Session, the WCWC filed and received approval for an extension of the committee through the end of 2013. The facilitators’ initial consultant agreement is fulfilled with the delivery of this Program Draft. However, the facilitators may be engaged through a new agreement for further work should the WCWC and/or City Council deem it appropriate. The facilitators will attend the August City Council Working Session as part of the existing agreement.

### 1.2. Background

- 1.2.1. As a result of the *Investigation of Septic Leachate to the Shoreline Area of Whitefish Lake* (Curtis & Koopal, 2012) report prepared by the Whitefish Lake Institute (herein WLI) which corroborated prior studies, the City of Whitefish formed an ad hoc committee—the Whitefish Community Wastewater Committee (herein WCWC)—to prepare a report and make recommendations to the Whitefish City Council regarding wastewater management. This program was developed 1) to protect human health, the health of the Whitefish economy, and Whitefish Lake from trending further toward cultural eutrophication from wastewater inputs, and 2) to provide a comprehensive and equitable strategy for ensuring properly installed, operated, and maintained septic and sewer systems.
- 1.2.2. There are three alternatives to consider in response to the findings of the WCWC. These alternatives are further described in Sections 4-6 of this plan. The alternatives can be used individually or in combination with all or part of the other alternatives. It is important to note that there are numerous funding opportunities to address the costs associated with the chosen alternative.
- 1.2.3. **Alternative 1** is to take no action beyond Education & Outreach. **Alternative 2** addresses the Whitefish Lake Watershed by concentrating on cleaning up areas of known septic leachate contamination identified in the septic leachate report and/or as prioritized by the WCWC. **Alternative 3** could include the activities of Alternative 2, but also adds measure to curtail or prevent future contamination from failing and/or aging septic systems through policy approaches. This program

reiterates a number of existing state, county, and city regulations, while also recommending programs that could—over time--simplify the process of identifying and bringing up to date aging and/or failing septic systems. Existing regulations are noted by two-letters within parenthesis throughout the document as follows: MT= State of Montana, FC=Flathead County, CW= City of Whitefish. The regulation may be used in a sentence that adapts it to use by another management entity.

- 1.2.4. The WCWC compiled a *List of Resource Agencies and Decision Makers* to include in communications of the committee. The list is attached as **Addendum A**. It is the responsibility of the committee members and the resource agency and decision makers receiving communications of the committee to communicate the work product of this committee to their appropriate constituents.

### 1.3. Purpose of Committee

- 1.3.1. The committee formed under Resolution 12-15 to identify, monitor, and coordinate wastewater management issues for the community of Whitefish, and to deliver to the City Council a plan with recommendations regarding wastewater conveyance and management, septic systems, and nutrient trading. The report is to include funding considerations, education & outreach options, management options, and a plan for ongoing monitoring. This “Whitefish Community Wastewater Management Program” serves as the deliverable for this committee.

- 1.3.1.1. The committee was asked to address the defined issues for the “community of Whitefish.” The committee has interpreted the “Community of Whitefish” to include areas that directly influence Whitefish and Whitefish Lake.

#### 1.3.2. Resolution 12-15 (**Addendum B**)

- 1.3.3. There are a few issues that may seem related to this program for which the WCWC does not have jurisdiction and which do not fall within the scope of the committee. They include:

- 1.3.3.1. **Annexation:** It is not within the scope of this committee to make recommendations regarding annexation.

- 1.3.3.2. **City Services & Fees:** It is not within the scope of this committee to make recommendations regarding the provision of City services or the setting of fees for these services.

- 1.3.3.3. **Whitefish Planning Jurisdiction:** It is not within the scope of this committee to make recommendations or comment on the ongoing legal dialogue between the City of Whitefish and Flathead County regarding the planning jurisdiction.

### 1.4. Investigation of Septic Leachate to the Shoreline Area of Whitefish Lake Summary & Map

#### 1.4.1. Executive Summary (**Addendum C**)

WLI conducted an investigation for the Whitefish County Water District under the Department of Natural Resources and Conservation Renewable Resource Grant & Loan program to determine the spatial and temporal extent of septic leachate to the shoreline area of Whitefish Lake (Curtis & Koopal, 2012). The study employed a toolbox of techniques to describe septic leachate, including; fluorometry, dissolved organic carbon (DOC), fluorometry/DOC ratio (F/DOC), *E. coli* enumeration, human DNA biomarkers, conductivity, total dissolved solids (TDS), and GIS methodologies. The study concluded with the development of a *Septic Leachate Contamination & Risk Assessment Map* which identifies confirmed sites of septic leachate contamination as well as areas of low, medium, and high potential for future contamination. This assessment is scientifically corroborated by past studies (as found in section 1.5) of a long-standing local issue.

#### 1.4.2. Risk Assessment Map: Attached as **Addendum D**

### 1.5. Prior Studies

- 1.5.1. 1976 The Montana Department of Natural Resources and Conservation (DNRC) has, since 1976, measured total phosphorus, nitrates, and nitrogen entering Whitefish Lake from Swift Creek.

- 1.5.2. 1977 U.S. Environmental Protection Agency: The US Environmental Protection Agency (EPA) conducted a National Eutrophication Survey in which Whitefish Lake was classified as *oligotrophic*, but the EPA warned that any significant increased nutrient loading to the lake could result in degradation of water quality, and they urged that “every effort be made to limit phosphorus inputs to the lake” (U.S. Environmental Protection Agency, 1977). An oligotrophic lake has low nutrient content, therefore low primary productivity, low algal production, and clear, high-quality, drinkable water that also supports numerous fish species.

- 1.5.3. 1981 Flathead County Sanitarian: Dye tests conducted by the Flathead County Sanitarian in 1981 confirmed that septic tank effluent was entering Whitefish Lake from a number of sites along the east

lakeshore. In addition, the Sanitarian determined that septic systems were failing in a number of areas other than along the lakeshore (Whitefish County Water and Sewer District, 1984).

- 1.5.4. 1984 US Environmental Protection Agency: In September of 1984, the EPA's Region 8 Water Division requested laboratory analysis of color infrared aerial photographs of Whitefish, including the developed sections of the Whitefish Lake shoreline. The photos were stereoscopically examined for indications of malfunctioning septic systems. In October of 1984, several suspected failing septic systems were inspected. The ground observations provided an added level of detail that identified and isolated issues other than septic failure—such as Fairyring fungus, natural grass species patterns, and old filled-in drainage channels—so that actual septic system failures were correctly identified. Results of the study showed 85 possible failed septic systems of the 147 investigated, 55 with high confidence (U.S. Environmental Protection Agency, 1985). These historical results corroborate our current findings at sites where older septic systems remain in operation.
- 1.5.5. 1984 Flathead Biological Station: A limnological study of Whitefish Lake in the early 1980s by the Flathead Lake Biological Station indicated that the lake was in a transitory phase toward eutrophication (Golnar & Stanford, 1984). They reported that most metrics measured at that time (primary productivity, phytoplankton structure and density, total organic carbon, and total nitrogen) were within the typical ranges of an oligotrophic water body. However, oxygen depletion in the *hypolimnion* (the dense bottom layer of water—below the *metalimnion* (the transition layer between surface and deep water)—in a thermally stratified lake) during late summer, combined with high total phosphorus concentrations in the *epilimnion* (the top-most layer in a stratified lake) were associated with *mesotrophic* lakes (lakes with intermediate productivity, generally clear with submerged plant life and a medium level of nutrients).
- 1.5.6. 1986 Flathead Biological Station: A study sponsored by the Whitefish County Water and Sewer District and conducted by the Flathead Lake Biological Station investigated septic contaminated groundwater seepage as a nutrient source to Whitefish Lake (Jourdonnais *et al.* 1986). That study found evidence of septic contaminated groundwater and surface water along shoreline locations around the lake. The Jourdonnais *et al.* report was instrumental in providing baseline data for comparison in the WLI 2012 study. The study was also used to support a grant application to extend the sewer system along a portion of the east shore of Whitefish Lake. This work was completed in the late 1980s.
- 1.5.7. 2003 Flathead Lake Biological Station: The Flathead Lake Biological Station returned to Whitefish Lake to gather data in 1986, 1987, and 1993, and select data were later reported in their Whitefish Lake Water Quality Report (Craft *et al.* 2003).
- 1.5.8. 2005 WLI formed with the objective of implementing a long-term Whitefish Lake Water Quality Monitoring Program. The goal of the program is to provide a comprehensive understanding of the lake resource by consistently gathering physical, chemical, and biological data for the lake and its tributaries over time and to gain an understanding of Whitefish Lake watershed processes. While the program takes into account past studies, it offers a higher level of consistency and coordination, a baseline data set, and an integrated long-term analysis of the lake. Prior studies on Whitefish Lake have been generally limited in duration and/or scope.

## 1.6. Trend analysis

### 1.6.1. Public, Economic, & Environmental Health

- 1.6.1.1. The City of Whitefish finds that regulating the treatment and disposal of wastewater and that the design, construction, use, alteration, maintenance, and repair of on-site wastewater treatment systems on or near Whitefish Lake will help in the control of human diseases and environmental pollution.
- 1.6.1.2. The regulations described in this program were developed to define and enforce the proper treatment of sewage, and are deemed necessary for the protection of the public, economic, and environmental health of the community of Whitefish.
- 1.6.1.3. The economic success of the services and retail enterprises sectors in Whitefish are driven by the appeal of the local geography. The high quality of Whitefish Lake and its tributaries and other waterways, surrounding forested lands, parks and recreation areas, abundance of wildlife, and numerous year-round sporting and recreation activities provide a desirability for living and visiting offered by few places in the US. The strength and durability of the Whitefish

economy are therefore highly dependent on the health of the environment. Additionally, the City of Whitefish gets a portion of its municipal water supply from Whitefish Lake at certain times of the year. As Whitefish Lake is a headwater for Flathead Lake, its health is of concern throughout the region. For all of these reasons, it is important to protect the health of the lake.

- 1.6.1.4. As described in the *Investigation of Septic Leachate to the Shoreline Area of Whitefish Lake* (Curtis & Koopal, 2012) ...there are several constituents of concern to human health from wastewater, including biological contaminants (bacteria & viruses); synthetic organic contaminants (algaecides, pesticides, and herbicides); and inorganic contaminants such as phosphorus, nitrogen, metals (lead, tin, zinc, copper, iron, cadmium, and arsenic), sodium, chlorides, potassium, calcium, magnesium, and sulfates (U.S. Environmental Protection Agency, 1984). Pathogenic viruses are a major concern because they can enter groundwater from numerous sources, the most common being livestock waste, landfill effluent, and septic systems. Infective viruses have been shown to move 50 m (164 ft) in depth from septic tanks to drinking wells, and controlled studies have shown horizontal movement of up to 1.6 km (just under one mile) (Dodds, 2002). Deborde et al (1999) demonstrated that the poliovirus moved approximately 20 m (65.6 ft) in a coarse cobble aquifer resulting in a virus mortality rate of less than 1%. Soil properties, temperature, organic matter, microbial activity, and virus survival times all potentially influence the spread of viruses through groundwater.
- 1.6.1.5. Another set of health concerns emanating from groundwater contamination come from nitrates. High nitrate concentrations in drinking water have been linked in studies to Methemoglobinemia and "blue baby" syndrome (Avery, 1999), hypertension (Malberg et al, 1978), central nervous system birth defects (Dorsch et al, 1984), certain cancers (Hill et al, 1972) non-Hodgkin's lymphoma (Ward et al, 1996 & Weisenberger, 1991), and diabetes (Parslow et al, 1997). Additional research is needed to further understand these linkages, but concern for nitrate related health risks from sewage outfall remains high. Some high nitrate readings have been recorded in the west Flathead Valley.
- 1.6.1.6. In addition to creating general human health hazards, one of the other main concerns regarding septic systems is the potential for long-term chronic nutrient, pollutant and bacterial loading to lakes. Bacteria, degradable organic compounds, synthetic detergents, and chlorides can enter and contaminate water and can increase eutrophication of lakes. The eutrophication process in lakes is natural. Typically as lakes age, nutrients, sediment, and plant material accumulates, slowly filling a lake's basin. The basin eventually—over centuries—becomes inhabited by terrestrial vegetation. The timing is highly variable, depending on the climate and characteristics of the basin and its watershed. However, by altering nutrient and sediment inputs, humans have greatly increased the rate at which eutrophication takes place. Depending on the lake and degree of human impact on it, this cultural eutrophication can take place in a much shorter timeframe. Cultural eutrophication occurs when the addition of nitrates, phosphates, and sediment above natural background levels promotes excessive plant growth and decay, showing preference to algae and plankton over other aquatic plants. Enhanced growth of algae and phytoplankton can lead to a partial lack of available dissolved oxygen (hypoxia) or a total lack of available dissolved oxygen (anoxia) needed by fish and other aquatic life forms to survive, thereby disrupting normal ecosystem functioning. Algae normally produce oxygen through photosynthesis, but under eutrophic conditions, water clarity is reduced, as is underwater light needed by algae to produce oxygen. When algae lose the ability to produce oxygen, they begin to consume it, reducing available dissolved oxygen for other aquatic life forms. Further complications also arise as algae blooms die and precipitate to the lake bottom where bacterial and microbial decomposers further deplete available dissolved oxygen. Eutrophication can rapidly turn a lake into an anoxic and lethal environment. In addition to impacting fisheries, eutrophication also decreases the value of lakes for swimming, boating, fishing, and aesthetic enjoyment which can have significant economic impacts.

## 1.7. Current Wastewater Facilities & Infrastructure - Excerpted from the *Investigation of Septic Leachate to the Shoreline Area of Whitefish Lake* (Curtis & Koopal, 2012).

### 1.7.1. City of Whitefish Sewer Infrastructure

- 1.7.1.1. The City of Whitefish sewer system includes about 46 miles of conventional gravity sewer mains, 17 lift stations, 13 duplex grinder pump stations which each serve 1020 residences, and two septic tank pump systems on the east shore of Whitefish Lake. The wastewater treatment plant is located on 40 acres south of town alongside the Whitefish River and has a capacity of 1.8 million gallons per day. The system collects wastewater, delivers it to the main sewage lift station then to an aerated lagoon treatment system for the removal of phosphorus, finally discharging the water to the Whitefish River.
- 1.7.1.2. Lift station installation dates range from 1960 to 2003, with the main lift station having undergone a rehabilitation effort in 2003. The lagoons were built in 1979. An alum based phosphorus removal process was added and improvements to the main lift station were made in 1986. The lagoons were upgraded in 2002 with sludge removal and new aeration filters. In 2009, an automated 5mm bar screen was installed to replace the 2" bar screen that required manual cleaning. A second clarifier was also brought online. In 2012, the State is mandating disinfection before effluent enters the Whitefish River. (Cassidy *et al*, 2008). The City has continued to contract with engineers to identify wastewater system weaknesses and make improvements to the system including the 2011 project to rehabilitate 11,400 linear feet of sewer mains.
- 1.7.1.3. The bulk of the sewer system includes conventional gravity sewers, augmented by lift stations where required by terrain (Figure 3). Lift stations located in close proximity to the lake include Mountain Park, Boat House, Birch Point, City Beach, Viking, Monk's Bay, and Houston Point. According to an engineering report prepared for the City of Whitefish (Anderson-Montgomery, 2005), the City's gravity sewers have performed satisfactorily with the exceptions of typical root intrusions, cracked pipe sections, and occasional joint separations in older vitrified clay pipe sections. Manholes have been upgraded or replaced as needed due to structural deterioration. Hydraulic performance of the existing gravity system is good and the capacity of the treatment plant is sufficient to serve current customers and growth through the year 2020 (City of Whitefish, 2012).
- 1.7.2. Septic System Installations
  - 1.7.2.1. Flathead County started requiring septic permits in 1970, even though the permitting process was voluntary for the first two years. As a result, it is not possible to determine septic system density pre-1970 (Flathead County, 2006).
  - 1.7.2.2. Data from the Flathead County Department of Environmental Services reported there was a 44% increase in septic system installations from 2000-2005. There were 668 permits issued for new septic systems in 2005. After an increase to 727 new permits in 2006, issued permits declined continuously from 611 in 2007 down to 245 in 2011 (Flathead County, 2012).
  - 1.7.2.3. The county's septic system permit database was updated in 2011 to capture previously unavailable information, and the county Geographic Information System (GIS) Septic System Permit Map was updated with this information. Although there remain numerous unknowns about septic system age and placement around Whitefish Lake, this updated information is the most current data available from Flathead County on relative density and age of septic systems around the lake. For this study, our GIS analyst researched and analyzed all other septic system databases and combined them to provide the most comprehensive view of septic system density around Whitefish Lake.
  - 1.7.2.4. Since the earliest on-site wastewater regulations in Flathead County in 1969, regulations for septic systems have been continuously revised based on new science and technology. Each revision has represented improvements in construction standards and technologies with an emphasis on treatment, and has resulted in a tightening of regulations. Until 2005, most systems consisted of a tank and gravity flow drainfield. Currently, all systems use uniform pressure distribution in the drainfields requiring the use of a pump or siphon to pressurize the system. Since 2002, in compliance with the state Water Quality Act, an analysis on the impacts of water from nitrates and phosphorus is done prior to the issuance of any septic permit (Cassidy *et al*, 2008).

## 2. SCOPE & AUTHORITY

### 2.1. Geographic Scope of Program

2.1.1. This program and its regulations apply to any person or entity constructing, using, maintaining, altering, or repairing new, existing, or abandoned on-site wastewater treatment systems. The program addresses on-site wastewater management throughout the Whitefish Lake Watershed, and in the case of Alternative 2 and 3, includes the Whitefish Planning Jurisdiction. If Alternative 3 is selected, the geographic scope would need to be further fleshed out.

### 2.2. Management Authority

#### 2.2.1. Program Management Authority

2.2.1.1. The Management Authority will depend on the Alternative chosen. If Alternative 2 is selected, the City will most likely need to partner with other entities. If Alternative 3 is selected, the City Council will work with Flathead County to determine the jurisdictional body that will have management authority over the final Whitefish Community Wastewater Management Program. Given the current legal dialogue regarding the Whitefish Planning Jurisdiction, the management authority for this Program is herein identified as the Whitefish Community Wastewater Program (WCWMP) Administrator.

2.2.2. Current State & Local Regulatory Authorities (in Montana, the State, counties, and cities all currently have the authority and responsibility to regulate subsurface wastewater treatment systems (SWTS) (U.S. EPA, 2006). Regulating authorities in Whitefish include the State of Montana, Flathead County, and the City of Whitefish. Their general regulations are listed below. This program will recommend changes and or additions to existing ordinances, and may suggest establishing additional regulations.

#### 2.2.2.1. Montana (ARM 17.36.9 On-Site Subsurface Wastewater Treatment Systems

<http://www.mtrules.org/gateway/Subchapterhome.asp?scn=17%2E36.9>): Circular DEQ4

Montana Standards for Subsurface Wastewater Treatment Systems

[www.deq.mt.gov/wginfo/Circulars/DEQ42004Edition.pdf](http://www.deq.mt.gov/wginfo/Circulars/DEQ42004Edition.pdf)); TMDLs; DEQ Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems ([water.epa.gov/infrastructure/septic/upload/onsite\\_handbook.pdf](http://water.epa.gov/infrastructure/septic/upload/onsite_handbook.pdf))

2.2.2.1.1. Setback, depth to groundwater, and septic size requirements; groundwater mixing zone regulations: subdivision requirements; DEQ approved system, non degradation guidelines, management guidelines

2.2.2.1.2. Construction or alteration of on-site wastewater treatment systems must, in addition to any regulations herein, conform to Circular DEQ-4 and A.R.M. 17.36.900.

#### 2.2.2.2. Flathead County (Regulations for Onsite Sewage Treatment Systems – effective 1/1/05): Attached as **Addendum E**.

2.2.2.2.1. Flathead County regulations were written pursuant to Title 50-2-116: Powers and duties of Local Boards; they cover all sewage treatment systems in Flathead County except “Municipal and Publicly owned Treatment Systems.” Listed herein is a sampling of some of the key Flathead County regulations. The City of Whitefish proposes that residents in the City and in the Whitefish Planning Jurisdiction follow all Flathead County regulations while considering additional regulations specific to the City of Whitefish. These regulations may be more stringent as necessary to protect the health and economy of the community of Whitefish. The City of Whitefish may consider recommending a Memorandum of Understanding (MOU) with Flathead County to support these efforts outside the City limits but within the Whitefish Planning Jurisdiction.

2.2.2.2.2. Flathead County Regulations require that wastewater must be treated so that:

2.2.2.2.2.1. It will not contaminate any existing or future drinking water supply,

2.2.2.2.2.2. It will not be accessible to insects, rodents, or other possible carriers which may come into contact with food or drinking water,

2.2.2.2.2.3. It does not pose a health hazard by being accessible to children,

2.2.2.2.2.4. It will not pollute or present the potential to contaminate any surface or ground water,

2.2.2.2.2.5. It will not give rise to a nuisance due to odor, insect or animal attraction,

2.2.2.2.6. It will not violate laws or regulations concerning water quality protection or sewage treatment/disposal.

2.2.2.3. **City of Whitefish** (Whitefish Water Quality Regulations; Whitefish Area Lake & Lakeshore Protection Regulations; Whitefish Growth Policy; Zoning & Subdivision Regulations)

2.2.2.3.1. The **Whitefish Water Quality Regulations (Addendum F)** are designed to apply development standards to lots or parcels with the greatest chance of affecting water quality. The regulations are intended to:

2.2.2.3.1.1. Protect and improve the quality of Whitefish area's water bodies, including lakes, streams, and the Whitefish River, which are central to the community's identity and values; and

2.2.2.3.1.2. Protect public safety, public and private property, and water quality from threats of geologic instability and erosion; as well as provide other protections unrelated to this program.

2.2.2.3.2. The regulations are applicable to:

2.2.2.3.2.1. Any new or expanded residential, commercial or industrial development proposal within two hundred (200) horizontal feet of a lake, river, wetland, stream or stormwater conveyance; and applies to lots or parcels that were created by whatever means prior to April 3, 2006 or after March 3, 2008.

2.2.2.3.2.2. Authority for the regulations is contained in MCA 76.2.301 (Municipal Zoning Authorized) and MCA 76.2.304 (Criteria and Guidelines for Zoning Regulations).

2.2.2.3.3. The **Whitefish Area Lake and Lakeshore Protection Regulations** (attached as **Addendum G**) designated under City of Whitefish City Codes Title 13, Chapters I-IV to provide regulations and enforcement, and are adopted under the authority of the State of Montana, Montana Code Annotated 75-7-2-7, which requires local governing bodies to adopt regulations regarding the issuance or denials 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. The purpose of the regulation is to:

2.2.2.3.3.1. Protect the fragile, pristine character of Whitefish area lakes and the intertwined adjacent riparian and upland areas;

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

2.2.2.3.3.3. Conserve and protect the value of lakeshore property;

2.2.2.3.3.4. Conserve and protect the value of the lakes for the state's residents and visitors who use them (Ord. 09-08, 7-20-2009)

2.2.2.3.3.5. The Regulations describe in Chapter 2: Permit Requirements, Section 13-2-1 activities requiring permits, which includes "L. Installation of water lines, sewer lines, or other utility lines or facilities; and Chapter 4: Administration and Enforcement, Section 13-4-1 which explains the creation, composition, and compensation of the committee as "...a special planning board in compliance with section 75-7-211 Montana Code Annotated empowered to review and comment on all activities within the jurisdiction of the Whitefish Lake and lakeshore regulations.

2.2.2.3.4. In addition to the above mentioned regulations, the Whitefish Growth Policy describes services provided by the City, broad concepts and guidelines, and implementation strategies, as well as addressing water quality and sustainability, and other environmental protections.

2.2.2.3.5. If appropriate, final wastewater management regulations may be recommended for inclusion in the existing Zoning & Subdivision regulations.

## 2.3. Administration

### 2.3.1. Short Term Administration

2.3.1.1. Short Term Administration of final WCWMP as approved by City Council and adopted by the City of Whitefish for Alternative 1 will include all work up to delivery of this program to City Council. For Alternative 2 or 3, it will include all work up to and including Project Grant Funding Training through the Water, Wastewater and Solid Waste Action Coordinating Team - W2ASACT (**Addendum H**); and development of a calendar for Preliminary Engineering Report

(PER) Planning Grant Applications, PER Requests for Proposals (RFPs), and Project Funding Grants and Loans—all work prior to the “Uniform Application.” The Uniform Application is one of the important outcomes of W2ASACT. It allows for communities and municipalities to use one main application to apply for funding from a number of federal, state, and local agencies. The process greatly reduces duplication of funding solicitation work effort.

