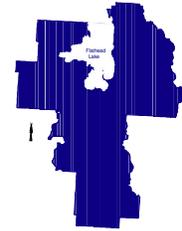


**LAKE COUNTY**  
**UPPER WEST SHORE**  
**ZONING DISTRICT & REGULATIONS**



**Effective June 27, 1994**  
**Created 1994 Resolution 979, Amended 1995 Resolution 95-69,**  
**Amended 2000 Resolution 00-09,**  
**Boundary amended 2000 Resolution 00-57, Amended 2006 Resolution 06-42**  
**Amended 2013, Resolution # 13-18**  
**Amended 2013, Resolution #13-29**

**I. Purpose**

The purpose of the zoning is to help guide growth and development in the area, to maintain the rural character of the area and allow for development that is consistent and compatible with the existing pattern of growth, to protect and enhance property values and amenities, and to protect and enhance the natural environment, water quality, and wildlife.

**II. Boundary**

The District consists of all the land within Township 25 North, Range 20 West, and Sections 13 and 24 of Township 25 North, Range 21 West P.M.M., Lake County, Montana, except for any islands within that area. In general terms, the border on the north is the county line and it extends to the south boundaries of Sections 31 and 32, which is just north of Mellow Cove Lane. The east boundary is Flathead Lake. The west boundary is the range line between Range 20 and Range 21, except for Sections 13 and 24 of Range 21, which are included in the District. These regulations shall apply to all lands within the District under the jurisdiction of Lake County.

**III. Permit Requirements**

**A. Zoning Conformance**

Prior to construction of any building or impervious surface area, modification or change of any land use or building within the Zoning District, the landowner shall obtain a zoning conformance permit from the Lake County Planning Department to assure compliance with the Zoning Regulations. Any construction within 20 feet of the high water mark of Flathead Lake is regulated by the Lakeshore Protection Regulations. Construction in the area between 20 feet and 50 feet of the high water mark must be lake related and shall adhere to the development guidelines of the Lakeshore Protection Regulations. No permit shall be required for structures less than 100 square feet in size, provided they are not located within 50 feet of the high water line of Flathead Lake, and provided they meet all requirements of the Zoning District.

**1. Applicability**

- a. Covenants for individual properties may provide more restrictive development and use requirements. In the event that covenants are more restrictive than the zoning requirements, the property owner/developer shall demonstrate the governing homeowners association, or a majority of the landowners, have

approved of the proposed plans and the covenants shall be updated to meet the proposal, prior to the issuance of a Zoning Conformance or similar permit.

- b. Property owners should be aware that other local and state laws may apply to the use and/or development of their property. It is the responsibility of the property owner and their hired contractors to obtain all required state and local permits. For information about permit requirements, the property owners should contact:
  - 1. The Lake County Environmental Health department for compliance with septic, well, and stormwater management rules and regulations.
  - 2. The Lake County Planning Department for compliance with the Zoning and Lakeshore Protection Regulations.
  - 3. The Montana Department of Commerce for compliance with state building, electrical, plumbing and mechanical codes.

## **B. Conditional Use**

In order to protect the public welfare and guarantee conformance with the intended spirit of the Zoning Regulations, permits are required for all conditional uses upon review and approval by the Lake County Board of Adjustment, which may condition approval of any use subject to reasonable measures deemed to mitigate associated negative impacts. In addition to the development standards defined in this document, the Board of Adjustment shall review and evaluate each conditional use request for the unique and special characteristics of the proposed use with respect to their location, design, size, method of operation, traffic circulation and requirements for public facilities.

## **C. Existing Uses**

Nothing in this regulation shall be construed to prevent or prohibit the use of any legally existing building, structure, or lot at the time of adoption of this ordinance. An existing use of property is a specific use of a building, structure or premises which was ongoing at the time of adoption of these regulations (June 27, 1994). Such a use is permitted, however it is considered a nonconforming use if it does not comply with these regulations and therefore, the degree of non-conformity shall not be expanded.

The right to such a use shall terminate: 1) after the cessation of that use for a period of eighteen months after (voluntary or otherwise), or 2) at the time the structure(s) housing such use is destroyed. If fire or other natural disaster destroys a non-conforming structure or use, the replacing structure must meet the terms of these zoning regulations. The Board of Adjustment may grant a variance if a literal enforcement of this regulation will result in unnecessary hardship.

## **IV. District Regulations**

### **A. Permitted Uses**

- 1. Single family residential, including manufactured homes
- 2. One guest house per lot, which is not less than 200 square feet or more than 1,000

- square feet of living area. Guest house must be in compliance with Section IV.B.
3. State-licensed short-term vacation rental of the property as a whole; no independent rental or habitation of more than one living unit shall be allowed without approval of the governing body.
  4. Agricultural and forestry operations
  5. Impervious surface area covering up to 29 percent of the buildable area of a lot

## **B. Structures**

1. Setbacks from foundation walls, and all extensions of the house including eaves, attached decks, walkways over 5 feet in width and patios  
The required setback for structures shall be:
  - a. 50 feet from high water mark of Flathead Lake that complies with Section IV.E.
  - b. 20 feet from any public road (right-of-way or driving surface, whichever is greater).
  - c. 20 feet from property lines, except for lots with an average width less than 200 feet the setback shall be 10% of the lot width, provided that no structure shall be located closer than 10 feet to a property line.
2. Accessory structures shall meet all setback requirements except as described below.
3. Only lake related structures are permitted within the Lakeshore Protection Zone, which is defined as the area within 20 feet landward from the high water mark. All work in this Zone is governed by the Lake County Lakeshore Protection Regulations.
4. Structures height shall not exceed 30 feet in average height as measured from the natural grade.
5. Structures shall not be located on slopes that exceed 25 percent. Structures, for the purpose of this restriction, shall not include stairways, walkways, or other access related improvements.
6. A reasonable variance may be granted to allow construction of a residence on lots that exist at the time zoning is adopted which cannot meet the setback requirements, provided that no residence shall be closer than 20 feet to the lake and that adequate storm drainage is assured.
7. A reasonable variance may be granted to allow construction of a residence on lots that exist at the time zoning was adopted which cannot meet the requirements in IV.B.5, "That structures shall not be located on slopes which exceed 25%", provided a written plan is submitted for approval that includes:

