



**SHORELINE
PROTECTION
ORDINANCE 64 (A)**

SHORELINE PROTECTION RULES AND REGULATIONS
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CHAPTER 1 – GENERAL PROVISIONS

1.1 TITLE

These regulations shall be known and referred to as the “Confederated Salish and Kootenai Tribes Shoreline Protection Regulations”.

1.2 AUTHORITY

These regulations are adopted under authority of Tribal Ordinance 64A (Revised), which authorizes the adoption of regulations regarding the issuance or denial of permits for work in navigable waters within the Tribe’s jurisdiction, including work done on the bed and banks below high water mark of all navigable waters within the exterior boundaries of the Flathead Reservation.

1.3 PURPOSE

The purpose of these regulations is to:

- A. Conserve and protect Flathead Lake and all navigable waters within the exterior boundaries of the Flathead Reservation, because of their high scenic value, and irreplaceable natural resource value;
- B. Conserve and protect the value of lakeshore property.
- C. Conserve and protect the value of all navigable waters for the area residents and visitors who may use and enjoy them;
- D. Promote sound water quality practices and activities on all navigable waters within the Flathead Reservation.

1.4 JURISDICTION

The Tribal Court of the Tribes shall have jurisdiction of all violations of this Ordinance or of permits issued pursuant to this Ordinance and to hear any appeal resulting from actions taken pursuant to this Ordinance.

1.5 SEVERABILITY

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

1.6 INTERPRETAION

These regulations supplement all applicable federal regulations and any permit issued hereunder does not supersede or negate the necessity for obtaining other permits as may be required by the United States Army Corps of Engineers or other federal governmental agency. Where any provision of these regulations imposes more stringent regulations, requirements or limitation than imposed or required by any other applicable regulation, resolution, ordinance or statute, the provisions of these regulations shall govern.

1.7 APPLICATION TO TRIBAL PROPERTY

It shall be the policy of the Confederated Salish and Kootenai Tribes of the Flathead Reservation to abide by all of the criteria contained in these regulations.

1.8 BOARD AUTHORITY TO DELEGATE FUNCTIONS

The Shoreline Protection Board may in its discretion delegate to the Shoreline Protection Staff any of its authority and responsibilities under these regulations except the power to grant or deny a permit application for a marina pursuant to Section 4.13B 3 d; to grant deny a major variance from these regulations pursuant to Section 8.1B 2 to institute a civil action in Tribal Court or to amend these regulations pursuant to Section 8.12. Any action taken by the Shoreline Protection Staff pursuant to any such delegation shall be deemed for all purposes to be the action of the Shoreline Protection Board.

CHAPTER 2 – DEFINITIONS

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

2.1 AID TO NAVIGATION

A structure designed and utilized to facilitate and protect access to navigable waters, providing that water depth at the water ward end of the dock or other structure does not exceed five feet at mean annual high water elevation, 2893.2 feet, and in no event shall the structure extend beyond elevation 2888.2.

2.2 APPLICANT

The person making applications to the governing body for a permit.

2.3 BOARD

Shoreline Protection Board of the Confederated Salish and Kootenai Tribes to whom full authority has been delegated for administration of the Tribal Ordinance 64A (Revised) by the Tribal Council.

2.4 BOAT RAIL SYSTEM

A facility consisting of tracks extending from or across the high water mark into the lake which is designed to facilitate or retrieving boats.

2.5 BOAT RAMP

A facility consisting of a pad extending across the high water mark area into the lake which is designed to facilitate launching or retrieving boats.

- 2.6 BREAKWATER
A structure which is designed to protect a shore area from wave action.
- 2.7 BUOY
A float especially a floating object moored to the bottom, used to moor boats mark channels, etc.
- 2.8 COMMON USE DOCK
Are docks that are for recreational boating and other water-related activities permitted to a legal entity such as, but not limited to homeowner's association or condominium developments, exclusively for the personal use of owners or shareholders of such entity or their invitees. Common use docks may also include docks permitted to agencies, departments, Tribal, Federal, States or local governments.
- 2.9 DOCK
A platform, either non-floating or floating, which extends into, over or across the water to provide for boat moorage, access to moorage area, swimming facilities, or other related activities.
- 2.10 DOCK LENGTH
Dock length is the length of the dock measured from the high water mark to the water ward side of the furthest end of the dock construction.
- 2.11 DREDGING
The process of excavating material from the lake bottom and thereby lowering the elevation of a portion of the lake bottom. The term shall include the process of extending the lake area landward by excavating material from the lakeshore protection area and thereby lowering the elevation of that portion of the lake.
- 2.12 FILLING
The process of discharging material onto a lake bottom and thereby raising the elevation of a portion of the lake bottom. This shall include the elimination of an aquatic environment or wetland environment by extending the dry land area into such aquatic or wetland area.
- 2.13 FREE WATER AREA
The open area beneath a dock, wharf, pier, breakwater or other structure which is totally free of any obstruction to water transfer under the structure.
- 2.14 GOVERNING BODY
The Confederated Salish and Kootenai Tribal Council.

- 2.15 GROIN
Any structure designed to arrest water, sand or gravel movement along the shoreline or along a dock, breakwater, retaining wall, or similar structure.
- 2.16 HIGH WATER MARK
“High water mark” means, on Flathead Lake, elevation 2893.2 feet, and, on any other navigable body of water, means that mark will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of abutting upland, in respect to vegetation, as that condition exists on the effective dated of this Ordinance, or as it may naturally change thereafter, or, where such mark cannot be found, the line of mean high water.
- 2.17 IMPERVIOUS
Not permeable, impenetrable by water.
- 2.18 JETTIES
Structures, usually in pairs, which extend from the shoreline into the lake at the month of rivers or at the entrance to lagoons which are designed to confine the flow of water to a narrow zone.
- 2.19 LAGOONS
An artificial boat harbor created by excavating the shoreline, removing earth material and thereby extending an aquatic environment into a dry land area.
- 2.20 LAKE
The southern half of Flathead Lake.
- 2.21 LAKE FRONTAGE
That portion of the property which borders on the lakeshore. For the purpose of measurement, lake frontage shall be the straight distance between side property lines at the water’s edge.
- 2.22 MARINA
A dock facility from which services are provided., such as, but not limited to, moorage sales or rental, marine sales and services, sales of fuel and other goods, and sewage disposal.
- 2.23 NAVIGABLE WATER(s)
The south part of Flathead Lake, being the portion of the Lake located within the outer boundaries of the Reservation, the portion of Flathead River located within the outer boundaries of the Reservation, and all other lakes, reservoirs, ponds, rivers, streams and bodies of water which are navigable in fact and are located within the outer boundaries of the Reservation.

