



December 5, 2013
Letter #2013-119

Jeff Hagener
Director
Montana Fish, Wildlife & Parks
P.O. Box 200701
Helena, MT 59620-0701

Dear Mr. Hagener:

On Monday, November 4, 2013, the Whitefish City Council passed Resolution No. 13-34 entitled "A Resolution of the City Council of the City of Whitefish, Montana, to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone."

I am enclosing a copy of that Resolution No. 13-34 along with this letter and some other documentation along with the City of Whitefish's petition to the Montana Fish and Wildlife Commission to designate a portion of the Whitefish River for use only by manual powered watercraft and electric motors. In support of this petition, I am enclosing the following documents:

1. Exhibit A – Copy of Resolution No. 13-34.
2. Exhibit B - Two maps showing the limits of the proposed restricted waterway, from the railroad trestle south of the Whitefish Lake outlet to JP Road.
3. Exhibit C - Minutes of the November 4, 2013 City Council meeting with the public hearing and City Council deliberations on the matter and the City Council vote.
4. Exhibit D - Minutes of the September 3, 2013 City Council meeting with the public hearing and City Council deliberations on the matter.

5. Exhibit E – document from City Councilman Richard Hildner, the sponsor of the request to the City Council, providing a timeline and history of the issue.
6. Exhibit F – document from City Councilman Richard Hildner describing the issue and the public safety and environmental or riparian need for this additional restriction.
7. Exhibit G – pictures demonstrating the hazards posed by jet skis and internal combustion engine powered watercraft on Whitefish River.
8. Exhibit H – pictures demonstrating bank erosion along the Whitefish River despite the current no-wake regulation.
9. Exhibit I – letters submitted from the public for the public hearing on November 4, 2013.

Please let me know if you or the Commission have any questions on this proposal or if there are additional forms or documents we need to provide. Also, please let us know if there is a hearing on this proposal scheduled before the Commission that we could be present for and present testimony.

Sincerely,



Chuck Stearns

City Manager

cstearns@cityofwhitefish.org

enclosures

cc: James Satterfield, Regional Supervisor, FWP Region 1 Headquarters,
490 N. Meridian Road, Kalispell, MT 59901
Lee Anderson, Warden Captain, FWP Region 1 Headquarters,
490 N. Meridian Road, Kalispell, MT 59901
Mayor and City Council, City of Whitefish
Mary VanBuskirk, City Attorney

**BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA
FISH AND WILDLIFE COMMISSION**

**In the matter of the
Amendment to ARM §12.11.645
adding the limitation on the use of
internal combustion boat motors on
that portion of the Whitefish River
from the BNSF trestle south of the
Whitefish Lake outlet to the bridge
on JP Road.**

PETITION

TO: All Concerned Persons

1. Petitioner's name and address is:

City of Whitefish
PO Box 158
Whitefish, Montana 59937-0158
Attention: Charles C. Stearns, City Manager
Phone: 406-863-2406
Email: cstearns@cityofwhitefish.org

2. Facts showing the proposed agency action:

Petitioner City of Whitefish, a municipal corporation, files this Petition under ARM §12.11.117, to change the water safety restrictions for a portion of the Whitefish River, namely that portion of the Whitefish River from the BNSF trestle south of the Whitefish Lake outlet to the bridge on JP Road, to manually powered and electric motor powered watercraft only. Petitioner further requests to have the proposed rule change be included on the Montana Fish and Wildlife Commission's agenda.

In 1989, the same portion of the Whitefish River was limited to a no wake speed, as defined in ARM §12.11.101(1), by the Montana Fish, Wildlife and Parks Commission following the Whitefish City Council's petition in response to citizen's safety concerns caused by speeding jet skis and motor boats on the river. ARM §12.11.645.

This Petition is timely because over the past four years the upper reach of the Whitefish River has been closed to all users while BNSF completed an EPA mandated clean-up of diesel sheen on the river. Over the past year, the City Council has scheduled public work sessions and hearings to gather the community's input concerning a non-motorized waterway on the same portion of the Whitefish River. Believing the use of motorized watercraft will increase once the upper portion of the Whitefish River is opened again to all users, the Whitefish City Council enacted Resolution No. 13-34 to approve a

petition to the Montana Fish and Wildlife Commission to limit this portion of the river to manually powered and electric motors in order to protect public safety and provide resource protection. A copy of Resolution No. 13-34 is attached as Exhibit A. As authorized by Resolution 13-34, by this Petition the City of Whitefish seeks a restriction on the use of internal combustion watercraft motors from the portion of the Whitefish River beginning from the BNSF train trestle near the outlet of Whitefish Lake to JP Road. Two maps showing the limits of the proposed restricted waterway, from the railroad trestle south of the Whitefish Lake outlet to the bridge on JP Road, are attached as Exhibits B-1 and B-2. The river near the outlet of Whitefish Lake to JP Road is approximately 3 miles in length and is accessible by powered watercraft only from the Whitefish Lake outlet and the Highway 40 bridge, located to the south of JP Road.

In support of its Petition the City of Whitefish has also attached Minutes of the November 4, 2013 City Council meeting with the public hearing and City Council deliberations on the matter, Exhibit C; Minutes of the September 3, 2013 City Council meeting with the public hearing and City Council deliberations on the matter, Exhibit D; timeline and history of the matter prepared by City Councilor Richard Hildner, sponsor of Resolution 13-34, Exhibit E; memorandum describing the issue and the public safety and riparian need for additional restrictions prepared by City Councilor Richard Hildner, Exhibit F; pictures demonstrating the hazards posed by jet skis and internal combustion engine powered watercraft on the Whitefish River, Exhibit G; pictures demonstrating bank erosion along the Whitefish River despite the controlled no wake speed, Exhibit H; and a copy of communications received for the City Council's public hearing on November 4, 2013, Exhibit I.

Despite the FWP designation and limitation to a controlled no wake speed, as defined in ARM §12.11.101, the current use of such motorized watercraft has not met the demands of public health and safety and the protection of the river's natural resources. Due to the geographical characteristics of the river corridor and its limited sight distances, the no wake restriction has not eliminated the earlier concerns for public health and safety due to the variety of shared uses and inherent conflict among swimmers, floaters, non-powered watercraft and powered watercraft. The no wake designation has not eliminated whitewater in the track or path of the vessel, and the waves immediate to the vessel have not been eliminated. Enforcement of the no wake speed has proven difficult to enforce, and the use of motorized vessels is expected to increase.

