

Vegetation Management (proposed new section)

-Version #2 – July 3, 2012-

(A) Policy:

Vegetation within the Lakeshore Protection Zone serves as a biological, structural, aesthetic, and cultural component of the lake and lakeshore, providing habitat for native fish and wildlife species, reducing the likelihood and severity of erosion, and helping to reduce runoff and pollutant loads. A properly vegetated riparian area helps to attenuate wave energy, filtering and stabilizing sediment, and protects scenic beauty. Healthy vegetated areas consist of a diversity of healthy, native tree, shrub, and grass species that vary in height and structure.

Native vegetation is typically better adapted to area soils, rainfall, and temperatures and will require no fertilization application and less long-term maintenance than non-native vegetation. It also provides high quality habitat to native wildlife species. Therefore, native vegetation types are highly preferred over non-native vegetation. As such, new **lawns** shall not be established, and existing, grandfathered lawns may not be expanded.

Healthy, beneficial, and conforming Lakeshores, in term of vegetation, can take years to fully establish. Therefore, healthy, naturally-occurring vegetation within the vegetated area of the lakeshore must be preserved, and projects must be designed to the extent that preserves the most beneficial trees and other plants. The most “beneficial” vegetation is typically native and healthy, well-established with large root structure, and vegetation that maintains or strengthens the overall integrity of the shoreline vegetation to provide fish and wildlife habitat.

It is understood that **dead, diseased, or damaged** trees/plants/branches may be better removed than left intact, and that vegetation should be pruned at times for the health of the plants and plant community.

However, unless the vegetated area of a Lakeshore is to remain vegetated in compliance with this Section, vegetation that is removed must be **replaced** as part of the vegetation management of a property.

Often, certain types of **dead trees** provide valuable wildlife habitat and nesting opportunities, and should be left in place unless they create a safety hazard to people, structures, or property.

In addition, landowners must be allowed to provide **defensible space** around structures and minimize fire danger.

It is acknowledged that lakefront properties and their Lakeshore Protection Zones are allowed to be **developed** with man-made improvements to provide lake-related opportunities for people. Vegetation management must be performed in a manner that provides a **balance** between human use, property rights, this Policy statement, and the Policy Criteria outlined by Sub-Section 5-__(__).

Because these regulations **provide for development** in the Lakeshore Protection Zone, as a means of providing balance between that development and the policies, the following Vegetation Standards, Allowances, General Requirements, Regulations, and Prohibitions must be incorporated into vegetation management and regulation of the Lakeshore Protection Zone.

Note: new definitions to consider to address this new section are included at the end. -in addition, some key terms from the draft Definitions section (from September 2011) are included for reference...

(B) Vegetation Standards:

A property's Lakeshore Protection Zone is considered conforming in terms of vegetation if the zone complies with the standards of this section. Likewise, a property's Lakeshore Protection Zone is considered non-conforming in terms of vegetation if the zone does not comply with the standards of this section.

- (1) In the Lakeshore **(the 20' land portion of the Lakeshore Protection Zone; see definitions)**:
 - (a) Pursuant to Section 5-__(__) of these regulations, generally, each 20' Lakeshore may be allowed a maximum "impervious cover" or "constructed area". The total of all constructed or impervious areas in the 20' Lakeshore shall not exceed five square feet (5 ft²) per linear front foot of Lakeshore; alternatively, this will typically allow for a minimum of fifteen square feet (15 ft²) per linear front foot of Lakeshore that may be managed for healthy, diverse vegetation. These non-constructed areas may be termed a "vegetated area" of the Lakeshore (see definitions).
 - (b) Vegetated areas of Lakeshores shall consist of a diverse mixture of trees, shrubs, native grasses and forest duff/leaf litter representative of the undeveloped areas around and within 20 horizontal feet of the applicable lake, in the general vicinity. Species types and individual plants in the vegetated areas of Lakeshores should also consist of diverse size and age classes.
 - (c) Examples of vegetated areas of Lakeshores that do not qualify as conforming include grass lawns (with few trees and other woody vegetation), orchards, and other areas with little or no canopy or understory vegetation.
 - (d) Although general calculations indicate at least fifteen square feet (15 ft²) per linear front foot of Lakeshore may be managed for healthy, diverse vegetation, it is understood that vegetation must be managed

for a variety of beneficial purposes. Vegetation removal is therefore regulated by the sub-sections below.