- 2.24 PERMIT
A document issued by the Tribes verifying compliance with the requirements and provisions of these regulations.
- 2.25 PERSON
An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, local government unit however designated, agency of the State of Montana or of any other state, or any other legal entity.
- 2.26 PIER
A non-floating fixed platform usually extending out over the water from shore and to which gangways are usually attached.
- 2.27 RECONSTRUCTION
To rebuild an existing facility by removing that facility and building a new structure.
- 2.28 REPAIR
To restore an existing facility to sound condition by replacing component parts of the facility.
- 2.29 RETAINING WALL
Any structure built parallel and contiguous to the shoreline of a lake which is designed to protect the land mass inland from erosion or wave action.
- 2.30 RIPARIAN BOUNDARY
A projection of the side property lines from their point of intersection with the perimeter of the lake at its mean annual high water elevation (for Flathead Lake, 2893.2 feet) lakeward at right angles to the natural shoreline. Where a structure has caused the buildup of an artificial shoreline, the artificial shoreline cannot be utilized to establish the riparian boundary.
- 2.31 RIP RAP
A layer, facing, or protective mound of stones, logs, or other materials randomly placed to prevent erosion, scour, or sloughing of a structure or embankment.
- 2.32 SHORELINE PROTECTION AREA
The area below high water mark on that portion of the Flathead Lake which is located within the exterior boundaries of the Flathead Reservation.
- 2.33 SHORELINE PROTECTION BOARD
Seven member board appointed by the Confederated Salish and Kootenai Tribes Council to oversee the regulation and administration of the south half of Flathead Lake as required under Section 8, Ordinance 64A (Revised).

- 2.34 SHORELINE PROTECTION ADMINISTRATOR
The director of the Shoreline Protection Office who is responsible to the Shoreline Protection Board through the Natural Resources Department.
- 2.35 SHORELINE PROTECTION STAFF
The staff employed by the Confederated Salish and Kootenai Tribes to assist in the administration and enforcement of Tribal Ordinance 64A(Revised).
- 2.36 SIDE WALL AREA (of a dock)
The side of that portion of a dock which is generally perpendicular to the shoreline.
- 2.37 TRIBES
The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.
- 2.38 TRIBAL COUNCIL
The governing body of the Tribes, or its designee.
- 2.39 WETLANDS
Water-land interface areas which are inundated or saturated by surface and/or ground waters at the frequency and duration of time periods sufficient to establish, and under natural conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to: swamps, marshes, bogs and similar areas. Wetland areas may be separated from the main body of water by maintaining barriers or natural berms.
- 2.40 WHARFS
A structure built on the shore of a harbor, river or canal so that vessels may lie alongside to receive and discharge cargo and passengers.

CHAPTER 3 - LANDFILLS AND DREDGING

3. VEHICLE USE BELOW MEAN ANNUAL HIGH WATER MARK
1. Vehicle Equipment Use- during drawdown only. (Specifications by permit not causing excess sediment.)
- 3.1 POLICY CONSIDERATIONS
- a. Dredging of the bed and banks of any navigable body of water may have adverse effects due to suspension of fine materials, resuspension of nutrients and toxic materials, exposures of stable bed sediments, to unstable conditions, removal of bed armament and creation of steep beach area. See Ordinance 64a (revised) section 3 (a (2)).

- b. Filling of a portion of a lake may have adverse effects due to the destruction of an aquatic environment, loss of habitat for fish and wildlife, creation of an unnatural shoreline, creation of a steep beach areas and alteration of current flows and wave action.
- c. Filing of wetlands have adverse effects due to destruction of an aquatic environment, loss of habitant for fish and wildlife, loss of water storage capacity and loss of natural storm runoff entrapment functions of wetlands.

3.2 STANDARDS

- a. Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or lagoon is strictly prohibited.
- b. Dredging for any other purpose is prohibited except to the extent that the variance provisions of section 8.1 of these regulation are applicable.
- c. Fill projects for the purpose of expanding existing land areas is strictly prohibited.
- d. Discharge of fill material directly into the lake shall not be permitted.

CHAPTER 4 – GENERAL PROCEDURES AND STANDARDS FOR NEW RIPARIAN STRUCTURES

GENERAL PROCEDURES

4.1 PERMIT REQUIRED

- a. It shall be unlawful, after the effective date of these regulations, for any person to construct, or cause to be constructed, on or below the mean annual high water mark, any wharf dock, boat shelter, pier, breakwater, jetty, groin, bulkhead, marina, common use dock or other structure, any addition or improvements to any such structure, unless he has obtained and has possession of a valid “Lakeshore Construction Permit” form Shoreline Protection Board of the Confederated Salish and Kootenai tribes.
- b. The person who performs such work is responsible for assuring that a valid permit has been obtained from the Tribes.
- c. The permit issued shall be prominently displayed, during work activity, so that it is conveniently visible to the public.
- d. The applicant shall have one (1) year from the date the permit is issued to complete the construction authorized therein. In the event construction can not be completed within this time period, an extension of one (1) year may be granted upon application to the Board

4.2 PROPERTY RIGHTS

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

4.3 PERMISSION TO ENTER

- a. The Shoreline Protection Board, its staff and/or its consultants, may conduct such investigations, examinations and site evaluations as it may deem necessary to verify information supplied as a requirement of these regulations.
- b. In making application for a “Lakeshore Construction Permit” the applicant grants to the Tribal Council, the Shoreline Protection Board, their staff and/or designees permission to enter upon his land during the application process and upon completion of construction.

4.4 WORK REQUIRING A PERMIT

Without limitation, the following activities, when conducted on the beds and banks of any navigable waters below the high water mark are examples of work for which a permit is required, and must therefore comply with these regulations and all applicable sections of Tribal Ordinance 64A (Revised):

- a. Construction of retaining walls and breakwaters;
- b. Construction of wharves, docks, boat shelters, piers and other structures which extend out over the mean annual high water mark of 2893.20’;
- c. Installation of boat rail systems, boat ramps, buoys, floating docks, personal watercraft lifts, boat lifts, rip rap and pilings.
- d. Routine maintenance involving the removal of accumulated silt, and soil behind a dock.

4.5 ROUTINE MAINTENANCE AND REPAIR

A permit may not be required for the following types of work:

- a. Repair work, provided that:
 1. Materials to be used do not differ, in type, from existing materials;
 2. The existing facility is not to be reconstructed, expanded or changed in size, character or bulk.
- b. Normal maintenance for existing facilities which will have insignificant or minimal environmental effects upon navigable waters within the exterior

boundaries of the Flathead Reservation. Any work involving dredging, filling or excavation shall not be considered normal maintenance. For purposes of these regulations normal maintenance is defined as work which involves less than fifty percent of an existing structure. Work involving fifty percent or more of an existing structure shall be deemed reconstruction and shall require a valid permit.

- c. The Board reserves the right to require the permittee to comply with the provisions outlined under Part 3 if such compliance is deemed necessary.

PART 2 - REVIEW PROCEDURES

4.6 APPLICATION

- a. Any person who proposes to engage in any activity or work, as outlined in Section 4.4, shall submit to the Shoreline Protection Board Office an application for a permit, together with an application fee of fifty (50) dollars for a residential permit and fifty (50) dollars plus five hundred \$500 dollars for a common use dock and one thousand (1000) dollars for a marina permit and one (1) set of such drawings, plans, specifications and other supplemental material as specified in paragraph (b).
- b. As part of the permit application, the following information shall be submitted, unless portions are waived by the Shoreline Protection Board.

- 1. Vicinity Map

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

- Location along shoreline.

- Name of and distance to nearest town, community, or other identifying location.

- Property boundaries and dimensions.

- Graphic scale.

- North arrow.

- 2. Site Plan

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

- Existing shoreline.

- Existing structures.

- Proposed work area with dimensions, location in relation to property boundaries or other identifiable points.

Water depths within and beyond the proposed work area.

Ordinary high water line.

Route by which investigators can reach the property.

North Arrow.

Graphic or numerical scale.

3. Project Drawings

Drawings showing plans, elevations, cross-sections and other details of the proposed project shall be submitted.