- a. a slope map and a cross sectional view of the building site that shows the natural grade, the grade after development and areas where the depth to bedrock is less than ten feet (10'); and
  - b. a proposal which demonstrates the visibility of the proposed development (structures, roads, streets or driveways) shall be minimized and shall have the least visual impact when viewed from Highway 93, and Flathead Lake. Natural features such as vegetation, ridges and knolls, rock outcrops, draws and drainage swales shall be preserved. Structures shall remain below the skyline and sited in such a manner so as not to create a silhouette against the sky as viewed from said reference locations.
  - c. a design in which the orientation and citing of the structure keeps grading and site preparation to a minimum; and
  - d. a grading plan that addresses stormwater drainage and management, during and after excavation and construction, slope stabilization and revegetation which includes detailed timeline for improvements;
  - e. Written comment from a licensed professional engineer that states the plan is compatible with the topography, soils, geology, hydrology and other physical conditions at the proposed site; and
  - f. Written comment from the local Fire Department that the plans mitigate concerns regarding fire protection and access.
8. Satellite dish antennae larger than 3 feet in diameter shall be located a minimum of 100 feet from the Lake and the setbacks in section IV.B.1.
  9. Existing residential structures that do not meet the setback requirements may:
    - a. Be rebuilt in a location that meets the terms of these regulations.
    - b. If fire or other natural disaster destroys a non-conforming structure or use, the replacing structure must meet the terms of these zoning regulations, but The Board of Adjustment may grant a variance if a literal enforcement of this regulation will result in unnecessary hardship.

### **C. Storm Drainage**

1. All development shall demonstrate that any storm run-off that results from physical improvement of the property will be managed without causing damage or harm to the natural environment, water quality, or adjacent property.
2. Driveways shall be held to the same standard as other development.
3. A storm water management plan, written by a registered licensed professional engineer or other qualified licensed professional, may be required by the zoning administrator prior to the granting of a permit or variance in order to demonstrate that the development will not result in the deterioration of water quality and to the properties adjacent to the subject property. The zoning administrator will

consider such factors as slope, soil type, vegetative cover, the percentage of impervious surface area, and the intensity of the proposed development project when determining if a management plan is required and assessing a plan's adequacy.

4. Stormwater cannot be channeled to bypass the buffer strip.

#### **D. Outdoor Lighting**

All nighttime outdoor lighting shall be directed downward and be shielded to prevent glare beyond the boundary of the subject property.

#### **E. Buffer Strip Design:**

##### **1. Intent:**

The intent of this section is to provide for the development of shoreline properties while maintaining the chemical, physical, and biological integrity of Flathead Lake. This section is intended to complement the Lake County Lakeshore Protection Regulations, which govern development from the highwater mark of Flathead Lake to 20 horizontal feet inland.

##### **2. Rationale:**

Because vegetative buffer strips have been shown to minimize the soil erosion that results from residential development, contribute organic matter that is a source of food and energy for the aquatic ecosystem, enhance scenic and recreational resources, provide riparian wildlife habitat, and remove pollutants delivered from storm water runoff, the following regulation has been added to the Upper West Shore Zoning Regulations:

A vegetated buffer strip at least 50-foot wide is required of all newly developed and subdivided lakefront properties as of December 2000. The buffer strip shall be located on the waterward side of all impervious surfaces except those governed by the Lake County Lakeshore Protection Regulations, and shall be measured from the highwater mark of Flathead Lake to the closest impervious surface.

##### **3. Procedure:**

A buffer strip design plan, including the different types of vegetation, storm water runoff control measures, and scaled sketches, shall be reviewed as part of the Zoning Conformance Permit process.

##### **4. Vegetation**

A. Buffers shall consist of a mixture of trees, shrubs, native grasses and forest duff/leaf litter. Examples of areas that do not qualify as buffer strips include grass lawns, orchards or landscaped areas where the understory has been modified. (Note: Native vegetation is typically better adapted to area soils, rainfall and temperatures and will require no fertilization and less long-term maintenance than non-native vegetation. It also provides

high quality habitat to native wildlife species.)

B. A diversity of tree species and size classes that are representative of undisturbed forest stands shall be maintained.

C. In order to promote a healthy and effective buffer strip, the clearing of vegetation shall be limited to the following:

1. Removal of dead, windblown, damaged or diseased trees and branches.
2. Replacement of lawns or other modified landscaping with a variety of species and sizes to increase the buffering capacity of the area.
3. Removal of up to one-half of the live trees to improve the scenic view and to minimize fire danger provided that at least 75 percent of the trees  $\geq 8''$  in diameter at breast height are maintained.
4. Removal of 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.
5. Pruning of live tree branches is permitted provided that at least the top two-thirds of an individual tree's canopy is maintained.

D. Areas with a slope of 25 percent or greater are too steep to be effective as a treatment buffer and shall be left undisturbed if fully vegetated. If the area has been modified, restoration of the area by the creation of a buffer strip is encouraged.

## **5. Lake Access**

- A. Footpaths shall not exceed six feet in width.
- B. Footpaths shall not run in a straight line directly to the water. Instead, they should meander and be designed to avoid the channelization of runoff.
- C. Footpaths and boat access ways must include features (e.g., shallow stone trenches) that spread runoff from the hard surface into the vegetated buffer strip without channelizing the runoff, which causes the ground surface to erode.
- D. Boat access shall be seeded or mulched to reduce erosion.