Also, the City of Whitefish desires to protect the stream bottom and shore immediately adjacent to the Whitefish River which is characterized by glacial outwash deposits, glacial till and lacustrine deposits, which are highly erodible. By this Petition, the City seeks to protect the water quality of the Whitefish River by limiting sedimentation, disturbance of the shore and river bottom, and the amount of hydrocarbon pollution resulting from internal combustion boat motors.

Therefore, the City of Whitefish petitions for a further restriction on the use of internal combustion watercraft motors because the operation of internal combustion boat motors on the designated no wake portion of the Whitefish River creates the potential for serious conflict and the risk of personal injury, the continuing visible disruption to the river

resource, the erodible impact to the river bed, shoreline and banks, and hydrocarbon pollution.

3. Reasons for the proposed agency action:

- a) Protection of public health and safety;
- b) Prevention of degradation of the shore and river bottom due to watercraft propellers;
- c) Prevention of sedimentation caused by interaction between watercraft wakes and the shore of the Whitefish River.
- d) Reduction of the noise level on the Whitefish River for other users of the river and residents along the Whitefish River.
- e) Reduction of the amount of chemical toxins released into the Whitefish River by internal combustion outboard motors.

4. The rule as proposed to be amended would read as follows (new matter underlined):

12.11.645 Whitefish River

(1) Whitefish River is located in Flathead County.

(2) Whitefish River is limited to a controlled no wake speed, as defined in ARM §12.11.101(1), in the following areas:

(a) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road.

(3) Whitefish River is limited to manually powered watercraft and electric motor powered watercraft, in the following areas:

(a) Whitefish River from its confluence at the railroad trestle south of the Whitefish Lake outlet to the bridge on the JP Road.

5. (Option 2) Persons known to Petitioner to have an interest in the proposed agency action are:

Mike Fitzgerald, 412 Lupfer Avenue, Whitefish, MT 59937, 406-862-7426
Leonard Howke, 180 JP Road, Whitefish, MT 59937, 406-862-4091
Leo Keane, 514 Pine Place, Whitefish, MT 59937, 406-862-5807
Glenwood F. Kerestes, 752 Tepee Trail, Billings, MT, 406-248-4098
Miriam Lewis, 367 Blanchard Lake Drive, Whitefish, MT, 406-862-5224
Rebecca Norton, 530 Scott Avenue, Whitefish, MT, 406-862-8175
Michael Park, 1219 7th Avenue West, Columbia Falls, MT, 406-892-2458
Sonny Schierl, 4185 US Highway 93 West, Whitefish, MT 59937
Chris Schustrom, 504 Spokane Avenue, Whitefish, MT 59937, 406-862-3440

6. (Option 1) Petitioner requests a hearing for expression of Petitioner's and other interested persons' views. X

WHEREFORE, Petitioner requests that the Fish, Wildlife and Parks Department and Fish and Wildlife Commission adopt a rule restricting that portion of the Whitefish River located from the railroad trestle south of the Whitefish Lake outlet to the bridge at JP Road to manually powered or electric motor powered watercraft only, and to prohibit internal combustion boat motors.

DATED this 5th day of December, 2013.

CITY OF WHITEFISH, Petitioner

By: Charles C. Stearns
Charles C. Stearns, City Manager

RESOLUTION NO. 13-34

A Resolution of the City Council of the City of Whitefish, Montana, to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone.

WHEREAS, in the interest of public safety and protection of public health and the river resource, in 1989 after public notice and hearing, the Montana Department of Fish, Wildlife & Parks (FWP) implemented a "no wake" restriction on all watercraft operating on the Whitefish River from its confluence with Whitefish Lake to the JP Road Bridge by ARM §12.11.645, whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel; and

WHEREAS, despite the "no wake" speed restriction on the Whitefish River, the continued operation of motorized watercraft on Whitefish River creates white water in its track or path and waves immediate to the vessel, which have not been eliminated, have proven difficult to enforce, and usage of non-motorized watercraft is expected to increase; and

WHEREAS, due to the geographical characteristics of the river corridor and limited sight distances, recreational use by swimmers and operators of motor-propelled watercraft and traditional non-motorized craft creates the potential for serious conflict and the risk of personal injury, if not restricted; and

WHEREAS, the City of Whitefish recognizes the Whitefish River as an essential, but fragile natural resource, in need of protection, for the quality of life and recreational use of all Montanans, and visitors to our community, and as an important habitat for a wide variety of territorial life; and

WHEREAS, the City has an essential interest in the Whitefish River, as its headwaters originate at the outlet from Whitefish Lake, the lake bed up to the low water mark having been annexed into the City by Resolution No. 05-25 on August 15, 2005; and

WHEREAS, beginning from its headwaters at Whitefish Lake, the Whitefish River corridor continues through the City's jurisdictional area to the bridge at Highway 40, a distance of almost six miles. The river depth is approximately four feet, the upper reach of the river narrows to approximately 46 feet with an average of less than 80 feet in width. The maximum sight distance is 549 feet and the minimum is 103 feet, averaging less than 278 feet; and

WHEREAS, the stream bottom and shore immediately adjacent to the Whitefish River is characterized by glacial outwash deposits, glacial till and lacustrine deposits, which are highly erodible; and

WHEREAS, due to its highly erodible geography, the river corridor continues to experience erosion and disruption of the river bed, shoreline, and banks, visible along the river corridor; and

WHEREAS, realizing the importance of protecting water quality, waterways, vegetation, wildlife and fish, the City Council enacted the Water Quality Protection Ordinance, Ordinance No. 12-04 on February 6, 2012; and

WHEREAS, in order to protect the unstable river bank and reduce rotational slumping along the Whitefish River corridor, and the risk of transporting the phosphate absorbed alkaline silts downstream toward Flathead Lake, wave action and motorized disturbance needs to be minimized and controlled; and

WHEREAS, FWP is authorized under Montana law as the responsible agency to determine recreation rules, and permitted and restricted recreational use on Montana's waterways in the interests of public health and safety, and protection of the State's natural resources. State law provides the process to petition the FWP Commission for river recreation management decisions and the restriction of use on waterways; and

WHEREAS, at publicly noticed hearings on September 3 and November 4, 2013, public comment was taken and following discussion, the City Council approved the resolution to petition FWP to limit watercraft to manually powered or electric motors on a portion of the Whitefish River from the railroad trestle at Edgewood Place and Birch Point Drive to the JP Road Bridge; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to petition for and be granted FWP's approval for such designation.