(2) In the Lake/lakebed:

- (a) Vegetation in the lake and on or above the lakebed can consist of wetland vegetation, aquatic vegetation, and terrestrial vegetation that extends over the lake (live or dead) or that may grow from the lakebed.
- (b) Vegetation in the lake and on or above the lakebed should be left primarily in its natural state. Vegetation in the lake should therefore be managed to remain in its natural state, and to prevent introduction and propagation of aquatic invasive species.
- (c) Surrounding natural areas of the lake and lakebed shall be used to indicate what constitutes natural vegetative states.
- (d) Where lake and lakebed areas have been obviously or purportedly modified leaving question as to the natural vegetative state, scientific information may be used to demonstrate an area's natural or healthy condition.

(C) Allowances:

Limited vegetation removal, management, installation, or other alteration may be allowed within the Lakeshore Protection Zone as follows:

- (1) By a Lakeshore Construction Permit subject to compliance with Vegetation Standards (Sub-Section B, above), Vegetation Removal (Sub-Section D, below), General Requirements for Vegetation Management Activities (Sub-Section G, below), and other applicable regulation (these regulations and otherwise). Vegetation-related elements of any project must be specified with the permit application and subject to associated "conditions of approval". The permit may be for the vegetation management only, or as an overall project that includes vegetation management.
- (2) As part of and in compliance with an overall Vegetation Management Plan reviewed and approved by Lake County.
- (3) As an exempt activity per Sub-Section (F) below.

(D) Vegetation Removal:

Vegetation removal is limited to the following activities, through approval of a Lakeshore Construction Permit or implementation of a county-approved Vegetation Management Plan:

- (1) Removal of dead, windblown, damaged, or diseased trees, shrubs, and branches. However, certain types of dead trees provide valuable wildlife habitat and nesting opportunities, and should be left in place unless they create a safety hazard to people, structures, or property.
- (2) Removal of select live trees, shrubs, and/or branches to allow permitted development of impervious or constructed surface areas over the 20' Lakeshore provided that healthy vegetated area(s) are maintained to provide or strengthen overall integrity and habitat.

- (3) Removal of select live trees, shrubs, and/or branches (fuels) to minimize fire danger and provide defensible space around structures, provided that a healthy vegetated area is maintained. All fuels reduction projects must be performed in compliance with state- or nationally-recognized standards; and projects may be required to be coordinated by a qualified professional.
- (4) Removal of select live trees, shrubs, and/or branches to improve scenic views provided that a healthy vegetated area is maintained. Where trees, shrubs, or branches are to be removed for view-shed purposes, they may be required to be replaced with a variety of shrubs, native grasses, or other vegetative and/or permitted ground cover.
- (5) Removal of vegetation to establish or maintain a healthy wooded area or to thin an overgrown or unhealthy woodland area. Such vegetation removal must be found reasonable by the governing body, and the governing body may require the landowner or applicant to provide a professional opinion regarding how this allowance may apply to a particular property.
- (6) Removal of woody vegetation less than four feet in height is limited to that necessary to create a winding footpath, defensible space around a home, boat access or to remove noxious weeds and plants such as poison ivy.
- (7) Removal of lawns or other non-native vegetation or landscaping to allow development of permitted features.
- (8) Removal of lawns or other non-native vegetation or landscaping, and replacement with native vegetation.
- (9) Removal of aquatic invasive vegetation species from the lake.
- (10) Other vegetation removal may be allowed on a case-by-case basis provided the activities comply with Sub-Section __-(A), "Policy" above, Section 5-___, "Policy Criteria for Issuance of a Permit", and Section __-___, "General Construction Requirements Affecting All Permits".

(E) Prohibitions:

The following vegetation management activities and features are prohibited in the Lakeshore Protection Zone:

- (1) Substantial vegetation removal to create a non-conforming Lakeshore, or to increase the non-conformity of a Lakeshore.
- (2) Installation of lawns wider than allowed as footpaths, boat ramps, roads, or as other permitted constructed features that use grass lawn for ground cover.
- (3) Installation of non-native vegetation and artificial landscaped areas.
- (4) Topping trees that are to be retained.
- (5) Other vegetation removal not explicitly allowed by these regulations or through an approved permit or Vegetation Management Plan.
- (6) Underground or other permanent sprinkler systems with exposed spray heads.
- (7) The application of chemicals, fertilizers, pesticides, insecticides, fungicides, or herbicides.
 - (a) Under extreme cases, a variance may be granted allowing chemicals, fertilizers, pesticides, insecticides, fungicides, or herbicides to be

applied within the Lakeshore Protection Zone provided a Lakeshore Construction Permit Application is submitted and approved, outlining a treatment plan created by a licensed applicator using methods approved for use near or in water, as applicable.