## **6. Permitted Features and Activities:**

Within the buffer strip, permitted features include walking paths, boathouses, boat ramps and boat rail systems, as governed by the Lake County Lakeshore Protection Regulations. Landscaping and the planting of vegetation in the buffer strip is permitted and shall incorporate every feasible step to minimize erosion. Restoring an altered area to a vegetative buffer is encouraged. The clearing of vegetation, as described above, is also permitted.

All vegetative buffers that exist within 50 feet of the highwater mark at the time of the adoption of these regulations shall be managed as vegetative buffer according to these regulations.

**7. Prohibited Activities:**

- A. Except as necessary to access boat ramps and maintain docks and other recreational facilities, all driving of motorized vehicles in the buffer zone is prohibited to prevent soil compaction and erosion.
- B. Except as permitted under the Lake County Lakeshore Protection Regulations, the construction of impervious surfaces is prohibited.
- C. Removing a buffer strip that exists at the time of adoption of this regulation is prohibited.
- D. Removing vegetation that exceeds the stipulations described above is prohibited.

**8. Long-Term Maintenance:**

- A. Buffer strips must be maintained so that channelization of storm water runoff does not occur.
- B. All foot paths and boat ramp accesses must be maintained to minimize erosion. Eroded areas or areas with bare soil shall be seeded or mulched.
- C. Fertilizers, pesticides and herbicides shall not be used in the buffer strip to prevent nutrients and other chemicals from entering Flathead Lake.

**9. Variance:**

A variance from the above regulation may be granted in the following two circumstances:

- A. For those lots created prior to December 2000, the Lake County Board of Adjustment may grant a reasonable variance where compliance would result in unnecessary hardship due to the physical conditions and limitations of the property. However, a variance shall not allow for adverse impacts to the environment.
- B. In order to protect homes from fire danger, the width of the buffer strip may be reduced so that a defensible space around the home may be created and maintained.

**V. Sub-Districts**

Due to the variation in existing land use patterns, the area is divided into Sub-Districts to allow for variable densities and uses.

**A. Sub-District A - Upper Lakeside**

This area includes land on the lakeside of the Highway 93 from the County line to the south end of Deweys Bay.

- 1. New lake front lots shall be a minimum of 1<sup>1</sup>/<sub>2</sub> acres in size and contain 150 feet of lake frontage.
- 2. All other land development off the lake shall not exceed one dwelling unit per 3 acres.
- 3. Conditional Uses:
  - a. Home occupation
  - b. Bed & Breakfast
  - c. Guest House with more than 1,000 square feet of living area.
  - d. Business Signs in compliance with Section VI

- e. Church camp & retreat center
  - f. Impervious surface area covering between 29 and 49 percent of the buildable area of a lot.
  - g. Temporary dwelling
  - h. Disturbance of 500 square feet or more of the natural grade of slopes greater than 25% within 300 feet of the high water mark on lakefront lots
  - i. Disturbance of 2000 square feet or more of the natural grade of slopes greater than 25 % on interior lots
4. Prohibited Uses:
- a. Industrial
  - b. Commercial
  - c. Mobile home park
  - d. Residential multi-family dwelling
  - e. Recreational vehicle park
  - f. Pre-1990 Manufactured Home
  - g. Single wide mobile home
  - h. Impervious surface area covering 49 percent or more of the buildable area on a lot
  - i. Construction or development within an area designated as being subject to a flood or 100-year frequency or as a Federally recognized wetland
  - j. Rental of more than one individual living unit on a property unless the property development meets the required density and the use is reviewed and approved by Lake County as a subdivision for rent or lease.

**B. Sub-District B - Lower Lakeside**

This area includes land on the lakeside of Highway 93 from the south end of Deweys Bay to the south District boundary.

- 1. New lakefront lots shall be a minimum of 1 acre in size and contain 100 feet of frontage.
- 2. All other land development off the lake shall not exceed one dwelling unit per 2 acres.
- 3. Conditional Uses:
  - a. Home occupation
  - b. Bed & Breakfast
  - c. Guest house with more than 1,000 square feet of living area.
  - d. Business Signs in compliance with Section VI
  - e. Church camp & retreat center
  - f. Impervious surface area covering between 29 and 49 percent of the buildable area of a lot
  - g. Temporary dwelling
  - h. Commercial, provided that the proposed use in within 250 feet of the right-of-way for Highway 93 and between the Crescent Bay Lane right-of-way and the Sub-District Boundary at the South end of Dewey's Bay

- i. Disturbance of 500 square feet or more of the natural grade of slopes greater than 25% within 300 feet of the high water mark on lakefront lots
  - j. Disturbance of 2000 square feet or more of the natural grade of slopes greater than 25 % on interior lots
4. Prohibited Uses:
- a. Industrial
  - b. Commercial (except as provided in V.B.3)
  - c. Mobile home park
  - d. Residential multi-family dwelling
  - e. Recreational vehicle park
  - f. Pre-1990 manufactured home
  - g. Single wide mobile home
  - h. Impervious surface area covering 49 percent or more of the buildable area on a lot
  - i. Construction or development within an area designated as being subject to a flood of 100-year frequency or as a Federally recognized wetland
  - j. Rental of more than one individual living unit on a property unless the property development meets the required density and the use is reviewed and approved by Lake County as a subdivision for rent or lease.

**C. Sub-District C - Upper Highway side**

This area includes land on the west side of Highway 93 extending south from the county line to the north and east boundaries of Section 20.