- 2.3.1.1.1. PER’s are intended to provide alternatives based on the specifics of each area. It should be noted that the prioritization of PER completion does not necessarily parallel the sequence for on-the-ground work or the funding of such work. In other words, the PERs could supply information that would change the priority of work in the different neighborhoods. See Figure 3 for PER Focus Areas.

### 2.3.2. Long Term Administration

- 2.3.2.1. Long Term Administration of final WCWMP as approved by City Council and adopted by the City of Whitefish for Alternative 2 will include all work from the “Uniform Application” through construction management. For Alternative 3, it will include the adoption and administration of policy.
- 2.3.2.2. Long Term Administration of final WCWMP as approved by City Council and adopted by the City of Whitefish includes:
  - 2.3.2.2.1. The Whitefish Community Wastewater Program Administrator will create an administrative structure to manage the Whitefish Community Wastewater Program. The administrative structure will likely include participation from or partnerships with
    - 2.3.2.2.1.1. Flathead County
    - 2.3.2.2.1.2. Whitefish County Water District
    - 2.3.2.2.1.3. Third Party Engineering Consulting Firm(s)
    - 2.3.2.2.1.4. WLI
    - 2.3.2.2.1.5. One or more of the relationships may require the development of a Memorandum of Understanding (MOU)

## 2.4. Program Funding

- 2.4.1. Short Term Program Funding
  - 2.4.1.1. Funding Sources currently available for conducting PERs include
    - 2.4.1.1.1. DNRC Planning Grants
    - 2.4.1.1.2. Treasure State Endowment Program(TSEP) Planning Grants
    - 2.4.1.1.3. The City of Whitefish
  - 2.4.1.2. The following entities were identified as potential sponsors of planning grant applications for PER(s) based on their qualifications to sponsor applications.
    - 2.4.1.2.1. City of Whitefish: East Lakeshore, Viking Creek (Some of these areas have City of Whitefish services)
    - 2.4.1.2.2. Whitefish County Water District: Lion Mountain, Point of Pines (These areas are not serviced by the City of Whitefish sewer system)
    - 2.4.1.2.3. Flathead County: Lazy Bay (This area is not serviced by the City of Whitefish sewer system)
  - 2.4.1.3. Based on the final timeline of activities, appropriate entities and their staff will be assigned to
    - 2.4.1.3.1. Complete planning grant (PER) applications,
    - 2.4.1.3.2. Solicit Requests for Proposals (RFQs) for project work
    - 2.4.1.3.3. Administer planning grant funds,
    - 2.4.1.3.4. Complete the W2ASACT Uniform Application for project funding, and
    - 2.4.1.3.5. Manage project funds.
- 2.4.2. Long Term Program Funding
  - 2.4.2.1. Long Term Program Funding will come from multiple grant and loan sources to cover:
    - 2.4.2.1.1. Program Infrastructure Costs such as septic system upgrades, replacements, and additions to the City sewer infrastructure.
      - 2.4.2.1.1.1. PERs completed during the Short Term Administration will identify options for specific areas which may include: Individual system replacement – regular, Individual system replacement – Level II, Upgrade to Communal System, Connect

- to City Sewer (Including City of Whitefish service extension possibilities, initial hook-up fees, and ongoing costs to residents)
- 2.4.2.1.1.2. PERs completed during the Short Term Administration will determine Scope of Work requiring funding, including identifying the number of Tier I, Tier II, and Tier III septic systems to be replaced and/or improved.
- 2.4.2.1.2. Management Costs: for staffing to develop and implement the Program
- 2.4.2.1.3. The City of Whitefish will determine funding sources (working with W2ASACT) and will work on a Uniform Application for program infrastructure funding. Funding sources will likely include
  - 2.4.2.1.3.1. The City of Whitefish
  - 2.4.2.1.3.2. DNRC RRGL Project Grants
  - 2.4.2.1.3.3. TSEP Construction Grants
  - 2.4.2.1.3.4. MT State Revolving Fund (SRF)
  - 2.4.2.1.3.5. Federal and State Loans
    - 2.4.2.1.3.5.1. USDA Rural Development Grants & Loans
  - 2.4.2.1.3.6. SID or RSID
  - 2.4.2.1.3.7. Nutrient Trading Program: The State of Montana adopted a policy for nutrient trading which will provide numeric criteria for nutrients (nitrogen and phosphorus) in an effort to reduce nutrient loading and meet wastewater facility compliance criteria. There will be options for wastewater facility compliance including point to non-point source pollution credit exchanges. A nutrient trading program could allow the City to obtain compliance credits for financially enabling homeowners with failing or aging septic systems to hook up to the City sewer system where available. Where the sewer is unavailable, it could reduce costs to the City allowing the City to provide financial incentives to homeowners to join a communal septic system, or upgrade to current individual on-site septic system technology.
    - 2.4.2.1.3.7.1. The economic and natural resource benefits of nutrient trading appear to be very promising for the community. By participating in a nutrient trading program, the City would directly reduce the amount of expenditure required to meet nutrient loading criteria for its wastewater facility plant-while also providing a vehicle to cover part of the cost for individuals to connect to the City sewer system. Participation in this program would reduce nutrient loading to Whitefish Lake and the Whitefish River from non-point source pollution, and will protect the water quality and beneficial uses of Whitefish Lake. The City was awarded a grant to explore the concept of nutrient trading as a tool for net economic benefit to the community and to protect and improve water quality.

## 2.5. Implementation Timeline

- 2.5.1.1. Program Implementation timing will be defined by the availability of funding sources. Funding availability is driven by legislative cycles. A proposed timeline with grant and loan funding cycles and proposal submission dates follows in two formats, Figure 1 and Figure 2
- 2.5.1.2. Program administrative infrastructure must be in place prior to completing the Uniform Application
- 2.5.1.3. Because the overall Whitefish Community Wastewater Program encompasses extensive, costly, and time-consuming components, the Program will likely be implemented in phases. The Program must therefore prioritize project areas based on threats to public, economic, and environmental health, funding availability, as well as the City's ability to manage program components.

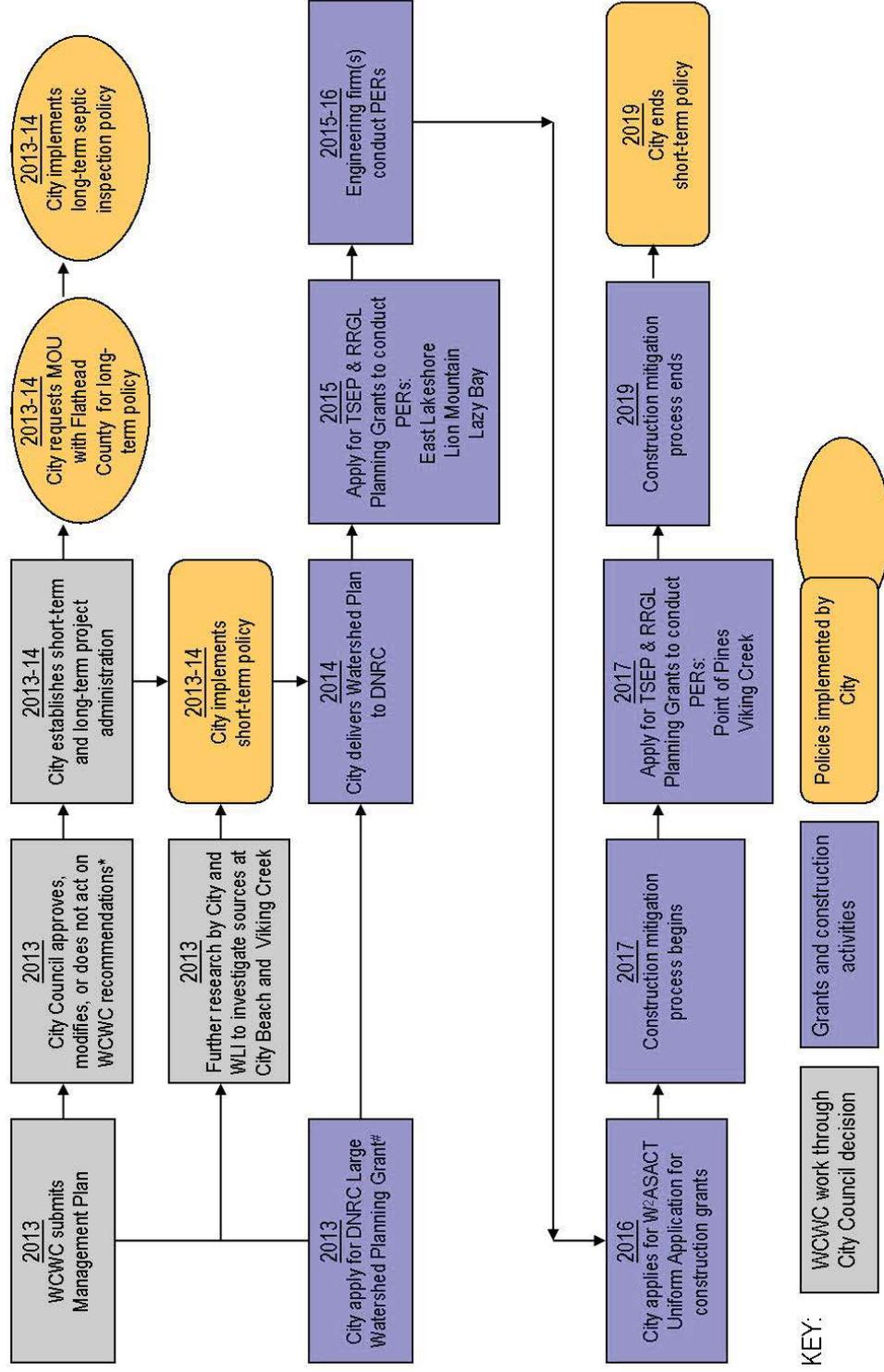
**WCWC FUNDING, PER & PROJECT IMPLEMENTATION CALENDAR**

<b>2013</b>			
July 1	Renewable Resource Lg Watershed Planning Grant* \$50K - \$100K (For overall watershed project plan)		Application Due (Odd years)
July or later	Renewable Resource Large Watershed Planning Grant		Grant Funded
July or later	Begin to write watershed plan		
<b>2014</b>			
July	Deliver Watershed Plan to DNRC		Must be done in one year
<b>2015</b>			
FCFS once Funding In place	TSEP Planning Grants	\$15K ea	Applications Due
May 15	RRGL Project Planning Grants (3) For ( <i>proposed</i> ) : PER 1: City of Whitefish applies for East Lakeshore Drive PER 2: Whitefish Water & Sewer District applies for Lion Mountain PER 3: Flathead County applies for Lazy Bay	\$20K ea	Applications Due (Odd years)
Spring-Early Summer	TSEP Planning Grants		Grants Funded
July 1 or later	RRGL Project Planning Grants		Grants Funded
July-December	Engineer conducts PERs 1, 2, 3		
<b>2016</b>			
May 15	Renewable Resource Project Grant \$100K (For doing actual septic system upgrade work)		Uniform Application Due
April/May	TSEP Construction Grants (For doing actual septic system upgrade work)	\$500K-\$750K	Uniform Application Due
<b>2017</b>			
May 15	RRGL Project Planning Grants (3) For ( <i>proposed</i> ) : PER 4: Point of Pines PER 5: Viking Creek	\$20K ea	Applications Due (Odd years)
July 1	Renewable Resource Project Grant Begin Infrastructure projects		Grant Funded
As approved by legislature	TSEP Construction Grants  Begin Construction projects		Grant Funded

\* Watershed Plan further define areas and assess habitat, quantify population, establish flow and loading criteria, summarize physical attributes of area, summarize known problems with on-site waste disposal, review funding mechanisms, consider nutrient trading potential, continue public education; all applicable to next step which is PER.

Figure 1. WCWC Funding, PER, and Project Implementation Calendar

# Whitefish Community Wastewater Committee Management Plan – Implementation Calendar



KEY:

WCWC work through City Council decision

Grants and construction activities

Policies implemented by City

\* Implementation Calendar intended to cover all three alternatives.

# DNR Large Watershed Planning Grant would provide background watershed, planning & engineering data & would reduce the cost of PER preparation.

Figure 2. WCWC Management Plan Visual Implementation Calendar

### 3. EDUCATION & OUTREACH

#### 3.1. Short Term Education Goals

3.1.1. Public awareness, involvement, and support of the Whitefish Community Wastewater Management Program will be important to its successful execution. The WCWC will work to make the Public aware of the committee's existence and its development of a Whitefish Community Wastewater Management Program and its financial assistance component. Efforts will focus on community awareness about wastewater management around and affecting the Whitefish Lake Watershed, and its effect on the Flathead Watershed. This will be accomplished through:

3.1.1.1. A monthly column in the Whitefish Pilot: Published columns attached as **Addendum I**.

3.1.1.2. Articles, letters to the editor, and press releases

3.1.1.3. Holding Community Forums

3.1.1.3.1. Results of March 2013 Community Forum are attached as **Addendum J**.

3.2. **Provide informational web links** to septic system information on City of Whitefish and Flathead County websites so the public can begin to understand the issues and some of the potential solutions. Homeowners have a number of options depending on their situation. Because the implementation of this program is a lengthy process, homeowners with current septic system issues may need to act before a final program is in place. Some of the options available include updating an older septic system to a modern more efficient one, joining a communal on-site wastewater management system, or hooking up to City sewer if it is available. There are varying costs associated with each of these options, and in some cases there may be grants or loans available to help individuals accomplish their upgrades. The committee recommends that as much information as possible be provided on the City of Whitefish website.

#### 3.3. Long Term Education Goals

3.3.1. Describe to the Public water quality goals around which criteria setting will be based, and for which policy standards will be developed to drive implementation of those water quality goals. Relate goals to human health, economic viability, and environmental health.

3.3.2. Provide information on the Program through:

3.3.2.1. Direct mailings to homeowners in and near priority areas

3.3.2.2. Inserting program information in municipal utility bill mailings

3.3.2.3. Postings in heavily trafficked public places (library, etc.)

3.3.2.4. Outreach Events

3.3.2.4.1. DEQ O&M Program (Joe Meek)

3.3.2.4.2. Professional Septic System and City Sewer System Provider events

3.3.2.4.2.1. Wastewater Systems 101 w/Septic System Tours (factory & on-site installations)

3.3.2.4.2.2. City Sewer 101w/Wastewater Treatment Facility Tour

3.3.3. Public/Homeowner Information

3.3.3.1. Presentations to community organizations, HOAs, realtors,

3.3.3.2. Septic System Care Fact Sheet & Checklist

3.3.3.2.1. Describe importance of what is input into the system

3.3.3.2.2. Describe modern water saving plumbing fixtures

3.3.3.3. Provide "Septic System Installer Checklist"

3.3.3.4. Provide "Choosing a Septic System Care Provider Checklist"

### 4. ALTERNATIVE 1

4.1. Alternative 1 is to take no action beyond Education & Outreach. While this alternative requires minimal human-and limited financial resources, it is very limited in addressing the current or future health of the lake or the health and safety of the community. The septic leachate pollution issues on Whitefish Lake would continue to exist and lake ecosystem conditions would continue to decline. The community of Whitefish would prolong addressing the pollution issue and would likely spend more money and resources addressing a larger problem at a later date.

### 5. ALTERNATIVE 2

5.1. Alternative 2 addresses the Whitefish Lake Watershed by concentrating on cleaning up neighborhood level areas identified in the septic leachate report and as prioritized by the WCWC. This alternative will mitigate contamination in the areas already identified. It does not require additional staff and can be handled by the

City of Whitefish and their project partners and outside consultants through the processes currently in place to address infrastructure improvements. It will not, however, address septic leachate groundwater pollution inputs from areas outside of those identified, nor will it address future septic system failures.

5.1.1. All current available information was used to develop a geographic scope within the Whitefish Lake Watershed that prioritizes problem areas identified by scientifically supported level of concern in the WLI investigation. These areas that have been identified as follows:

#### 5.1.2. Tier I

5.1.2.1. Lazy Bay: High fluorometric values, high *E. coli* and positive human DNA markers coupled with a high density of aging septic systems *provide substantial evidence to pursue a Preliminary Engineering Report (PER)*.

5.1.2.2. Lion Mountain: High fluorometric values, and high *E. coli* coupled with a high density of aging septic systems on a fractured bedrock bedding plane *provide substantial evidence to pursue a PER*.

5.1.2.3. East Lakeshore Drive (Gaines Point to Big Mtn. Road turn-off): This area had medium fluorometric values and has medium to high density of aging septic systems depending on localized area. In addition, Jourdonnais et al (1986) found this area with significantly high fluorometric and conductivity values. Carver Engineering also noted anecdotal evidence that found soils of Alpine Village to be poor for septic system suitability. *The combination of reports provide evidence that pursuing a PER for this area is warranted, however, the geographic scope needs to be clearly defined.*

#### 5.1.3. Tier II

5.1.3.1. City Beach Bay: The positive human DNA biomarker found in this area was interpreted as drift from City Beach or from failure of the City sewer system due to the lack of septic systems in the area. *The best approach in this area is to not include in a PER but to have the City of Whitefish Public Works investigate/rule out a sewer system breach.*

5.1.3.2. Viking Creek: The positive human DNA biomarker found in this area was interpreted as possible failure of the sewer system or from an upper watershed source. *The best approach in this area is to have the City of Whitefish Public Works investigate/rule out a sewer system breach, and for WLI to conduct a synoptic sampling of Viking Creek to rule out an upper watershed source. The committee has identified this area for a PER.*

5.1.3.3. The City of Whitefish completed their investigation of City Beach and Viking Creek in mid-May and provided results of that work in **Addendum K**.

#### 5.1.4. Tier III

5.1.4.1. Point of Pines: Due to medium range fluorometric values and a relatively medium to high density of aging septic systems near the lake this area is in need of mitigation. In 2012, a community wastewater facility was completed on DNRC land with partial hook-up occurring. There was no WLI data collection point south of Point of Pines; however, there is a medium density of aging septic systems in the area. *The approach in this area could be served by a PER, however the cost benefit of drafting a PER for the small population served, lends itself to mitigation through a long-term policy approach or a lower PER prioritization.*

5.1.5. **General**: Prioritization of risk assessment was driven by science. A number of factors (not any one factor) were analyzed in the *Investigation of Septic Leachate to the Shoreline Area of Whitefish Lake* study to develop this risk assessment and the resulting geographic scope tiers. This tier structure will remain in effect unless or until further research provides additional information to suggest re-categorization, or City Council chooses to re-categorize,.



Figure 3. Preliminary Engineering Report Focus Areas – This represents a very generalized scope of neighborhood boundaries.

## 6. ALTERNATIVE 3

6.1. **Alternative 3** utilizes policy to curtail or prevent future contamination from aging or failing septic systems through policy. While this alternative offers the best overall long-term outcome for the resource, it would require the addition of staff, the establishment of a new program that would extend into the Whitefish Planning Jurisdiction, and working in cooperation with the Flathead County Health Department to enhance current regulations. This alternative proposes implementations of a similar program to assess and maintain septic systems that has been executed in Lewis & Clark County, Montana. Included in this alternative are Policy & Regulations, Permit Procedures & Requirements, System Requirements, Inspection Programs, Operations & Maintenance, and Enforcement. It is important to note that

### 6.2. POLICY & REGULATIONS

(NOTE: 69% of the regulations described herein already exist, while 31% are newly recommended. Of the newly recommended regulations, one (# 6.7) is a proposed septic system maintenance and inspection program. Existing regulations are noted by two-letters within parenthesis as follows: MT= State of Montana, FC=Flathead County, CW= City of Whitefish. Newly recommended regulations are noted as (Proposed)

#### 6.2.1. Public Health Threat Regulations

6.2.1.1. It is a violation of this regulation to construct, repair, use, or alter any onsite wastewater treatment or disposal system that may:

6.2.1.1.1. Discharge wastewater to ground, surface, or any state water; (FC)

6.2.1.1.2. Contaminate any drinking water supply; (FC)

6.2.1.1.3. Cause a public health risk as a result of carriers of disease to humans, such as insects or animals; (FC)

6.2.1.1.4. Cause a public health hazard by being accessible to humans or animals; (FC)

6.2.1.1.5. Violate any federal, state, or local regulation governing water pollution; (FC)

6.2.1.1.6. Pollute or contaminate state waters, in violation of Section 75-5-605, MCA; (MT)

6.2.1.1.7. Degrade state waters, in violation of Section 75-5-303, MCA; or (MT)

6.2.1.1.8. Cause a nuisance due to odor, unsightly appearance, or other aesthetic consideration (FC)

#### 6.2.2. Guidelines & Limitations for Septic

6.2.2.1. Homeowners are to use centralized (City or communal) wastewater collection when available, unless physically or economically impractical (NOTE: The City will need to determine a definition for "economically impractical") (Proposed)

6.2.2.2. No new lakeside individual on-site septic system shall be installed, repaired, or rehabilitated where a communal septic system is available or where connection to city sewer infrastructure is available, except where an individual system is a cost effective alternative that has been defined through the PER process (Proposed)

6.2.2.3. System function criteria will serve as basis for guidelines (Proposed)

#### 6.2.3. Sewer Connectivity Requirements

6.2.3.1. If wastewater collection is available through the City of Whitefish within a distance of 200 feet of the property line of a property for connection to collect a new source of wastewater, or replacement for a failed system, and the City approves the connection, wastewater must be discharged to the City sewer system. (Proposed)

6.2.3.2. A public system is not considered "readily available" if there is evidence demonstrating that connection to the system is physically or economically impractical, or that easements are not obtainable. (Proposed)

6.2.3.3. A connection is considered "economically impractical" if the cost of connection to the public system equals or exceeds three times the cost of installation of a proposed onsite wastewater treatment system approved by The City or County. (Proposed)

#### 6.2.4. Prohibited Activities & Systems

6.2.4.1. It is a violation of these regulations to construct, repair, use, or alter any onsite wastewater treatment system without strict compliance with the provisions of these regulations and the possession of a valid permit issued pursuant to these regulations. (FC)

6.2.4.2. It is a violation of these regulations to begin construction prior to the issuance of a letter of approval or valid on-site wastewater treatment permit. (FC)

6.2.4.3. It is a violation of these regulations to discharge any untreated wastewater from private septic systems to any ditch, stream, pond, lake, natural or artificial waterway, county drain, groundwater, abandoned well, sinkhole, storm water conveyance, or swale. (MT, except for last 3)

6.2.4.4. Construction Prohibitions

6.2.4.4.1. Construction on any parcel of land prior to the issuance of a valid on-site wastewater treatment system permit is a violation of these regulations and will result in penalties. (FC)

6.2.4.4.2. Construction may not begin on any parcel of land unless all applicable permits are obtained from all government agencies. (FC)

6.2.4.5. Occupancy Prohibitions

6.2.4.5.1. It is a violation of these regulations to occupy or allow occupation of any dwelling unit or other structure served by a piped water supply unless the structure is connected to:

6.2.4.5.1.1. An on-site wastewater treatment system approved by the WCWMP Administrator, or (Proposed)

6.2.4.5.1.2. An on-site wastewater treatments system approved under earlier regulations or ordinances, or resolutions, or (Proposed)

6.2.4.5.1.3. An on-site wastewater treatment system installed prior to the enactment of any State, County, or City regulations, or (Proposed)

6.2.4.5.1.4. An on-site wastewater treatment system approved through a variance granted by the County or City, or (Proposed)

6.2.4.5.1.5. the public sewer system provided by the City of Whitefish

6.2.4.5.2. Prohibited Systems

6.2.4.5.2.1. The installation of cesspools for the disposal of wastewater is specifically prohibited. (Proposed)

6.2.4.5.2.2. Wastewater holding tanks may not be used as a permanent method of wastewater disposal (Proposed). Currently, Flathead County regulations state: "holding tanks will not be considered where new construction is proposed. Their only use will be for replacement of existing systems where current regulations cannot be met and variances cannot be granted due to the potential adverse impact that a sewage treatment system might have on ground or surface waters and/or the health of any person. The only exception to the above rule shall be where connection of the structure shall be made to a public or municipal system within one year of issuance of a temporary permit." (FC)

6.2.4.5.2.3. The installation of any system must comply with specifications and regulations in Circular DEQ-4 (2004) (MT)

**6.2.5. System Failures & Abandonments**

6.2.5.1. Failing sewage treatment systems are clearly defined to include sewage or effluent flows that enter surface or ground waters without adequate treatment or removal of bacteria, virus, and other contaminants of danger to public health or the environment. (FC)

6.2.5.2. The owner of the premises must report a failed system to the WCWMP Administrator. (Proposed)

6.2.5.3. Use of a failed wastewater treatment system violates these regulations

6.2.5.4. Upon determining that a system has failed, the WCWMP Administrator shall give written notice of the violation to the owner of the property. (Proposed)