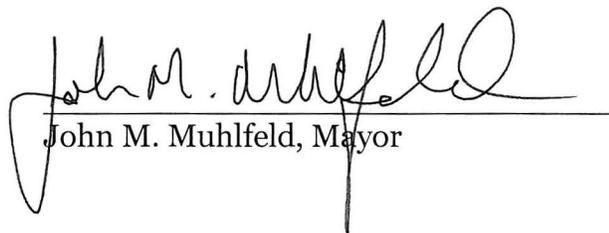
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City of Whitefish adopts this Resolution as an expression of its support for the Petition to the FWP Commission to limit a portion of the Whitefish River from the railroad trestle at Edgewood Place and Birch Point Drive to the JP Road Bridge to manually powered or electric motors only.

Section 2: On behalf of the City, the City Manager will Petition the FWP Commission seeking such restriction and designation for a portion of the Whitefish River, and to take such further action to have the restriction and designation approved by FWP.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

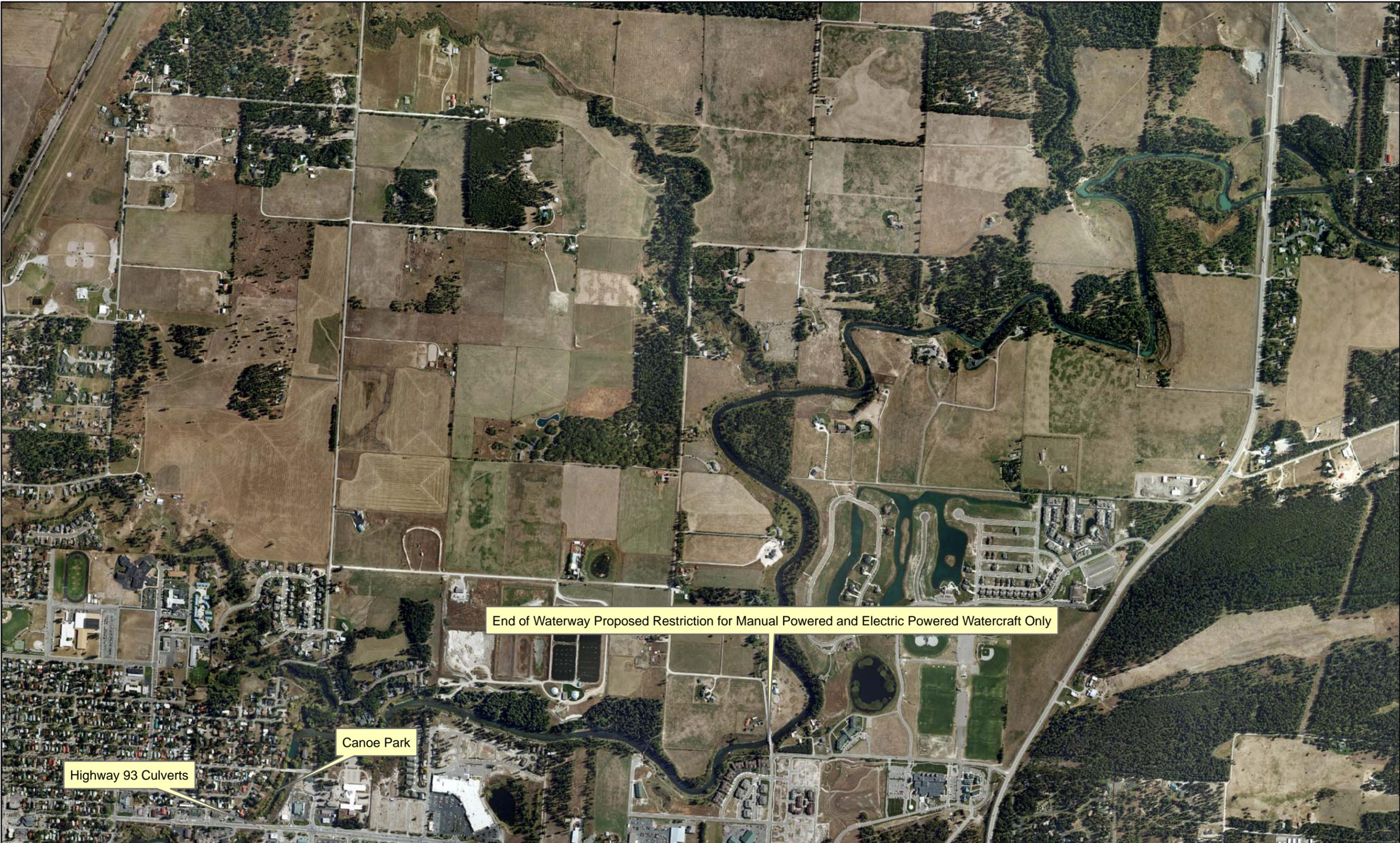
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 4TH DAY OF NOVEMBER, 2013.


John M. Muhlfeld, Mayor

ATTEST:


Necile Lorang, City Clerk





End of Waterway Proposed Restriction for Manual Powered and Electric Powered Watercraft Only

Canoe Park

Highway 93 Culverts

plan. Councilor Hyatt said he sits on the Park Board and he thinks the staff did a great job. He said Applied Communications and Bruce Boody did a great job and it is not easy to pull something like this together. He said the Parks and Recreation staff kept their offices open every Tuesday to get public input. Councilor Hildner thanked Director Cozad and his staff and said it is an excellent plan.

The motion passed 5-1 with Councilor Mitchell voting in opposition.