One original or good quality reproducible set of all drawings should be submitted on 8" x 10 ½" tracing cloth, tracing film or paper. Drawings should be prepared in accordance with the general format of the samples. See Application Form. Block style lettering should be used.

A one-half inch margin is required on the other three edges. The title block of each sheet submitted should identify the proposed activity and contain the name of the applicant, number of the sheet and total number of sheets in set, and the date the drawing was prepared.

4. Additional Information

The Shoreline Protection Staff or Shoreline Protection Board may require the submission of any additional information that it may deem necessary for adequate review of the application.

4.7 SHORELINE PROTECTION STAFF REVIEW PROCEDURE

- a. The Shoreline Protection staff shall review the application and other information to determine whether or not the proposed project complies with the requirements of these regulations. The Shoreline Protection Administrator, in his/her discretion, may seek input from other agencies or individuals.
- b. Upon completion of the review of the permit application by the Shoreline Protection staff, all materials shall be forwarded to the Board, together with the staff's findings and recommendations for final approval, conditional approval, or disapproval.

4.8 SHORELINE PROTECTION BOARD REVIEW PROCEDURE

- a. The Shoreline Protection Board shall review the application, other information, and the Shoreline Protection staff findings and recommendations in order to ascertain the probable effect of the structure or addition or improvements thereto, on the water quality, continued use of the affected area as a habitat for fish and wildlife, navigation, exercise

of tribal treaty fishing rights, and scenic beauty of the affected area, other resource values, and compliance with the construction and design criteria of Sections 4.12, 4.13.

- b. If the Shoreline Protection Board determines that the proposed project has a minimal or insignificant impact when reviewed in light of the factors set forth in subparagraph a, it shall approve or conditionally approve the application.
- c. The Shoreline Protection Board is empowered to impose, as a condition to the issuance of the permit, conditions and limitations as appear necessary to avoid or minimize any environmental or other effects of an adverse nature.
- d. If the Shoreline Protection Board determines that the proposed project may have a significant impact on navigable waters, or the project will require a major variance pursuant to Section 8.1 of these regulations, the Board may request additional information and staff findings with recommendations for the Shoreline Protection Board's final review.

4.9 REVIEW PERIOD

- a. Review of a permit application and its approval, conditional approval or denial by the Board, shall take place within thirty-one (31) days unless a variance is needed. The thirty-one (31) day period shall commence upon receipt of the application for review, provided that all required information and fees have been properly submitted.
- b. If an application is incomplete, the Shoreline Protection staff shall so notify the applicant and the review period shall not commence until the application requirements stated in Section 4.6 are fully met.

4.10 PERMIT VALIDITY

A permit issued under this chapter shall specify the term for which it is issued, which term shall not exceed ten years, or such lesser term as is specified by Section 4.1(d) of the Ordinance.

PART 3 - CRITERIA FOR ISSUANCE OF A PERMIT

4.11 POLICY CRITERIA FOR ISSUANCE OF A PERMIT

- a. Any proposed structure shall not, during either its construction or its utilization:
 - 1. Materially diminish water quality;
 - 2. Materially diminish habitat for fish or wildlife;

3. Interfere with navigation;
4. Interfere with the exercise of tribal treaty fishing rights;
5. Interfere with the scenic beauty of the area;
6. Interfere with any other resource value;
7. Damage cultural, historical, or archeological sites.

- b. In addition, these regulations shall be consistently applied in a manner which will encourage facilities of the minimum size required to meet the intended purpose(s) of the intended user(s).

4.12 GENERAL CONSTRUCTION STANDARDS

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

- A. Erosion, Sedimentation and Storm Runoff
Designs that address a more natural shoreline will be preferred over all other applications.

1. POLICY CONSIDERATIONS

- a. Any construction activity which will affect the lakeshore protection area should incorporate all necessary means to prevent pollution of navigable waters, including erosion, sediment and storm runoff controls.
- b. The proposed activity should not cause, directly or indirectly, increased sedimentation, an increase in suspended sediments, or an increased discharge of nutrients into the lake either during construction or utilization of the structure for which the permit has been issued.
- c. New erosion control structures of over 100' will require a review period by Tribal Professional Staff and will require a 30 day processing period. The application will include engineered plans containing drawings and designs and follow the guidelines in section 8.1A.2 for a major variance request.

2. STANDARDS

- a. The interface of fill materials, such as rip rap, with the lake water shall be sloped at a maximum of 2.0 to 1 ratio or natural slope of the shoreline to dissipate wave energy which ever is less. The face of the slope shall be covered

with armament suitable materials to discourage soil erosion and slumping of banks.

- b. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.
- c. New rip rap projects to prevent erosion may not exceed more the 3' lake ward from the Mean Annual High Water Mark of 2893.20' and will have filter fabric incorporated into the designs.
- d. Rip rap material must be clean and angular and be hauled in from off site. The use of lake bed rock is prohibited. Clean round field rock or washed round rock may be used to fill in and around rip rap.

B. Impervious Cover

1. POLICY CONSIDERATIONS

- a. Excessive impervious cover should be discouraged as it may effect water quality, detract from the aesthetic values of the shoreline or alter natural shoreline characteristics.
- b. Porous or permeable materials should be preferred to impervious materials as they reduce the intensity and amount of runoff channeled to adjoining areas.

2. STANDARDS

- a. The total of all constructed impervious surface area over the body of water, at high water elevation, shall not exceed eight hundred (800) square feet per one hundred (100) feet of shoreline.
- b. The total of all constructed impervious surface areas within navigable waters shall not exceed one thousand (1000) square feet per one hundred (100) feet of shoreline

C. Removal of Debris

1. POLICY CONSIDERATIONS

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

2. STANDARDS

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

D. Setback Requirements

1. POLICY CONSIDERATIONS

- a. Structures should be adequately setback from the riparian boundary lines in order to prevent overcrowding and to maintain the aesthetic values of the shoreline.
- b. Common facilities, constructed and shared by two or more landowners, reduce the number of facilities on the lake, thereby reducing potential impacts. Where such a situation exists, setback requirements from the riparian boundaries may be waived, provided that the application clearly specifies that the facilities are to be used in common by the owners of the adjoining properties.
- c. Stream and spring outlets on lakeshores are valuable aquatic resources. They provide spawning and rearing habitat for numerous fish species as well as a variety of food organisms. Structures should be adequately setback from such outlets in order to protect fish habitat.

2. STANDARDS

- a. A riparian structure shall be set back the lesser of (i) twenty-five (25) feet from a riparian boundary or (ii) if less than 75' of shoreline, but greater than 60' of shoreline, then it will be set pack one third the linear distance to the opposite riparian boundary and properties with less than 60' of shoreline frontage, will not be permitted to have a structure.
- b. Structures shall be setback a minimum of twenty-five (25) feet from ordinary stream high water, for streams and springs having a flow less than twenty five (25) cubic feet

per second (cfs). Streams and springs with higher flow volumes will be assessed on an individual basis.

4.13 DESIGN STANDARDS FOR FACILITIES

Any structure which shall be constructed on the bed and banks of any navigable water within the exterior boundaries of the Flathead Reservation below the high water mark shall meet the following design standards:

A. Docks, Wharves, Piers

1. POLICY CONSIDERATIONS

- a. Open and floating docks are encouraged as they allow complete water transfer beneath them. Such docks with large free water transfer areas do not impede current flows and therefore stagnant water conditions are not created.
- b. Partially open docks which provide for restricted water transfer may be allowed. Partially open docks are those constructed of closely spaced piling or planking, concrete or crib docks having reduced free water areas, or similar structures which impede free water transfer.
- c. Solid docks or structures which essentially block the transfer of water beneath the dock will not be permitted on new structures.
- d. Docks, wharves and piers have a high potential to interfere with public navigation and public recreation. The property owner has a right to navigation and recreation in the navigable waters within the Reservation boundaries. A balance of these two rights should be arrived at by consideration of the water depth at a given location and the distance a structure extends into those waters.