6.2.5.5. Upon receipt of written notice, the owner shall stop the flow of wastewater if possible. (NEW)

6.2.5.6. The owner shall deliver—within 30 days of receipt of notice of violation of a system failure—a remediation plan for the repair and restoration of the failed wastewater treatment system. (Proposed)

6.2.5.6.1. An owner who fails to deliver a remediation plan within 30 days of receipt of notice of violation, or who fails to repair and restore the failed wastewater system within 90 days shall be considered in violation of these regulations. (Proposed)

6.2.5.6.2. The owner of the property may voluntarily vacate the premises instead of repairing or replacing the failed system provided that all surface contamination is properly

remediated, and the failed system is made inoperable. The abandoned tank must be pumped and then removed or filled with sand and/or gravel, or another approved fill material. (Proposed)

- 6.2.5.6.3. If any part of the system repair requires a variance from this regulation, or if other special circumstances exist, the property owner/tenant must provide a written plan to the WCWMP Administrator within 30 days of receipt of notification of violation. The WCWMP Administrator may approve an extension. (Proposed)
- 6.2.5.6.4. The WCWMP Administrator may require the owner and/or occupant to remove and dispose of contaminated soil. The WCWMP Administrator must approve any disposal or removal. (Proposed)
- 6.2.5.6.5. Before making repairs or replacing a failed system or any of its component parts, an owner/tenant shall acquire a permit. (FC)
  - 6.2.5.6.5.1. The WCWMP Administrator may require a site evaluation to ensure that repair or replacement of the failed system complies with all current regulations. (FC)
  - 6.2.5.6.5.2. The owner and or occupant shall comply with all requirements and pay all fees associated with the site evaluation and permit. (FC)
  - 6.2.5.6.5.3. The WCWMP Administrator may permit use of components of the failed system that meet current requirements. (FC)
  - 6.2.5.6.5.4. The WCWMP Administrator may require submittal of proof of compliance with the permit. (FC)
- 6.2.5.7. Abandonment of septic systems requires the sewer line be disconnected between the building and the septic tank; the septic tank pumped, destroyed by filling with an inert solid, the lid crushed into the tank, and the tank filled with sand or soil. It may also be removed from the premises or re-used if in suitable condition. (FC)

### **6.3. PERMIT PROCEDURES & REQUIREMENTS**

#### **6.3.1. Installer Certification**

- 6.3.1.1. Flathead County and the Whitefish Community Wastewater Program Administrator require that all sewage treatment systems must be constructed, altered, or repaired only by persons holding valid Flathead County Sewage Treatment System Contractor's License. A homeowner constructing altering or repairing an individual sewage treatment system for his/her own residence upon his/her own property is exempt from this requirement. However, the owner must construct the system in full compliance with the regulations and design construction standards. Detailed plans showing the proposed layout, construction method and materials to be used must be provided to the County. A person who owns several parcels of land and who builds structures on these parcels for sale, rent or lease and not for the purpose of their residing in said structures shall not be considered a "homeowner." (FC)
- 6.3.1.2. Flathead County Contractor's Licenses are granted upon completion of applicant providing appropriate information, passing a required examination, and payment of a license fee. Contractor's Licenses may be denied or revoked based on rules of Flathead County. (FC)

#### **6.3.2. New Systems**

- 6.3.2.1. Flathead County's permitting regulations govern the design, installation, and operation of septic and other sewage treatment systems and establishes the minimum criteria for standards and require that applications for sewage treatment system permits or site evaluations must be made only by the owner or lessee of the property for which the system is proposed or his/her duly authorized agent or assigns and shall be in writing bearing the applicant's signature, and must follow all requirements listed in section 4.5 of the Flathead County Regulations. (FC)
- 6.3.2.2. A permit is required for any person to construct, alter, repair and/or operate any sewage treatment system within Flathead County unless the system is either a municipal or publicly owned sewage treatment system. (FC)
- 6.3.2.3. All new septic systems within Flathead County, except those previously reviewed under the Sanitation in Subdivision Act, shall comply with those standards as required under the Administration Rules of Montana (ARM) Title 17, Chapter 30, Sub-chapter 5, Mixing Zones in Surface and Groundwater and Sub-chapter 7, Nondegradation of Water Quality. (FC)

- 6.3.2.4. New onsite wastewater treatment systems must comply with all Flathead County regulations. (FC)
- 6.3.2.5. New systems must also comply with all Whitefish Area Lake and Lakeshore Protection Regulations. (CW)
- 6.3.2.6. If a sewage treatment system for which a permit has been issued has not been installed, inspected and approved by Flathead County within 12 months, said permit shall expire and be void. Should the permit expire, the applicant may reapply. The new permit shall be subject to all the requirements that exist at the time the new application is made. (FC)

**6.3.3. Alterations & Replacements**

- 6.3.3.1. Alterations to existing onsite wastewater systems must comply with all regulations at the time of alteration. Replacements must be made in accordance with all new system regulations and abandonments of old system regulations. (FC)

**6.3.4. Denials & Variances**

- 6.3.4.1. Flathead County Regulations for Onsite Wastewater Treatment Systems provides for denials of permits in Section 6 and variances in Section 11. (FC)

**6.4. SYSTEM REQUIREMENTS**

**6.4.1. Site Requirements**

- 6.4.1.1. The site and installation of a sewage treatment system and each part thereof shall be such that, with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance or constitute a hazard to public health, or endanger the safety of any actual or potential domestic water supply, or directly enter the waters of the State of Montana. In determining a suitable location of the system, consideration shall be given to the size and shape of the lot, soil conditions, slope of the land, depth to groundwater, proximity to existing and future water supplies, existing sewage treatment systems and State waters, depth to bedrock and/or other impervious materials and to areas for expansion or replacement of the treatment system. Minimum site requirements are published in Section 9 of the Flathead County Regulations for Onsite Sewage Treatment Systems. (FC)
- 6.4.1.2. Additional requirements of the Whitefish Water Quality Regulations, and the Whitefish Area Lake and Lakeshore Protection Regulations may apply to certain properties based on proximity to the lakeshore and geologic foundation such as slope. (CW)

**6.4.2. Septic Tank Requirements**

- 6.4.2.1. All onsite wastewater treatment systems must include a septic tank to provide primary treatment.
  - 6.4.2.1.1. The septic tank must receive all wastewater from the structure being served.
  - 6.4.2.1.2. All septic tanks must be designed and constructed in compliance with the specifications defined in the Flathead County regulations (FC)
  - 6.4.2.1.3. All septic tanks must be equipped with an effluent filter, and (Proposed)
  - 6.4.2.1.4. All septic tanks must have risers to grade. (Proposed)
- 6.4.2.2. Septic Tank Sizing
  - 6.4.2.2.1. The minimum tank size for residential flows is determined in Figure 4 and is described in Circular DEQ-4. (MT)

<b>Figure 4. Minimum size for residential flows</b>	
<b>NUMBER OF BEDROOMS</b>	<b>MINIMUM TANK SIZE, GALLONS</b>
1-3	1000
4-5	1500
6-7	2000
8	2250
9	2500
Add 250 Gallons for each additional bedroom after 9	

**6.4.3. Treatment Field Requirements**

- 6.4.3.1. Treatment field requirements are described in Section 9 of the Flathead County Regulations for Onsite Sewage Treatment Systems. (FC)

- 6.4.3.2. Treatment field minimum requirements are based on the soil characteristics of the site and the estimated wastewater flow to the proposed system. (FC)
- 6.4.3.3. The number of bedrooms is used to estimate the daily wastewater flow for residential structures.
  - 6.4.3.3.1. The minimum allowable daily flow for any residence is based on two bedrooms. (FC)
- 6.4.3.4. Soil texture, structure, and type is determined using soil data obtained through on-site evaluations by professional engineers. (FC)
- 6.4.3.5. The linear feet requirement of a treatment field may be reduced through the use of a Level II filtration system. (FC)

## 6.5. INSPECTIONS

### 6.6. Inspection of Newly Installed Septic Systems

- 6.6.1. Once a permit has been issued by Flathead County or the Whitefish Community Wastewater Program Administrator for an onsite sewage treatment system, the applicant may begin construction. All systems shall be inspected by Flathead County or the Whitefish Community Wastewater Program Administrator prior to backfilling any portion of the system. For engineer designed systems, presence of design engineer or his/her representative is mandatory at this inspection. It shall be the responsibility of the applicant, or the applicant's contractor, to notify Flathead County or the Whitefish Community Wastewater Program Administrator twenty-four (24) hours in advance of the anticipated completion time of the construction of the system for the purpose of arranging a time for inspection. Requests for inspections must be made for normal Flathead County or Whitefish Community Wastewater Program Administrator work hours. (FC)
- 6.6.2. By issuance of a septic system permit, the owner of the property consents to the re-inspection by Flathead County or the Whitefish Community Wastewater Program Administrator during the operational life of the system to determine the system is operating in compliance with regulations. If not in full compliance, the owner is notified and has 15 days (unless a longer timeframe is approved by the County) to correct the problem. Noncompliance is subject to the County Attorney enjoining the violation, and to fines of up to \$500/day. (FC) Note: Should we include something about making appointments with owner for inspection?)
- 6.6.3. Inspections of newly installed septic systems must comply with all the rules of Section 8 of the Flathead County Regulations for Onsite Sewage Treatment Systems. (FC)

### 6.7. Septic System Ongoing Maintenance Inspection Program (NEW: This entire program is a new recommendation to simplify septic system maintenance for owners and the agencies responsible for management and compliance. It is based on successful programs implemented elsewhere in Montana and other states. See Lewis & Clark County Septic System Maintenance Program online at: <http://www.lccountymt.gov/health/environmental-services/septic-maintenance.html>)

- 6.7.1. In an effort to identify malfunctioning or failing septic systems, to extend the life of septic systems, and to protect human health, groundwater and surface water resources, the Whitefish Community Wastewater Program Administrator will implement a Septic System Maintenance Inspection Program
  - 6.7.1.1. Whitefish Community Wastewater Program Administrator Responsibilities - The WCWP Administrator will need to:
    - 6.7.1.1.1. Provide staff to oversee the implementation and ongoing administration of the inspection program,
    - 6.7.1.1.2. Identify budget for inspection program
    - 6.7.1.1.3. Create online database for tracking inspections of septic systems; system failures and upgrades.
    - 6.7.1.1.4. Identify trained personnel to inspect systems (city staff and/or private inspectors)
    - 6.7.1.1.5. Determine the Scope of the Work necessary to bring a failed system into compliance. Such Scope of Work may include, but is not be limited to:
      - 6.7.1.1.5.1. performing soil and percolation tests and other necessary site analyses;
      - 6.7.1.1.5.2. specification of the failed system components to be repaired, replaced and/or upgraded;
      - 6.7.1.1.5.3. design of the system or components to be repaired, replaced and/or upgraded;

- 6.7.1.1.5.4. obtaining all applicable federal, state and local permits and approvals required to complete the work;
  - 6.7.1.1.5.5. seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements;
  - 6.7.1.1.5.6. minimizing any disruption of utility service, and reasonably restoring the property to as near its original condition as practicable; and
  - 6.7.1.1.5.7. engaging such other services and procuring such other materials as shall be reasonably necessary to complete the project in a good and workmanlike manner.
- 6.7.2. **Property Owner Responsibilities - Through the Septic System Maintenance Inspection Program**, property owners will be required to perform one of the following maintenance tasks for their septic system, 1) Septic System Inspection (see 7.2.2.1): Hire an independent, licensed septic system maintenance and operation professional to perform a comprehensive inspection of their septic system. OR, 2) complete the Septic System Assessment Form (7.2.2.2) to answer a series of household use questions that lead to the assignment of a score to determine septic tank pumping frequency.
- 6.7.2.1. **Septic System Inspection**: Obtain an operations and maintenance inspection performed by a certified septic system operations and maintenance professional at an interval not to exceed five (5) years, and the septic tank pumped as determined by the inspection.
- 6.7.2.1.1. The results of the inspection, the septic tank pumping record, and applicable fees must be provided to the WCWMP Administrator through an online database or in writing for review.
  - 6.7.2.1.2. The Administrator will work with homeowners on any problems encountered during the inspection. Deficiencies noted during the inspection must be corrected as noted herein.
  - 6.7.2.1.3. **Critical Deficiencies**: The owner/occupant of an onsite wastewater treatment system with "critical" deficiencies must repair or replace the system *immediately*. These deficiencies include, but are not limited to:
    - 6.7.2.1.3.1. Sewage being discharged to ground surface;
    - 6.7.2.1.3.2. Sewage being discharged to surface water or a cesspool;
    - 6.7.2.1.3.3. Septic tanks that are leaking, collapsing, or overflowing;
    - 6.7.2.1.3.4. Sewage backed up into the structure;
    - 6.7.2.1.3.5. Septic tank lids are broken or missing;
    - 6.7.2.1.3.6. Effluent pump not functioning;
    - 6.7.2.1.3.7. Floats or controls in effluent pump tank missing or not functioning;
    - 6.7.2.1.3.8. Distribution lines leading into or out of the septic tank and/or drainfield are broken, collapsed, or blocked;
    - 6.7.2.1.3.9. Broken or collapsed lines within a drainfield;
    - 6.7.2.1.3.10. Tree roots within any part of the system;
    - 6.7.2.1.3.11. System electrically unsafe.
  - 6.7.2.1.4. **Serious Deficiencies**: The owner/occupant of an onsite wastewater treatment system with "serious" deficiencies must repair or replace the system *within 30 days of inspection*. These deficiencies include, but are not limited to:
    - 6.7.2.1.4.1. High water alarm inoperable;
    - 6.7.2.1.4.2. Septic tank baffles missing or broken;
    - 6.7.2.1.4.3. Floats or controls in the effluent pump tank not positioned properly;
    - 6.7.2.1.4.4. Effluent filters blocked, missing, or broken.
  - 6.7.2.1.5. **Moderate Deficiencies**: The owner/occupant of an onsite wastewater treatment system with "moderate" deficiencies must repair or replace the system *before the next required operations and maintenance inspection*. These deficiencies include, but are not limited to:
    - 6.7.2.1.5.1. Access lids from septic tank not to grade;
    - 6.7.2.1.5.2. Cleanouts not accessible;

- 6.7.2.1.5.3. Access ports or risers not available for distribution systems;
- 6.7.2.1.5.4. Drainfield used for parking, driving, heavy livestock traffic;
- 6.7.2.1.5.5. Drainfield and/or septic tank not easily accessible;
- 6.7.2.1.5.6. Free space not adequate between inlet and baffle (2-4 inches);
- 6.7.2.1.5.7. Tank not installed properly so that the outlet is lower than the inlet;
- 6.7.2.1.5.8. Tank not set level.

6.7.2.2. **Septic System Assessment:** Frequency would range from three (3) to five (5) years based on the results of the assessment. The system owner sends the assessment and pumping record to the WCWMP Administrator by mail or through an online database for review. The manager will work with homeowners on any problems encountered during the assessment.

6.7.2.2.1. Septic tank pumping frequency is based on the following criteria:

6.7.2.2.1.1. High Frequency: A score of 25-36 Assessment points which requires the septic tank to be pumped at least once every three (3) years;

6.7.2.2.1.2. Medium Frequency: A score of 12-24 Assessment points which requires the septic tank to be pumped at least once every four (4) years;

6.7.2.2.1.3. Low Frequency: A score of 0-11 Assessment points which requires the septic system to be pumped at least once every five (5) years.

6.7.2.2.2. Criteria used to determine pumping frequency will include, but are not limited to:

6.7.2.2.2.1. System age;

6.7.2.2.2.2. System type;

6.7.2.2.2.3. Water softening units and/or garbage disposals;

6.7.2.2.2.4. Water usage and conservation measures;

6.7.2.2.2.5. Scum layer thickness;

6.7.2.2.2.6. Date of most recent septic tank pumping and/or inspection;

6.7.2.2.2.7. Number of people served by the system;

6.7.2.2.2.8. Location of septic system

**6.7.3. Existing System Date Activated Regulation Option**– This will define required actions based on specific septic installation origination dates. Data sources that can provide system installation dates, not just permit dates would be required. This is a new recommendation.

6.7.3.1. If system was built & installed pre 1999, specific actions required are:

6.7.3.1.1. Site Inspection by a specific date

6.7.3.1.2. Upgrade or replacement to be made by a specific date

6.7.3.2. If system built & installed post 1999, specific actions required are:

6.7.3.2.1.1. Follow rules of the **Septic System Maintenance Inspection Program**

**6.7.4. Property Conveyance Regulation Option** - This is a new recommendation

6.7.4.1. This regulation requires that septic system design & operating conditions are included in the real estate disclosure process; & requires septic system inspection and mitigation prior to transfer of property.

6.7.4.1.1. **LEGISLATIVE NOTE:** In an effort to encourage work on septic system issues around the state, Environmental Policy Director Joe Kolman drafted an interim study that Representative Ed Lieser would like to sponsor. A Joint Resolution of the Senate and House of Representatives of the State of Montana, the study would look at options to permit, inspect, and maintain septic systems. The draft discusses general septic system issues on Whitefish Lake, the results of the WLI study, and requests the Legislative Council designate an appropriate interim committee (or direct staff resources) to: evaluate state and local permitting, inspection, and maintenance regulations as compared to other states, and to examine government and non-government options for same.

## 6.8. OPERATIONS & MAINTENANCE

**6.8.1. General Requirements:** These general requirements exist to ensure that onsite wastewater treatment systems are operated and maintained in a manner that protects public health, ensures proper functionality of the systems, and prevents system failure. This section describes each

participant's responsibilities in carrying out the final program, including all or part of the newly recommended Septic System Ongoing Maintenance Inspection Program described in 7.2 above.

#### **6.8.2. Owner/Occupant O&M Responsibilities**

- 6.8.2.1. The owner/occupant shall insure that wastewater discharged to the onsite wastewater treatment system does not exceed the current permitted design capacity of the employed system.
- 6.8.2.2. The owner/occupant shall report instances of onsite wastewater treatment system failures to the WCWMP Administrator in accordance with the Failed System Regulations provided herein.
- 6.8.2.3. The owner/occupant must prevent adverse impacts to the system, including the primary and replacement soil treatment areas caused by use, activities, or other situations including, but not limited to:
  - 6.8.2.3.1. Encroachments such as buildings, structures, or materials;
  - 6.8.2.3.2. Vehicle traffic;
  - 6.8.2.3.3. Domestic animal management activities;
  - 6.8.2.3.4. Surface or storm water;
  - 6.8.2.3.5. Compaction, excavation, grading, cutting, or ditching of soil on top of or adjacent to a system in violation of the horizontal setback requirements contained herein.
- 6.8.2.4. The owner/occupant shall monitor the use of the system to ensure conformance with these regulations
- 6.8.2.5. Owner/occupant shall, within 45 days of written notice, comply with the Septic System Maintenance Inspection Program and either obtain an Assessment for Septic Tank Pumping Frequency, and pump the septic tank at the interval required by the Assessment criteria, OR obtain an operation and maintenance inspection performed by a certified operation and maintenance professional at an interval not to exceed every five (5) years.

#### **6.8.3. Operations & Maintenance Service Provider Responsibilities**

- 6.8.3.1. O&M service providers may perform their services only when their certification is in good standing and in conformance with these regulations. Certification is a privilege extended to an Operations & Maintenance (O&M) service provider and is not a right.
- 6.8.3.2. Certification means that the O&M service provider has demonstrated sufficient knowledge of these regulations to perform an operation and maintenance inspection in compliance with these regulations.
- 6.8.3.3. O&M service providers have a duty to keep current on changes to these regulations.
- 6.8.3.4. To become certified, an applicant must:
  - 6.8.3.4.1. Complete an application;
  - 6.8.3.4.2. Pay the non-refundable fee;
  - 6.8.3.4.3. Attend a WCWMP approved certification course (to be developed);
  - 6.8.3.4.4. Pass the certification exam.
- 6.8.3.5. Performance criteria for O&M service providers include:
  - 6.8.3.5.1. Performs operations and maintenance service in accordance with these regulations;
  - 6.8.3.5.2. Possess equipment that allows for the proper inspection of septic systems;
  - 6.8.3.5.3. Submit operations and maintenance reports on forms or by other methods specified by the WCWMP Administrator;
  - 6.8.3.5.4. Submit deficiency reports on forms or by other means within two (2) working days after completing the inspection;
  - 6.8.3.5.5. Provide payment of fees within thirty (30) days after maintenance is completed;
  - 6.8.3.5.6. Submit complete, truthful, and accurate inspection and maintenance reports to the WCWMP Administrator and owner.

#### **6.8.4. Whitefish Community Wastewater Program Administrator O&M Responsibilities**

- 6.8.5. Whitefish Community Wastewater Program Administrator will:
  - 6.8.5.1. Develop forms and reporting systems to facilitate conformance with these regulations;
  - 6.8.5.2. Maintain records for all required operations and maintenance activities completed and submitted to the WCWP Administrator according to these regulations;
  - 6.8.5.3. Provide upon request, records concerning the operations, maintenance, and compliance of any onsite wastewater treatment system;

- 6.8.5.4. Provide written notification to owners and occupants that they are required to perform operation and maintenance tasks for their system;
- 6.8.5.5. Require complete and accurate inspection reports or contract information, and require correction and re-submittal of information corrected by the provider or owner;
- 6.8.5.6. Respond to reports of "Critical" deficiencies within two (2) business days, "Serious" deficiencies within ten (10) business days, and "Moderate" deficiencies within twenty (20) business days;
- 6.8.5.7. Perform oversight and periodic review of certified providers to determine conformance with these regulations;
- 6.8.5.8. Investigate and track issues of public health significance caused by malfunctioning or failing systems;
- 6.8.5.9. Take necessary and responsible action to eliminate or mitigate public health concerns caused by malfunctioning or failing systems.
- 6.8.5.10. Review and update this program every two years.

## **6.9. ENFORCEMENT**

### **6.9.1. Effectiveness**

- 6.9.1.1. The most effective and defensible regulatory programs are based on clear policy; are incentive-based, providing funding options to reduce financial and other hardships of community members; and have an appropriate enforcement component. It is the intention of the WCWC that the WCWMP fulfills the requirements of effectiveness by clearly defining the program, making available all funding options and incentives, and defining responsibilities and enforcement.

### **6.9.2. Access Rights**

- 6.9.2.1. By issuance of a Flathead County septic system permit, the owner of the property consents to the re-inspection of their septic system during the operational life of the system to determine the system is operating in compliance with regulations. Property owners therefore are required to provide access during regular business hours to inspectors. (FC)
- 6.9.2.2. It is the responsibility of the owner/occupant to give Flathead County and/or the Whitefish Community Wastewater Program Administrator free access to the property at reasonable times for the purpose of making such inspections as are necessary for determining compliance with these regulations. (FC)
- 6.9.2.3. No person may molest or resist representatives of Flathead County or the Whitefish Community Wastewater Program Administrator in the discharge of their duty, including inspections made before, during, and after the installation and final approval of a system. (FC)

### **6.9.3. Violations**

- 6.9.3.1. It is a violation of these regulations to:
  - 6.9.3.1.1. Own or operate a malfunctioning sewage treatment system; (FC)
  - 6.9.3.1.2. Install or alter a sewage treatment system without a valid permit or written Flathead County Health Department approval; (FC)
  - 6.9.3.1.3. Construct or maintain any dwelling or other occupied structure which is not equipped with adequate facilities for the sanitary disposal of sewage; (FC)
  - 6.9.3.1.4. Violate any provision of these regulations. (FC)
- 6.9.3.2. If the Flathead County Health Department or the Whitefish Community Wastewater Program Administrator discovers there has been a violation of any provision of these regulations or if the requirements of a sewage treatment system have been willfully violated, the governing body shall give notice of such violation to the responsible person or persons. Such notice shall be in writing and shall specify any violations. The notice shall spell out the required corrective action and provide a reasonable time for correction, considering the severity of the violation and its public health significance. Service of such notice shall be by means of regular mail and shall be considered complete upon personal service or mailing by the governing body. If after the notice has been served, the deficiencies have not been fully corrected to the satisfaction of the governing body in the specified time period, the governing body shall provide such information to the County Attorney for appropriate legal action including, but not limited to, action to enjoin (take legal action) the violation. (FC)

### **6.9.4. Enforcement & Penalties**

#### 6.9.4.1. Enforcement authorities

6.9.4.1.1. Flathead County Health Department

6.9.4.1.2. Whitefish Community Wastewater Program Administrator

#### 6.9.4.2. Fines

6.9.4.2.1. Any person who violates any provision of these regulations or any provision of any regulation adopted by the City of Whitefish pursuant to that authority granted by this regulation shall upon conviction be punished a fine not less than \$50 or more than \$500 (Committee needs to solidify recommendation - Flathead County is \$50 - \$500) per day of violation. Each day of violation constitutes a separate offense. The first day of the violation shall be the date of the notice of violation.