- (b) At a minimum, the treatment plan is required to be developed or approved by a licensed applicator and the plan must include the types of chemicals that will be used, the frequency of application, estimate of the dates when the activities will occur, and information demonstrating that the work will be conducted by a licensed applicator.
- (c) The governing body reserves the right to require that the landowner demonstrate compliance with any other laws or regulations with respect to such treatment activities.

(F) Exempt Activities:

The following exempt vegetation management activities are specifically allowed within the Lakeshore Protection Zone without a Lakeshore Construction Permit or an approved Vegetation Management Plan:

- (1) Watering activities limited to that necessary for the establishment of new vegetation or to sustain existing vegetation during periods of drought; watering by hand or through the use of a soaker hose helps to minimize erosion. *(Note: sprinkler systems with exposed spray heads are prohibited in the Lakeshore Protection Zone per Sub-Section ___-(E)(5) above.)*
- (2) Native grasses may be mowed or cut back no more than twice per year, preferably in the fall or late winter, to help maintain health and productivity.
- (3) Minor pruning, thatch removal, and/or weed pulling if performed by hand. Pruning of trees shall not include topping trees that are to be maintained for compliance with this section.
- (4) Minor debris and driftwood removal, if done by hand.
- (5) Continued watering of grandfathered lawns and other non-conforming landscaped areas.
- (6) Continued mowing grandfathered lawns and other non-conforming landscaped areas.

Note: Notwithstanding (1) and (2) above, grandfathered lawns and other non-conforming landscaped areas may not be treated with any chemicals, fertilizers, pesticides, insecticides, fungicides, or herbicides unless approved through variance. See Sub-Section ___-(E)(6) above.

(G) General Requirements for Vegetation Management Activities:

- (1) Vegetation Removal:

Activities associated with the removal of vegetation shall meet the following requirements, unless otherwise approved by the governing body:

 - (a) Vegetation that must be removed shall generally be felled away from the lake unless circumstances prohibit such practices.

- (b) If vegetation must be felled into the lake, such activities should be planned for when the lake water level is at the lowest level for the year.
 - (c) All material and debris that enters the lake or lakebed as a part of vegetation management shall be removed immediately.
 - (d) All stumps shall be cut or ground off at, near (no deeper than 6-inches), or above ground level within the vegetated area of the Lakeshore.
 - (e) All sub-surface roots located within the vegetated area or water-ward area of the Lakeshore Protection Zone shall remain in place to help secure the soil.
 - (f) Debris such as driftwood and other transient detached vegetation may be removed by hand without a permit. Debris removal requiring motorized or heavy equipment shall always require a Lakeshore Construction Permit unless the activity is in accordance with a county approved Vegetation Management Plan that includes proper Best Management Practices (BMPs) to minimize or prevent impacts to the lake and Lakeshore.
 - (g) If re-development is occurring within the Lakeshore Protection Zone and the zone contained little or no native vegetation, or if it had grandfathered lawn or non-native vegetation prior to construction, once the grandfathered or non-native vegetation is altered or removed, it must be replaced with native vegetation.
 - (h) Slopes greater than 25 percent shall retain existing vegetation to the greatest extent possible.
 - (i) Lakeshore Protection Zones containing Woody Draws and Streamside Riparian Areas shall retain existing vegetation to the greatest extent possible.
- (2) New and Replacement Vegetation/Material and Soils:
- (a) New and replacement plants introduced into the Lakeshore Protection Zone must be native to the respective surrounding area or be cultivars whose form, color, texture, and character approximates that of natives.¹
 - (b) Compacted soils may be cultivated or tilled by hand-tools, or solarized, in preparation for the planting of seeds and vegetation, provided proper Best Management Practices (BMPs) are implemented.
 - (c) New certified weed-free topsoil in the Lakeshore Protection Zone may be allowed in quantities necessary for establishing new plantings.
 - (d) Soils around plantings shall be secured through the use of such methods as certified weed-free mulch, straw, mats, etc. until they become stabilized.