- 1. All land development shall not exceed one dwelling unit per 10 acres.
- 2. Conditional Uses:
  - a. Home occupation
  - b. Bed & Breakfast
  - c. Guest house with more than 1,000 square feet of living area.
  - d. Guest house rental if the property meets density requirement of the subunit  $\pm$  5% prior to construction.
  - e. Business Signs in compliance with Section VI.A
  - f. Single wide mobile home
  - g. Church camps & retreat center
  - h. Disturbance of 2000 square feet or more of the natural grade of slopes greater than 25 %
  - i. Impervious surface area covering between 29 and 49 percent of the buildable area of a lot
  - j. Temporary dwelling
- 3. Prohibited Uses
  - a. Industrial
  - b. Commercial
  - c. Mobile home park
  - d. Residential multi-family

- e. Recreational vehicle park
- f. Impervious surface area covering 49 percent or more of the buildable area on a lot
- g. Construction or development within an area designated as being subject to a flood of 100-year frequency or as a Federally recognized wetland
- h. Rental of more than one individual living unit on a property unless the property development meets the required density and the use is reviewed and approved by Lake County as a subdivision for rent or lease.

**D. Sub-Unit D - Lower Highway side**

This area includes land on the west side of the Highway from the southern boundary of Sub-Unit C to the south District boundary.

1. All land development shall not exceed one dwelling unit per 5 acres.
2. Conditional Uses:
  - a. Home occupation
  - b. Bed & Breakfast
  - c. Guest house with more than 1,000 square feet of living area
  - d. Guest house rental if the property meets density requirement of the subunit± 5% prior to construction.
  - e. Single wide mobile home
  - f. Cottage light industry that employs less than 10 people
  - g. Highway commercial
  - h. Business Signs in compliance with Section VI.A
  - i. Recreational vehicle park
  - j. Conversion of existing recreational vehicle parks to mobile home park (subject to subdivision review)
  - k. Expansion of existing business
  - l. Disturbance of more than 2000 sq feet of the natural grade of slopes greater than 25 % on interior lots
  - m. Impervious surface area covering between 29 and 49 percent of the buildable area of a lot
  - n. Temporary dwelling
3. Prohibited Uses:
  - a. Industrial
  - b. Mobile home park (except as provided in V.D.2.i)
  - c. Residential multi-family dwelling
  - d. Impervious surface area covering 49 percent or more of the buildable area on a lot
  - e. Construction or development within an area designated as being subject to a flood of 100-year frequency or as a federally recognized wetland
  - f. Rental of more than one individual living unit on a property unless the property development meets the required density and the use is reviewed and approved by Lake County as a subdivision for rent or lease.

## **VI. Conditional Uses**

### **A. Signs**

1. New business signs may be allowed along Highway 93 only as a conditional use.
  - a. Detached signs located at a place of business shall not exceed 64 square feet in sign area, or extend more than 15 feet in height above the average elevation of the natural ground level at the site.
  - b. Signs attached to a place of business shall not exceed 64 square feet in sign area, or extend more than 30 feet in height above the average elevation of the natural ground level at the site.
  - c. Signs that are not located at the place of business shall not exceed 16 square feet in sign area, or extend more than 10 feet in height above the average elevation of the natural ground level at the site.
  - d. Signs shall be designed and constructed of materials and colors that blend with the surrounding natural environment, but also maintain visual clarity to convey their message to the public.
  - e. Signs, if illuminated, shall be lighted by continuous, stationary, shielded light sources, directed to illuminate only the sign as to not be obtrusive to adjacent landowners. Signs shall not rotate, move, flash, change or blink, except if utilized by a government agency for public safety or information.
2. Exemptions
  - a. Political signs shall be allowed as a permitted use during campaign seasons, provided they do not exceed 32 square feet in sign area, and are removed within one month after the date of the applicable election.

### **B. Home Occupations**

1. The intent is to prevent the commercialization of a residential area by limiting the floor area and potential impacts resulting from an occasional commercial transaction.
2. The Planning Director shall make the decision as to whether a use is a home occupation under the Zoning Regulations and that decision may be appealed to the Board of Adjustment.
3. A use that is determined to be a home occupation under the terms of the Zoning Regulations may be allowed as a conditional use, and the Board of Adjustment shall consider the following guidelines:
  - a. The use of the residential property for a home occupation must be clearly subordinate to its use for residential purposes.
  - b. The home occupation may be conducted within the residence or an accessory building, but the total floor area, or outdoor storage area used for the home occupation shall not exceed 1200 square feet.
  - c. Minimal traffic shall be generated by the home occupation in greater volumes than would normally be expected in the surrounding neighborhood.
  - d. No equipment or process shall be used in the home occupation which creates

noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property.

- e. Vehicle or equipment repair shall be conducted only in enclosed buildings.
- f. The outside appearance of the building or premises used for the home occupation shall be substantially similar to the appearance of other residential properties in the area.
- g. Outdoor storage associated with the business shall be screened from public view by any effective combination of the placement of buildings, landscaped buffers, and screening fences or walls.
- h. One off-street parking space shall be provided.

### **C. Cottage Light Industry**

- 1. The intent is to allow a small fabrication or processing operation in the area to provide local employment opportunities.
- 2. The Planning Director shall make the decision as to whether a use is a cottage light industry under the Zoning Regulations and that decision may be appealed to the Board of Adjustment.
- 3. A use that is determined to be a cottage light industry under the terms of these Zoning Regulations may be allowed as a conditional use in Sub-District D after a public hearing, and the following guidelines shall be considered by the Board of Adjustment in making a decision:
  - a. The number of employees shall be limited to 10, excluding family members of the landowner of the business.
  - b. The parcel size of the operation shall be a minimum of 5 acres.
  - c. The total floor area of the building(s) used for the operation shall not exceed 10,000 square feet.
  - d. The outside appearance of the building and premises shall blend with the neighborhood to the extent possible.
  - e. Outside storage shall be screened from public view by any effective combination of the placement of buildings, landscaped buffers, and screening fences or walls.
  - f. No equipment or process shall be used in the operation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property, or in greater magnitude than the existing situation off the property.
  - g. Vehicle or equipment repair shall be conducted only in enclosed buildings.
  - h. Off-street parking equal to one space per employee and one space per 1000 square feet of area shall be provided

## **VII. Land division**

All land division shall conform to the requirements of the zoning district regulations

- A. Density Clustering:** The density requirement shall not be construed as a minimum lot size requirement. Development which provides for lot sizes to be less than the density

limitation may be allowed provided that the overall average density of the subject parcel shall not exceed the required density per acre. However, no variation of the minimum lake frontage per lot shall be allowed.