6.9.4.2.2. Similar to the Flathead County Regulations, Whitefish poses fines for violations including up to thirty (30) days in jail, a \$500 fine, or both.

### 7. MONITORING

7.1. Two types of monitoring are suggested in conjunction with the Whitefish Community Wastewater Management Program; 1) Public Works sewer infrastructure inspections & exfiltration investigations, and 2) Whitefish Lake septic leachate monitoring.

7.1.1. Sewer Infrastructure: The City conducts ongoing sewer inspections to determine the condition of the wastewater infrastructure and to identify maintenance and rehabilitation needs. An extensive review of the system and recommendations for repairs and upgrades was made in 2006 (Anderson-Montgomery). The City conducted additional inspections of the sewer system in the identified problem areas in 2013 to evaluate system components and to identify any problems that might be contributing to sewer wastewater entering groundwater and the lake. No problems were identified.

7.1.2. Whitefish Lake Septic Leachate Monitoring: WLI will develop recommendations for a Long-Term Whitefish Lake Wastewater Monitoring Plan to measure effects of wastewater systems on the lake and its tributaries.

### 8. BUDGET

8.1. The City of Whitefish will create a budget to recognize expected project costs which will be further enumerated as the final program becomes clearer. Alternatives 2 & 3 will be subject to the costs of grant writing and eventually a cost-share with grants and loans, and may also be subject to the costs of a FTE or contractor to manage the program.

### 9. NEXT STEPS

9.1. The Whitefish Community Wastewater Committee was tasked with delivering to the City Council recommendations regarding wastewater conveyance and management, septic systems, and nutrient trading, including funding considerations, education & outreach options, management options, and a plan for ongoing monitoring. This "Whitefish Community Wastewater Management Program" is hereby delivered to fulfill that goal. It is now the task of the City Council to review the Program Draft for possible action.

It is with great respect for the enormity of the issue and for the demands on the county and city staff responsible for the health of our citizens that this Program Draft was developed. The WCWC members agree that the problem of aging septic systems needs to be addressed in order to protect human and economic health. The committee also recognizes that there is no one simple solution, and all actions come with a range of effectiveness and associated resource requirements. We believe however, that there are a number of actions that can be taken—over time—to address the issue of septic pollution. And, we have identified numerous proven funding programs designed to help municipalities address costly and time-consuming projects such as improving wastewater treatment. It is the hope of the WCWC that the alternatives proposed in this Program Draft will serve as a starting place for discussions between the City of Whitefish and Flathead County to implement the shared goals of a healthier community. The WCWC members appreciate the opportunity to serve on this ad hoc committee.

## 10. ACRONYMNS

ARM	Administrative Rules of Montana
DEQ4	Montana Standards for Subsurface Wastewater Treatment Systems.
GIS:	Geographical Information Systems
HOA:	Home Owners Association
MCA:	Montana Codes Annotated
MOU:	Memorandum of Understanding
MSPA	Montana Subdivision & Platting Act
O&M:	Operations & Maintenance
PER:	Preliminary Engineering Report
RFP:	Request for Proposal
SRF:	State Revolving Fund
SWTS :	Subsurface Wastewater Treatment Systems
TSEP:	Treasure State Endowment Program
W2ASACT:	Water, Wastewater and Solid Waste Action Coordinating Team
WLI:	Whitefish Lake Institute
WCWC:	Whitefish Community Wastewater Committee
WCWMP:	Whitefish Community Wastewater Management Program

## 11. GLOSSARY OF TERMS

**ABANDONED SYSTEM** - A system is considered to be abandoned when it meets one of the following criteria: The system has not been used for two (2) years, or The use of the system has been discontinued because of connection to an improved, on-site system or a public sewer system. Systems for recreational cabins or dwellings used regularly, but infrequently, shall not be considered abandoned.

**ALTERATION** shall mean physically changing a system by relocating, modifying, repairing, extending or replacing, all or portions of a system.

**APPROVED** shall mean accepted by the jurisdictional body in writing.

**ASSESSMENT FOR SEPTIC TANK PUMPING FREQUENCY** means the form that the system owner uses to report information to the WCWMP about household and system use practices. The reported information is then used by the WCWMP Administrator to determine the frequency at which the owner must have the septic tank(s) pumped.

**BEDROCK** is the solid rock underlying unconsolidated surface materials. It is typically insufficient for the adequate treatment and disposal of wastewater.

**BEDROOM** shall mean any room that is or can be used for sleeping or any room or space such as a den, study, storage area, or other area, which can be easily converted to a bedroom. An unfinished basement shall be considered as an additional bedroom.

**CERTIFIED INSTALLER** is any individual who has attended required training and demonstrated an adequate knowledge of the regulations governing on-site wastewater treatment by passing all required examinations and paid the required certification fees.

**CESSPOOL** means a seepage pit without a septic tank to pre-treat the wastewater.

**CONSTRUCTION** shall mean the building or renovation of any structure intended for human occupancy that would result in an increase in wastewater flow; the drilling of a well or the provision of water to a site intended for human occupancy; or work on or the installation of any part of an on-site wastewater treatment system.

**CRITICAL DEFICIENCY** means an instance of non-compliance noted during an operation and maintenance inspection or risk assessment that is considered an immediate public health threat and poses concerns for public and environmental safety.

**DWELLING** refers to any structure, building or portion thereof, which is intended or designed for human occupancy and that must be supplied with water by a piped water system.

**EMERGENCY** is any situation that poses a threat to the health of the public or the environment by allowing untreated wastewater to be exposed to the ground surface or discharged to the aquifer.

**FAILED SYSTEM** means an on-site wastewater system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of ARM. 17.36.913.

**FLOODPLAIN** means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of one-hundred year frequency except for sheet flood areas that receive less than one (1) foot of water per occurrence and are considered Zone B areas by the Federal Emergency Management Agency. The floodplain consists of the floodway and the flood fringe, as defined in the A.R.M. Title 36, Chapter 15.

**GRAY WATER** is any wastewater other than toilet wastes or industrial chemicals, and includes but is not limited to shower and bath wastewater, kitchen wastewater, and laundry wastewater.

**GROUNDWATER OBSERVATION** is water level observation in a properly constructed well conducted for a long enough period of time to detect a peak and then a sustained decline in water level. Water level observing must be performed in accordance Circular with DEQ 4 in Appendix C.

**INSTALLERS** shall mean those persons who are involved in the actual physical construction of on-site wastewater treatment systems.

**LEVEL II TREATMENT** means a wastewater treatment system that must provide a higher degree of treatment than conventional systems, including the removal of at least sixty (60) percent of nitrogen as measured from the raw effluent load to the system. The term does not include treatment systems for industrial waste.

**LICENSED SEPTAGE HAULER** means a person licensed by the State of Montana to remove and transport wastewater from onsite wastewater treatment systems to an approved facility.

**MAINTENANCE** means routine or periodic action taken to assure proper system performance, extend system longevity, and/or assure a system meets performance requirements.

**MODERATE DEFICIENCY** means an instance of non-compliance during an operation and maintenance inspection or risk assessment that has the potential to interfere with the overall performance of the system and may interfere with proper operation and maintenance of the onsite wastewater treatment system.

**MONITORING** may refer to the periodic or continuous checking of an onsite wastewater treatment system, which is performed by observation and measurements, to determine if the system is functioning as intended and if system maintenance is needed. Monitoring also includes maintaining accurate records that document monitoring activities. Monitoring may also refer to the routine or periodic measurement of chemical and/or physical properties of a waterbody, conducted by scientists to measure changes to that waterbody.

**MUNICIPAL SEWER SYSTEM** is defined in MCA §7-13-2201 through §7-13- 2351, the term "municipality" includes a consolidated city and county, city, or town and includes all corporations organized for municipal purposes within the districts.

**NON-CERTIFIED INSTALLER** means any individual who has not attended required training and demonstrated an adequate knowledge of the regulations governing on-site wastewater treatment by passing all required examinations and paid the required certification fees. Non-certified also refers to any certified installer who has had his/her certification revoked.

**OCCUPANCY** means the fact or condition of using or residing in a building or part of a building that is served by a piped water supply, including residential, commercial, or any other type of building.

**ON-SITE WASTEWATER TREATMENT SYSTEM** refers to any form of subsurface wastewater treatment and all wastewater treatment systems for individual residences.

**OPERATION** means the act or process of operating or functioning or using an onsite wastewater treatment system.

**OPERATION AND MAINTENANCE SERVICE PROVIDER** refers to a qualified person certified by Flathead County or the Whitefish Community Wastewater Program Administrator to perform operation and maintenance inspections and repairs not requiring a permit on onsite wastewater treatment systems.

**OWNER** refers to a person or person who has legal title to, or possession of, real property, a building, structure, or place of business.

**OWNERS AGENT** refers to a person or business that an owner authorizes to represent them.

**PERMEABILITY** refers to the capacity of the soil to transmit fluids. The degree of permeability depends upon the amount, size and shape of the soil pores and their interconnections. Permeability is measured by the rate at which a fluid of standard viscosity can move a given distance through an interval of time.

**PERMIT** means the written authorization from the Whitefish Community Wastewater Program Administrator or Flathead County to install a new on-site wastewater treatment system or repair, replace, expand, alter, or improve an existing on-site wastewater treatment system or any part thereof.

**PERSON** shall mean any individual, corporation, company, association, society, firm, partnership, joint stock company or any branch of state, federal or local government; or any other entity that rents or leases property subject to this regulation.

**PIPED WATER SYSTEM** means a plumbing system that conveys water from a source, including but not limited to wells, cisterns, springs, or surface water to a structure.

**PRIVATE SEWER** means a sewer receiving the discharge from one building sewer and conveying it to the public sewer system or a wastewater treatment system.

**PUBLIC SYSTEM** means a system for: collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in a calendar year. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data

**PUMPING RECORD** refers to the record or report provided by the licensed septage hauler that records the date of removal of wastewater and the size and condition of the septic tank(s) and/or dosing tank(s).

**REPLACEMENT SYSTEM** means an on-site wastewater treatment system proposed to replace a failed, failing, or contaminating system.

**SEASONAL** shall mean occupancy of a residence for not more than one hundred twenty (120) days in a calendar year and which would not qualify as the primary residence of a taxpayer for federal income tax purposes related to capital gains on the sale or exchange of residential property.

**SEPTIC TANK** means a storage-settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

**SERIOUS DEFICIENCY** means an instance of non-compliance noted during an operation and maintenance inspection or risk assessment that has the potential to result in a type deficiency and may create damage to the onsite wastewater treatment system.

**SEWER DISTRICT** is defined in MCA §7-13-2201 through §7-13-2351 as a unit of local government separate and distinct from a municipality, but a district may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the state.

**SITE EVALUATION** means an evaluation to determine if a site suitable for the installation of a subsurface wastewater treatment system.

**SLOPE** means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

**STATE WATERS** is a body of water, irrigation system, or drainage system, either surface or underground; however, this does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

**SUBDIVISION** means a division of land or land so divided which creates one or more parcels containing less than 160 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

**SUBSURFACE WASTEWATER TREATMENT SYSTEM** means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

**SURFACE WATER** refers to any body of water whether fresh or saline, including watercourses such as impoundments, lakes, streams, irrigation ditches, or ponds.

**SYSTEM** means all components of any wastewater treatment system from the point of exit from the structure/dwelling to the end of the distribution network (including but not limited to: pipe, septic tank, dose tank, pumps, manifold, distribution box, perforated pipe, chambers).

**UNSTABLE LAND FORMS** refers to areas showing evidence of mass down-slope movement such as debris flows, landslides, rock falls, and hummock hill slopes with undrained depressions up-slope. Unstable landforms may exhibit slip surfaces roughly parallel to the hillside; landslide scars and curving debris ridges; fences, trees, or telephone poles that appear tilted; and tree trunks that bend uniformly as they enter the ground.

**VARIANCE** means the granting of an exception to the minimum requirements set out in these regulations, or to the requirements in Title 17, Chapter 36, Subchapter 9 of the Administrative Rules of Montana, or to the requirements in Circular DEQ-4.

**WASTEWATER** means a combination of liquid wastes that may include chemicals, house wastes, wash water, human excreta and animal or vegetable matter in suspension or solution.

**WASTEWATER TREATMENT SYSTEM or WASTEWATER DISPOSAL SYSTEM** means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to pit privies and experimental systems

**WELL** means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

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ADDENDUM A  
RESOURCE DECISION MAKERS

**RESOURCE DECISION MAKERS**  
(Decision makers & first tier implementers to be kept in the loop re committee communications & activities)  
Last updated 11/10/12

AGENCY/ENTITY	CONTACT	TITLE	EMAIL	PHONE	ADDRESS	
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	Eric Regensburger	WQPB, Modeler & Hydrologist	<a href="mailto:eregensburger@mt.gov">eregensburger@mt.gov</a>	406.444.6714		
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US Montana Senator	Max Baucus (staff)	Senator			8 Third Street E.	Kalispell MT 59901
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Montana Senate District 2	Dee Brown	Senator elect				
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	John Muhlfeld - committee	Mayor	<a href="mailto:muhlfeld@cityofwhitefish.org">muhlfeld@cityofwhitefish.org</a>		PO Box 158	Whitefish MT 59837
Whitefish City Planning Board	Wendy Compton-Ring - committee		<a href="mailto:wcompton-ring@cityofwhitefish.org">wcompton-ring@cityofwhitefish.org</a>		PO Box 158	Whitefish MT 59837
Whitefish Lakeshore Protection Committee	Jm Stack		<a href="mailto:jst@centurytel.net">jst@centurytel.net</a>			
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	John Wilson	City Engineer	<a href="mailto:wilson@cityofwhitefish.org">wilson@cityofwhitefish.org</a>		PO Box 158	Whitefish MT 59837
Whitefish Water District	Carl Denny - committee		<a href="mailto:carl.denny2@gmail.com">carl.denny2@gmail.com</a>			



ADDENDUM B  
RESOLUTION

**RESOLUTION NO. 12- 15**

**A Resolution of the City Council of the City of Whitefish, Montana, establishing an ad hoc Whitefish Community Wastewater Committee.**

BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: There is hereby established a Whitefish Community Wastewater Ad Hoc Committee (the "Committee").

Section 2: The purpose and duties of the Committee shall be as follows:

A. Identify, monitor, and coordinate issues of wastewater management for the Whitefish Community;

B. Identify spatial and temporal extent of septic leachate contamination to the shoreline area of Whitefish Lake;

C. Provide a scientific basis for identifying ecological threats to Whitefish Lake; and

D. Prepare an ad hoc committee report with recommendations to the Whitefish City Council regarding wastewater management, septic systems, nutrient trading, and wastewater conveyance issues including:

1. Timeline of deliverables that takes into account the complexity of the issues and timing of funding opportunities.
2. Address short-term goals (such as education and outreach) and long-term goals (such as management options and/or policy setting).
3. Review current funding options and grant application deadlines so the committee can position the City to meet important deadlines.
4. Monitoring component to assess and disseminate information from ongoing investigations by the Whitefish Lake Institute and other science-based and technical organizations.
5. Prepare a list of resource agencies and decision makers to be included on communications of the committee.

Section 3: Membership of the Committee shall be as follows:

A. The Committee shall have up to ten (10) voting members. Members shall consist of one (1) or two (2) Whitefish City Councilors and/or Mayor, appointed by the Whitefish City Council, one (1) Flathead County Commissioner (or designee) appointed by the Flathead County Commissioners, one (1) Flathead Basin Commission Board Member, one (1) representative from each of the affected sampling areas, Lazy Bay, Lion Mountain, Carver Bay/East Lakeshore, and Point of Pines (four (4) citizens), and two (2) at-large members from the community of Whitefish and its extraterritorial area.

The City Clerk shall make a notation of a member's representation category to facilitate appointment to categories not represented.

B. The Committee shall also have up to nine (9) ex-officio (non-voting) members as follows: the City Manager or designee, one (1) representative from Whitefish City Public Works, one (1) representative from Whitefish City Planning Department, one (1) representative from Flathead County Health Department, one (1) septic system engineer, one (1) representative from Whitefish Water District, and two (2) representatives from the Whitefish Lake Institute appointed by the Whitefish Lake Institute.

C. The City Council shall be entitled to appoint those individuals that it determines most qualified, regardless of representation category. The City Council may appoint one of its members to serve as an ex officio (non-voting) member of the Committee.

D. Committee members shall receive no compensation.

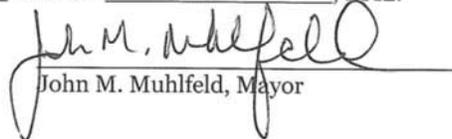
Section 4: The Committee shall begin its deliberations as soon as practical after creation of the Committee. The Committee shall be disbanded no later than of July 31, 2013, or earlier if the City Council completes its consideration of the Committee's report prior to that date.

Section 5: A member of the Committee may be removed by the City Council, after a hearing for misconduct or nonperformance of duty. Absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute grounds for removal. Circumstances of the absences shall be considered by the City Council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the Committee Chair at least twenty-four (24) hours prior to any scheduled meeting.

Section 6: Any vacancy on the Committee shall be filled by the unexpired term in the same manner as the original appointment.

Section 7: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 16<sup>th</sup> DAY OF JULY, 2012.

  
John M. Muhlfeld, Mayor

ATTEST:

  
Necile Lorang, City Clerk

ADDENDUM C  
**INVESTIGATION OF SEPTIC LEACHATE TO THE SHORELINE AREA OF WHITEFISH LAKE**  
**EXECUTIVE SUMMARY**

The Whitefish Lake Institute conducted this investigation for the Whitefish County Water District under the Department of Natural Resources Renewable Resource Grant & Loan program to determine the spatial and temporal extent of septic leachate to the shoreline area of Whitefish Lake. The study also provides a scientific basis for identifying ecological threats to the lake, economic threats to the community of Whitefish, and potential public health risks resulting from decreased water quality. Synoptic sampling of 20 sites—including one midlake reference site—occurred on 9 sample dates starting in May 2011 and concluding in October 2011. The results of this investigation are intended as actionable information for resource decision makers and Whitefish citizens concerning septic system usage around Whitefish Lake. Whitefish Lake is located in northwestern Montana in the larger Flathead Watershed which is part of the Columbia River Basin.

Septic “leachate” is the liquid that remains after wastewater drains through septic solids. The liquid contains elevated concentrations of bacteria and organic compounds from waste, detergents, and other household materials. When properly placed, functioning, and maintained, septic systems are designed to collect wastewater to neutralize these contaminants before they enter ground or surface water systems. Decomposition of waste begins in the septic tank and ends in a leachfield after undergoing a series of treatments whereby wastewater is chemically, physically, and biologically processed to remove contaminants. Modern septic systems are considered cost-effective for wastewater treatment, however issues such as improper initial system design, impermeability of soil, improper soil drainage class, improper vertical distance between the absorption field and the water table, improper slope, or improper maintenance may lead to system failure. Even when properly installed and maintained, septic systems have a finite life expectancy.

In addition to basic cleaning components, 97% laundry detergents in the U.S. contain Optical Brightening Agents (OBAs). OBAs are added to laundry soaps, detergents, and other cleaning agents because they adsorb to fabrics and materials during the washing and cleaning processes making clothes appear brighter. Laundry wastewater is the largest contributor of OBAs to wastewater systems. The presence of OBAs in wastewater with laundry effluent as a component is therefore considered an excellent indicator of septic or sewage system failure. Because the specific light spectrum emitted from OBAs found in cleaning products is easily measurable, it is one of the key data parameters used in tracking ineffective sewage treatment from septic systems.

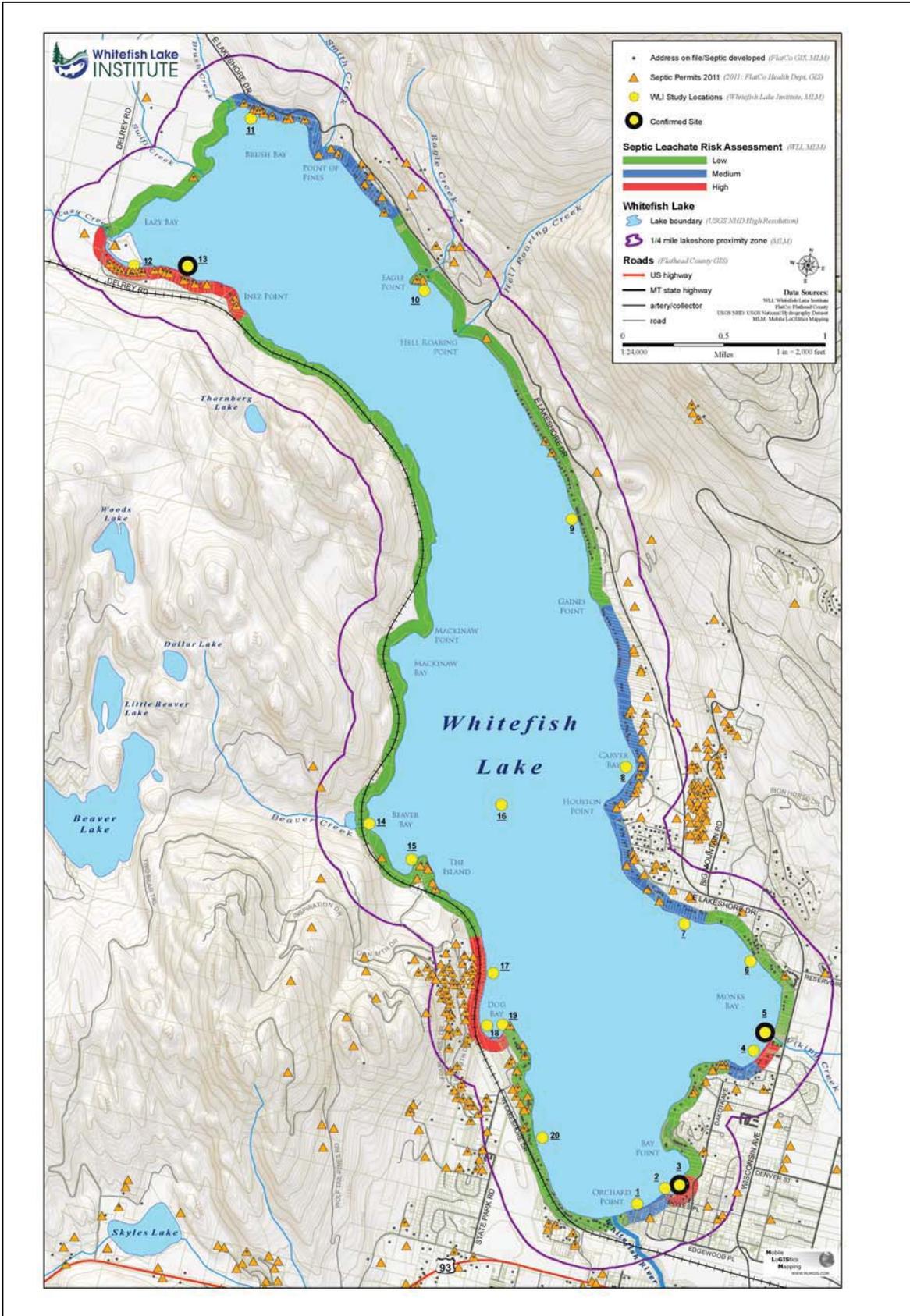
Numerous studies have shown that septic leachate is transported by groundwater flow through lake-bottom sediments into lake water, elevating nutrient concentrations (Kerfoot and Brainard 1978; Belanger *et al.* 1985; Jourdonnais and Stanford 1985 *in* Jourdonnais *et al.* 1986). Previous studies specific to Whitefish Lake have indicated septic system failures, and confirmed the presence of OBAs from household cleaning products commonly found in septic leachate. This investigation was designed to build on the techniques and results of prior studies, but employ newer data collection techniques along with bacterial source tracking methodologies. Because septic leachates are known to contain elevated concentrations of both organic and inorganic compounds, the study employed a toolbox of techniques, including: fluorometry, dissolved organic carbon (DOC), fluorometry/DOC ratio (F/DOC), *E. coli* enumeration, human DNA biomarkers, conductivity, total dissolved solids (TDS), and GIS methodologies and tools. In addition to data collection and analysis, a historical record for the study area was established.