2. STANDARDS

- a. All facilities
 1. Docks shall not exceed sixty (60) feet in length if there is five (5) feet of water depth at the end of the

dock when the lake is at its mean annual high water elevation, i.e., 2893.2 feet.

- 2 Where the depth of the water, for a sixty(60) foot dock is less than five (5) feet, additional length may be allowed, for the purpose of reaching said 5 feet depth. However, no dock shall exceed one hundred (100) feet in length as measured from the mean annual high water mark to the farthest extension of the dock into the lake.
- 3 Where boat access is provided to a dock structure, a minimum of twenty-five (25) feet shall remain open between the dock structures and stream and spring outlets.
- 4 The breakwater portion of a dock shall be reasonably parallel to the shoreline and shall not exceed a length equal to twenty-five (25) percent of the property's shoreline frontage, or thirty (30) feet, whichever is less. No solid section of the of the breakwater portion of a crib dock shall exceed twenty-five (25) feet in length.
- 5 All docks shall be open or partially open. Partially open docks shall meet the following standards:

DOCK LENGTH (FEET)	STANDARDS
25 or less	One or more openings of 8' along side wall area as free water area(s).
More than 25 but less than 75	Two or more openings which which incorporate at least one-half (1/2) of the length of the side wall area as free water area(s).
75 or more	Three or more openings which incorporate at least one-half (1/2) of the length of the side wall area as free water area(s).

No solid portion of any dock extending water ward from the shoreline shall exceed twenty (20) feet in length as measured from the high water mark, 2983.2 feet, to the furthest extension of the structure.

6. Solid docks twenty (20) feet or less in length may be allowed under special circumstances.
7. The free water area of partially open docks shall be at least eight (8) feet wide and the distance between such areas shall be no less than eight (8) feet.
8. The width of the deck on the dock shall not be greater than eight (8) feet.
9. Reflection devices, not exceeding four (4) inches in diameter, shall be installed at the end of the dock in order to increase dock visibility for lake traffic.

B. Marinas and Common Use Docks

1. POLICY CONSIDERATIONS

- a. All policy statements stated in Section 4.13 A.1 shall also apply to marinas.
- b. Marinas, because of their size, have a high potential to impact the lake and lakeshore. A marina should be designed to accommodate only the anticipated sizing and capacity needs, to protect the navigational rights and safety of neighboring property owners and recreational users of the lake, to insure general compatibility with the character of the area so as not to create an unwarranted disturbance or nuisance, and to protect the quality of the water, and fish and wildlife habitat.
- c. In addition to the criteria for permit approval set forth in Section 4.11 the Board shall also ascertain, in connection with approval of a permit application for a marina that such marina will be compatible with the surrounding land and water uses.
- e. A distinction is made between marinas and common use docks. Marinas provide services to the general public and meet the needs of many lake users and common use docks meet only the needs of a homeowners association of a limited size.

2. STANDARDS FOR COMMON USE DOCKS

- a. A minimum of one hundred feet 100' shall remain open between any dock structure and the side riparian boundary.
- b. A minimum twenty-five feet 25' travel lane shall be provided between dock structures for boats to travel.

- c. Each common use dock shall have a minimum of two hundred fifty feet 250' of lake frontage.
 - d. The maximum length of each individual wing dock forming a boat slip shall not exceed twenty 20' feet.
 - e. The number of boats or boat slips provided shall not exceed one boat or boat slip per twenty (20') lineal feet of lake shore frontage.
 - f. Common use docks may incorporate a boat ramp no larger than ten feet 10' wide and no longer than sixty feet 60' lakeward.
 - g. No retail sales or rental facilities shall be allowed on the dock structure.
 - h. Additional private docking facilities may be allowed if the following conditions are met:
 - The legal entity to which the common use dock is issued has a minimum of one thousand feet 1000' of lake shore frontage.
 - The association members have a covenants which provide the landowner fronting the lake through a designated common area special conditions which provide the individual the exclusive use of that lake access.
 - The density of structures shall not exceed one structure for every two hundred-fifty 250' lineal feet of lake shore frontage.
 - Structures shall meet the requirements set forth in Section 4.13.A2
3. STANDARDS FOR MARINAS
- a. Each marina shall have a minimum of three hundred feet 300' of shoreline frontage.
 - b. In addition to Section 4.13. A design standards for docks, the maximum length of that portion of any dock extending over the water shall be one hundred feet 100'.
 - c. The length of the wing docks forming the individual boat slips shall be sized according to the lineal feet of the shoreline. The number of boat slips provided shall not exceed one boat slip per twenty (20) lineal feet. (i.e. three hundred feet 300' of shoreline would accommodate 15 boat slips)

- f. One boat ramp per marina may be constructed not to exceed twenty feet 20' wide and one hundred feet 100' long.
- g. One shore side sewage facility and one shore side fuel station per marina may be constructed, provided, however, that one fuel pump may be allowed on the dock structure provided that it is continuously in compliance with all applicable Federal, Tribal Laws and local regulations.
- h. Lake related services and rentals sales of water use related merchandise such as, boat fuel, oil lubricants, fishing equipment and personal items typically associated with marinas shall not extend over the water.

4. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION.

The applicant for a marina or common use dock shall, in addition to all other requirements for permit application, be responsible for producing at their expense an environmental analysis report. The environmental analysis report shall comply with the requirements contained in the regulations addressing a "Major Variance" found in chapter 8 of these regulations. The procedures pertaining to a major variance shall be employed by The Shoreline Protection Board, including public notice and public hearing. Accordingly, the permit review time frame, contained in Regulation 4.9 shall be waived to accommodate the environmental analysis and public participation requirements of the regulations in chapter 8.

C. Boathouses Boat Shelters and Shore Stations

1. POLICY CONSIDERATIONS

- a. Boathouses are essentially land based structures and, built water ward of the shoreline, have a high potential to; detract from the aesthetic values of the shoreline, block scenic views from neighboring properties, significantly alter the natural characteristics of the shoreline and diminish water quality.
- b. Boat shelters may detract from or block scenic views from neighboring properties.

2. STANDARDS

- a. The construction of boathouses is prohibited below the high water mark.
- b. The bed and banks of any navigable water shall not be excavated or dredged in order to provide channels and suitable water depth for boating access into a boathouse.
- c. Any structure which accommodates living quarters or other nonwater related activity in conjunction with housing boats may not be located below the high water mark of any navigable water.

D. Boat Ramps and Boat Rail Systems

1. POLICY CONSIDERATIONS

- a. Boat ramps have a potential to increase sedimentation in the lake, diminish water quality and alter natural shoreline characteristics.
- b. Boat rail systems, are preferred over boat ramps and are allowed if properly installed,
- c. Boat ramps will not be allowed within a 2 mile radius of the nearest public launch access site.