1. Density Bonus: A density bonus allocation may be given for clustering development and committing land in open space, resource use, common area, or parkland. The allocation shall be based upon the percentage of the tract left in open space, as follows:

% of Tract in open space	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>	<u>90</u>
% Increase in units/acre	<u>05</u>	<u>10</u>	<u>15</u>	<u>20</u>	<u>25</u>	<u>30</u>	<u>35</u>	<u>40</u>

2. Density Transfers: Landowners in a Sub-District may transfer rights for the allowable dwelling units per acre to other lands they own within the Sub-District, provided that the overall density between the parcels included in the transfers does not exceed the maximum density allowed within the Sub-District, and provided a deed restriction conservation easement or similar method is used to preserve the overall density that is allowable between the parcels.
3. All land division that proposes to utilize density clustering shall be subject to board of adjustment approval prior to subdivision review to determine whether the resulting development is compatible with surrounding land uses and the neighborhood.

#### **B. Common Lake Access**

1. For development of secondary lots or living units which include common lake access, the common lake access lot shall be a minimum of one acre in size and contain a minimum of 100 feet of lakefront. An additional 10 feet of lakefront shall be added for each dwelling unit in excess of five.

### **VIII. Administration**

#### **A. Interpretation**

The Lake County Planning Director shall be designated as the Zoning Administrator with the responsibility to implement the Zoning Regulations. Any interpretation or decision by the zoning administrator concerning the Zoning District and Regulations may be appealed to the Board of Adjustment by any landowner within the District.

#### **B. Permit Requirements**

A permit shall be required for any land development and building construction of permanent structures greater than 100 square feet. These regulations establish two kinds of permits:

1. Zoning Conformance Permit: A permit shall be required for any land use or

building activity listed as “permitted” in these regulations prior to any work on the property to develop the proposed use.

- a. An application for all zoning conformance permits must be complete and submitted with the established review fee to the Lake County Planning Department by the owner or one owner of interest of the subject property.
- b. The applicant shall stake the exterior boundaries of any proposed structure at the time the application is submitted.
- c. Incomplete applications will be returned.

2. Conditional Use Permit: A conditional use permit shall be required for any land use or building activity listed as a “conditional use” in these regulations prior to any work on the property to develop the proposed use.

- a. An application for all conditional use permits must be complete and shall be submitted with the established review fee to the Lake County Planning Department by the owner or one owner of interest of the subject property twenty eight (28) days prior to a regularly scheduled meeting of the Board of Adjustment.
- b. At the Administrator's discretion, based on appropriate findings, a conditional use permit application may be referred to a technical expert for review. The technical expert shall be a party agreed upon by the Zoning Administrator and the applicant. Such review shall be at the applicant's expense.
- c. The applicant shall stake the exterior boundaries of any proposed structure. This staking shall be performed two (2) weeks prior to the public hearing for the conditional use permit.
- d. In addition to the application, the following information shall be submitted:
  1. A dimensional plan of the proposed site with a scale of 1 inch equal to 20 feet showing the location of all buildings, parking and loading area, traffic access and traffic circulation, open spaces, easements, existing and proposed grade, landscaping, utilities, water and sewer services, signs, a rendering of building exteriors, a stormwater management plan, a letter of review and comment from the local fire department regarding the proposal, and such other information as the Zoning Administrator may require.
  2. A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, glare, on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district and the relationship of the proposed use to the intent of the Zoning District.
- e. Standards for evaluation: The Board of Adjustment shall review the particular facts and circumstances of each proposed conditional use according to the following standards and shall find adequate evidence showing that such use at the proposed location:
  1. Constitutes a conditional use as established for the applicable zoning

- district;
2. Is in accordance with the general objectives or with any specific objective of the Zoning District;
  3. Is designed, constructed, operated and maintained to be harmonious with the existing or intended character of the general vicinity and will not change the essential character of the same area;
  4. Is not hazardous or disturbing to existing or future neighboring uses;
  5. Is served adequately by existing or proposed public facilities and services such as roadways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer; or the persons responsible for the proposed use shall be able to provide any such services adequately;
  6. Does not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
  7. Does not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water pollution, hazardous materials or safety hazards; and
  8. Provides vehicular approaches to the property which shall be designed as not to create an interference with traffic on surrounding public thoroughfares.
3. Hearing Notices: The Zoning Administrator shall place notice of the proposal in the local newspaper and shall notify by mail all adjoining property owners within fourteen (14) days of the Board of Adjustment Hearing on the application.

### **C. Appeals, and Variances**

General Requirements: An application for all variance requests and appeals shall be obtained from the Lake County Planning Department, completed and submitted by at least one owner of interest of the subject property not later than 28 days prior to a regularly scheduled meeting of the Board of Adjustment. The applications shall be accompanied by a fee in the amount set by the Lake County Board of County Commissioners.

1. Appeal: A person may file an appeal when aggrieved by a decision or interpretation of the zoning administrator by delivering a notice of the appeal to the zoning administrator within 28 days of the date of the decision being challenged.
  - a. The Zoning Administrator shall notify the Board of Adjustment of the appeal and deliver the case file to the board of adjustment at least seven (7) calendar days prior to the next regularly scheduled meeting.
  - b. The Board shall either affirm or reverse the decision of the administrator. The decision shall be in writing and contain the basis for the decision on each appeal, and a detailed summary of the facts and basis supporting the

determination.