- 7f. **Resolution 13-34; A Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone (p. 336)**

City Councilor Richard Hildner said after listening carefully to the public comment at the previous public hearing he met with Attorney VanBuskirk and talked to FWP. The Resolution tonight is a major modification from the October 9, 2013 meeting. He took the language from the FWP boating manual to come up with the term “manually powered or electric motors.” He said there are 12 bodies of water in Montana that have this restriction. He said this is just one step in the process and then it goes to FWP for consideration, study and hearings, then the Commission holds more public hearings and makes a decision. He said his report describes the situation on the Whitefish River regarding resource protection and public safety.

This Resolution is revised from the prior Resolution under consideration and would now allow small electric motor powered craft on the river. Councilor Mitchell asked why he wouldn't allow something with 3-5 horsepower motors. Councilor Hildner said enforcement is easier if they are limited to electric motors. He said this meets the concerns expressed by the public at the last public hearing about using electric motors. Councilor Mitchell said some folks wanted to use small gas-powered motors. Councilor Hildner said he doesn't think they can address everyone's concerns entirely. He said under 12.1.1.4.0 the FWP says that management plans must not compromise long term conservation. Councilor Anderson thanked Councilor Hildner for his foresight in bringing this before them. He would rather recommend low horsepower motors rather than just electric motors. He also questioned going all the way down to Highway 40. He would like to make the protected zone end at JP Road, which is where the no wake regulations currently end. It would also resolve the comments from folks who occasionally use higher powered boats below JP Road.

Mayor Muhlfeld opened the public hearing.

Michael Park, 1219 7th Avenue West in Columbia Falls, said he attended the September meeting. He said he can't hold an oar or a paddle due to a disability, so he uses an electric motor. He appreciates that Councilor Hildner listened to his concerns. He knows some people would like higher horsepower. He has a 30 thrust electric motor on his pontoon boat and he would appreciate being able to continue using the river.

Leonard Howke, 180 JP Road, said they allow motorized boats from the mouth of the river to the railroad trestle. He asked and Councilor Hildner said no wake is allowed on that section of river. Mr. Howke said they could leave it as no wake all the way down to JP Road. He said if they can have motors and boats up there and he can't then he feels discriminated against. He doesn't feel that is right. Mr. Howke said not all jet skis go fast and not all boats go fast.

Mike Fitzgerald said he has been on the river for the last 36 years and about 15 years ago they tried a no-wake zone but it didn't work. They can't control it. He said a 5 horsepower engine can still stir up the river a lot. They have seen how Whitefish Lake goes crazy in the summer. It would be nice if there was a body of water where they could enjoy it without motorized vehicles. He said they have seen a tremendous increase in boats zooming up the river and you can't run a jet ski without wakes. He said they tried helping the minority in the past who wanted to use their outboard engines, but they are seeing more and more people who abuse the river. It would be nice if they didn't have to put up with motorized traffic on the river.

Mayor Muhlfeld closed the public hearing.

Councilor Sweeney asked if the proposal requests that they change the regulation for non-motorized vehicles from the mouth of the river all the way to JP Road. Councilor Hildner said under this proposal they would ask FWP to consider a restriction from the trestle to Highway 40 to manual and electric motors only. He said the no-wake regulation to the trestle would remain in place. In 2007 the idea to eliminate motors was opposed by those who lived at the mouth of the river and wanted to get into the lake. Councilor Mitchell asked Councilor Anderson to repeat what he had said earlier and Councilor Anderson said he would like to allow small horse power or electric motors. Councilor Hildner said battery size is the issue for electric motors—it would take huge battery to get much speed for an electric motor.

Michael Park said his is a 30 thrust electric motor and uses a battery similar to a riding lawn mower. Councilor Kahle asked about enforcement and Councilor Hildner said FWP will be the enforcer, backed up by the City police. He said it is the responsibility of the operator to know about the boating laws. Councilor Kahle said he thinks they can achieve the objective of safety and protecting resources by limiting the horsepower. They can all share the river as long as it is being respected. He thought the proposal was too restrictive. Councilor Hildner said one of the advantages for restricting it to electric motors is that you don't hear them and you do hear internal combustion engines, so you know they are in violation. He said it would simplify law enforcement. Councilor Kahle said if the river is being treated with respect and there is no wake allowed, then that is adequate. Councilor Mitchell said he would be willing to make it 5 horse power and stop it at JP Road, not Highway 40.

Councilor Anderson said he would prefer to see this restriction from the trestle to JP Road and to allow low powered or electric motors. Councilor Hyatt agreed with the trestle to JP Road since it is a zone that is already restricted and he is in favor of 5 HP or less combustion motors. Mayor Muhlfeld asked if this ordinance would affect emergency response teams on the river. Councilor Hildner said he expected them to be able to respond appropriately. Mayor Muhlfeld said the Whitefish Lake Institute may need to use motorized boats for their research. Councilor Hildner said he would guess it would be part of the FWP research and decision after they go through the public process. Councilor Hyatt said the clean-up barges have to run high horse power as well.

Councilor Hildner offered a motion, seconded by Councilor Anderson, to approve Resolution 13-34; A Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone from the railroad trestle to JP Road.

Councilor Mitchell asked about the exceptions and Councilor Anderson said this has no effect on law, it is just asking FWP to consider the request.

Councilor Hyatt offered an amendment, seconded by Councilor Mitchell, to also allow up to 5 horsepower combustible engines.

Councilor Sweeney asked if the concern was enforcement or the depth of the engine or turbulence. Councilor Hildner said he believes it would facilitate enforcement and to protect the resource. The electric motor won't create a wake so they reduce stream bank erosion and contamination.

The vote on the amendment was tied with Councilors Hyatt, Mitchell and Kahle voting in favor. Councilors Sweeney, Anderson and Hildner voted in opposition. Mayor Muhlfeld voted in opposition and the amendment failed.

The vote on the original motion was tied with Councilors Sweeney, Anderson and Hildner voting in favor. Councilors Hyatt, Mitchell and Kahle voted in opposition. Mayor Muhlfeld voted in favor and the motion passed.

8. COMMUNICATIONS FROM FIRE CHIEF

8a. Contract award for Fire Water Tender apparatus (p. 355)

The Fire Department currently operates one (1) 2,500 gallon water tender. This unit was purchased in 1982 by the Whitefish Rural Fire Service Area and donated to the City. This vehicle has had been in front line service for 31 years.