2. STANDARDS

- a. Footings and/or the base of the boat ramp shall be constructed below the preexisting grade of the shoreline.
- b. Boat ramps shall be of the same elevation as the preconstruction elevation of the bed and shore of the applicable body of water.
- c. No boat ramp shall exceed six hundred (600) square feet of surface area water ward of the mean annual Water elevation, i.e., on Flathead Lake 2893.2 feet.
- d. Maximum grade shall not exceed 15% and no natural slope in excess of 45% grade shall be disturbed by construction of a boat ramp.
- e. All ramps shall be finished with non-skid surface to insure maximum traction for vehicles launching and retrieving boats.
- f. Boat ramp edges shall be rip rapped in order to prevent erosive undercutting those boat ramps that are constructed flush with the surface of lake bed may require rip rap

- g. Launching rails shall be suitably anchored to the lake bottom.

E. Retaining Walls

Designs that address a more natural shoreline are preferred over all other methods.

1. POLICY CONSIDERATIONS

- a. Retaining walls significantly alter shoreline characteristics. They create a totally unnatural shoreline which causes alteration of wave actions, beach dynamics and shoreline erosion patterns.
- b. Retaining walls which do not follow the natural contour of the shoreline have a high probability of effecting erosion of neighboring properties and may have adverse impacts on the lake and lakebed.
- c. Other alternatives, such as rip rap, should be explored first. Retaining walls should be constructed only as a last resort. When used, retaining walls should be constructed only for the purpose of stopping shoreline erosion.
- d. Stone or log retaining walls are preferred to concrete retaining walls.

2. STANDARDS

- a. Retaining walls shall be permitted only when other construction types, or alternatives, are not feasible.
- b. Retaining walls shall not be permitted in areas where active erosional processes are not evident.
- c. Retaining walls shall be constructed at or above the mean annual high water elevation whenever possible, and they shall conform to the contour of the shoreline.
- d. Retaining walls designed to extend the land area into the lake shall not be permitted.
- e. Concrete retaining walls shall be permitted only when other construction types, or alternatives, are not feasible.
- f. If an existing retaining wall has to be replaced, it shall be removed from the shoreline and shoreline protection area, and the

replacement wall shall be constructed in essentially the same location as the existing wall. However, if replacement proves economically unfeasible or will cause undue environmental hazards (i.e., excessive sedimentation), a new wall may be constructed in front of the existing wall. New retaining walls will not be allowed more than three (3) feet water ward of the mean annual high water elevation, i.e., on Flathead Lake 2983.2 feet.

- g. Groins shall be constructed, where necessary or advisable, to prevent erosion of neighboring properties caused by a retaining wall.
- h. Applications for retaining wall structures over one hundred feet 100' will need to meet the requirements outlined in chapter 8 for a "Major Variance" request.

F. Breakwaters, Jetties and Groins

1. POLICY CONSIDERATIONS

- a. Breakwaters, jetties and groins have a high impact on shoreline areas through alteration of current flows, alteration of erosional and sedimentation patterns, creation of stagnant water areas and potential interference with navigation or recreational use of public waters.

2. STANDARDS

- a. Breakwaters, jetties and groins shall be situated such so as not to cause the accumulation of beach materials or increase sedimentation or erosion to the banks and bed of the lake.
- b. Breakwaters, jetties and groins may be permitted only if after review the governing body finds that the proposed structure(s) will comply with the "Policy Criteria for Issuance of a Permit", contained in section 4.11 and the "Construction Standards" contained in Section 4.12 of these regulations.
- c. Breakwaters and wave breaks will be permitted, if required as an integral portion of as dock, provided that the standards contained in Section 4.13, A.2 (a) (4) and Section 4.12.

G. Buoys

A permit is not required for buoys placed in a lake on a temporary basis not to exceed ten (10) days. However, location and time frame must be reported to the Shoreline Protection staff.

1. POLICY CONSIDERATIONS

- a. Buoys may create a potential safety hazard to navigation and recreation, and so should only be allowed in selective locations.
- b. Buoys should be securely anchored and well marked for safety reasons.
- c. Buoys should be made of styrofoam and/or low-impact plastic. Logs and/or metal barrels should not be allowed.
- d. Anchors shall consist of concrete.

2. STANDARDS

- a. Buoys and their anchors will be permitted only if after review the Board finds that placement of the buoy will not cause a significant safety hazard and not interfere with navigation and recreation. And said anchor is not to exceed one cubic yard of concrete.
- b. Anchors, for buoys used to moor boats, shall be installed within one hundred (100) feet of the mean annual high water elevation i.e., on Flathead Lake 2893.2 feet.
- c. Anchor lines shall be weighted or made of non-floatable materials.
- d. Anchors are to be placed only on the surface of the lakebed in accordance with Section 4.13 G. 2 (b).
- e. The distance from the buoy to a moored boat shall not exceed twenty (20) feet.
- f. All buoys shall be clearly marked (i.e., reflective to materials, flags, etc!), and shall contain reflective devices.
- g. The applicant installing the buoy shall be the property owner of the property adjacent to the site, or, if not the property owner, then permission, in writing, of such owner shall be obtained and shall be a prerequisite to the issuance of any permit.
- h. A buoy will be considered still in place and functional until the entire anchoring system has been removed from the lake bed and lake bed has been restored.

H. Utility Lines and Water Withdrawal Systems

1. POLICY CONSIDERATIONS

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

2. STANDARDS

- a. Where necessary, the lakebed and lakeshore shall be disturbed only to the extent necessary to install the line.
- b. In areas where there is a rock layer on the surface of the lakebed or lakeshore, such rock shall be removed and set aside, then replaced as a protective layer subsequent to the excavation.
- c. In areas where no rock layer exists, the replaced dirt shall be compacted and consolidated in order to prevent erosion. Additional cover, such as gravel, a rock layer or vegetation, may also be required, which may include seeding.
- d. Following installation, the lakebed shall be returned to its condition prior to construction.
- e. All utility lines on structures and water withdrawal systems shall be installed so as to provide maximum protection from the natural elements, mechanical wear and any other situation that may cause damage.
- f. No lines shall be attached to the top of the deck on floating structures.
- g. All permanent lighting, both on dock structures and shore side, shall be designed to minimize reflection on navigation channels and fairways. Flashing and bright lights are prohibited.
- h. All utility circuits shall meet all State and local electrical codes.

I. Burning

1. POLICY CONSIDERATIONS

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

2. STANDARDS

- a. The burning of any or all materials below the high water mark of Flathead Lake, is strictly prohibited.

J. Removal of Accumulated Materials From Behind a Dock or other Structure

1. POLICY CONSIDERATIONS

- a. It may be necessary due to the dynamics of Flathead Lake, and the character of existing structures, to periodically remove accumulated silt, soil, and other materials, in order to maintain riparian structures in good working condition and insure continued boating access.
- b. Such maintenance if improperly performed poses a high risk of damage to the lakebed, and the shoreline.

2. STANDARDS

- a. The removal of accumulated materials behind and around a riparian structure will, in all cases, require that a one (1) year permit be obtained from the Board.
- b. The permit application shall contain a detailed statement as to what precautions will be taken to ensure that the removal operation does not result in damage to the lakeshore or shoreline.
- c. The area from which removal of materials is contemplated must be less than five hundred 500 square feet.
- d. The removal of accumulated materials shall not result in a water depth, at the water ward end of a dock or other similar riparian structure, of greater than five feet.
- e. This maintenance shall be carried out in such a manner that any disturbance to the lakebed shall be held to a minimum and the natural slope of the lakebed and shoreline shall not be altered.