- c. A person aggrieved by a decision of the board of adjustment may file an appeal with a court of record as provided by law within thirty (30) days of date of the decision by the board.
2. Variance: In addition to the application, the following information shall be submitted:
    - a. A plan of the site for the variance proposal addressing all elements necessary to evaluate the request. These may include location of buildings, parking and loading area, traffic access and traffic circulation, open spaces, easements, existing and proposed grade, landscaping, utilities, water and sewer services, signs, stormwater management plan, and such other information as the Zoning Administrator may require.
    - b. A narrative statement discussing the proposed use, the hardship peculiar to the property, and how the request is the minimum means to alleviate the hardship. It should also evaluate the effects of the proposal on neighboring properties and the public, which includes consideration of the compatibility of the proposal with other properties in the district and the relationship of the proposed use to the intent of the Zoning District.
    - c. Standards for evaluation
      1. Hardship: Certain circumstances exist or arise wherein an unnecessary hardship is created through strict adherence to the provisions of these regulations. There is hereinafter provided provisions for the granting of a variance from the provisions of these regulations, so that the public welfare is secured and substantial justice can be done to those so affected.
      2. Review: The Board shall review the particular facts and circumstances of each proposed variance. Findings are required to be made by the board for approval of a variance. No variance shall be granted unless the board finds all the following conditions are met or found to be not pertinent to the particular case:
        - a. Strict compliance with the terms of these regulations will limit the reasonable use of the property; and deprive the applicant of rights enjoyed by other properties similarly situated in the district.
        - b. The hardship is the result of lot size, shape, topography or other circumstances over which the applicant has no control.
        - c. The hardship is peculiar to the applicant's property.
        - d. The hardship was not created by the applicant.
        - e. The hardship is not economic (when a reasonable or viable alternative exists).
        - f. Granting the variance will not adversely affect the neighboring properties or the public.
        - g. The variance requested is the minimum variance which will alleviate the hardship.

3. Hearing Notices

The Zoning Administrator shall place notice of the variance proposal or appeal in the local newspaper and written notice shall be sent by regular mail to all landowners adjoining the property to which the conditional use is proposed within 14 days of the Board of Adjustment hearing.

**D. Grievance**

An aggrieved landowner, within the district, may appeal the decision of the Zoning Administrator to the Board of Adjustment or a decision of the Board of Adjustment to a Court of Record provided that the appeal is filed in 30 days or less of the issuance of the decision to be contested.

**E. Violation**

Where the administrator finds any building or structure is erected, constructed, reconstructed, altered, or converted, or any building or structure of land is used in violation of this Regulation, or a person is violating any of the provisions within the zoning district regulations, a notice of non-compliance shall be issued in writing to the person responsible for such violations, as well as the property owner. The notice of violations shall indicate the nature of the violation and ordering the action necessary to correct it. The notices shall also order discontinuance of illegal buildings or structures or of illegal additions, alterations, or structural changes.

If the person in violation chooses to appeal the notice of non-compliance he may file an appeal with the Board of Adjustment as set forth in this Section C. If the party in violation does not comply with the notice within 20 days, the Administrator shall file a complaint with the Board of Adjustment. If the party in violation does not comply with the notice within thirty days or file an appeal with the Board of Adjustment within such a period, the Administrator shall forward the notice of non-compliance to the Lake County Attorney.

The County Attorney may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, or use to restrain, correct, or abate such violation, to prevent occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. A violation of the Zoning Regulations is a misdemeanor and shall be punishable by a fine not exceeding \$500.00 or imprisonment in the county jail not exceeding 6 months or both.

**IX. Amendment**

**A. Mandatory Review**

The Zoning Regulations shall be reviewed by the Lake County Planning Board in the fifth and tenth year of each decade. The Planning Board shall conduct a public hearing and submit a written finding to the Board of Commissioners which addresses the

applicability of the zoning regulations to the current land use, development, social, economic, and environmental situation in the district.

## **B. Amendment Procedure**

The zoning regulations may be amended in whole or in part by the affirmative vote of the Board of Lake County Commissioners after a public hearing is held in accordance with 76-2-205 MCA. A proposal to amend the zoning may be initiated by any landowner within the district, the Lake County Planning Board, or Planning Department staff. However, prior to taking any action to amend the regulations the Commissioners shall solicit a recommendation on the proposed action from the Lake County Planning Board. When considering an application for amendment to the provisions of these regulations, the Planning Board and the Board of Lake County Commissioners shall be guided by and consider the criteria identified in state law, Title 76, Chapter 2 MCA.

### 1. Procedures:

- a) Requests to amend the text of these regulations may be initiated by providing the Zoning Administrator with the proposed amendment and the applicable review fee at least thirty (30) days prior to the next regularly scheduled Planning Board hearing at which the proposed amendment would be heard.
- b) If the request for amendment is being made by a landowner, the landowner of record or his/her authorized agent shall sign the application for amendment.
- c) The applicant shall provide the names and addresses of all property owners adjoining the proposed amendment area.
- d) After acceptance of the completed application by the Zoning Administrator, the Planning staff shall set a public hearing date and publish notice in compliance with state law.
- e) The Planning Board shall consider the application and make a recommendation to the Board of Lake County Commissioners to grant, amend or deny the application.
- f) Upon receipt of the recommendation of the Planning Board, the Board of Lake County Commissioners shall render a decision to grant, amend or deny the requested amendment based on the results of the public input, the staff report, and findings of the Planning Board.
- g) Should the proposed amendment be adopted by resolution in compliance with state law, the Zoning Administrator shall incorporate the amendment into the appropriate section or paragraph of these regulations.
- h) In the event that an application to amend these regulations is denied by the Board of Lake County Commissioners or the application for amendment is withdrawn after the hearing of the Planning Board, the Zoning Administrator shall have the authority to refuse to accept another application for any similar amendment within one year from the date of hearing of the previous application before the board.