In total, we identified three confirmed areas of septic leachate contamination, including Site 3: City Beach Bay, Site 5: Viking Creek, and Site 13: Lazy Bay. We identified two areas of high potential for septic leachate contamination, including Site 12: Lazy Channel and Site 18: Dog Bay State Park Seep. Four areas were identified as having medium potential for septic leachate contamination, including Site 2: City Beach Seep, Site 4: SE Monk’s Bay, Site 11: Brush Bay, and the East Lakeshore from Gaines Point south to north Monk’s Bay, including Site 8: Carver Bay and Site 7: SE Houston Pt. The remaining 10 shoreline sites are considered to have a low potential for contamination by septic leachate (Figure 24). A study conducted in 1985 reported signs of chronic contamination from shoreline developments at Sites 2: City Beach Seep, 18: Dog Bay State Park Seep, 5: Viking Creek, and the approximate location of Site 14: Central Beaver Bay, correlating directly with results of this study.

Our results suggest that the three confirmed sites, along with the two sites with high potential and four sites with medium potential have also shown contamination in prior studies, and represent locations where action should be considered. The study concluded with the development of a *Septic Leachate Contamination & Risk Assessment Map* (Figure 24) which identifies confirmed sites of septic leachate contamination as well as areas of low, medium, and high potential for future contamination.

General and site specific recommendations included herein, largely based on examples from other wastewater management programs, are provided as examples of actions that can be taken to support the common goal of protecting Whitefish Lake water quality. They include Education & Outreach and Regulatory programs.

ADDENDUM D  
RISK ASSESSMENT MAP



ADDENDUM E  
FLATHEAD COUNTY REGULATIONS FOR ONSITE SEWAGE TREATMENT SYSTEMS

**PART I      FLATHEAD COUNTY  
REGULATIONS FOR ONSITE SEWAGE TREATMENT SYSTEMS**

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FLATHEAD COUNTY  
REGULATIONS FOR ONSITE SEWAGE TREATMENT SYSTEMS

**PURPOSE OF REGULATIONS**

The Flathead City-County Board of Health understands the importance of proper treatment and disposal of sewage. Diseases such as dysentery, infectious hepatitis, typhoid, paratyphoid, and various types of diarrheal infections are transmitted from one person to another through fecal contamination of food, water and other vectors. This can occur by the improper treatment and disposal of sewage. Every effort must be made to prevent such hazards. Important to this is the proper treatment of sewage and not just the disposal of sewage.

Safe treatment and disposal of all sewage is necessary to protect the health of the individual family and the community and to prevent the occurrence of public health nuisances. To accomplish satisfactory results such waste must be treated and disposed of so that:

1. It will not contaminate any existing or future drinking water supply,
2. It will not be accessible to insects, rodents, or other possible carriers which may come into contact with food or drinking water,
3. It does not pose a health hazard by being accessible to children,
4. It will not pollute or present the potential to contaminate any surface or ground water,
5. It will not give rise to a nuisance due to odor, insect or animal attraction.
  
6. It will not violate laws or regulations concerning water quality protection or sewage treatment/disposal.

The Flathead City-County Board of Health has developed the following regulations and construction standards to insure the proper design, installation and operation of sewage treatment systems and to alleviate possible public health hazards associated with improper treatment and disposal of sewage.

**SECTION 1 - Authority and Scope of Regulations**

- 1.1 These regulations have been written pursuant to Title 50-2-116 - Powers and duties of Local Boards - (j) "adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system (fees shall be deposited with the County Treasurer)".
- 1.2 These regulations cover ALL sewage treatment systems in Flathead County except "Municipal and Publicly owned Sewage Treatment Systems", as defined herein.
- 1.3 The permit system established through these regulations governs the design, installation and operation of sewage treatment systems. Operation shall mean the system is functioning properly in compliance with the regulations at the time the permit is issued. The permit is not to be construed as being a building permit or any other permit that may be required by other agencies to erect a structure in Flathead County.

1.4 The permit itself establishes the minimum criteria for the standards adopted in Flathead County. The Department does not design the systems and the recommendations set forth in the permit do not bind or obligate the county to guarantee the satisfactory operation of any system.

1.5 At any time throughout this permit system process, the Flathead City-County Health Department may require the applicant to provide verification of compliance, or the ability to comply with other agencies', districts', or governmental entities' bylaws, ordinances, zoning laws, rules or regulations when deemed pertinent and appropriate by the Department.

### **SECTION 2 - Effective Date and Review Procedures**

2.1 All provisions established under this regulation shall become effective as of January 1, 2005.

2.2 At any time, the Board may propose additions or revisions to these regulations. Changes proposed to the regulation by the Board shall be processed for adoption, as prescribed by existing County Administrative Regulations.

### **SECTION 3 - Definitions**

3.1 "Abatement Order" shall mean a written order to (1) cease an act(s) which is in violation or causes a violation of these regulations or (2) to do an act(s) so as to comply with these regulations; it shall specify which section of these regulations is being violated or must be complied with and it shall be delivered in the manner prescribed in Section 13.2.

3.2 "Adequate Facilities" shall mean a subsurface sewage treatment system or other facilities approved by the Department.

3.3 "Alteration" shall mean physically changing a sewage treatment system by lengthening, shortening, widening, building structures over or changing the flow into a system by changing use of a dwelling unit. Changing the use of a dwelling unit may include, but not be limited to, adding living quarters, adding structures or changing the use in such a manner as to alter the wastewater characteristics for which the system was permitted. This shall not be construed to mean changing dwellings in a campground or a trailer court currently licensed by the State Department of Health and Environmental Sciences. Conversion of a campground to a mobile home park shall be considered an alteration requiring Department approval. Alteration shall also mean the conversion of an existing dwelling unit into multiple units.

3.4 "Applicant" shall mean any person, institution, public or private corporation, partnership or other entity that submits an application for a permit to install, alter, construct or repair a sewage treatment system.

3.5 "Bedrock" shall mean a consolidated rock formation of impervious material that may exhibit a jointed, fractured or cohesive structure. It shall also include the above material in a decomposing state.

3.6 "Board" shall mean the Flathead City-County Board of Health.

3.7 "Class 1 System" shall mean an individual sewage treatment system.

3.8 "Class 2 System" shall mean a shared, multi-user or public sewage treatment system with design flow of less than 1000 gallons per day.

3.9 "Class 3 System" shall mean a shared, multi-user or public sewage treatment system with design flow of 1000 or more gallons per day.

3.10 "Composting Toilet" shall mean a unit that consists of a toilet seat and cover over a riser which connects to a watertight compartment or vault that contains or will receive composting materials sufficient to reduce waste by aerobic decomposition.

3.11 "Conventional System" shall mean a sewage treatment system composed of a septic tank and standard soil absorption trenches.

3.12 "Department" shall mean the Flathead City-County Health Department.

3.13 "Dosing" shall mean storage and periodic, high rate discharge of sewage or effluent from one sewage treatment unit to the next.

3.14 "Failing Sewage Treatment System" shall mean any sewage treatment system not properly functioning and shall include but not be limited to:

(1) Sewage treatment systems whose sewage or effluent flows or enters surface waters or groundwaters without adequate treatment or removal of bacteria, virus, and other contaminants of danger to public health or the environment.

(2) Systems that have sewage or effluent overflow from any of their component parts that ponds or flows on the ground surface.

(3) Systems that back sewage or effluent into any portion of the building or plumbing system.

3.15 "Fill" shall mean soil materials that have been displaced from their original location by other than natural processes.

3.16 "Final effluent treatment" shall mean the natural treatment derived through the process of effluent release to the environment.

3.17 "Floodplain" shall mean the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than one (1) foot of water per occurrence and are considered "Zone B" by the Federal Emergency Management Agency.

3.18 "Greywater" shall mean any waste water other than toilet or industrial wastes and includes, but is not limited to, shower and bath wastes, kitchen wastewater, usual household chemicals and laundry wastes. Industrial wastes containing industrial chemicals are not considered as greywater.

3.19 "Groundwater Table" shall mean the upper surface of groundwater in the zone of saturation of a geologic formation. The upper surface of a perched water table is included in this definition.

3.20 "Health Officer " shall mean the legally established authority as designated by the Flathead City-County Board of Health.

3.21 "High Seasonal Groundwater Level" shall mean the minimum depth, during any period of the year to the groundwater table as measured from the natural ground surface.

3.22 "Holding Tank" shall mean a watertight receptacle for the retention of sewage before, during or after treatment where an effluent is not generated.

3.23 "Impervious or Restrictive Layer" shall mean a layer of material that prevents water or root penetration and/or has a percolation rate slower than one hundred twenty (120) minutes per inch.

- 3.24 "Individual Sewage Treatment System" shall mean a system designed to serve one single family dwelling or a structure used for a single commercial use which employs and/or serves less than 25 people per day or a single commercial use which employs and/or serves 25 or more people per day less than 60 days per year.
- 3.25 "Infiltrative surface" means the undisturbed soil interface beneath the drainrock or leaching chamber.
- 3.26 "Level 2 treatment" means a subsurface wastewater treatment system that:  
(a) removes at least 60% of total nitrogen as measured from the raw sewage load to the system; or  
(b) discharges a total nitrogen effluent concentration of 24 mg/L or less.  
The term does not include treatment systems for industrial waste.
- 3.27 "Licensed Contractor" shall mean a person that holds a current license, issued by the Department, to install, alter or repair sewage treatment systems under the terms of these regulations.
- 3.28 "Mobile Home Park" shall mean a tract of land providing space and water and/or sewer service to two (2) or more mobile home lots for lease or rent to the general public.
- 3.29 "Multi-user Sewage Treatment System" shall mean all systems that serve 3 - 14 families or service connections, but not over 24 people.
- 3.30 "Municipal Sewage Treatment System" shall mean a system that is the sole responsibility of an incorporated city or town government.
- 3.31 "Owner" shall mean the person who is the legal titleholder of land onto which a sewage treatment system has been or is to be placed.
- 3.32 "Permit" shall mean a written authorization issued by the Department allowing construction, alteration, installation or repair and operation of a sewage treatment system under the provisions of this regulation.
- 3.33 "Person" shall mean any individual, public or private corporation, institution, partnership or other legal entity.
- 3.34 "Pit Privy" shall mean an excavated pit which receives undiluted sanitary sewage.
- 3.35 "Premises" shall mean a definite portion of real property with its appurtenances, also to include a building or part of a building. This shall include, but not be limited to, residential dwellings, mobile homes, recreational vehicles, commercial or industrial structures, apartment, condominiums, and townhouses.
- 3.36 "Primary Treatment" shall mean the initial process by which suspended solids are settled out of the wastewater.
- 3.37 "Publicly Owned Sewage Treatment System" shall mean a system that is the sole responsibility of a Special Improvement Sewer District created in accordance with Montana Law.
- 3.38 "Public Sewage System" means a system which serves 15 or more families, or 25 or more persons for a period of at least 60 days out of the calendar year.
- 3.39 "Sealed component" shall mean a receptacle which is watertight on the sides, bottom and possibly the top in which wastewater is held for primary treatment or effluent is held for intermittent conveyance to an additional treatment component.
- 3.40 "Secondary Treatment" shall normally mean any process or facility to further reduce the suspended or dissolved organic and/or inorganic solids in the effluent from a "Primary Treatment" facility or process. This can take many forms, one of which is a subsurface drainfield.

3.41 "Septage" shall mean material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

3.42 "Septic Tank" shall mean a watertight accessible covered receptacle designed and constructed to receive sewage from a structure or structures, settle solids from the liquid, to anaerobically digest organic matter and store digested solids through a period of retention and allow the clarified liquids to discharge to other treatment units for final disposal.

3.43 "Sewage" shall mean a combination of liquid wastes that may include usual household chemicals, domestic wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, which is discharged from a dwelling, building or other establishment. Within the scope of this definition sewage shall also include greywater.

3.44 "Sewage Treatment System" shall mean a system for sanitary collection, transportation, treatment and disposal of sewage, operated in accordance with State and Local Board of Health Regulations.

3.45 "Shared Sewage Treatment System" means a sewage treatment system which receives wastewater from 2 living or commercial units with a total service population of less than 25 people per day, or more than 25 people per day for less than 60 days per year.

3.46 "Site Evaluation" shall mean the physical inspection of the property to determine suitability for installation of sewage treatment systems.

3.47 "Soil Profile" shall mean a detailed description of the soil strata to a specific depth. The description can be expressed using the U.S. Department of Agriculture's Soil Classification System or the Unified Soil Classification System.

3.48 "Standard Soil Absorption Trench" or "Drainfield Trench" shall mean a ditch or trench with vertical sides and substantially flat bottom dug to a width of two (2) feet and to a maximum depth of three (3) feet.

3.49 "Subdivision" shall mean a division of land as defined in the most current revision of the Sanitation in Subdivisions Act (76-4-101 thru 76-4-131, M.C.A. 1995) and/or its Regulations (Title 17, Chapter 36, Sub-Chapters 1, 3 and 6 ARM), now and as hereafter amended.

3.50 "Subsoil Drain" shall mean foundation drains, french drains, vertical drains, or other drainage systems designed to lower a groundwater table.

3.51 "Surface Water" shall mean any natural or man made body of water or watercourse, including lakes, ponds, rivers, creeks, streams and swamps.

3.52 "Temporary Permit" shall mean a permit authorizing installation of an interim sewage treatment system.

3.53 "Test Hole or Test Pit" shall mean an open pit dug to sufficient size and depth to permit thorough examination of the soil to determine a soil profile.

3.54 "Vault Toilet" is a water tight tank that is approved by the Department for temporary storage of undiluted sanitary waste.

#### **SECTION 4 - Application and Permits**

4.1 A permit issued by the department is required for any person to construct, alter, repair and/or operate any sewage treatment system within Flathead County unless the system is either a municipal or publicly owned sewage treatment system.

4.2 All applications for permits shall be made to the Department. The Department will be furnished a copy of all plans. Individual sewage treatment plans will be processed at the County level. Multi-user and Public Sewage system plans will be reviewed by the Department and forwarded to the State Health Department, if required, for their review, approval and returned to the Department. Permits shall be issued upon compliance by the applicant with all provisions of these regulations. Upon completion of the review process, approval and payment of the appropriate fee, one copy of the permit will be provided to the applicant.

4.3 All sewage treatment systems in Flathead County shall utilize uniform pressure distribution. Plans and specifications shall be prepared by a professional engineer or a sewage treatment system designer certified by the Department.

4.4 Non-degradation - All new septic systems within Flathead County, except those previously reviewed under the Sanitation in Subdivisions Act, shall comply with those standards as required under the Administration Rules of Montana (ARM) Title 17, Chapter 30, Sub-chapter 5, Mixing Zones in Surface and Groundwater and Sub-chapter 7, Nondegradation of Water Quality.

4.5 Application for a sewage treatment system permit or site evaluation shall be made only by the owner or lessee of the property for which the system is proposed or his/her duly authorized agent or assigns and shall be in writing bearing the applicant's signature. Applications shall be made on forms provided by the Department and shall include the following:

(1) Legal description of property for which construction, alteration, or repair is proposed. (Lot and Block numbers in a platted subdivision, or if applicable the Tract Nos.; and a quarter-quarter breakdown of a Section plus the Section, Township and Range). The applicant MUST ALSO PROVIDE a visual representation of the property. This may be a copy of a Certificate of Survey that created the property, a copy of the Plat, Deed Exhibit, or a copy of the Section map. This material may be obtained at the Plat Room of the County Clerk and Recorder's Office at the owner's expense.

(2) Parcel Size

(3) Names, current addresses and telephone numbers of the applicant, and those legally responsible for the operation and maintenance of the system.

(4) Address of the property on which the system is to be installed.

(5) A site plan indicating whether public and/or private sewer and water systems will be used. Include the design and location of proposed sewer and water systems showing their relation to site elevations, water wells or surface water bodies, including those located on adjacent properties within 100 feet of the property line, proposed and existing buildings, driveways, parking areas, other utility lines, and lot boundaries. Show the site available for a replacement system, or include a plan to correct possible system failure.

(6) Proof that the proposed structure will be in compliance with current zoning regulations in that specific area is required.

(7) Payment of site evaluation fee.

4.6 Minimum lot size requirement - A proposal to use both an individual onsite wastewater treatment system and water supply for each single family residence or 700 gpd of design wastewater flow for commercial and

other non-residential uses on a lot which is smaller than 1 acre may be approved only if all regulatory requirements including separations and setbacks can be met.

Parcels for which additional development is proposed must provide:

1) at least 1 additional acre for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses if served by an individual water supply and sewer service or,

2) at least an additional 20,000 ft<sup>2</sup> for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses if either the water or sewer is provided by a shared, multi-user or public system.

If the property proposed for the sewage treatment system installation, alteration or repair and operation has not been reviewed and does not have a Certificate of Subdivision Plat approval, a site evaluation may be conducted by the Department to determine the suitability of the property and the area designated for the sewage treatment system installation, alteration or repair before issuing a permit under these regulations. The applicant shall grant the Department access to the property for the purpose of determining site suitability.

NOTE: The presence of a Certificate of Subdivision Plat Approval on a specific property does not obligate the Department to issue a sewage treatment system permit without a site evaluation if the information provided is found to be inaccurate or additional information from the immediate area regarding soil, groundwater, etc., indicates the physical conditions are different than represented by the Certificate of Subdivision Approval.

(1) On any existing tract of land in Flathead County, whether it be an individual tract or a lot in a platted subdivision where new construction is proposed requiring a sewage treatment system, area must be made available for a 100% replacement of the original system in the event that failure occurs or the applicant must provide the Department with a plan or procedure to correct the system failure should it ever occur. The plan or procedure must be approved by the Department prior to issuing the permit for the original or primary system.

NOTE: New construction on any tract of land or subdivision lot, regardless of when it was created, where the new construction proposed is for multiple family structures, multiple dwellings or for commercial or industrial structures shall be required to have area available for a 100% replacement of the original system.

(2) The Department may require that the applicant have a test hole dug in the area of the proposed sewage treatment system installation, alteration or repair. The depth of the test hole will be dependent upon the type of information the Department feels is necessary for that specific situation. The Department may require that the applicant provide more than one (1) test hole depending upon the variability of the soils, the type of information necessary, and/or the anticipated size of the drainfield area.

(3) After or during the inspection of the property, the Department may require that the applicant provide additional information. The reasons for this request shall be provided to the applicant. This additional information may include, but is not limited to, percolation tests, more detailed soil analyses, groundwater monitoring or a system designed by a professional engineer.

(4) If groundwater monitoring is deemed necessary based on information received during the site evaluation, derived from Soil Conservation Service (SCS) material or from experience with that specific area, groundwater monitoring shall be carried out to determine the depth to high seasonal groundwater during its period of occurrence, in order to determine compliance with these regulations (see Section 9.5).

(5) If information received during a site evaluation, or if any information received indicates that a conventional system cannot be installed so as to fully comply with these regulations, the Department may require that the applicant seek the assistance of a professional engineer to design a system complying with these regulations.

(6) Permits for multi-user systems which are designed to serve multiple lots or parcels shall not be issued until an ownership, maintenance and operation agreement acceptable to the Department has been submitted. Furthermore, final approval of the installation shall not be given until the agreement has been filed with the County Clerk and Recorder.

(7) If any portion of a sewage treatment system must encroach within 10 feet of a property line, written permission from the neighboring property owner must be obtained prior to issuance of a sewage treatment system permit.

(8) If any portion of a sewage treatment system will be located on another parcel of land, an easement filed with the County Clerk and Recorder will be required prior to issuance of a sewage treatment system permit.

(9) The Department may require the material discussed in this section be provided by persons trained in the related field(s).

4.7 The Department shall not issue a permit until all pertinent site data and required design plans have been received, reviewed and determined to be in full compliance with all provisions contained in these regulations and applicable State Regulations. If the Department does not have qualified personnel or facilities to perform adequate review of a particular plan, it shall secure review and evaluation by an independent engineer to the extent deemed necessary. Cost of such review will be borne by the Department. One set of plans approved by the Department, will be retained. At the time the Department determines the proposal outlined in the application complies with the regulation, a permit will be prepared and signed by the Department. A permit is not considered as issued until the applicant has paid the appropriate permit fee.

#### 4.8 Permit and Site Evaluation Fees

(1) A site evaluation fee may be required and must be submitted with the initial applications.

(2) Applicants shall be required to pay the permit fee prior to issuance of the permit.

(4) Fees shall be in accordance with a Schedule of Fees adopted by the Flathead City-County Board of Health, a copy of which shall be available at the Health Department.

(5) Fees are to defray costs, to the extent deemed appropriate by the Board for evaluation of the site and system, administration, necessary inspection and re-inspection from initial application through construction and operational start-up.

4.9 Temporary Permit - A permit to install and operate a temporary sewage treatment system may be issued by the Department when municipal or public sewer is proposed to be made available to the subject property within six (6) months. Additional time must be granted through a variance with the Board of Health. Financial hardship shall not be considered as the basis for issuance of a temporary permit. Issuance of a temporary permit shall be subject to any or all of the following conditions as deemed appropriate by the Department through written agreement:

(1) Annexation to the municipality or district.

(2) The Department may require a form of security to assure compliance with 4.7(1). The form of security may be:

- (a) Cash or other collateral readily convertible to cash at face value deposited in an escrow account or with the Department.
- (b) Certificate of deposit payable to the Department.
- (c) The owner shall provide the Department with a letter of credit from a bank or other reputable institution or individual certifying the following:
  - 1) That the creditor guarantees funds in an amount of 125% of the projected cost of completing all required improvements;
  - 2) That if the owner fails to complete the specified improvements within the required period, the creditor will immediately pay the Department upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;
  - 3) That the letter of credit may not be withdrawn or reduced in amount until released by the Department
- (d) A commercial bond, or
- (e) Other security acceptable to the Board.

The amount of the security shall be 125% of the total estimated project cost and the estimated cost shall be determined by a licensed professional engineer or licensed contractor, whichever is deemed appropriate by the Department. If the Department determines that the holder of a temporary permit has not complied with the terms of the permit or agreement, it may withdraw the security and use these funds to construct the improvements or correct any deficiencies necessary to bring the permit holder's system into compliance with the permit or agreement.

4.10 Re-use of Existing Septic Systems - Sewage treatment systems no longer in use due to the removal or destruction of a structure may be permitted for re-use provided the following criteria are met:

- (1) There is a permit for the existing system in the FCCHD files.
- (2) The system is in compliance with all current separation and setback requirements.
- (3) The system is in compliance with current construction standards.
- (4) The system appears to have adequate capacity for the proposed use as related to current minimum standards, and
- (5) Application is made and a new permit is issued.

Sewage treatment systems within the 100 year floodplain may be replaced provided all other setback and separation requirements are met. However, if any portion of the applicant's property is located out of the floodplain, the applicant may be required to locate all or a portion of the replacement system in this area.

4.11 A sewage treatment system which the Department determines must be abandoned shall have:

- (1) The sewer line disconnected between the building and the septic tank.
- (2) The septic tank destroyed by filling with an inert solid, removed from the premises or re-used if the tank is in suitable condition.

- (3) Written certification by the owner to the Department that the system has been abandoned in accordance with the conditions referenced above.

#### **SECTION 5 – Expiration and Revocation of Permits**

5.1 If a sewage treatment system for which a permit has been issued has not been installed, inspected and approved by the Department within 12 months, said permit shall expire and be void. Should a permit expire, the applicant may reapply. The new permit shall be subject to all requirements that exist at the time the new application is made.

5.2 The permit for a sewage treatment system which has been inspected and approved will be revoked if the system has not been put into operation within three (3) years at the permitted or lesser level of use. A new application must be made to renew any revoked permit. The application for renewal will be reviewed prior to permitting to ensure compliance of the existing system with the regulation in effect at the time of application and that the connection to a structure can be made in compliance with those regulations. A fee for renewal of the permit will be required. An inspection of the connection to a structure may also be required.

NOTE: The Department is not obligated to issue a new permit to an applicant who has allowed a previously issued permit to expire or be revoked even though the new permit application utilized the same specifications and information as on the previously issued and expired permit. A new permit will not be issued if information becomes available indicating that a previously approved system or permit cannot now be approved or re-issued and be in full compliance with the regulations that exist at the time of reapplication.

5.3 The installation, alteration, repair or operation of a sewage treatment system after the initial permit has been voided shall constitute a violation of these regulations.

5.4 Any changes in plans, details or specifications of construction not approved by the Department after the permit has been issued, shall invalidate the permit.

5.5 There will be no reimbursement to any applicant of fees received for the issuance of the permit.

5.6 The Department may void a permit before its normal expiration date when any of the facts or conditions upon which the permit specifications were based are found to constitute a violation of these regulations.