K. Other Projects

Other types of projects which are not specifically covered by the foregoing design standards, such as the placement of fuel tanks over water beyond the high water mark, shall be reviewed on an individual basis under the "Policy Criteria for Issuance of a Permit" contained in Section 4.11 and the "Construction Standards" contained in Section 4.13 of these regulations.

CHAPTER 5 - EXISTING STRUCTURES

- A. Any structure maintained or causes to be maintained, on the Bed and/or banks of any navigable water below the high water mark on Flathead Lake, before November 1, 1982. The high water mark is described as 2893.2 elevation within the outer bounds of the Flathead Reservation.

5.1 Structure Registration

- A. Any person who on November 1, 1982, maintained any wharf, dock, pier, breakwater, jetty, groin, bulkhead, marina, or other structure, on the bed and banks of any navigable water below the high water mark within the exterior boundaries of the Reservation, must obtain a valid permit from the Shoreline Protection Board of the Confederated Salish and Kootenai Tribes.
- B. A riparian landowner shall have a period of six months from the effective date of this chapter, or until November 2, 1983, within which to file a permit application, all supporting maps, and any other documents required, with the Shoreline Protection Board.

5.2 PERMISSION TO ENTER

- A. The Shoreline Protection Board, its staff and/or its consultants or designees, may conduct such investigations, examinations and site evaluations as it may deem necessary to verify information supplied as a requirement of these regulations.
- B. In applying for a permit the applicant grants to the Tribal Council, Shoreline Protection Board or their staff or designees, permission to enter onto his land for the purpose of performing such investigations and evaluations.

5.3 APPLICATION PROCEDURE

- A. The following information shall be submitted to the Board in connection with the application for a permit issued under this chapter unless waived, in writing, by the Board:
1. Permit Application
A permit application setting forth in detail:
 - A description of the nature of the structure, its size and shape;
 - The materials of which it is constructed;
 - The purpose for which it is used.

2. Vicinity Map

- A vicinity map of the site in which the structure is located clearly showing:
- Location along shoreline,(East, West, North or South Shores)
- Name and distance to nearest town, community or other identifying location, (mile marker, Buildings, etc.)
- Property boundaries and dimensions, (submit property plat)
- North Arrow.

3. Site Plan

- Site plan of the entire site in which the structure is located. The site plan shall be drawn to a convenient scale and shall show:
- Existing shoreline;
- Existing riparian structures with location in relation to property boundaries and other identifiable points;
- The high-water mark;
- The five foot water depth in relation to riparian structure.

4. Additional Information

- The Shoreline Protection staff or Shoreline Protection board may require the submission of any additional information that it may deem necessary for adequate review of the application.

B. All necessary application forms may be obtained from the Shoreline Protection office, Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855, Telephone (406) 675-2700 or (406) 883-2888.

5.4 SHORELINE PROTECTION STAFF REVIEW PROCEDURES

A. The Shoreline Protection staff shall review the application and other information to determine whether or not the riparian structure complies with the requirements of these regulations and the Shoreline Protection Ordinance. The Shoreline Protection Administrator, in his/her discretion, may seek input from other agencies or individuals.

B. Upon completion of the review of the permit application by the Shoreline Protection staff, all materials shall be presented to the Board, together with the staff's findings and recommendations for final approval, conditional approval, or disapproval.

5.5 SHORELINE PROTECTION BOARD REVIEW PROCEDURE

- A. The Shoreline Protection Board shall review the application, other pertinent information, and the Shoreline Protection staff findings and recommendations, for compliance with the criteria set forth in Section 5.8.
- B. The Shoreline Protection Board shall issue the permit unless one of the reasons for denial, as set forth in Section 5.9 of these regulations exists, Provided, however, That the Board is empowered to impose in connection with the issuance of the permit, conditions and limitations as appear necessary to avoid or minimize any environmental harm or other effects of an adverse nature.

5.6 REVIEW PERIOD

- A. Review of a permit application and its approval, conditional approval or denial shall be the responsibility of the Shoreline Protection Board.
- B. If an application is incomplete, the Shoreline Protection staff shall notify the applicant and the review of the permit application shall not commence until all required materials have been submitted.

5.7 PERMIT VALIDITY

- A. A permit issued under this chapter shall remain effective until voluntarily surrendered by the holder or revoked by the Board for a violation of these regulations.
- B. In the event the appurtenant property to which the permit relates changes ownership, the permit may remain effective provided the new owner notifies the Board of the change in ownership.

5.8 CRITERIA TO BE USED IN REVIEWING PERMIT APPLICATIONS FOR EXISTING STRUCTURES

- A. The Board shall consider the following factors in deciding whether to grant a permit for an existing structure:
 - 1 The quality of construction;
 - 2 The general state of repair or disrepair of the structure;
 - 3 The effect, if any, of the structure on water quality;
 - 4 The use of the affected area as a habitat for fish and wildlife;
 - 5 The effect, if any, of the structure on the exercise of tribal treaty fishing rights;

- 6 Whether the structure is one intended for use in aid of navigation and is no more extensive than necessary to accomplish that purpose;
 - 7 The effect, if any, on the scenic beauty of the areas; or on
 - 8 Any other resource value.
- B. The Shoreline Protection staff, and Board, where applicable, may also consider the conformance of the structure to the Construction and Design criteria for new structures as set forth in Sections 4.12 and 4.13.
- C. The Board is empowered to impose such conditions on permit issuance, including but not limited to, alteration of a structure, as is necessary to accomplish the purposes of these regulations and the Shoreline Protection Ordinance (as revised). The permittee may appeal the imposition of any condition on the continued effectiveness of the permit in accordance with the procedures of Sections 8 and 10 of the Shoreline Protection Ordinance.

5.9 REASONS FOR DENIAL OF A PERMIT

A permit application for a riparian structure in existence prior to November 1, 1982, shall be denied only for one of the following reasons:

1. The failure of the applicant to submit the necessary permit application forms, or accompanying material, failure to permit routine site evaluations and investigations by Board personnel, or any other failure of or refusal by the applicant to abide by the Shoreline Protection Ordinance and its implementing regulations.
2. The structure is in such a state of disrepair as to pose a public nuisance, or a danger to the health and safety of others, or a danger to navigation;
3. The structure has an adverse effect on water quality and there are no mitigating measures instigated to eliminate or substantially reduce the adverse effects;
4. The structure materially interferes with the use of the affected area as a habitat for fish and wildlife or materially interferes with the exercise of tribal treaty fishing rights;
5. The structure constitutes an obstruction to navigation.

5.10 REVOCATION OF A PERMIT

- A. A permit which has been issued under this chapter may be revoked for one of the following reasons:
1. A violation of a condition stipulated in the permit, the Shoreline Protection Ordinance or these regulations,

2. Refusal of the permittee to pay any applicable annual rental charge,
 3. Failure to comply with a Board order to undertake repairs or alterations of a riparian structure.
- B. Upon a determination that the permittee is in violation of the provisions of the ordinance, these regulations, or the permit, the Shoreline Protection Board shall send him notice by registered mail of the deficiency and that he has thirty (30) days or a time period established by the Board, based on the circumstance from receipt of such notice to remedy the deficiency. If the permittee fails to take the required action within the time specified, the Board shall send by registered mail a Notice of Non-Compliance subject to the provisions of Section 8.4 of these regulations.
- C. Upon receiving the Notice of Non-Compliance the permittee may avail himself of procedures set forth in Sections 8, 9 and 10 of the Ordinance and Chapter 8 of these regulations.