In March of this year, the Fire Department advertised for bids for the manufacture of a 3,000 gallon tender. In addition to advertising, the bid specifications were mailed to the 8 major manufacturers of fire apparatus as listed in the packet. At that time only one manufacturer, Rosenbauer, chose to submit a proposal and price quote. The \$344,603 price quote was \$69,603 above our projected cost of \$275,000. At the May 20, 2013, City Council meeting the Council rejected this bid and authorized staff to revise the specifications and re-bid the tender. The approved FY14 budget includes a financial provision of \$285,000 to replace this unit during FY14.

During late September and early October, the Fire Department advertised for bids for manufacture of a 3,000 gallon tender based on the revised specifications compiled by staff. In addition to advertising, the bid specifications were again mailed to the 8 major manufacturers of fire apparatus). Two manufacturers, Danko Emergency Equipment Co. and Rosenbauer, chose to submit proposals and price quotes of \$294,571 and \$280,855, respectively.

Both proposals were carefully compared with the published tender specifications. Rosenbauer's proposal was found to be compliant in all aspects with the published specifications. Danko's proposal has some deviations from the specifications, specifically, with the Peterbilt chassis. In addition to the chassis differences, Danko's proposal excludes significant pieces of loose equipment called for in the specifications. These items will have to be purchased prior to placing the vehicle in-service; adding approximately \$5,000 to the cost of Danko's bid.

6. CONSENT AGENDA-(The consent agenda is a means of expediting routine matters that require the Council’s action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

- 6a. Minutes from the August 19, 2013 Council regular session (p. 34)**
- 6b. Consideration of approving application from Houston Point Homeowners for Whitefish Lake Lakeshore Variance (#WLV-13-W28) at Houston Drive to Variance to add 24 square feet/8’ feet in length to existing gangways on 4 docks at a private marina to extend the length of the existing docks to 78 feet and subject to 10 conditions (p. 58)**
- 6c. Consideration of approving application from Westridge Investments, LLC for Whitefish Lake Lakeshore Permit (#WLP-13-W25) at 2454 Birch Glen Road for replacement of wooden stairs subject to 6 conditions (p. 92)**
- 6d. Consideration of approving application from State of Montana for Whitefish Lake Lakeshore Permit (#WLP-13-W30) at the Montana State Park on State Park Road to replace the public boat launch subject to 16 conditions (p. 106)**
- 6e. Consideration of application for final plat approval – Papp subdivision – 2 lot re-subdivision of Lot 42 Mountain Park subdivision (p. 119)**

Councilor Kahle offered a motion, seconded by Councilor Hyatt, to approve the consent agenda. The motion passed unanimously.

7. PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

- 7a. Resolution 13-___; A Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to restrict motorized watercraft from a portion of the Whitefish River and designate a portion of the Whitefish River as Montana's first urban non-motorized waterway (p. 145)**

Mayor Muhlfeld said this is a resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks (FWP) to restrict motorized watercraft from a portion of the Whitefish River and designate a portion of the Whitefish River as Montana's first urban non-motorized waterway. He said they had a work session on this topic preceding the meeting tonight. He turned the meeting over to Councilor Hildner. Councilor Hildner said for the last two years at the annual goal setting sessions the City Council set a goal to create a non-motorized waterway on the Whitefish River. There is currently a No-Wake restriction from the outlet at the lake down to the JP Road Bridge. In 2007 the Council voted to create a non-motorized waterway but it was rescinded when a couple of landowners complained that they wouldn’t be able to bring their boats from the lake to their docks just north of the trestle. The new proposed resolution won’t place the restriction until after the trestle. He said public safety and resource protection are the issues. The river has been closed for 5 years during the BNSF clean-up, so now there is an opportunity to be pro-active for any kind of management. He said paddle boarders and kayaks are not always compatible with powered craft. He said the silts are highly erodable and it might have some impact on the City’s ability to deal with the water quality issues. He said the river is now as clean as most people can ever remember seeing it. He showed a slide presentation demonstrating various uses on the river and expressed his concerns with jet skis interacting with the non-motorized vehicles on the river. He said the site distances are less than 300 feet and it takes approximately 300 feet to stop a jet ski according to the Kawasaki owner’s manual. He said it is important to protect this resource for the community.

Mayor Muhlfeld opened the public hearing.

Michael Park, who lives in Columbia Falls but owns a business in Whitefish, said the idea of “no motors” means they eliminate electric motors which allow those who are physically handicapped to access the river. He said his little boat isn’t safe on Whitefish Lake, but he is able to use it on the river. He said an electric motor has no wake. He asked them not to take away the right to use a part of the river that he currently has, and is able, to use.

Leonard Howke, 180 JP Road, said a lot of garbage floats down the river and he appreciates the wake because it takes it away. He said if he wanted to go on Whitefish Lake he would have to have a trailer, but right now he can just go up the river. He talked about the safety issues on the bike trail. He said visibility is an issue on those trails, too. He said Whitefish River is considered navigable waters and they can use a boat on it.

Sonny Schierl, 105 Wisconsin Avenue, owns Paddfish Sports; and said he does a lot of stand up paddling. He said he takes a lot of people paddling up the river. He is in support of making this 6-mile stretch of river non-motorized except for the use of electric motors. He said wakes cause silt erosion and damage the river. He thinks that if they are proactive on this they can protect the river and make it work for a lot of people. He said many people are interested in silent sports; and more will come to Whitefish to paddle if this is a protected river way.

Mike Fitzgerald, 412 Lupfer Avenue, said he was involved in 1989 when they worked to create a non-motorized standard and they changed it to a no-wake designation, but it hasn’t worked. He said most of the traffic he sees comes from the lake down the river, not upstream. He agreed that perhaps electric motors should be allowed. He said they have lost 25 feet of shoreline at Riverside Park and if they allow the jet skis and other motorized traffic to have their way then it will get ruined again after the latest clean-up.

Rebecca Norton, 530 Scott Avenue, said she loved this proposal and she thanked Richard Hildner for all of his efforts. She likes the safety parts of this, but she also likes the preservation part of it.