#### **SECTION 6 - Denial of Permits**

6.1 The Department may disapprove an application for a permit if the Department determines:

- (1) That the sewage treatment system, as proposed, will not comply with the requirements or specifications of these regulations, or,
- (2) That the applicant has failed to supply all data necessary to make a determination as to whether or not the proposed sewage treatment system complies with the requirements or specifications of these regulations and had failed to provide such information within ninety (90) days after a written notice for such additional information has been made by the Department, or,
- (3) That the applicant has failed to pay the required fees and has failed to make such payment within ninety (90) days after notice to the applicant by the Department that the permit has been prepared and can be issued upon payment of the appropriate fee.

6.2 If a tract of land is presently being reviewed under the Sanitation in Subdivisions Act, a permit

cannot be issued for any structure on that tract of land until the review of said subdivision has been completed and the subdivision approved.

6.3 A permit may be denied if it is found that any provision of a Certificate of Subdivision Approval has been violated or there is departure from any criteria set forth in the approved plans and specifications of said subdivision.

6.4 A permit may be denied if it is found that such installation is in conflict with the requirements of the Sanitation in Subdivisions Act or its regulations, or if such installation is intended as a means of avoiding the requirements of the Sanitation in Subdivisions Act or its regulations.

6.5 A permit to construct a sewage treatment system for a structure on any tract of land, regardless of size, where there already exists another structure or structures, serviced by a separate sewage system(s), shall be denied if the applicant cannot provide substantiating evidence that there is available area for the construction of said system and there is sufficient area to construct a 100% replacement system for that system and for any other sewage treatment system on that tract of land.

6.6 If an approved municipal or other publicly owned sewage collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed treatment system, and the owner (management entity) of the publicly owned collection and treatment system approves the connection, the applicant must connect. A connection is considered as not readily available if:

- (1) The cost of the connection, as determined by the Department, is greater than three times the cost of the installation of an onsite wastewater treatment system that could be approved for the site, or
- (2) Connection to the public system is physically impractical, or
- (3) Necessary easements cannot be obtained.

6.7 If it is determined by the Department that the primary purpose of a proposed septic system is to avoid annexation to a municipality, the permit shall be denied.

6.8 Any denial of a permit shall be made with reasons for such denial and shall be given to the applicant within fifty (50) days of the receipt of a completed application.

#### **SECTION 7 - Contractor Licensure**

7.1 It shall be unlawful for any person, except as delineated in this section, to construct, alter or repair an individual or multi-user sewage treatment system within Flathead County unless that person holds a valid Flathead County Sewage Treatment System Contractor's License. A homeowner constructing, altering or repairing an individual sewage treatment system for his/her own residence upon his/her own property is exempt from this requirement. However, it must be understood by the owner that the system must be constructed in full compliance with these regulations and design and construction standards. Detailed plans showing the proposed layout, construction method and materials to be used must be provided to the Department. A builder who owns several parcels of land and who builds structures on these parcels for sale, rent or lease and not for the purpose of their residing in said structures, shall not be considered a "homeowner".

7.2 All first time applications for contractor licenses shall be made to the Department who may grant the license upon completion of the following:

- (1) Name, address and telephone numbers of the applicant.

- (2) Passing the required examination.
- (3) Receipt of the license fee payment.

All applications for license renewal shall contain all the elements of a first time application except that the examination requirement may be waived if the applicant has demonstrated knowledge of good sewage system design and/or installation in the year immediately preceding the application.

7.3 Contractor licenses shall be valid from January 1 through December 31 for the year stated on the license and shall be renewable by March 1 of the following year. Licenses are not transferable.

7.4 Contractor licenses may be denied for any of the following reasons:

- (1) Having constructed or altered a sewage treatment system without a valid permit, and/or,
- (2) Having a license revoked within twelve (12) months preceding the application, and/or,
- (3) Failure to meet the terms of License Applications.

7.5 Contractor licenses are the property of the Department and may be revoked by the Department at any time for the following reasons:

- (1) Installation of a sewage treatment system prior to the issuance of a septic system permit, and/or,
- (2) Failure to gain approval for a sewage treatment system installation, and/or,
- (3) Having provided false evidence or information to obtain a septic permit or gain approval of a septic installation.

7.6 In the event that any portion of Section 7.5 has been violated and revocation of the license is deemed appropriate, the Department shall notify the licensee in writing that the license has been revoked. Reasons for the revocation shall be specified in the letter.

7.7 Appeal to the Board. A contractor whose license has been revoked by the Department may appeal that decision to the Board of Health. After receiving the appeal, the Board shall allow the appellant to present his/her appeal before the Board at its next regularly scheduled meeting, provided that such request is received ten (10) days prior to the scheduled meeting date. At this meeting, the appellant may appear in person, be represented by another person, or may appeal to the Board in writing. The Board shall, within fifteen (15) days after hearing and/or reviewing the appeal, respond to the applicant in writing stating its decision and the reasons therefore. The Board's decision shall be determined as final.

7.8 The term of revocation will be for one calendar year from the date of violation. Relicensure shall be permitted only after completion of the requirements set forth in Section 7.2.

## **SECTION 8 - Inspection & Operation of Sewage Treatment Systems**

8.1 Once a permit has been issued by the Department for sewage treatment system, the applicant may begin construction. All systems SHALL be inspected by the Department PRIOR to backfilling any portion of said system, unless specific permission has been granted by the Department to backfill a portion of the system. For engineer designed systems, presence of the design engineer or his representative is mandatory at this inspection. It shall be the responsibility of the applicant, or the applicant's contractor, to notify the Department twenty-four

(24) hours in advance of the anticipated completion time of the construction of the system for the purpose of arranging a time for inspection. Requests for inspections must be made for normal Department work hours.

8.2 By the issuance of a permit, the owner of the property consents to the re-inspection by the Department of the sewage treatment system during its operational life. This consent shall be binding upon the owner's successors, heirs and assigns in interest. Re-inspections shall be conducted during regular business hours. The purpose of the re-inspection is to determine that the sewage treatment system is operating in compliance with these regulations.

8.3 During the Department's inspection of the sewage treatment system the inspector shall diagram the distance, dimensions and capacities of all component parts of the system on the Department's copy of the application and evaluate the conformity of the construction and operation of the system relative to all provisions of these regulations and the plans and specifications approved for that permit.

8.4 Should the inspector find that any aspect of the construction or operation of a sewage treatment system is not in full compliance with these regulations and/or the plans and specifications filed with the permit, he/she shall describe these deficiencies in detail in writing on the Department's copy of the inspection record. The Department shall then notify the applicant or owner immediately of all deficiencies and require that corrective action be taken. A re-inspection shall be made upon notification by the applicant or the applicant's contractor, as specified in this Section, to ensure that the deficiencies have been corrected and that the system has been brought into compliance with these regulations and/or the specifications of the permit. A re-inspection fee shall be paid prior to the re-inspection.

8.5 The deficiencies as described by the Department must be corrected within fifteen (15) days, unless a longer compliance schedule is approved by the Department. Noncompliance with the above schedule or use of the system shall constitute a violation of these regulations. (See Section 12 - Violations, Penalties and Enforcement)

8.6 Final approval for engineer designed systems shall not be granted until the design engineer furnishes a complete set of as-built drawings and written certification to the Department that the project was completed as shown therein. Information required for the certification shall include that obtained by the engineer during an inspection conducted after final completion of the project. The certification and as-built drawings shall be provided to the Department within 10 days following the final inspection.

8.7 The property owner shall be responsible for proper operation, maintenance and cleaning of the system and/or abatement of any nuisance arising from its failure, unless jurisdiction for responsibility has been transferred to a public, quasi-public or private entity or political subdivision. The issuance of a permit does not constitute assumption by the Department or its employees of liability for the failure of any sewage treatment system nor does it imply any guarantee by the Department that the system will function properly.

8.8 The Board of Health or Department may require the owner of an individual or multi-user sewage treatment system to maintain and submit to the Department records of inspection, maintenance, cleaning and testing performed on the system as deemed necessary by the Board or Department for any system requiring maintenance beyond normal pumping and filter cleaning frequency, for any system designed to treat wastewater that exceeds residential strength, any system that utilizes Level 2 or greater treatment technology, or any system that may not be functioning or being operated properly.

8.9 Sewage treatment systems are designed to accept domestic wastes, not to include toxic chemical wastes, e.g., developing solutions from photographic activity, industrial wastes, washdown of chemical containers, etc. Water from roof drains, groundwater, surface runoff, gutters, sump pumps, etc., shall not be discharged into a sewage treatment system and should be purposely directed to discharge to locations that will not in any way affect a sewage treatment system or pollute State waters. NOTE: Greywater must be treated as sewage and disposed of through an approved sewage treatment system.

## **SECTION 9 - Minimum Requirements for Class 1 - 3 Sewage Treatment Systems**

### 9.1 General

- (1) The sewage treatment system shall consist of an inlet line from a point two (2) feet outside the foundation wall to the septic tank or other approved primary treatment device, possibly an intermediate treatment device and a final effluent treatment system usually consisting of a subsurface absorption field.
- (2) All effluent treatment systems utilizing a subsurface absorption field shall employ uniform pressure distribution.

- (3) Wastewater flows:

- (a) - Residential wastewater flows

Minimum design wastewater flow from a single family dwelling unit in Flathead County is 350 gallons per day. For dwelling units which have more than 3 bedrooms, the design wastewater flow shall be increased by 100 gallons per day per additional bedroom.

- (b) - Nonresidential wastewater flow

Typical daily flows for a variety of commercial, institutional, and recreational establishments are presented in Tables 5 -1, 5-2 and 5-3 of circular DEQ 4. For design purposes, the typical flows must be used as minimum design flows. Greater design flows may be required where larger flows are likely to occur, such as resort areas. Design flow must be computed using the total number of units in the proposed facility times the typical daily flow in the tables, with no reduction allowed for occupancy rates. Where the system includes several different types of uses from the tables, each use must be computed separately, and the design flow must be based on the sum of all of the uses. A means of flow measurement (such as flow meters or pump run-time meters) may be required.

As an alternative to the flows listed in the tables, design flow may be based on actual water use data from similar facilities. Because this water use data will typically be monthly averages, the peak design flow must be a minimum of 1.5 times the average flow. System components may be added (or enlarged) to address peak flows to allow drainfields to be sized based on average flow.

- (4) Upon failure of any portion of a sewage treatment system, the Department may require upgrading of any other portion of the system in addition to the failed component.
- (5) Installation of a pit privy is prohibited in Flathead County.
- (6) Installation and use of a vault toilet shall be limited to serving a structure which does not have water piped into the building.

### 9.2 Location

- (1) The location and installation of a sewage treatment system and each part thereof shall be such that, with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance nor constitute a hazard to public health nor endanger the safety of any actual or potential domestic water supply, nor directly enter the waters of the State of Montana. In determining a suitable location of the system, consideration shall be given to the size and shape of the lot, soil conditions, slope of the land, depth to groundwater, proximity

to existing and future water supplies, existing sewage treatment systems and State waters, depth to bedrock and/or other impervious materials and to areas for expansion or replacement of the treatment system.

(2) Minimum distances/separations have been established for location of the various component parts of the sewage treatment system and these distances/separations are shown in Table 1.

TABLE 1 - MINIMUM SETBACK AND SEPARATION DISTANCES

FROM:	TO: Septic Tank Pump Chamber Other Sealed Components (feet)	TO: Absorption System (feet)
Well <sup>(a)</sup>	50	100
100-year Floodplain	5	100
Surface Water <sup>(b)</sup>	50	100 <sup>(a)</sup>
Foundation Wall	10	10
Water Lines	10	10
Property Lines <sup>(c)</sup>	10	10
Absorption System	10	---
Slopes in excess of 25%	10	25
Groundwater Table <sup>(d)</sup>	(e)	4 <sup>(a)(f)</sup>
Bedrock <sup>(d)</sup>	(e)	4 <sup>(a)(f)</sup>
Impermeable or Impervious Layer <sup>(d)</sup>	(e)	4 <sup>(a)(f)</sup>
Subsoil Drains	10	10
Cisterns <sup>(a)</sup>	25	50

(a) Variances to these setbacks will not be considered for new construction.

(b) Surface Water - This distance shall be measured horizontally from the high water mark.

(c) For proposed installations where any portion of the sewage treatment system will be located less than 10 feet from the property line, written permission must be obtained from the adjoining owners.

(d) Groundwater Table - Depth to groundwater table shall be measured during its highest period of occurrence (high seasonal groundwater level).

(e) The Department may require that special design criteria and construction techniques be utilized when septic tanks, pumping chambers and sealed lines are proposed to be located within two (2) feet of the groundwater table, bedrock, impermeable soils, or extremely coarse soils (gravels).

(f) 4 feet - The separation to groundwater, bedrock and/or impermeable or impervious layer shall be measured from the infiltrative surface.

(3) No component of any sewage treatment system shall be located under driveways, parking areas or areas subject to heavy loading and no vehicles shall be driven over the system after installation, except those portions properly installed to accept traffic loads. No component part of any sewage treatment system shall be installed in an area that might later be used for building additions, garages, sheds or other structures that will restrict immediate access to any portion of the system for necessary maintenance and repair. NOTE: No absorption system shall be placed under driveways, roadways, parking areas or areas that may be subject to continued/periodic vehicular traffic, regardless of design and installation.

(4) Soil absorption fields shall be adequately protected (e.g., fenced) to prevent trampling by livestock or damage from vehicular traffic.

(5) Floodplain: No soil absorption system shall be located within 100 feet of a 100 year floodplain of any river, lake, stream, pond, or watercourse and from any swamp or seep as delineated by the most current Federal Emergency Management Agency (FEMA) floodplain maps available and accepted for use in Flathead County or other method of delineation described in subsection (b).

(a) Where FEMA floodplain maps are available the shaded zones as shown on the map shall generally be considered as a guideline in determining the area within the 100-year floodplain. In those areas where there are questions due to either the scale of mapping or variation in topography, the 100-year floodplain boundary shall be further delineated by obtaining a Letter of Map Amendment through FEMA. Elevations as determined by a licensed surveyor or licensed engineer may be required to verify that the proposed sewage treatment system site meets the location requirements set forth in Table 1.

(b) If any portion of a proposed system is within two thousand (2000) horizontal feet and twenty (20) vertical feet of a live stream draining an area of twenty-five (25) square miles or more and no official FEMA floodplain delineation or floodplain studies of the stream have been made, the applicant shall be requested to furnish a report delineating the base flood elevation of the 100-year floodplain to the Water Resources Division of the Montana Department of Natural Resources and Conservation. After the Water Resources Division has reviewed and approved the report delineating the floodplain, the applicant shall submit it to the Department.

(c) The horizontal setback to the 100-year floodplain may be waived in the event that the sewage treatment system drainfield is a minimum of 100 feet from the river, stream or other water body's average yearly highwater mark and the bottom of the drainfield will be at least two feet above the 100 year base flood elevation as determined by methods described above.

(d) Sewage treatment systems within the 100 year floodplain may be replaced provided all other setback and separation requirements are met. However, if any portion of the applicant's property is located out of the floodplain, the applicant may be required to locate all or a portion of the replacement system in this area.

(e) Replacements of sewage treatment systems within the 100 year floodplain shall be for only what the system has been serving or the use for which the system was permitted. No increase in use shall be allowed.

(f) The unpermitted filling of wetlands (e.g., ponds, watercourses, swamps) or the 100 year floodplain for the purpose of attaining the setback requirements set forth in Table 1 is prohibited.

(6) The sewage treatment system shall not be located in any swales or depressions where surface runoff may flow or accumulate. Careful consideration must be made to prevent any accumulation of water over the sewage treatment system by properly landscaping to direct drainage away from the system.

(7) The Department may require that special design criteria and construction techniques be utilized when septic tanks, pumping chambers and sealed lines are proposed to be located within two (2) feet of the groundwater table, bedrock, impermeable soils, or extremely coarse soils (gravels).

9.3 Groundwater: If groundwater is within seven (7) feet of the natural ground surface or if there is any reason to believe groundwater will be within seven (7) feet of the ground surface at any time of the year, groundwater monitoring holes shall be provided to a depth of at least eight (8) feet in the area of the absorption field to determine the high seasonal groundwater level (see Section 6 - Denial of Permits).

9.4 Bedrock/Impervious Material - If there is reason to believe that bedrock or other impervious material is within seven (7) feet of the natural ground surface, test holes shall be provided to accurately determine the depth to bedrock or other impervious material.

NOTE: If information is obtained indicating that a four (4) foot separation between the infiltrative surface and high seasonal groundwater, bedrock or other impervious materials cannot be provided in the area of the proposed sewage treatment system, a permit to install a conventional sewage treatment system shall be denied (see Section 6 - Denial of Permits).

9.5 Slope Restrictions - Natural slopes greater than 15% but less than 25 % shall preclude the use of sub-surface sewage treatment systems unless evidence is submitted substantiating that soil and groundwater conditions are such that there will be no visible outflow of liquid downslope from the installation of the sewage treatment system. Such material shall be submitted by an engineer, soils scientist, or geologist. Natural slopes greater than 25% will not be considered for sewage treatment system installation.

9.6 Holding Tanks: As defined in 3.23, holding tanks will not be considered where new construction is proposed. Their only use will be for replacement of existing systems where current regulations cannot be met and variances cannot be granted due to the potential adverse impact that a sewage treatment system might have on ground or surface waters and/or the health of any person. The only exception to the above rule shall be where connection of the structure shall be made to a public or municipal system within one year of issuance of a temporary permit (see Section 4.8).

9.7 If it is the finding of the Department that further installation of sewage treatment systems in an area may adversely affect or injure any property, the health or safety of any person, surface or groundwaters, or will conflict with the purposes of these regulations, the Board of Health may restrict, prohibit or impose additional conditions upon the installation of new sewage treatment systems within the affected area.

#### **SECTION 10 - Special Districts**

Within the limits of its authority, the Board of Health may enter into agreements with County Water and Sewer Districts for the purpose of mitigating public health hazards, improving, protecting and preserving water quality.

#### **SECTION 11- Variances and Appeals**

11.1 Appeal to the Health Officer: Should a sewage treatment system permit be denied or should any affected person wish to appeal the application or operation of any part of these regulations, the applicant or appellant may appeal such denial or the affected person may appeal the application or operation of the regulations within ten (10) days in writing to the Health Officer.

(1) The burden of proof shall be placed upon the applicant or appellant to show that the denial of the permit or application or operation of these regulations was contrary to these regulations or based upon incorrect information or incorrect interpretation of information.

(2) The Health Officer shall decide within thirty (30) days whether the denial will be upheld or the appeal granted. Reasons for any decision will be provided to the applicant or appellant in writing.

11.2 Appeal to the Board of Health. Should an appeal to the Health Officer result in a denial of the appeal, the appellant may make an appeal to the Flathead City-County Board of Health. After receiving the appeal, the Board shall allow the appellant to present his/her appeal before the Board at its next regularly scheduled meeting, provided that such request is received ten (10) days prior to the scheduled meeting date. At this meeting, the appellant may appear in person, be represented by another person, or may appeal to the Board in writing. The Board shall, within fifteen (15) days after hearing and/or reviewing the appeal, respond to the

applicant in writing stating its decision and the reasons therefore. The Board's decision shall be determined as final.

11.3 Application for Variance. An application for a variance to these regulations may be made to the Board within sixty (60) days of a denial of an application for a permit. The Health Officer shall receive all applications for variances.

11.4 The Health Officer shall maintain and be custodian of all records of the Minutes of the Board and findings and decisions of the Board. All records shall be open to the public. An application for a variance shall be in writing.

11.5 At least 10 days prior to the date of the hearing on the application for a variance, the Health Officer shall transmit a copy of said application to the members of the Board. The Department shall submit its advisory opinion on said application to the members of the Board prior to the date of hearing.

11.6 Conditions Governing Variances: The Board shall have the authority to grant a variance from a requirement of these regulations unless it clearly conflicts with state or federal law.

(1) Before any variance can be granted, the Board shall make written findings of fact based upon evidence produced at the public hearing setting forth and showing that the following circumstances exist:

(a) That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location not applicable to other lands in the same area and that literal interpretation of the provisions of these regulations would deprive the property owner of rights commonly enjoyed by other properties similarly situated under the terms of these regulations;

(b) That special conditions and circumstances did not result from the actions of the applicant;

(c) That granting the variance requested will not confer a special privilege to the applicant or his property that is denied other applicants or property owners;

(d) That granting the variance will not adversely affect or injure any adjacent properties, will not conflict with the purpose of these regulations and will not adversely affect the health or safety of any person or be contrary to the six factors set out under "Purposes of Regulations";

(e) That the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that can be granted under the regulations;

(f) That there does not exist for the applicant a reasonable alternative method of complying with these regulations.

(2) The fact that the property may be utilized more profitably will not be an element of consideration before the Board.

(3) In granting any variance, the Board may prescribe conditions and safeguards that insure that the purpose and intent of these regulations shall not be violated. Violation of such conditions and safeguards when made part of the terms under which the variance is granted shall be deemed a violation of these regulations and punishable under Section 12 "Violations, Penalties and Enforcement".

11.7 The Health Officer shall notify the applicant in writing that the variance was denied or that the specific variance was granted and any conditions and safeguards that were made part of the terms under which the variance was granted.

#### **SECTION 12- Violations, Penalties and Enforcement**

12.1 General Prohibitions - It shall be a violation of these regulations to:

- (1) Own or operate a malfunctioning sewage treatment system;
- (2) Install or alter a sewage treatment system without a valid permit or written Departmental approval;
- (3) Construct or maintain any dwelling or other occupied structure which is not equipped with adequate facilities for the sanitary disposal of sewage;
- (4) Removed sewage or effluent from a system and disposed of it onto any site which has no prior approval for septage disposal;
- (5) Violate any provision of these regulations.

12.2 Notice of Violation - If the Department discovers there has been a violation of any provision of these regulations or if the requirements of a sewage treatment system have been willfully violated, the Department shall give notice of such violation to the responsible person or persons. Such notice shall be in writing and shall specify any violations. The notice shall spell out the required corrective action and provide a reasonable time for correction, considering the severity of the violation and its public health significance. Service of such notice shall be by means of regular mail and shall be considered complete upon personal service or mailing by the Department. If after the notice has been served, the deficiencies have not been fully corrected to the satisfaction of the Department in the specified time period, the Department shall provide all such information to the County Attorney for appropriate legal action including, but not limited to, action to enjoin the violation.

12.3 Misrepresentation - Any permit or approval granted under these regulations which was based upon misrepresentation, failure to make a material fact or circumstances known or should have been known by the applicant or his agent, shall be void. Any construction, alteration, repair or use of a sewage treatment system after the permit for said system has been voided shall constitute a violation (see Section 12.2).

12.4 Any person who violates any provision of these regulations or any provision of any regulation adopted by the Flathead City-County Board of Health pursuant to the authority granted by this regulation, shall upon conviction be punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) per day of violation. Each day of violation constitutes a separate offense. The first day of violation shall be the date of the notice of violation.

#### **SECTION 13 - Severability and Conflicts**

13.1 Conflict of Ordinances, Effect of Partial Invalidity: In any case where a provision of this regulation is found to be in conflict with a provision of any zoning, building, fire, safety or health regulation or code of the State of Montana, Flathead County, or any municipality within Flathead County, existing on the effective date of this regulation, the provision which, in the judgment of the Board, establishes the higher standard for the protection of the health and safety of the people, shall prevail.

13.2 If any section, paragraph, sentence, clause or phrase of this regulation should be declared invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this regulation, which shall remain in full force and effect, and to this end, the provisions of this regulation are hereby declared to be severable.

ADDENDUM F

WHITEFISH WATER QUALITY PROTECTION REGULATIONS

# Whitefish Water Quality Protection Regulations

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ADOPTED by WHITEFISH CITY COUNCIL: Ordinance 08-04, March 3, 2008; Amended by Ordinance 08-18; Amended by Ordinance 08-25; Amended by Ordinance 09-04; Amended by Ordinance 12-04

### **11-3-29A. Purpose and Intent:**

It is the purpose of this section to apply development standards to lots or parcels with the greatest chance of affecting water quality:

1. Maintain the community's ability to manage stormwater through protection of "critical conveyances".
2. Protect and improve the quality of the Whitefish area's water bodies, including lakes, streams, and the Whitefish River, which are central to the community's identity and values.
3. Protect public safety, public and private property, and water quality from threats of geologic instability and erosion.
4. Protect and preserve the lawful use and enjoyment of private property.

To accomplish these objectives, this section will set forth a series of standards and regulations to maintain the ability of critical conveyances to carry stormwater; to limit sediment, nutrients and other pollutants entering the area's streams and lakes; to properly condition and, where necessary, prohibit development in geologically unstable areas adjacent to water bodies.