¹ **Note: tip box in proposed regulations:** More information regarding native vegetation may be obtained by contacting the Lake County Planning Department, the local Conservation District or Montana State University Extension Office, or the Montana Native Plant Society Flathead Chapter. Although native vegetation may require a longer time period to mature, once established it saves time and money by eliminating or significantly reducing maintenance and watering. Native vegetation's deeper root zones help to effectively stabilize soils and minimize erosion, and they are less likely to become invasive.

(e) If mulches are used, they must be of a sufficient size to be held in place.

(H) Vegetation Management Plans:

- (1) All applications involving work or alterations in the Lakeshore Protection Zone that will install, disturb, alter, remove, or destroy vegetation located within the Lakeshore Protection Zone shall include a Vegetation Management Plan for review, modification, and approval by Lake County.
- (2) Landowners who wish to establish a Vegetation Management Plan to allow maintenance activities without new permits may also submit a Vegetation Management Plan for review and approval by Lake County to allow such activities in accordance with this Section.
- (3) All Vegetation Management Plans must meet the following requirements:
 - (a) Any Vegetation Management Plan must be specific to the individual property and include the following:
 1. A description of existing and planned vegetation and the specific methods by which:
 - a. vegetation will be preserved, protected, and maintained;
 - b. the planned beneficial vegetation will be installed, established, promoted, and maintained; and
 - c. any existing beneficial and non-beneficial or non-desirable vegetation is to be removed, and if necessary or applicable, replaced with beneficial vegetation.
 2. Scaled sketches showing the locations, sizes, and densities of the different types of vegetation, sloped areas, and locations of all storm water runoff control measures, erosion control methods, and other Best Management Practices (BMPs) to demonstrate compliance with the vegetation requirements.
 3. Specific measures for vegetation management within the Lakeshore Protection Zone to promote the Policy outlined by Sub-Section __-(A), above.
- (4) A Vegetation Management Plan that is reviewed and approved by Lake County constitutes an agreement between Lake County and the landowner, heirs, and assigns, that runs with the land through the time period contemplated or required by the plan. Lake County reserves the right to enforce the terms of the approved and agreed upon plan.

Note: new definitions to consider:

Aquatic vegetation:

A plant or plants that grow in the lake, whether anchored to the lake bottom, or floating without anchorage. Aquatic vegetation may be wetlands or entirely aquatic. Aquatic vegetation may be natural, beneficial, or invasive.

Lawn or Grandfathered Lawn:

Areas of vegetation commonly consisting of a mixture or monoculture of grasses such as bluegrass, fescue, or perennial rye that is maintained and periodically mowed for cosmetic, convenience, or recreational purposes. Grandfathered lawns are lawns comprised of non-native grasses that existed prior to the establishment of the 2012 Lakeshore Protection Regulations, or were not allowed by previous versions of the Lakeshore Protection Regulations.

Native plants:

Plants that are native to a specific region prior to European contact and are naturally adapted to that specific region in regards to climate, soils, and hydrology and occur with other native plants in the surrounding area. These plants typically do not require soil additives, frequent watering, chemicals, fertilizers, pesticides, insecticides, fungicides, etc., and some native vegetation may be less attractive to browsing wildlife.

Rain garden:

A shallow depressed area consisting of conditioned soil topped with a layer of mulch or high carbon soil layer and vegetation tolerant of short-term flooding, which is designed to retain, filter, and treat stormwater.

Streamside Riparian Areas:

Areas adjacent to perennial streams that support riparian and woody vegetation.

Vegetated area [of the Lakeshore]:

The required non-constructed areas in the Lakeshore not calculated as “impervious cover” or “constructed area” that may be managed for healthy, diverse vegetation.

Vegetation Management Plan:

A property-specific plan for long-term management of vegetation in and potentially near a Lakeshore Protection Zone. A Vegetation Management Plan that is reviewed and approved by Lake County constitutes an agreement between Lake County and the landowner, heirs, and assigns, that runs with the land through the time period contemplated or required by the plan.