5.11 FEES

- A. No fee is required to accompany a permit application for an existing structure.
- B. The Shoreline Protection Board may, however, as a condition to the issuance and continued effectiveness of the permit, require the payment of a reasonable annual charge or rental fee, on that part of any structure which is in excess of that which is required as an aid to navigation.

5.12 REPAIR AND RECONSTRUCTION

- A. The issuance of a permit for an existing riparian structure authorizes the routine repair and maintenance of the structure(s) to which it relates without the necessity of obtaining further authorization from the Shoreline Protection Board. In the event of extensive repairs, or reconstruction of an existing structure, it will be necessary to obtain Board authorization as set forth in Section 4.5B.
- B. Any repair carried out under this Chapter shall, to the fullest extent possible, conform to the construction and design criteria for new structures as set forth in Section 4.12 and 4.12 of these regulations.

CHAPTER 6 - ABANDONED STRUCTURES

- A. Any structure located on the bed and/or banks of any navigable waters below the high water mark which has not been claimed by an individual, group, or organization lacking concrete proof of actual riparian ownership through recorded deed or Bill of Sale, or any structure that is in such a state of disrepair as to be

considered unsafe, unrepairable, or a hazard to navigation, and having been in such condition for a period of one year.

6.1 AUTHORITY OF THE BOARD

The Shoreline Protection Board shall have the authority to order the removal of a riparian structure, which has been abandoned, and the restoration of the property underlying and surrounding such structure.

6.2 PRESUMPTION OF ABANDONMENT

- A. A riparian structure shall be presumed to have been abandoned in the event:
1. There is a documented long period of non-use of such structure, such period of non-use extending at least three years.
 2. The structure is in such a state of disrepair as to indicate an intent on the part of its owners to discontinue the structure's intended use.
- B. Notice of a Board determination that a riparian structure has been abandoned shall be sent to the owner of the property on which the structure is located, and the current resident of the property, if different from the owner.
- C. Upon receipt of notice from the Board that a structure located within their riparian boundary has been found to have been abandoned, and the order of the Board has ordered its removal and the restoration of the underlying property, any interested party may present to the Board, within fifteen days of receipt of notice, evidence that such structure has not been abandoned.
- D. "Interested party" for the purpose of this chapter means the owner of the appurtenant property on which the structure is located, the present inhabitant of the property on which the structure is located, or any other person who can prove a right, by contract, permission or otherwise, to the use of such structure.
- E. Evidence presented by any interested party that a riparian structure has not been abandoned shall be heard in the first instance by the Board. In the event the Board rejects the proffered evidence, any interested party may seek review of the Board's decision pursuant to Sections 8 and 10 of the Ordinance.

6.3 EFFECT OF AN APPEAL

- A. In the event it is determined as a result of either initial Board review, review by the Tribal Council or appeal to the Tribal Court, that a riparian structure has not been abandoned, any existing permit authorizing such structure will remain in effect, provided, however, that as a condition to the continued effectiveness of

such permit, the Board may order the permittee to undertake any, necessary repairs or restoration.

- B. In the event the Board determines that a structure has been abandoned, they shall issue an order directing that such structure be removed and the surrounding area be restored to its preexisting condition within sixty days of the date of such order, or such other time period the Board may prescribe.
- C. In the event the owner of the property fails to avail himself of any rights of appeal, the structure must be removed, and surrounding area restored, within sixty (60) days of the receipt of the initial determination of abandonment by the Board, or such other time period the Board may prescribe.

6.4 PARTY RESPONSIBLE

- A. The owner of the riparian structure shall be primarily responsible for compliance with an order of the Board in respect to removal and restoration.
- B. It shall be presumed that the owner of the appurtenant property on which the structure is located is also the owner of the structure.
- C. In the event a riparian structure is transferred with the sale of the appurtenant property, the new property owner shall be deemed to be the owner of the structure and shall be responsible for compliance with any orders issued under this chapter.

6.5 EFFECT OF PERMIT

A structure which meets the criteria for an abandoned structure as set forth in Section 6.2 shall be subject to the provisions of this chapter notwithstanding the existence of a Board permit for such structure.

CHAPTER 7 - INSPECTION AND REPAIR OF STRUCTURES

- A. The Shoreline Protection Board and Staff shall have the authority to inspect any and all structures located on the bed and banks of the Flathead Lake below the high water mark (2893.2), said inspection will be made to determine the stability, safety and overall compliance of said structures to the adopted Rules and Regulations, to recommend to the Board the necessary action in regard to revocation of permits due to noncompliance to Rules and Regulations.

7.1 RIGHT TO INSPECT

- A. The Shoreline Protection Board, or its designees, shall have the authority to conduct periodic inspections of riparian structures in order to monitor compliance with the provisions of the Ordinance and these regulations.

- B. The scope of any site investigation carried out by the Shoreline Protection Board, or its designees shall be confined to determining that the permittee is in compliance with any and all conditions imposed in the permit, the regulations and the Ordinance.
- C. In addition, the Shoreline Protection Board or its designees may inspect the condition of a riparian structure, including structural strength, and the general state of repair or disrepair in order to assure that such state of repair or disrepair poses a threat to health, safety, environment and/or hazard to navigation.

7.2 REMEDIAL ORDERS

- A. In the event the Shoreline Protection Board becomes aware of a violation of the ordinance, these regulations or the terms of a permit, or the existence of any condition which may pose a danger to the health and safety of the public, or threaten harm to the environment, the Board will issue a Notice Of Non-Compliance directing that the condition be corrected.
- B. The Notice Of Non-Compliance will set forth, in addition to the information required by Section 8.4:
 - 1. The nature of the condition to be corrected;
 - 2. The period of time in which the remedial measures must be accomplished; and
 - 3. The right of the permittee to seek review of the order of the Board pursuant to the provisions of Section 8.4 of these regulations.
- C. Failure to comply with the order of the Shoreline Protection Board within the time specified in the Notice Of Non-Compliance, or to timely avail oneself of the right to seek review of such determination, shall be deemed a violation of the ordinance and these regulations and may subject the permittee to the revocation of his permit, to the enforcement and fine provisions of the Ordinance and these regulations.

7.3 INSPECTION PROCEDURE

- A. Inspections of riparian structures subject to the provisions of the Shoreline Protection ordinance, and these regulations, shall take place on a periodic basis.
- B. Issuances of a permit under the provisions of the Shoreline Protection Ordinance grants to the Shoreline Protection Board or its designees the right to enter property at all reasonable times for the purpose of carrying out the provisions of these regulations.

CHAPTER 8 - ADMINISTRATION OF SHORELINE PROTECTION BOARD

8.1 VARIANCES

A. GENERAL CRITERIA

1. MINOR VARIANCE

The Shoreline Protection Board is empowered to grant a minor variance from the construction requirements or design requirements of these regulations when it determines that:

- a. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship;
- b. No reasonable alternatives exist which do meet the standards herein; and
- c. Granting of the variance will not have adverse impacts on a body of water or its shoreline in terms of the Policy Criteria for Issuance of a Permit, outline in Section 4.11.

2. MAJOR VARIANCE

Major variances from the requirements of these regulations require the preparation of an environmental impact statement, review by the Shoreline Protection Board and a public hearing by the Shoreline Protection Board. A variance request shall be considered major when any of the following criteria are met:

- a. The variance request does not meet the requirements of section 8.1 (A) (1).
- b. The variance request deviates substantially from the construction requirements or design standards set forth in these regulations;
- c. The variance request criteria creates a major environmental impact. All variances that are granted shall be clearly stated on the permit.