Leo Keane, 514 Pine Place, said he fully supports the proposal. He thinks they should pass it and enforce it as soon as possible. He is a motor boat enthusiast, but there are 7 miles of lake to boat in. He agreed that electric motors are smaller with low impact. He wondered if they can grandfather a few folks who already live on Whitefish River and want to come up to the lake. He said the river is too special to lose it.

Chris Schustrom, 504 Spokane Avenue, supports the proposal. He encouraged the City to consider the use of electric motors and consideration for the use of small horse power watercraft for sporting pursuits. He said in October 2011 Montana FWP and the commission enacted motorized regulations on certain stretches of the Clark Fork River near Missoula while still allowing motorized uses for waterfowl hunting. He said the Whitefish River is a popular resource that they all can enjoy.

Mayor Muhlfeld closed the public hearing.

Councilor Kahle said he agreed with Chris Schustrom that what they’re concerned about is the wake. He agreed that they could allow low horse power gasoline and electric motors. He would favor

restricting high horse power motors and personal motor craft. Councilor Hildner said the public has given them grounds for thought and there might be things they can change in the resolution to make it more acceptable to more people. It may also enhance their chances of getting it through Fish, Wildlife and Parks. Councilor Anderson said the use of electric motors from the trestle to JP Road might need a little more thought. He said he wondered about the uses south of the bridge at JP Road. He said he learned tonight that there are a couple of assertions that have to accompany a petition like this for Montana Law. He said the data on erosion at Riverside Park might need to be developed before they go forward with this. Councilor Hyatt said he loves the river and wants to protect it. He said FWP has a restriction for allowing the use of motors under 10-HP they might want to consider. Councilor Hildner suggested that they postpone the vote on the resolution to allow more research and consideration of the concerns of the community expressed here tonight. He talked to the warden and there should still be time to get it in for this year's consideration

Councilor Hildner offered a motion, seconded by Councilor Hyatt, to postpone a Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to restrict motorized watercraft from a portion of the Whitefish River and designate a portion of the Whitefish River as Montana's first urban non-motorized waterway to November 4, 2013.

Councilor Anderson offered an amendment, seconded by Councilor Kahle, to re-open and continue the hearing. The amendment passed unanimously.

The original motion, as amended, passed unanimously.

Councilor Hildner requested he be allowed to introduce John Swanson in the audience; he and Mr. Swanson served together in the Pease Corps forty years ago.

7b. Consideration of an application from Marty Beale for a Conditional Use Permit for a professional office and tri-plex at 118 W. 2nd Street subject to 11 conditions (p. 152)

Senior Planner Compton-Ring said that Marty Beale, on behalf of the Eighth Street llc, is requesting approval of a Conditional Use Permit to have multiple primary uses on one lot – a professional office and triplex at 118 W 2nd Street. The property is currently developed with a single family home. The property is zoned WR-3 (Low Density Multi-family Residential District). The Whitefish Growth Policy designates this property as “High Density Residential”. The Whitefish Zoning Regulations, §11-2-3B(12), permits only one primary use per lot unless a Conditional Use Permit is obtained.

The proposed project will convert an existing single family home into a professional office. The WR-3 (Low Density Multi-family Residential District) along Highway 93 W allows the conversion of existing single family homes to professional offices once a Conditional Use Permit is obtained. This is an area of town where one is able to obtain a Conditional Use Permit administratively; however, since a Conditional Use Permit is required for the multiple uses, staff is reviewing these two permits concurrently.

The other aspect to this project is a triplex on the north part of the property. Parking for the residential use and the office will be located in the center of the property. Three spaces for the residential units will be covered and one customer space for the professional office will be located in front of the professional office. A walking trail for the triplex is being designed to access the Whitefish

EXHIBIT E
**Timeline and history of Whitefish
River motorized restriction issue**

A RESOLUTION TO PETITION MONTANA FISH WILDLIFE AND PARKS
TO RESTRICT MOTORIZED WATERCRAFT ON THE
WHITEFISH RIVER BETWEEN THE OUTLET
FROM WHITEFISH LAKE TO HIGHWAY 40

TIMELINE:

June 5, 1989: Councilor Hanson “wondered if the City could do anything about a speed limit on (the) Whitefish River. There are jet skis and motor boats speeding up and down too fast and endangering people in canoes and on their docks.”

June 19, 1989: City Council votes unanimously to petition FWP to designate the Whitefish River from the lake through the City as “No Wake.”

September 17, 2007: City Council votes unanimously “to petition FWP to prohibit internal combustion motors on the portion of the Whitefish River that is within the City limits.”

October 2007: The previous action of the City Council is rescinded when property owners between the outlet and the BNSF trestle objected.

April 2012: City Council agrees to include pursuit of a “non-motorized waterway on the Whitefish River between the outlet and Highway 40” during their annual goal setting session.

April 2013: City Council reaffirms its commitment to creating a “non-motorized waterway on the Whitefish River between the outlet and Highway 40”

August 19, 2013: City Council schedules a work session and public hearing to gather input on a “non-motorized waterway on the Whitefish River between the outlet and Highway 40” and petition FWP for a non-motorized designation.

Why create a non-motorized section of the Whitefish River?

The primary concern is public safety. Non-motorized use on the River is increasing including swimming, fishing, stand-up paddleboarding (SUP), floating and boating. The River presents several challenges to motorized users such as limited sight distances, narrow waterway, and speed. As a consequence of the BNSF River clean up, River use appears to be increasing.

A secondary concern is resource protection: The shoreline of the Whitefish River is highly erodible and this is exacerbated by wave action from motorized craft. Increased siltation contributes to the eutrophication of the River and Flathead Lake. Eroded silts carry phosphorus to the river. The Whitefish River is home to a wide variety of plants, animals, and fishes.

Why now?

For the past five years the upper reach of the Whitefish River has been closed to all users while BNSF completed an EPA mandated cleanup of diesel sheen on the River. Non-motorized use of the River appears to be increasing, particularly the use of stand-up paddleboards, now that the River has reopened to the public. Now is a good time to provide for public safety and resource protection. High speed watercraft are incompatible with more passive activities such as floating, paddling, swimming, and bridge jumping in the confined space of the Whitefish River.