Woody Draws:

Draws located adjacent to a lake that support woody vegetation, such as tall shrub and tree species in small intermittent and ephemeral drainages. The vegetation is a result of higher moisture availability in the drainage than the surrounding area.

Some applicable or potentially applicable definitions from September, 2011 draft section (have not yet been adjusted to account for that work session’s comments):

Constructed Area:

Area covered by any constructed structures or features such as dock, deck, walkway, building roofing, concrete, asphalt, imported flagstone, or otherwise covered by any non-

native material or substance that would not naturally occur within a particular area. Constructed area includes areas such as imported washed-gravel for swimming areas and similar non-natural beaches. Constructed area does not include naturally exposed bedrock. An improvement or ground covering shall not be considered as constructed area if it permits normal precipitation to directly infiltrate the soil typical of the surrounding natural area and allows healthy growth of vegetation native to the immediate vicinity.

Expansion:

Addition to an existing structure; including the alteration of the size, shape, footprint, or aerial extension of a structure.

Impervious:

Not substantially penetrable by water.

Lake:

According to MCA 75-7-202, "Lake" means 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 160 acres for at least 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.

The lakes within Lake County governed by these regulations are Flathead Lake, Swan Lake, and Lake Mary Ronan.

Lake Frontage:

A measurement of the portion of a property that borders on the lake. For the purposes of measurement of typical properties abutting the lake, lake frontage is the straight distance between side property lines at the water's edge. Lake frontage on large properties or properties with highly variable shoreline may be measured in manners that take into account the variable shoreline.

Lakebed:

The ground area covered by water when the lake is at mean annual high water elevation.

Lakeshore:

The perimeter of the lake when it is at its mean high water elevation, including the land within 20 horizontal feet from that high-water elevation.

Lakeshore Protection Zone:

The lake, lakebed, and lakeshore. This area shall include the land area surrounding a lake and adjacent wetlands that is within twenty horizontal feet (20') of the perimeter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation.

Maintenance:

Routine or seasonal work or upkeep performed on an existing structure or facility. To be considered maintenance, work shall not impact the Lakeshore Protection Zone, nor shall the size, shape, character, or nature of the structure be altered. Typically, only hand tools are required for maintenance. Examples of typical maintenance include painting, staining, tightening, adjusting, minor replacement of boards, shingles, broken windows, clean up of debris such as branches and leaves, restacking and repositioning of fallen rock and other natural materials, etc. The addition of walls to a previously open structure is not considered maintenance. Any dredging, filling or excavation is not considered maintenance.

Mean Annual High Water Elevation:

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

New Construction:

Structures for which construction, substantial improvement, or alteration commences on or after the effective date of these regulations.

Nonconforming Structure or Use:

A structure, use or activity which was lawful prior to the adoption, revision, or amendment of these regulations but which fails by reason of such adoption, revision, or amendment, to conform to the present requirements of the regulations.

Permit (a.k.a. Lakeshore Construction Permit):

A document issued by Lake County signifying that project plans together with any specified “Conditions of Approval” are in compliance with the “Policy Criteria for Issuance of a Permit” (Section 5-___).

Reconstruction:

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

Remodel:

Work involving renovation of an existing facility resulting in a change that is equal to or less than fifty percent (50%) of the existing structure’s replacement value.

Repair:

To restore an existing facility to a sound condition by replacing one or more parts of the facility (excluding foundations and roof systems) utilizing the same or substantially similar construction materials and maintaining the exact design, size and configuration as was original prior to repair. Replacement of a structure’s foundation or roof system does not constitute repair.

Shoreline:

The interface between the lake at any given time and the lakeshore.

Structure:

Anything constructed or built, any edifice or building of any kind, or any piece of work artificially built, molded, or composed of parts joined together in some definite or purposeful manner, which requires location on the ground or is attached to something having a location on the ground.

Variance:

An exception to or relief from these regulations granted by the governing body.

Variance—Major:

A variance granted for exemption to violations of “Policy Criteria for Issuance of a Permit” outlined in Section 5-1.

Variance-Minor:

A variance granted for a slight deviation from the “General Construction Requirements” outlined in Section 5-2.

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

Work:

Any activity performed by people or machine that temporarily or permanently alters, impacts or modifies the current, course or cross-sectional area of the Lakeshore Protection Zone or a structure within the Lakeshore Protection Zone.