2. Amendments To Official Zoning Map (Rezoning): An amendment proposing changes in the official zoning map shall follow substantially the same procedures as provided for above, with the following additional requirements to be adhered to:
  - a) If property outside the zoning district is to be annexed into the district, it shall be adjoining and all proposals shall be compatible with the existing sub-district of the zoned property.
  - b) In the event that an application filed by a real property owner in the area involved includes any property other than that owned by the applicant, then before the application will be accepted for processing, a petition in favor of the request signed by the real property owners representing at least sixty five percent (65%) of the land area to be included in the application must be submitted. The petition shall bear the property owners signatures and addresses, the legal description and land area of each property represented in the petition, the total land area represented by the petition, and the total land area of individual properties included in the application.
  - c) In the event that the Board of Lake County Commissioners grants the application to amend or rezone, they shall notify the Zoning Administrator of their action and he/she shall be responsible for updating the official zoning map. The updating shall include the posting on the face of the official zoning map the date and the number of the resolution or ordinance amending the map.
  - d) In the event that an application to amend (rezone) is denied by the Board of Lake County Commissioners or that the application is withdrawn after the Planning Board hearing, the zoning administrator shall have the authority to refuse to accept another application for any similar amendment within one year from the date of the hearing of the previous application before the board.

## **X. Definitions**

### **A. Agricultural Use**

Any management of any land for agriculture: raising of cows, horses, pigs, poultry, and other livestock: forestry: horticulture or orchards: including the sale of products grown or raised directly on such land: and including the construction, alteration or maintenance of agricultural buildings, roads, drainage systems, irrigation systems, farm ponds, and fish ponds.

### **B. Average Building Height**

The vertical distance of a structure is computed by determining the average of the highest point of each major side of a structure. The highest point on each major side shall be measured from the average ground elevation to the highest point of the structure. For the purposes of these regulations, all structures will have a maximum of four sides. The highest point shall be measured from the top of the highest component of each major side to the average ground elevation along that side. The highest point does not include

- typical extensions above a roofline such as chimneys or antennas. The ground elevation for this purpose shall be measured from the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of building the structure.
- C. **Bed & Breakfast**  
A single family dwelling containing individual sleeping rooms without kitchen facilities which is operated by the owners who reside on the premises for the purpose of providing accommodations to short term travelers . A maximum of five (5) guest rooms may be provided.
  - D. **Buildable Area**  
That portion of a lot which meets the setback requirements of these regulations has less than a 25% slope and upon which a building may be lawfully constructed.
  - E. **Church Camp (See Retreat Center)**
  - F. **Commercial Use**  
Any use involving the sale, rental, or distribution of goods, services, or commodities, either retail or wholesale, or the provision of recreation facilities or activities.
  - G. **Conditional Use**  
A use that may be allowed by the Board of Adjustment, after a public hearing, and upon finding that it is compatible with surrounding land uses and complies with the standards and the purpose of these regulations. The Board of Adjustment may prescribe conditions for such use.
  - H. **Cottage Light Industry**  
A small fabrication or processing operation that may be allowed under Section VI of these regulations.
  - I. **Destroy**  
A building/structure or nonconforming use is considered destroyed if greater than 60% of the original floor area that existed at the time of damage is deteriorated by the destructive action.
  - J. **Dwelling Unit**  
Any structure, building or portion thereof within a larger structure, which is intended or designed for human occupancy and/or use and is supplied with water by a piped system.
  - K. **Guest House**  
An attached or detached accessory building designed for occupancy on a short term basis by guests of the occupants of the primary residence. Guest houses shall not exceed one

per tract. A guest house shall not be utilized for sale purposes, but may be rented or leased if the dwelling unit density of the subunit is not exceeded prior to addition of the guest house, and the use is reviewed and approved by Lake County as a subdivision for rent or lease. Guest houses permitted on a property which exceeds the allowable dwelling unit density prior to addition of the guest house shall not be rented.

L. High Water Mark

For the purposes of these regulations, the Zoning Administrator shall determine the approximate location of the high water mark by a visual identification of coloration and debris along the shoreline caused by standing water.

M. Home Occupation

Any occupation conducted entirely within a residence by the occupants thereof, which activity is clearly incidental to the use of said residence as a dwelling and does not change the residential character thereof, is conducted in such a manner as to not give any outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term, and does not infringe upon the rights of neighboring residents to enjoy a peaceful occupancy of their homes.

N. Impervious Surface Area

The part of the buildable portion of a lot that is covered with man made improvements. This area includes, but is not limited to, such items as a house, garage, shed, decks, and hard surfaced driveways and parking areas.

O. Industrial Use

Any manufacturing, production, or assembly of goods or materials, including any on-site waste disposal area directly associated with an industrial use. This term does not include mineral extractions. This term includes junkyards and similar facilities or uses. This term does not include manufacturing, production, or assembly that may be allowed as a conditional use under home occupation, commercial or cottage light industry.

P. Legally Existing Use

The use is in full compliance with all applicable laws, rules, and regulations, including but not limited to possession of and compliance with any permit, license, or other approval required under Federal, State, or Local regulations.

Q. 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. Lake Frontage is measured at the high water mark.

R. Lakeshore Protection Zone

The lake, lakebed and the land area which is within twenty (20) horizontal feet of the perimeter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation. All work in this area requires a Lakeshore Construction Permit.

S. Manufactured Home

Homes that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site built homes and are transported to the site for final assembly on a permanent foundation. The term does not include mobile homes which means a detached residential dwelling unit which may consist of two or more sections fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation.

T. Mobile Home

Any structure that is transportable in one or more sections, and which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation.

U. Mobile Home Parks

Any parcel of land under single or undivided ownership which is designed and improved for the placement of two or more mobile home units.

V. Natural Grade

The elevation of the ground surface in its natural state before man made alterations including but not limited to stripping, cutting, and filling.

W. Nonconforming Use

A lawful use of a building, other structure or land, which predated the adoption of the zoning use regulations now in effect, and which would not be a use authorized in the district designation currently applied to that site.

X. Primary Residence

The permanent or main residential dwelling on a property zoned for single family residential use.

Y. Prohibited Use

A use that is not permitted within the Zoning District. A property owner cannot be granted a variance for a prohibited use.