The intent of these regulations is to promote lawful and responsible land development. These regulations allow the restoration of streams, stream banks, slopes, and wetlands; sound forest management; and the clearing and removal of hazardous vegetation to protect life and property.

## 11-3-29B. Administration:

### 1. Applicability:

Any new or expanded residential, commercial or industrial development proposal within 200 horizontal feet of a lake, river, wetland, stream or stormwater conveyance shall comply with this section. Any lots or parcels that were created by whatever means prior to April 3, 2006 or after March 3, 2008 shall be required to comply with this section.

The following developments, activities and associated uses shall be exempt from the provision of this section:

- a. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventive action in a time frame too short to allow for compliance with the requirements of this section. After the emergency, the person or agency undertaking the action shall report any impacts to the water quality protection area to the director within five (5) days of the activity. The director may require submittal of a water quality protection area report or geotechnical letter to guide restoration or mitigation for these impacts. Final approval of the report, restoration and mitigation shall be in accordance with provisions of this section.
- b. Operation, maintenance, repair, modification, or addition to existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity applies best management practices and does not further encroach within a water quality protection area or buffer and there is no increased risk to life or property as a result of the action. As applicable, new facilities must comply with subsections 11-3-33 (erosion control) and 11-7-10E (mitigation for impacts). Operation and maintenance includes minor landscaping, native plant landscaping, buffer restoration, bank stabilization with native plant landscaping and vegetation management, provided that such management actions are part of regular and ongoing maintenance and do not expand farther into the water quality protection area or buffer.
- c. Agricultural activities, as defined in Montana Code Annotated 76-2-902. This includes timber harvesting, thinning, and regeneration on land without residential structures. Timber harvesting on forestlands that are proposed for conversion to other uses must be in compliance with Montana Code Annotated 77-5-301 - 307, the Montana streamside management zone law. Violations of Montana Code Annotated 77-5-301 - 307 must be remediated to the satisfaction of the Montana department of natural resources and conservation prior to submittal of development permits under this section.

- d. Educational and research activities that do not degrade the functions and values of a water quality protection area or buffer, and conservation or restoration activities to protect or restore these functions and values.
- e. Development of a lot contained within a preliminary plat or planned unit development approved by the Whitefish city council prior to April 2, 2008, pursuant to the approved building site plan or building pad, if the building site plan or building pad are specifically located on the lot, but only to the extent that such development is located within the building site plan or building pad. The zoning administrator may, on a case by case basis, approve minor modifications to the building site plan or building pad. However, this exemption does not exempt a property owner from the requirements of subsection 11-3-33 of this section.

2. Relationship to Other Regulations:

- a. These water quality protection regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.
- b. Any individual water quality protection area adjoined by another type of water quality protection area shall have the buffer and meet the requirements providing the most protection to the water quality protection areas involved. When any provision of this section or any existing regulation, easement, covenant, or deed restriction conflicts with this section, that which provides more protection to the water quality protection areas shall apply.
- c. The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a water quality protection area or associated buffer, without first ensuring compliance with the requirements of this section.
- d. Compliance with the provisions of this section does not constitute compliance with other federal, state, and local regulations and permits that may be required, nor does it relieve an applicant from the duty to avoid harm to neighboring or downstream properties or create a duty to neighboring or downstream properties on the part of the city. The applicant is responsible for complying with these other requirements and duties, apart from the process established in this section.

3. Administrative Rules:

Applicable departments within the city are authorized to adopt such administrative rules and regulations as are necessary and appropriate to implement this section and to prepare and require the use of such forms as are necessary for its administration.

4. Permitting:

Development within 200-feet of a water quality protection area that is not exempt under Section 11-3-29B(1) shall obtain a permit prior to the start of any proposed activity pursuant to Section 11-7-10.

5. Reasonable Use Exception:

When the requirements of this section, or these requirements in combination with zoning and other development standards, would render a legally existing lot or parcel of record incapable of providing any legal and reasonable use, as defined in this subsection, a reasonable use exception (RUE) shall be issued by the director if the criteria in this subsection are met. A "legal and reasonable use" is defined as one that is allowed by the applicable zoning district and consistent with similar uses in the same general area, taking into account the most recent construction trends in the general area. For dwelling units, a legal and reasonable use may disturb no more than five thousand (5,000) square feet or fifteen percent (15%) of the parcel, whichever is greater, by structures or other land alteration, including grading, utility installations and landscaping, but not including the area used for an on site sewage disposal system.

- a. An application for a reasonable use exception shall be made to the city and shall include a water quality protection area identification form; water quality protection area report or geotechnical letter, as applicable; and any other related project documents, such as permit applications to other agencies. The application shall document what can be developed on the property in compliance with the strict provisions of this section and other zoning and development standards, and shall explain why this would not permit any reasonable use of the property. It shall include the date the applicant purchased the property or otherwise obtained the right to develop or use it, and restrictions or conditions on use or development in existence on that date. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
- b. Following receipt of a complete and accurate submittal, within thirty (30) days the director shall grant or deny a request for an RUE in writing with findings of fact pursuant to the determinations set forth in subsection B9c of this section.
- c. In reviewing applications for RUEs, the director shall determine that all of the following criteria are met:
  - (1) The lot, tract, or parcel is a legal lot of record.
  - (2) All reasonable use of the property is preempted under the strict provisions of this section, or the combination of this section and zoning and

development standards, for reasons other than actions by the applicant after the effective date hereof.

- (3) There are no reasonable development alternatives readily available to the applicant that meet the standards of these regulations.
  - (4) The RUE does not pose a threat of significant injury to occupiers of the land, other properties, or the natural resources protected by this section.
  - (5) Impacts associated with the RUE are the minimum necessary to allow for reasonable use of the property, and will be reasonably and effectively mitigated through conditions of approval.
- d. An RUE shall not be approved solely to improve views and vistas or proximity to amenities when viable alternatives exist. Preference shall be given to modifying or waiving development standards that do not impact water quality protection areas or the safety of the occupiers of the land or other properties.
  - e. Approval or denial of any RUE may be appealed to the board of adjustment pursuant to section 11-7-5 of this title. An approved RUE shall be recorded with the Flathead County clerk and recorder prior to any construction activity. The RUE shall be valid for three (3) years and the director may approve up to two (2) 1-year extensions, provided the applicant can demonstrate progress is being made on the project. If construction has not begun during the approval period, the RUE shall expire.

#### 6. Variances:

A variance from the requirements of this section may be authorized through a planned unit development or a neighborhood plan or, in other cases, by the director, in conjunction with the public works department, if the applicant provides clear and compelling evidence that the result would better protect or restore the functions and values of affected water quality protection areas than would application of standard criteria or in the case where these regulations conflict with state or federal regulations.

#### 7. Public Agencies And Utilities:

If the application of this section would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for a reasonable use exception, which shall follow the procedures and criteria of subsection B9 of this section, as applicable, and shall also demonstrate that application of this section would otherwise unreasonably restrict the ability to provide services to the public.

8. Mapping:

The city shall maintain planning level maps indicating the best available information as to the location location of water quality protection areas. In addition to these maps, the following may be used as a guide for locating water quality protection areas:

- a. Topographic maps published by the U.S. geological survey;
- b. Flood insurance rate maps published by the federal emergency management agency;
- c. Surficial geologic map of the upper Flathead River Valley (Kalispell Valley) area, Flathead County, northwestern Montana, published by the Montana bureau of mines and geology;
- d. Soil survey of the upper Flathead valley area, Montana, published by the U.S. soil conservation service; and
- e. Soil survey of Flathead national forest area, published by the U.S. forest service and the natural resource conservation service, in cooperation with Montana agricultural experiment station.
- f. Topographic mapping through the Flathead Basin Mapping Project, 2009, maintained by Montana Natural Resource Information System.

All of these sources are to be used for planning purposes by the city, project applicants and property owners, but may be superseded by new data and do not eliminate the need for on site evaluation for the presence of water quality protection areas.

9. Density Calculation:

Density shall be calculated based on the gross acreage of the site. Land restricted from development within water quality protection areas or their buffers may be used to meet requirements for open space other than active recreation under section 12-4-11 of this code. Where development is partly prohibited due to the presence of water quality protection areas, as defined in this section, an applicant may be permitted to transfer up to one hundred percent (100%) of the density attributable to the undevelopable area of the property to another portion of the same property, where the director finds that this is consistent with the city's growth policy and that the following standards are met:

- a. The increased density does not significantly harm the water quality protection areas on site or on adjacent properties;

- b. The increased density does not significantly harm wildlife habitat, including migration corridors;
- c. The increased density does not significantly harm the character and qualities of the existing neighborhood; and
- d. Where applicable, the increased density makes efficient use of infill property.

Where the above standards are met, the normal standards of the underlying zoning district for minimum lot size, setbacks, and lot coverage may be modified to accommodate the increased density.

10. Enforcement and Penalties:

- a. Reasonable access to the site shall be provided to the city for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property. Except in emergencies or when the director determines that there may be an imminent threat to environmental resources, such reasonable effort shall include written notice by certified letter seven (7) days in advance of a planned site inspection.
- b. When a water quality protection area or its buffer has been altered in violation of this section, all ongoing development work shall stop and the water quality protection area or buffer shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this section. All development work shall remain stopped until a restoration plan is prepared and approved by the city.
- c. If development work continues, the city shall have the authority to seek all legal and equitable relief necessary to enforce this section. Restoration plans shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection B14d of this section. As necessary, the director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
- d. At a minimum, performance standards for restoration shall be as follows:
  - (1) For alterations to critical stormwater conveyances, or streams, wetlands, and lakes and their buffers, restoration shall return the affected environment to the historic conditions or the conditions existing at the time

of the initiation of the project; if that is infeasible, restoration shall replace, enhance, or provide substitute resources or environments, following the criteria for mitigation in Section 11-7-10D, where applicable.

- (2) For alterations to steep or unstable slopes, the following minimum performance standards shall be met for restoration:
  - (A) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;
  - (B) Any risk to public safety or other water quality protection areas resulting from the alteration shall be eliminated or minimized; and
  - (C) To the extent feasible, the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.
- e. Any person convicted of violating any of the provisions of this section shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this section is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this section shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Montana. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this section. The civil penalty shall be assessed at a maximum rate of one thousand dollars (\$1,000.00) per day per violation.

**11-3-29C. Stream, Lake and Wetland Buffers And Setbacks:**

**1. Standard Buffers and Setbacks:**

A buffer is an area of land adjacent to a lake, wetland or stream, including the Whitefish River intended to protect the water quality area, while a setback is a smaller area of land adjacent to the buffer intended to protect buffers from human disturbance where structures are prohibited and only limited alterations are allowed.

Except where modified through a reasonable use exception under subsection B5 of this section or a variance under subsection B6 of this section, buffers and setbacks for streams, wetlands, and lakes are hereby established as follows. All buffers shall include the entire floodplain. Widths shall be measured on the horizontal plane perpendicular to the edge of the water quality protection area. Developments in compliance with buffer and setback requirements or allowed uses in this section shall not be required to submit a water quality protection area report unless specifically noted below.

<b><u>Waterbody:</u></b>	<b><u>Buffer:</u></b>	<b><u>Setback:</u></b>
<b>Whitefish River</b> <i>Section C(1)(a)</i>	75' or top of bank, whichever is greater	Variable, but no less than 20-feet
<b>Other perennial streams</b> <i>Section C(1)(b)</i>	100' with 25' increase/decrease for high/low intensity land use	10'
<b>Intermittent streams</b> <i>Section C(1)(c)</i>	50'	10'
<b>Whitefish Lake</b> <i>Section C(1)(f)</i>	20' with water quality plan to meet performance standard of 75' buffer	10'
<b>Other lakes</b> <i>Section C(1)(g)</i>	75'	10'
<b>Wetlands</b> <i>Section C(1)(d)</i>	100', with 25' increase/decrease for high/low intensity land use	10'

- a. Whitefish River: The buffer shall be the top of bank (where evident) or seventy five feet (75') from the ordinary high water mark, whichever is greater. If there is an associated wetland along the river, the seventy five feet (75') shall be measured from the edge of the wetland. If any structure is proposed within two hundred feet (200') of the buffer on a property that abuts the river, a geotechnical letter consistent with subsection D of this section shall be required. Such an analysis may also be required if the director of public works

determines, based on field observation and in consultation with the applicant, that a proposed structure beyond this setback may be damaged by slope failure, slumping or other geologic instability, or that it may contribute to such instability on other properties. Unless an approved geotechnical letter concludes that a larger setback is necessary, the setback shall equal the rear yard setback in the applicable zone, but in no case shall it be less than twenty feet (20').

- b. All Other Perennial Reaches Of Streams: All other perennial reaches of streams, including, but not limited to, Beaver, Cow, Eagle, Haskill, Hellroaring, Lazy, Smith, Swift, Viking, and Walker Creeks and their tributaries: The buffer shall extend one hundred feet (100') from the ordinary high water mark, except that the buffer for Second Creek upstream of the city's water supply intake shall be two hundred feet (200'). These buffers shall be increased by twenty five feet (25') for multi-family, industrial and commercial development; they shall be reduced by twenty five feet (25') for passive recreational uses such as parks or for low density residential development on lots 2.5 acres or greater and cannot be subdivided into lots less than 2.5 acres. There shall be no permitted reduction in the buffers for Second Creek. The setback shall be ten feet (10'), with no encroachment on the buffer allowed.
- c. All Intermittent Streams: The buffer shall extend fifty feet (50') from the ordinary high water mark. The setback shall be ten feet (10'), with no encroachment on the buffer allowed.
- d. Wetlands: For single-family residential development, the buffer shall be one hundred feet (100') for all wetlands not exempted under subsection C1e of this section. These buffers shall be increased by twenty five feet (25') for multi-family, industrial, and commercial development; they shall be reduced by twenty five feet (25') for passive recreational uses such as parks or for low density residential development on lots 2.5 acres or greater and cannot be subdivided into lots less than 2.5 acres. The setback shall be ten feet (10'), with no encroachment on the buffer allowed.
- e. Exempt Wetlands: All isolated wetlands rated as category III or category IV using the Montana wetland assessment method, as developed and updated by the Montana department of transportation, and that are less than one thousand (1,000) square feet shall be exempt from these regulations. All such wetlands between one thousand (1,000) square feet and ten thousand (10,000) square feet shall have no buffer and setback restrictions and may be filled or otherwise degraded, if impacts are fully mitigated based on Section 11-7-10. Existing storm ponds that were former wetlands, provided a fifteen foot (15') setback is maintained from the edge of the pond, are exempt.
- f. Whitefish Lake: The buffer and setback shall be regulated under title 13 of this code. All development of property within seventy five feet (75') of the lake shall

submit a water quality protection plan developed by a qualified professional, which shall make recommendations regarding stormwater management, impervious surface, grading and filling, and vegetation protection and restoration so that the estimated discharge of sediment, nutrients, and other pollutants to the lake during and after construction would be no greater than if the site had a seventy five foot (75') buffer, using a methodology approved by the director of public works. This plan may reference or incorporate other documentation required by the city. Requirements for a water quality plan may be waived by the public works director for minor disturbances.

- g. All Other Lake Shorelines That Are Not Wetlands: The buffer shall be seventy five feet (75') from the mean high water mark. The setback shall be ten feet (10'), with no encroachment on the buffer allowed.

2. Restriction on Subdividing:

Land that is located wholly within a wetland or its buffer may not be subdivided. Land that is located partially within a wetland or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the wetland or its buffer.

3. Restoration Incentive:

Except for Whitefish Lake, buffer widths may be reduced up to twenty five percent (25%) if the buffer is restored or enhanced from a preproject condition that is disturbed (e.g., dominated by invasive species), so that functions of the postproject buffer are equal or greater. For single-family homes on existing lots of record, the restoration plan must be developed by a qualified professional for the relevant water quality protection area and must be approved by the director. For all other development, the restoration plan must also meet requirements in Section 11-7-10.

4. Buffer Averaging:

Except for Whitefish Lake, the director shall have the authority to average buffer widths on a case by case basis, where a qualified professional demonstrates to the director's satisfaction that all of the following criteria are met:

- a. The total area contained in the buffer after averaging is no less than that contained within the buffer prior to averaging;
- b. Decreases in width are generally located where riparian functions may be less sensitive to adjacent land uses, and increases are generally located where riparian functions may be more sensitive to adjacent land uses, to achieve no net loss or a net gain in functions; and

- c. The averaged buffer, at its narrowest point, shall never be less than fifty percent (50%) of the standard width or fifty feet (50') for the Whitefish River.

5. Allowed Activities in Buffers:

The director shall permit the following uses within a stream, wetland, or lake buffer, provided they meet the standards set forth below and are not prohibited by any other applicable law. Certain allowed activities require a water quality protection plan approval. Activities along perennial streams, including the Whitefish River, may also require review and approval from the Flathead Conservation District:

- a. For lake buffers, activities specifically authorized under title 13, "Lake And Lakeshore Protection Regulations", of this code.
- b. Viewing structures, if they are no greater than one hundred (100) square feet, have no permanent foundation, and have impacts mitigated by planting an area with native vegetation at least equal in size to the area disturbed by the structure, preferably in the same buffer.
- c. Walkways and trails, provided pathways minimize adverse impacts on water quality. As applicable, trails must comply with subsections 11-3-33 (erosion control) and 11-7-10 (mitigation for impacts). Paths should be designed using the best management practices and obtain permits when necessary. Unless required by the Americans with disabilities act or otherwise approved in the city's adopted master trails plan, they should generally be parallel to the perimeter of the water body, located in the outer twenty five percent (25%) of the buffer area, avoid removal of mature trees, and be limited to pervious surfaces no more than four feet (4') in width. City paths/trails also require approval of a water quality protection permit. A walking path to a lake, stream, or wetland may be permitted for single-family homes on existing lots of record provided impacts are mitigated based on recommendations by a qualified professional for the relevant water quality protection area, which must be approved by the director. For all other developments, mitigation for such a path must also meet requirements in Section 11-7-10.
- d. Pesticides and fertilizers may be applied in buffers under the following conditions:
  - (1) Pesticides shall be applied according to the manufacturer's label. There are specific materials labeled for use that are appropriate applications in aquatic, ditch bank/edge areas and upland environments. All others shall be prohibited. The applicator shall ensure that the pesticide application is applied in accordance with the restrictions of the label for its intended use, targeted vegetation and/or area being treated.

- (2) No fertilizer shall be applied to any buffer unless suggested as part of a buffer enhancement/mitigation plan. Such plan shall provide soils sample analysis indicating a need for the fertilizer and the composition of macronutrients (N, P, K), a schedule of application and measures to ensure the fertilizer does not reach adjacent water bodies. Fertilizer applied shall be no more than is needed for plant uptake.
- e. Forest management. Tree removal within the buffer area for the following shall require the submittal of a tree removal plan to the zoning administrator for review and approval prior to removing trees.
  - (1) Tree removal for the health of the stand, including fuel reduction, habitat improvement, removal of diseased wood, and thinning for acceleration of multi-age, multi-story characteristics. Trees planted by the current property owner may be removed at the sole discretion of that property owner and need not be replaced unless they were required as mitigation or through an enforcement action under this section.
  - (2) Tree removal for limited view enhancement, meaning filtered views and/or view corridors from key vantage points, such as decks, balconies, and picture windows, achieved by pruning or limbing or, as a last resort, limited tree removal. Trees removed shall be replaced with additional trees at least three inches (3") in trunk diameter as measured eight inches (8") above ground level, unless installation of such trees would create erosion or slope stability hazards that cannot be adequately controlled or mitigated. Conifers removed shall be replaced by conifers. Replacement trees and shrubs shall be located in the same general area of the site as the trees removed, to the extent consistent with purposes for removal, and shall be sufficient in number to provide a comparable area of root coverage, once established.
- g. Stream crossings, if necessary to provide access to property and if impacts are fully mitigated consistent with an approved water quality protection areas report.
- h. Stormwater management facilities may be allowed within the outer twenty five percent (25%) of buffers, provided that:
  - (1) No other location with less impact is feasible; and
  - (2) Mitigation for impacts is provided to achieve no net loss or a net gain in functions.
- i. Connection lines to utilities, if required by the city or utility, with a restoration plan for disturbed soils and vegetation approved by the director.

- j. Bioengineering or soft armoring techniques for streambank stabilization is preferred.

6. Allowed Activities in Setbacks:

In addition to activities identified in subsection C5 of this section, the following uses are allowed in a stream, wetland, or lake setback, provided they are not prohibited by any other applicable law:

- a. Activities specifically authorized within lake setbacks under section 11-3-27 of this chapter.
- b. Recreational structures such as play apparatus or patios at grade and associated safety devices (railings, steps, etc.).
- c. Vehicular access for maintenance or essential emergency services.
- d. Lawns, gardens, and the application of associated fertilizers, herbicides, and pesticides are allowed.
- e. Incidental outdoor storage of nonhazardous materials.
- f. Tree removal is not restricted, but tree retention and management are highly encouraged, as is the planting of native trees.

### **11-3-29D. Slopes And Geologic Instability:**

If a project is proposed on a lot or parcel with slopes greater than ten percent (10%) and is within two hundred feet (200') of a lake, wetland or intermittent or perennial stream, the applicant shall submit a geotechnical letter, as described below.

#### **1. Geotechnical Letter:**

- a. The letter shall include an assessment of the existing geologic and geotechnical site conditions, including surface water runoff, groundwater, soil types, erosion, and slope stability.
- b. The qualified professional shall prepare conclusions and recommendations for the proposed development and any mitigation necessary to address existing site conditions that may need to be modified due to the proposed development.
- c. **Maintenance Responsibility.** Perpetual maintenance of all stabilization measures and their design effectiveness is the express responsibility of the property owner and all heirs and assigns. Failure to maintain these measures and their design effectiveness shall constitute a violation of this section pursuant to section 11-7-12 of this title.

#### **2. Exemption:**

For the following residential development applications within 200-feet of a lake, wetland or stream, the director shall waive the requirements of this subsection:

- a. An addition less than two hundred (200) square feet in size.
- b. Detached unoccupied auxiliary buildings such as garages and sheds 600 square feet or less.
- c. Decks attached to structures where no additional load bearing weight is added to an adjacent slope.
- d. Other small or minor disturbances, as determined by the director.

## 11-3-29E. Critical Stormwater Conveyances:

### 1. Restricted Area:

No building, structure, excavation, filling, or development of any kind, and no terrain disturbance that would interfere with stormwater flow shall be allowed within critical stormwater conveyances, as defined by this section, unless otherwise approved through a reasonable use exception under subsection B8 of this section, a variance under subsection B9 of this section, or by the director of public works as part of a detailed drainage study.

### 2. Applicability:

This section applies only to critical stormwater conveyances that have been identified on the city's most current maps, or to critical stormwater conveyances identified by the director of public works based on field observation, with the precise location of the conveyance to be determined on a site by site basis, as described in subsection E of this section.

### 3. Location:

Precise location of critical stormwater conveyance boundaries shall be determined on a site by site basis by the director of public works based on estimated flows for a 25-year storm (having a 4 percent chance of occurring in any given year), in consultation with the property owner and/or project proponent and reviewing the most recent city stormwater conveyance mapping, within thirty (30) days of a request by the property owner. The property owner may hire a qualified professional to establish the precise location of the boundaries and submit the determination for the city's review and approval.

### 4. Setback:

New structures or terrain disturbance that would interfere with stormwater flow are also prohibited within fifteen feet (15') of designated critical stormwater conveyances. Patios, driveways, and landscaping that would not significantly interfere with stormwater flow are allowed.

### 5. Property Access:

Structures necessary for vehicle access are allowed within critical stormwater conveyances and setback areas if they do not reduce conveyance capacity.

### 6. Pesticide and Fertilizer Application:

- a. Pesticides shall be applied according to the manufacturer's label. There are specific materials labeled for use that are appropriate applications in aquatic,

ditch bank/edge areas and upland environments. All others shall be prohibited. The applicator shall ensure that the pesticide application is applied in accordance with the restrictions of the label for its intended use, targeted vegetation and/or area being treated.

- b. Fertilizer applied shall be no more than is needed for plant uptake, taking into account the nutrient content of the soils.

7. Restricted Activities:

Removal and/or disturbance of existing ground vegetation and trees within critical stormwater conveyances, and filling and excavation of areas adjacent to critical stormwater conveyances, shall not be conducted in such a manner as to negatively impact the conveyance through additional runoff, erosion, or sedimentation. No storage or vehicle parking of any kind shall be allowed within a critical stormwater conveyance.

ADDENDUM G  
WHITEFISH AREA LAKE & LAKESHORE PROTECTION REGULATIONS

# Chapter 1

## GENERAL LAKE AND LAKESHORE PROTECTION PROVISIONS

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

### 13-1-2: PURPOSE:

### 13-1-3: JURISDICTION:

### 13-1-4: INTERPRETATION:

### 13-1-5: DEFINITIONS:

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

These regulations shall 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).