EXHIBIT F
Proposal and description of need -
Richard Hildner, Whitefish City Council

Whitefish River Non-motorized Waterway

Proposal

Introduction:

In order to protect human safety and preserve the natural resource values afforded by the Whitefish River, it is the desire of the City of Whitefish to call upon the Montana Department of Fish, Wildlife, and Parks to designate the Whitefish River from the BNSF trestle below the outlet from Whitefish Lake to the bridge at Highway 40 as Montana's first urban non-motorized waterway.

The Whitefish River traverses the Whitefish community from its origin at the outlet from Whitefish Lake to the bridge at Highway 40. This headwaters segment makes it an ideal candidate to become Montana's first urban non-motorized waterway. Such a designation would protect public safety and protect an impaired river.

A draft resolution to accomplish this goal is attached.

Description:

The Whitefish River from the outlet at Whitefish Lake to the Highway 40 Bridge is approximately 5.95 miles in length and is accessible by powered watercraft only at

these two locations. In addition, non-motorized craft currently have unimproved public access at Kay Beller Park (Hwy 93 West Bridge), Riverside Park at Baker Street, and a City-owned unimproved site near the corner of Riverside and Columbia Avenues. The river itself is currently on Montana's 303(d) list as threatened for partial support for aquatic life and cold water fishery—trout (Relyea).

For the past three years the upper reach of the River has seen no recreational use due to the closure necessitated by the cleanup of petroleum sheen by Burlington Northern Santa Fe Railroad. Cleanup is scheduled to conclude in July, 2013. The lower reach saw only limited floater traffic during this same period because of limited access due to cleanup operations.

Safety:

Historically the Whitefish River has been shared by a variety of uses including swimming, floating, paddle boarding, fishing, and power boating. The foot bridge at Riverside Park is a popular venue for bridge jumping. Use is generally limited to that period of time when water temperature permits extended periods of emersion—mid June through August. Large water craft are limited to a short period of high water that permits ingress and egress from Whitefish Lake. Personalized watercraft, however,

have the same use period as non-motorized recreationists due to the shallow draft of these craft.

As the popularity of personalized watercraft grew in the late 1980s so did the conflict with traditional non-motorized users. In 1989, after a public hearing in Whitefish, Fish Wildlife and Parks implemented a No Wake restriction on the Whitefish River from the outlet at the Lake to the JP Road Bridge. There is no put-in/take-out access at this point. The No Wake restriction has proven difficult, if not impossible, to enforce. A jet ski at full throttle can be down the river and back into the lake before law enforcement can respond. Likewise, hull numbers are impossible to read at these speeds.

As use increases so does the potential for serious conflict between motorized and non-motorized uses. The upper reach of the Whitefish River, in places, narrows to about 46 feet and averages approximately 80 feet in width through this 1.37 mile stretch (Hagler). The maximum site distance is 549 feet and the minimum is 103 feet. Average site distance in this reach is no more than 278 feet; less than the length of a football field.

The lower reach, from the culverts under Highway 93 to the Highway 40 Bridge, currently receives no motorized traffic. The River below the culverts is narrow and is

similarly characterized by limited sight distances. The maximum sight distance on this reach is 1,010 feet, however the minimum is reduced to only 51 feet or an average of 271 feet.

At this point it is important to note that the stopping distance of a Kawasaki Jet Ski at full throttle is 328 feet (Kawasaki) and the average operating speed of a Personal Water Craft (PWC) is 35-40 mph. Interestingly, due to the nature of water-jet propulsion systems, a PWC must sustain forward thrust in order to maintain steerage. That is, more power, not less, is necessary for directional control.

Information on water depth is limited but it is instructive to note that the average depth over 27 cross sections from upstream of the foot bridge to below the Baker Street Bridge, at low flow, is less than four feet (Cross). The result is a very narrow navigable river channel. Downstream information is not available but ocular estimates reveal a similar condition.

Summary:

In order to be proactive in protecting and promoting safe use of the Whitefish River the most prudent course of action is to prohibit the use of motorized watercraft between the

BNSF train trestle near the outlet from Whitefish Lake to the bridge crossing at Highway 40. Limited sight distance, a narrow river, and increased float/paddle use are incompatible with motorized use.

Resource Protection:

The stream bottom and shore immediately adjacent to the Whitefish River is characterized by “glacial outwash deposits, glacial till, and lacustrine deposits (Critical, p.28).” It is this last group that dominates the fine sediments most commonly found in and next to the Whitefish River. These lacustrine silts are highly erodible.

In an effort to protect water quality in the Whitefish jurisdiction the City passed a Water Quality Protection Ordinance in 2012. This ordinance provides for buffers and setbacks along the Whitefish River to protect water quality and provide vegetative protection on steep slopes which frequently exceed 30%. There is ample evidence of instability and rotational slumping on these slopes. For the most part, riparian vegetative cover is currently intact along this section of the Whitefish River.

Silts are a major component of sediment load in the Whitefish River and “controlling sediment yield will control phosphate loading of water bodies in the Whitefish

jurisdictional area as well (Critical, p. 31).” Because silts travel further than sands and gravels, it stands to reason that the phosphate-absorbed alkaline silts are easily transported downstream toward Flathead Lake. Sediments also play a role in the “transporting anthropogenic contaminants that sorb to sediment, including organic compounds, such as but not limited to, pesticides and herbicides, products of incomplete combustion or PICs (principally from vehicles), and heavy metals (Critical, p.31).”

It has been observed that even minimal wave action disturbs these fine silts and causes the river to go “off color.” This condition is particularly evident as silts become subject to wave action during the summer months as the river transitions from high to low flow.

Sediment loading is, however, a natural occurrence during spring runoff. Average stream flows go from a seasonal high of 929 cfs during spring runoff to an August low of 150 cfs (WLI).

As previously mentioned, the riparian vegetation regime along most of the river corridor is intact giving rise to a sense of seclusion and solitude, particularly in the lower reach below the site of the old North Valley Hospital. A partial listing of observed wildlife includes, deer, moose, beaver, otter, bear, and a plethora of birdlife including, ducks,

geese, great horned owls, bald and golden eagles, osprey, hawks, herons, and a wide variety of songbirds (Hildner).