Z. Residential Single Family Dwelling

Any building containing one dwelling unit, containing facilities for cooking, living, and sleeping, which is designed for permanent occupancy by one family.

AA. Residential Multi-Family Dwelling

Any apartment, townhouse, condominium, or similar building, including the conversion of an existing single family dwelling, designed for occupancy by more than one family in separate living quarters.

BB. Recreational Vehicle Campground

A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers, or automobiles for transient dwelling purposes.

CC. Retreat Center (Church Camp)

Any area or tract of land containing buildings and accessory uses that are intended to provide people with a common pursuit in a quiet location for seclusion.

(Examples of land uses that qualify under this definition are a treatment facility for health purposes, and educational or religious facility, or an executive meeting facility. Examples of land uses that do not qualify as a retreat center under this definition are hotels, motels, and commercial resorts.)

DD. Short Term

On a basis less than 30-days.

EE. Slope

The degree of deviation of a surface from horizontal measured from the natural grade. For the purposes of these regulations, slope is expressed in percent. Slope can be calculated in percent by dividing the vertical distance by the horizontal distance of the natural grade beneath the improvements proposed.

FF. Temporary Dwelling

(i) Establishment of a travel type or single wide mobile home for a construction period not to exceed two (2) calendar years

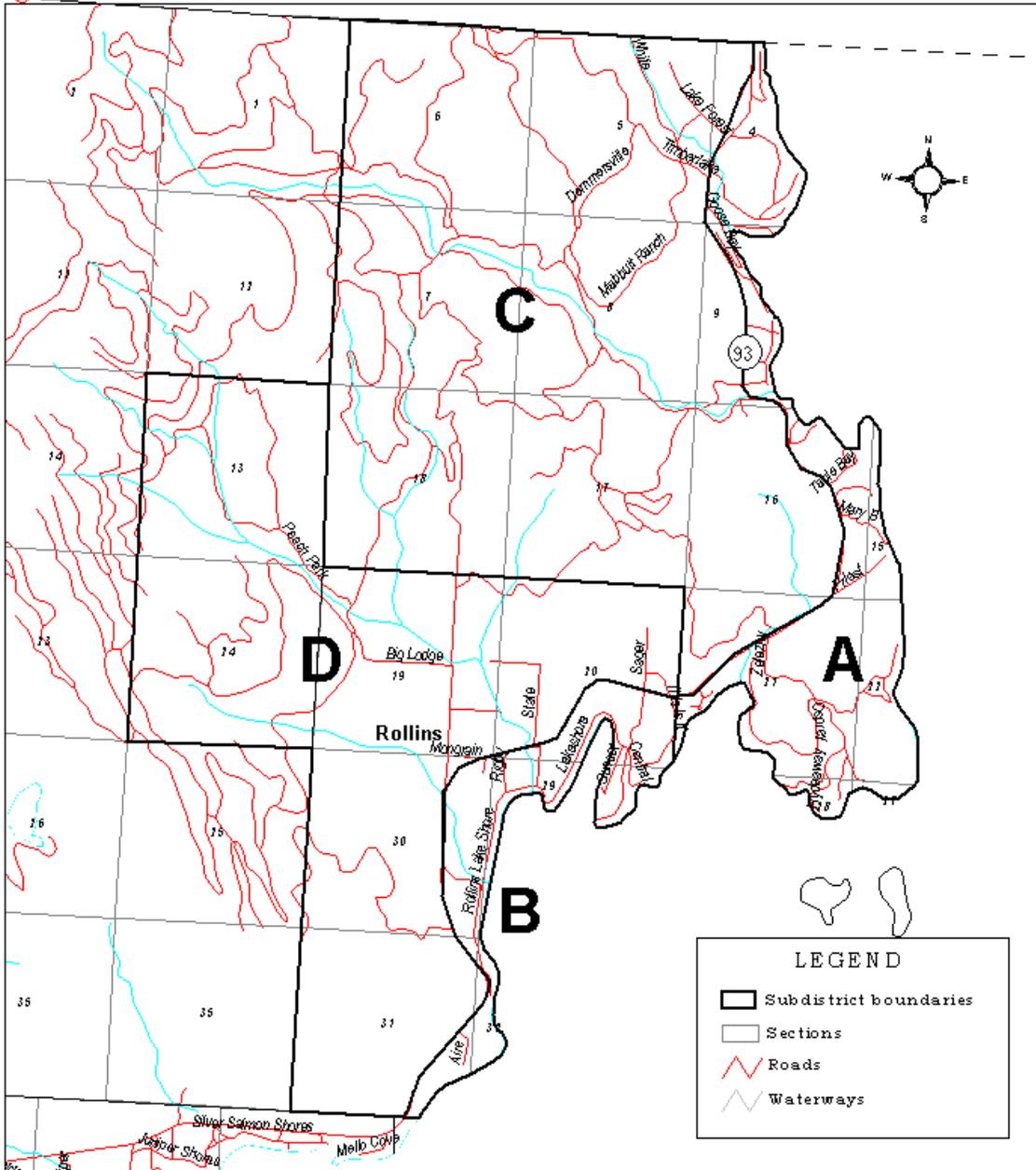
(ii) A temporary structure may be used on a seasonal basis provided that the structure shall not remain on the lot for more than five (5) months. The temporary structure shall be removed from the lot for a period of at least 30 days in order to activate a new 5-month period.

GG. Vacation Rental

Rental of the property and associated living units to one entity on a basis less than 30 days. All short-term rentals must obtain a public accommodation license from the State of Montana.

# Upper West Shore Zoning District Lake County, MT

Located in  
Township 25 North  
Range 20 West



### LEGEND

- Subdistrict boundaries
- Sections
- / Roads
- ~ Waterways

1 0 1 2 Miles

Scale 1:50,000  
Lambert Projection

Lake Co. Plat Dept.  
Reviewed 3/2/16/aw/planning  
10/11/2000