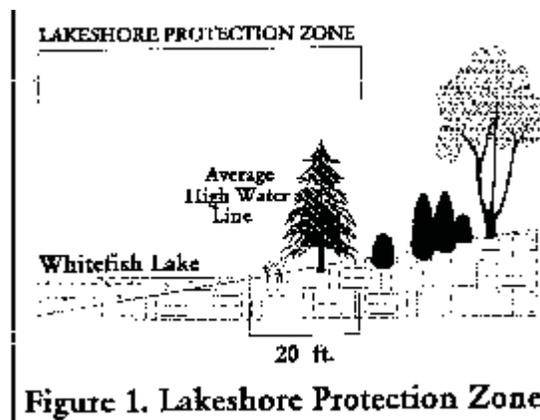


Figure 1. Lakeshore Protection Zone

(Ord. 09-08, 7-20-2009)

### 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. (Ord. 09-08, 7-20-2009)

### 13-1-3: JURISDICTION:

These regulations govern any work which alters Whitefish Lake, Lost Coon Lake and Blanchard Lake, and the land which is within twenty (20) horizontal feet of the mean annual high water elevation of these lakes. The mean annual high water elevation for Whitefish Lake has been established according to statute 75-7-202(4) at 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). The mean annual high water elevation of Blanchard Lake is three thousand one hundred forty four and eight-tenths feet (3,144.80') msl (1988 datum) which is equivalent to three thousand one hundred forty one feet (3,141') msl (1929 datum). (Ord. 09-08, 7-20-2009)

#### **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 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. (Ord. 09-08, 7-20-2009)

#### **13-1-5: DEFINITIONS:**

Whenever the following words or phrases appear in this title, they shall 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" 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 [13-2-5B6](#) and B7 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 governing body for a permit. On a permit in which a letter of authorization is provided to allow a contractor or other individual to act on behalf of the property owner, both the property owner and other individual or contractor shall be considered to be the applicant.

**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 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.

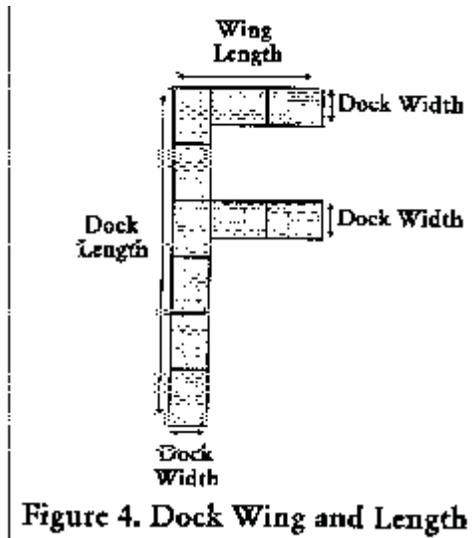
**BUOY:** A float moored to the bottom, used to moor boats, mark channels, etc.

**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 nonfloating 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 below).

**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 below).



**Figure 4. 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 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.

**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 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 multisectional, self-floating system designed to support a boat or personal watercraft.

**GOVERNING BODY:** The Whitefish city council.

**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.

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

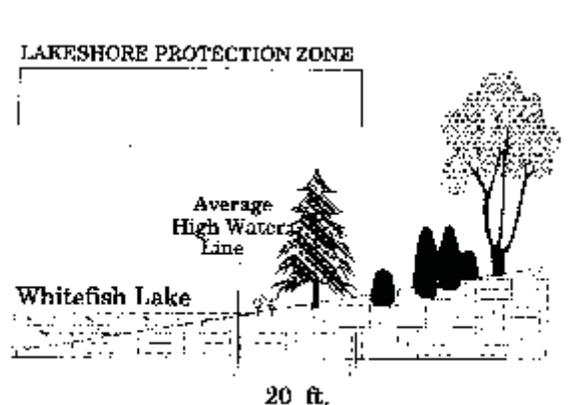
**IMPROVEMENT:** An addition made to property (real estate) or a change in its condition which is intended to enhance its value, aesthetics, utility, or to adapt it for new or further purposes.

**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 based on the linear feet of lake frontage of the lot or tract to be developed as well as any adjoining undeveloped lots under the same ownership. "Common waterfront property ownership" shall be defined as multiple contiguous lots under one family or related ownership, including fractional ownership in a corporation, partnership or other legal entity. Lake frontage shall be determined from records at the Flathead County assessor's office, subdivision plats, certificates of survey, or may be measured as a straight line between two (2) lot lines at the point where mean annual high water intersects each lot line.

**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 6 of this definition).



**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. 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.

**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 towards the establishment of the mean annual high water elevation. For the purpose of these regulations, the mean annual high water elevation for Whitefish Lake has been established at three thousand and seventy nine-hundredths feet (3,000.79') msl (NAVD 1988), which is equivalent to two thousand nine hundred ninety seven feet (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 three thousand one hundred and twenty one-hundredths feet (3,100.21') msl (NGVD 1929). The mean annual high water elevation of Blanchard Lake is three thousand one hundred forty four and eight-tenths feet (3,144.80') msl (1988 datum) which is equivalent to three thousand one hundred forty one feet (3,141') msl (1929 datum).

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

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

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

**PLANNING BOARD:** The Whitefish city/Flathead County planning board.

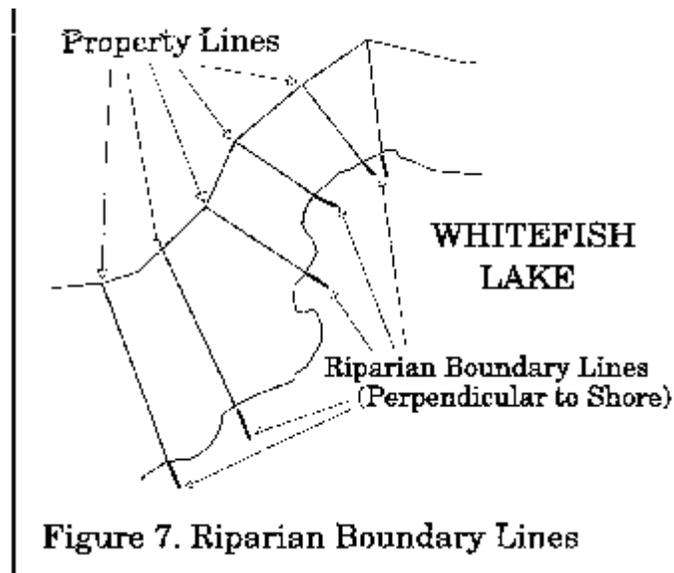
**REAL VALUE:** For the purpose of maintenance and/or repair of a nonconforming structure, the real value shall be determined to be the fair market value of the structure, exclusive of foundation, prior to any changes or damage.

**RECONSTRUCTION:** To rebuild an existing facility such that at the time of reconstruction in excess of 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 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.

**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 of this definition).



**Figure 7. Riparian Boundary Lines**

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

**SEWAGE PUMPOUT FACILITY:** A facility specifically provided to pump out and receive the contents of holding tanks 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.

**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).

**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. (Ord. 09-08, 7-20-2009)

## Chapter 2

# PERMIT REQUIREMENTS

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

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

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

### 13-2-4: ADDITIONAL REQUIREMENTS:

### 13-2-5: APPLICATION REVIEW PROCEDURES:

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

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

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

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

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

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

- A. Construction of channels or ditches;
- B. Excavation;
- C. Dredging, to remove muck, silt sediment, rock or vegetation;
- D. Filling, including artificial beach creation;
- E. Construction of lagoons;
- F. Construction of living quarters, buildings, or other impervious surfaces;
- G. Construction of boat service facilities, including the installation of fuel pumps or sewage pumpout facilities;
- H. Construction of elevated structures (example: decks, overhangs), including extensions into the airspace;
- I. Construction of retaining walls and breakwaters;
- J. Construction, installation or additions to docks;
- K. Installation of boat and personal watercraft shore stations, boat rail systems, boat ramps, boat storage and parking facilities, buoys and floating docks, and floating trampolines;
- L. Installation of water lines, sewer lines or other utility lines or facilities;
- M. Any major clearing or removal of natural vegetation;
- N. Reconstruction of existing facilities;

- O. Stockpiling brush, trees, vegetation, construction materials or debris;
- P. Moving a dock, shore station, or buoy to another location on the lake;
- Q. Operation of machinery, with the exception of recreational watercraft and equipment used for seasonal removal/installation of docks;
- R. Any other work not herein mentioned that may have an impact on a lake, lake bed or lakeshore. (Ord. 09-08, 7-20-2009)

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

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

- A. Repair Work: 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.
- 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 be followed where emergency work is performed:
    - a. The person proposing to do emergency work shall notify the governing body as to the nature of the emergency, description of the work to be done and the location of the site. If the work date falls on a normal working day (Monday through Friday, excluding holidays), notification must be made prior to beginning work. If the work date falls on a nonworking day (Saturday, Sunday and holidays), notification must be made on the next working day. Notification shall be made by phone and in writing.
    - b. The administrator shall review the notification. If the administrator determines that the work is emergency work, the administrator shall sign the notification and send a copy of it to the applicant and the lakeshore protection committee.
    - 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 be considered a violation of these regulations.
- D. Real Estate Signs: Real estate signs less than six (6) square feet in size. (Ord. 09-08, 7-20-2009)

### **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;
- F. Covering beach with impervious nonnative material (material which does not allow water absorption);
- G. Any installation of asphalt;
- H. Satellite dishes;
- I. Permanent or temporary buildings;
- J. Hot tubs;
- K. Fuel storage tanks;
- L. Decks;
- M. Roads, driveways, or parking areas; and
- N. Signs. (Ord. 09-08, 7-20-2009)

### **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, 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 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, 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 not perform work within the lakeshore protection zone. (Ord. 09-08, 7-20-2009)

### **13-2-5: APPLICATION REVIEW PROCEDURES:**

- A. Application: Depending on the jurisdiction, any person seeking a lakeshore construction permit shall submit a complete application to the administrator of the planning office of the jurisdictional governing body. The application shall be accompanied by a vicinity map with directions to the property, photographs of the shoreline (including docks and all structures in the lakeshore protection zone), a scaled site plan, detailed project drawings, and fee established by the governing body.

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

**B. Application Procedure:**

1. An applicant shall file an application with the administrator.
2. An application is deemed as accepted when a complete application, required accompaniments and fee are presented to the administrator. The application must be either signed by the property owner or a letter of authorization from the owner must be attached.
3. Upon acceptance of an application, the administrator shall schedule it for review at the next regular meeting of the Whitefish lake and lakeshore protection committee.
4. The chairman shall be responsible to see that all pending applications are brought before the committee for comment and action.
5. The committee shall have up to sixty (60) days from the date of acceptance of the completed application to review and forward comments to the governing body for final action. If no comment is received after sixty (60) days, the application will be forwarded to the administrator for final action by the governing body with no comment. If the application is incomplete, the administrator or lakeshore protection committee shall notify the applicant within 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.
6. Upon review and approval of a permit application by the committee, the administrator may issue an administrative permit specifically for floating docks which do not exceed sixty feet (60') in length (including gangway), for shore stations, and for buoys, providing that such permit complies with all other regulation standards and does not require a variance.
7. The administrator may issue an administrative permit for burning in the lakeshore protection zone or for buried domestic water lines installed during low water when such activities are found by the administrator to have a minimal or insignificant impact on the lake or lakeshore and to comply with the construction standards found in [chapter 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, shall be placed on the governing body'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 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. All construction shall be completed prior to expiration of the permit. The permit may be renewed without submission of a new application or plans if the applicant requests a permit renewal in writing from the administrator before the original permit expires and the administrator grants a renewal. The administrator, at their discretion, may grant more than one renewal. (Ord. 09-08, 7-20-2009)

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

All lakeshore construction permits shall be evaluated against the policy criteria for issuance of a permit. A permit shall only be issued when it is found that the proposed action will not, during either its construction or its utilization:

- A. Materially diminish water quality;
- B. Materially diminish habitat for fish or wildlife;
- C. Interfere with navigation or other lawful recreation;
- D. Create a public nuisance or public safety hazard;
- E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and

F. Alter the characteristics of the shoreline. (Ord. 09-08, 7-20-2009)

**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 restore the lake or lakeshore protection zone to its condition before he disturbed it.
- B. Archive photos or baseline videos on file at the jurisdictional planning office may be used in enforcing regulations and prosecuting violations.
- C. Areas where vegetation has been destroyed in the lakeshore protection zone shall be restored in accordance with subsection [13-3-1D](#) of this title. (Ord. 09-08, 7-20-2009)

# Chapter 4

## ADMINISTRATION AND ENFORCEMENT

### 13-4-1: WHITEFISH CITY/COUNTY LAKE AND LAKESHORE PROTECTION COMMITTEE:

#### 13-4-2: VARIANCES:

#### 13-4-3: AMENDMENTS:

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

#### 13-4-5: VIOLATIONS; PENALTY:

### **13-4-1: WHITEFISH CITY/COUNTY LAKE AND LAKESHORE PROTECTION COMMITTEE:**

#### A. Creation, Composition And Compensation Of Members:

1. The Whitefish city/county lake and lakeshore protection committee is hereby created as a special planning board in compliance with section 75-7-211 Montana Code Annotated empowered to review and comment on all activities within the jurisdiction of the Whitefish lake and lakeshore protection regulations and shall be known as the lakeshore protection committee.
2. The committee shall consist of eight (8) voting members. Four (4) members shall constitute a quorum to conduct business.
  - a. The Whitefish city council shall appoint three (3) members. All members shall be residents of Whitefish and at least two (2) shall be lakefront property owners or residents.
  - b. The Flathead County board of commissioners shall appoint four (4) members. All members shall be residents of rural Flathead County and at least three (3) shall be lakefront property owners or residents. Of those three (3), at least one shall be a lakefront property owner or resident on Blanchard Lake.
  - c. The eighth member shall be appointed by the Whitefish city/county planning board. He/she shall serve for a two (2) year term unless he/she requests removal or is removed by a majority vote of the planning board. The eighth member may be a member of the planning board or may be a member at large, but in any event shall be a resident of Whitefish.
3. City appointees and county appointees shall each initially be appointed to a staggered term of one, two (2) and three (3) years. Thereafter, each succeeding term shall be three (3) years. Vacancies during the term shall be filled by the appropriate governing body for the duration of the unexpired term.
4. The committee members shall serve without compensation.

#### B. Duties: The committee shall:

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

C. Organization: The committee shall organize and adopt bylaws pursuant to these regulations establishing the operating policies and procedures of the committee. (Ord. 09-08, 7-20-2009)

### **13-4-2: 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 A1a and A1b of this section, the granting of a variance would result in a general and universal public benefit.
2. Major Variances: A variance request shall be considered major when any of the following criteria are met:
- a. The variance request does not meet the requirements of subsection A1 of this section;
  - b. The variance request deviates substantially from the construction requirements or design standards of these regulations; and
  - c. The variance request creates a major environmental impact.

**B. Review Procedures:**

1. Minor Variances:
- a. The lakeshore protection committee, if it so determines, shall recommend to the governing body that a minor variance(s) from these regulations should be granted as part of an application's approval.
  - b. The governing body shall consider the lakeshore protection committee's recommendation and act upon the application. It may grant, modify or deny the variance request.
2. Major Variances:
- a. When the lakeshore protection committee determines that a major variance is required, it shall notify the governing body and applicant of said decision.
  - b. The determination that a major variance is required shall cause to be prepared, by and at the expense of the applicant, an environmental impact statement. The environmental impact statement shall contain:
    - (1) Description of the proposed project;
    - (2) Description of, and the reason for, the major variance being considered;
    - (3) Description of existing conditions;
    - (4) Description of anticipated impacts as they relate to each of the policy criteria in section [13-2-6](#) of this title;
    - (5) Alternatives to the proposed project, which would not require a major variance; and
    - (6) Any other information that may be required.
  - c. Nine (9) copies of the environmental impact statement shall be submitted to the administrator.
  - d. The lakeshore protection committee shall review the application for major variance and make a recommendation to the planning board.
  - e. The planning board shall review the information and make a recommendation to the governing body.
  - f. The governing body, upon receipt of all materials and recommendations, shall hold a public hearing on the proposed action. Notice of the time and place of the public hearing shall be published at least once in a newspaper of general circulation not less than fifteen (15) nor more than thirty (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. (Ord. 09-08, 7-20-2009)

**13-4-3: AMENDMENTS:** 

These regulations may be amended. Prior to adopting any proposed amendment, the Whitefish city council 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. (Ord. 09-08, 7-20-2009)

**13-4-4: 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. (Ord. 09-08, 7-20-2009)

**13-4-5: 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 constitute a separate offense. For instance, each tree removed or violation of a different subsection requirement shall constitute a separate offense. Each day that the violation exists beyond a restoration deadline date shall constitute a separate offense. 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 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 be paid to the general fund of the governing body, for the purpose of administering these regulations. (Ord. 09-20, 10-19-2009)

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 be responsible for becoming familiar with these regulations and for complying fully with such regulations.

D. Any permit issued which has been based on incomplete, incorrect, or false information supplied by the applicant in their permit application shall be deemed to be invalid. (Ord. 09-08, 7-20-2009)

## 8-3-4: PRIVATE DISPOSAL SYSTEMS:

- A. Connection To Sewer: The city council shall have power, by resolution, to order any privy, water closet or house drain in actual use on any lot or part of lot in the city, adjacent to any main trunk sewer or lateral sewer in the city, now constructed or which may hereafter be constructed, to be connected with the sewer whenever the city council deems it necessary to the health or sanitary condition of the locality.
- B. Order To Connect: When the city council orders any privy, water closet or house drain to be connected with the sewer, as provided by subsection A of this section, it shall be the duty of the city clerk to deliver to the chief of police a certified copy of the resolution and one additional copy thereof for each owner and person in charge of the privy, water closet or house drain ordered by the resolution to be connected with the sewer. The chief of police shall forthwith deliver to the owner and to the person in charge of the privy, water closet or house drain a certified copy of the resolution and make a return on the original to whom and when he delivered the certified copies and file the same with the city clerk.
- C. Notice To Connect: If the owner of the property on which any privy, water closet or house drain is ordered to be connected with the sewer is a nonresident of the city, or for any other reason cannot be served as provided by subsection B of this section, the city clerk shall post a copy of the resolution in three (3) of the most public places in the city for one week which shall be a legal service and notice to such owner. (Ord. 106, 2-1-1915)
- D. Compliance Required: If any owner or owners of any privy, water closet or house drain fails, refuses or neglects to comply with the requirements of the resolution of the city council ordering the privy, water closet or house drain to be connected with the sewer, after a receipt of a certified copy of the resolution as provided by subsection B of this section, or after the posting of copies of the resolution, as provided by subsection C of this section, in the way and manner as is provided by this chapter for thirty (30) days, the owner or owners shall, upon conviction thereof, be deemed guilty of a misdemeanor, punishable as set forth in section [1-4-1](#) of this code and shall also be deemed to have committed a municipal infraction, punishable as set forth in section [1-4-4](#) of this code. 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.
- E. Violation: It is unlawful for any person in charge of any privy, water closet or house drain, after receipt of a copy of a resolution ordering the privy, water closet or house drain to be connected with the sewer, to use the same for more than thirty (30) days after they have received a copy of the resolution. Any person violating the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor, punishable as set forth in section [1-4-1](#) of this code and shall also be deemed to have committed a municipal infraction, punishable as set forth in section [1-4-4](#) of this code. 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. (Ord. 09-20, 10-19-2009)

## ADDENDUM H W2ASACT INFORMATION

In 1982, a group of professionals from state, federal, and non-profit organizations that finance, regulate, or provide technical assistance for community water and wastewater systems, decided to start meeting in order to coordinate and enhance their efforts. This group calls itself the "Water, Wastewater and Solid Waste Action Coordinating Team" or W2ASACT for short. W2ASACT meets several times a year to find ways to improve our state's environmental infrastructure.

**W2ASACT members include:**

### **Federal Agencies and Programs:**

- Bureau of Reclamation (Department of Interior)
- U.S. Department of Housing and Urban Development- HUD Montana Field Office Helena Economic Development Administration (Department of Commerce)
- Environmental Protection Agency
- Rural Development, Rural Utilities Services (Department of Agriculture)

### **Private Associations or Non Profit Organizations:**

- Midwest Assistance Program
- Montana Association of County Water and Sewer Systems
- Montana Association of Counties
- Montana League of Cities and Towns
- Montana Rural Development Partners
- Montana Rural Water Systems, Inc.

### **State Agencies and Programs :**

- Community Development Block Grant Program (Department of Commerce)
- Community Technical Assistance Program (Department of Commerce)
- Public Water Supply Section (Department of Environmental Quality)
- INTERCAP Program (Board of Investments)
- Local Government Center (Montana State University)
- Local Government Services Bureau (Department of Commerce)
- Governors Office of Indian Affairs
- Montana Coal Board (Montana Department of Commerce)
- Montana Water Center (Montana State University)
- Municipal Wastewater Assistance Program (Department of Environmental Quality)
- Renewable Resources Grant and Loan Program (Department of Natural Resources and Conservation)
- State Drinking Water Revolving Fund (Department of Environmental Quality and Department of Natural Resources and Conservation)
- State Wastewater Revolving Fund (Department of Environmental Quality and Department of Natural Resources and Conservation)
- Treasure State Endowment Program (Department of Commerce)
- Technical and Financial Assistance Bureau (Department of Environmental Quality)

All of the programs represented in W2ASACT have different missions and meet unique needs. However, it has been the common elements shared by the funding programs that have been the driving force of W 2 ASACT. These programs provide money (grants or loans), take applications from communities to fund their projects, and administer those monies once the project is funded. While W2ASACT cannot change all of the state or federal requirements, it can identify unnecessary duplication of requirements that make compliance difficult for communities.

ADDENDUM I  
WHITEFISH PILOT COLUMNS

**Whitefish Pilot**

Managing Editor Matt Baldwin printed our monthly column *The Water Closet* as follows:

<u>Column Due</u>	<u>Publication Date</u>	<u>Authors</u>	<u>Subject</u>
November 9	November 14	John Muhlfeld & Patti Scruggs	What is the purpose of the WCWC
December 7	December 12	Andy Feury & Denise Hasnon	Funding options
January 4	January 9 (Ran 1/16)	Jan Metzmaker & Jim Laidlaw	Describe the planning process
February 1	February 6	Tom Cowan & Bill Kahle	Septic 101
March 1	March 6	Pam Holmquist & John Muhlfeld	Community Forum
April 5	April 10	Karen Reeves & Ryan Purdy	Community Forum survey reminder
May 3	May 8	Tom Cowan & Bill Kahle	Landscape & Water Quality
May 31	June 5		Community Forum Results
July 31	Aug 7	Andy Feury & John Muhlfeld	Program delivered to City



8. Do you live in Whitefish...?

9 Full Time 1 Part time

9. Do you live in the Whitefish extraterritorial area...?

5 Full time 1 Part time

Comments:

I was disappointed that Ed Leiser's bill to add septic inspections to sale of property got tabled- wondering if we would add that to our local laws? County?

I'm looking forward to everybody learning about their septic systems and learning to take care of them.

The lake is, by far, our most important natural asset - It must be protected.

Require all owners who can connect to Hellroaring sewer line to do so within 10 years.

## ADDENDUM K

### Investigation of Viking Creek and City Beach Sewer Infrastructure

P.O. Box 158 • Whitefish, MT 59937 • (406) 863-2400 • Fax: (406) 863-2419



Date: July 11, 2013  
To: Lori Curtis, Whitefish Lake Institute  
From: John Wilson, Public Works Director  
Re: Investigation of Viking Creek and City Beach Sewer Infrastructure

In mid-May 2013, the Public Works Department performed television inspections of all gravity sewer mains along the southeast shore of Whitefish Lake between Bay Point and City Beach. Field crews did not report any damage or potential for sewage to escape from the system.

Field crews also performed television inspections of the gravity sewer mains in the vicinity of Viking Creek, specifically along Wisconsin Avenue from the north end of the Lodge at Whitefish Lake condominiums to a point just north of Colorado Avenue. This covers a distance of at least 350 feet either side of Viking Creek. Again, no evidence was reported indicating potential for sewage to escape the system.

Regarding the new gravity sewer mains installed for the Viking Creek subdivision, while we did not perform a television inspection of these lines, they were certified by the project engineer to have passed inspections and leak test requirements in 2011.

Please let us know if you have any other questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Wilson".

John C. Wilson  
Public Works Director