The Whitefish River contains, depending upon location and season, cutthroat trout, northern pike, suckers, rainbow trout, mountain whitefish and the occasional migratory bull trout (FWP). Increasing water temperature has limited, in recent years, bull trout migration between Flathead and Whitefish lakes.

Summary:

Fine, easily erodible silts line the edge of the Whitefish River. These silts often contain a variety of pollutants that are easily carried downstream when disturbed by wave action. Wave action exacerbates shoreline erosion which contributes to loss of riparian vegetation and bank instability. The net result is further degradation of water quality in the Whitefish River and ultimately, Flathead Lake.

Conclusion:

The Whitefish River is an important recreation resource and provides important habitat for aquatic plants, animals, and fish as well as riparian habitat for a wide variety of terrestrial life. As such it is a natural resource worthy of protection. The very nature of

the geography of the river with its limited sight distances and narrow width make conflict with motorized use inevitable. We are presented, here, with a rare opportunity to take proactive action to prevent serious injury or death among users of this waterway. Use by floaters, paddlers, paddle boarders, and tubers will surely increase once the closure imposed by the EPA during the BNSF river clean up is lifted.

In order to reduce the likelihood of polluted sediments being released from the shore of the Whitefish River between the high and low water marks it seems wise to reduce, to the extent possible, the mechanical disturbance (wave action) to the river shoreline.

Increased wave action will continue to erode the river bank, degrade riparian vegetation, and release polluted silts downstream. Motorized use will not only exacerbate wave action but will also contribute to the loss of solitude and potential disturbance of wildlife habitat.

Sources:

Critical Lands Report City of Whitefish, Montana. Steward and Associates, Snohomish, WA and RLK Hydro Inc., Kalispell, MT. August 31, 2007

Cross. Cross Sections 15+50 thru 29+00, Whitefish River Lower Reach Remedial Action (2011) prepared by Jenks Consultants, 32 Second Ave., Suite 100, Whitefish, MT 59937.

Flathead County GIS. 800 South main St., Kalispell, MT 59901

Flathead-Stillwater Sediment and Temperature TMDLs. <http://montana.tmdlflathead.pbworks.com/w/page/46768378/Flathead%20-%20Stillwater%20...> . 3/5/20013

FWP, Montana Fish Wildlife and Parks. <http://fwp.mt.gov/fishing/mFish/>. 3/11/2013

Hagler, Rob. Kennedy/Jenks Consultants, 32 Second Ave., Suite 100, Whitefish, MT 59937. Personal communication 27 February 2013.

Hildner, Richard. Personal observation

Kawasaki Operating Instructions, p.89. www.kawasaki-techinfo.net/showOM_Detail/Index.php?. March 3, 2013

Relyea, S. E. 2005. A synoptic study of the water quality of Whitefish River. Flathead Lake Biological Station Report 187-05. Prepared for Montana Division of Environmental Quality, Helena, Montana by Flathead Lake Biological Station, Polson, Montana. 42 pp.

WLI. Whitefish Lake Institute Whitefish River Flow Data provided by WLI on 3/7/2013.











RIVERSIDE PARK 1986



RIVERSIDE PARK 2013



RIVERSIDE PARK DOCK AREA 3/31/13



RIVERSIDE PARK DOCK AREA 3/31/13



CITY IRRIGATION LINE RIVERSIDE PARK
BOAT DOCK AREA 3/31/13

Chuck Stearns

From: miriam@zaneray.com on behalf of Miriam Lewis [lewis@acrossmontana.net]
Sent: Thursday, September 05, 2013 11:34 AM
To: Chuck Stearns
Subject: Contact council members

Hello Chuck,

I looked on the City website to find a place to send an email to council members but there was nothing so I would like to have you forward this on to the council members as I am unable to attend the Nov. 4 council meeting due to surgery. Thanks!

Council Members and Mayor,

I am writing this with regards to the proposal to restrict all motorized boats on the Whitefish River. While I agree with a drastic limit to the horsepower on the river, I think for all to enjoy the river, there should be an allowance for low hp, no wake type motorized watercraft.

I certainly do not like the idea of a jet ski or larger boats, but smaller boats would provide many people that are not paddleboarders, kayakers etc. the opportunity to enjoy the river that are also unable to really enjoy the use of their watercraft on the lake due to the larger wakes and waves on the lake.

It is important that you consider the needs of all rather than just a few.

Thanks very much for your consideration.

Miriam Lewis
406.249.5804

received
10/29/13

10/29/13

Necile Lorang

Administrative Services

City of Whitefish

Re: Proposal to restrict motorized access on the Whitefish River

Necile:

Per our conversation this morning 10/29/13 would you see that my comments and concerns are brought to the attention of the appropriate parties.

Re: Proposal to restrict motorized access on the Whitefish River

To whom it may concern:

My name is Glen Kerestes and I own property along the Whitefish River, outside of the city limits, which could be impacted by the decision to restrict the use of motorized water craft on the river. This property has been in my family for over 100 years and the river has been the focal point of the land since my ancestors first settled in the area. The river divides portions of my land for a length of almost three quarters of a mile and any restrictions as presently proposed on how I or my heirs/successors may utilize the river or access portions of our property would not be welcome.

While I wish to maintain the right to utilize motorized craft for the purposes of access I do strongly believe in the need for the protection of the river banks from undue erosion as well as common sense use of the waterway to ensure the safety of other river users. As such I would have no objection to a speed limit or "no wake" regulation.

I can't help but feel that the proposed regulation is an attempt to address a problem that doesn't really exist. While I am most familiar with only the last 2 miles of the river above the Hwy 40 bridge I have never observed more than a couple of motorized craft a year. During the heat of early to mid summer there often times floaters enjoying the river but by late summer the numbers drop to almost nothing. It is only occasionally in the fall that a few waterfowl hunters will use small motorized boats to access the area.

While I may be one of the few landowners that has property actually divided by the river I would ask that you give my concerns due consideration. For generations my family has recognized the beauty and importance of this river for everyone. However, I sometimes have to question why we have paid 100 years of taxes for a river bed everyone has the right to enjoy only to turn around and feel that I must specifically request that my rights as a property owner be recognized without having to resort to means such as special request, permits or litigation.

Thank you again for your consideration.

Glenwood F. Kerestes

10-29-13

Glenwood F. Kerestes

406-861-1154