B. REVIEW PROCEDURE

1. MINOR VARIANCE

- a. The Shoreline Protection staff, if it so determines, shall recommend to the Shoreline Protection Board that a variance(s) from these regulations should be granted as part of an application's approval or conditional approval.
- b. The Shoreline Protection Board shall then consider the Shoreline Protection staff recommendations and act upon the application. The Board may grant or deny the variance request.

2. MAJOR VARIANCE

- a. When the Shoreline Protection staff determines that a major variance is involved, it shall notify, in writing, the Shoreline Protection Board of said request. The Shoreline Protection Board shall then determine a major variance under these regulations and shall inform, in writing, the Shoreline Protection staff and the applicant of its decision.
- b. The determination that a major variance request exists shall require at the expense of the applicant, the preparation of an environmental impact statement. The environmental impact statement shall contain:
 - 1. Description of the proposed project;
 - 2. Description of and the reason for, the major variance being considered;
 - 3. Description of existing conditions;
 - 4. Description of anticipated impacts as they relate to each of the Policy Criteria of Section 4.11.
 - 5. Alternatives to the proposed project, which would not require a major variance; and
 - 6. Any other information that may be required.
- c. When complete, the environmental impact statement shall be made available, at the expense of the applicant, to persons, agencies or organizations that may have an interest in the proposed project.
- d. The Shoreline Protection staff shall review the application, the environmental impact statement and other information and thereupon prepare its recommendation. Said materials and recommendations shall be distributed to the Shoreline Protection Board for their review.
- e. The Shoreline Protection Board upon receipt of all materials and recommendations, shall post notice and hold a public hearing on the proposed action.

- f. Following the public hearing, the Shoreline Protection Board shall act upon the application and may grant or deny the variance request.

8.2 FEES (see fee schedules)

8.3 VIOLATIONS

After the effective date of these regulations the following actions shall constitute a violation of Tribal Ordinance 64A (Revised), the Shoreline Protection Ordinance, and shall subject the person guilty thereof to the provisions of Sections 8.11, 8.12 and 8.13.

1. The initiation or continuation of any construction on the bed or banks below the high water mark of any navigable body of water within the exterior boundaries of the Flathead Reservation without a valid permit from the Board authorizing such construction;
2. The undertaking of any construction in excess of that authorized by a valid existing permit;
3. Construction or utilization of a riparian structure in violation of any condition placed on the issuance of a permit for that structure or of the construction standards set forth in Chapter 4 of these regulations;
4. The reconstruction of an existing structure without first obtaining a valid permit authorizing such work from the Board;
5. The dredging of the bed and banks of the Flathead Lake or any other navigable body of water, or the creation of landfills on the bed or banks of Flathead Lake, or any other navigable body of water within the Flathead Reservation, unless a variance has been granted in accordance with Section 8.1 of these regulations;
6. Failure to comply with an order of the Shoreline Protection Board with respect to restoration of the shoreline protection area as set forth in Section 8.13.

8.4 NOTICE OF NON-COMPLIANCE

- A. Whenever the Shoreline Protection Board determines that a violation has occurred of the Shoreline Protection Ordinance, these regulations, or any permit or order issued pursuant thereto, it shall issue a Notice of Non-Compliance. The Notice of Non-Compliance shall serve as the summons and complaint for purposes of the violation.

- B. A Notice of Non-Compliance shall contain information advising the person to whom it is issued of the following information:
1. That there maybe an opportunity to cure alleged acts of non-compliance, and if so, the method and time for cure.
 2. That an answer to the notice must be made in writing and received by the Shoreline Protection Office within fifteen days of receipt of a notice.
 3. The consequences of failing to answer.
 4. The nature of each violation.
 5. The type and amount of any fines or penalties for each alleged violation.
 6. The date, time and place at which a hearing on each violation will be held, if not cured, which shall not be less than thirty (30) days more than sixty days(60) days after the date of issuance of the notice.
- C. A notice of non-compliance shall be served either personally or by registered or certified mail return receipt requested.

8.5 ANSWER

- A. A person to whom a Notice Of Non-Compliance has been issued shall answer within 15 calendar days of the date of service of the notice of non-compliance. Answers shall be mailed or be delivered by personal appearance before the Shoreline Protection Board or its designated agent. Failure to answer within the time specified shall be deemed a admission of the violation.
- B. An answer shall either, admit or deny, the violation, raise all affirmative defense, within fifteen (15) days of the date of receipt of the notice of non-compliance will undertake curative measures, if any, specified in the Notice of Non-Compliance.
- C. If an answer states that a person will undertake the curative measure that may be specified in the notice, the hearing schedule in the notice may be held in abeyance for reasonable amount of time to enable the curative measures to be completed. If curative measures are completed in a reasonable amount of time and to satisfaction of the Shoreline Protection Office Administrator the hearing may be cancelled at the discretion of the Administrator. Satisfactory completion of curative measures does not obviate of other fines or penalties if a reasonable basis exists for their imposition.

8.6 CONTESTED CASES

- A. A hearing for the resolution of contested case shall be conducted by a hearing examiner designated by the Board and shall be held pursuant to the procedures

contained in the Tribal Administrative Procedures Ordinance (hereafter called TAPO). As applied to this Ordinance the “Chief executive officer” referenced in PART VI Section 23 of TAPO shall be the Board.

- B. The provisions of TAPO shall provide the procedures for administrative and judicial review of all contested cases arising under this Ordinance.
- C. If a contested case involves a significant public interest the Board may, on its own motion, solicit public comment. The Board may condition or limit public comment as necessary for prudent administration of these regulations. In the event that the Board determines public input is necessary it may toll any time frames contained in these regulations for the duration of the public comment period

8.7 PENALTIES

Upon finding that the person served with a notice of non-compliance has committed a violation of Ordinance 64A, these regulations, a condition of a permit, or an order of the Board, any or all of the following penalties may be assessed and ordered:

1. Revocation of any applicable permit;
2. Removal of riparian construction and restoration of the underlying property;
3. Imposition of a monetary fine;
4. Prescription of any remedial measures deemed necessary providing the need for such measures had been sustained in the Board hearing and subsequent appeals.

8.8 ACTIONS TO ENFORCE

The administrator of the Board may institute in Tribal Court, under the procedures there applicable, a civil action to collect against any person who has been ordered to pay a penalty or perform remedial measure pursuant to these regulations and who has not appealed such decision or who has not paid an assessed fee, cost, or penalty.

8.9 REVOCATION OF PERMIT RESTORATION OF AN AREA

- A. In addition to revocation of a permit, if any the responsible person may be ordered to remove a project and restore the area surrounding and underlying the project.
- B. Removal of a project and restoration of the surrounding area must be accomplished within sixty (60) days of an order directing such action, except that

the Board or Court may, on its own initiative, or upon application of the responsible person, delay the removal and restoration for up to twelve (12) months if it is determined that such delay would reduce the likelihood of environmental damage resulting from such removal and restoration.

8.10 FAILURE TO COMPLY WITH BOARD ORDER

- A. In the event that a person responsible for a project fails to comply with an order directing removal and restoration, the Board, after the laps of sixty (60) day grace period, may undertake the removal of the project and restoration of the underlying property on its own initiative, and may assess the responsible person for the cost of such work.
- B. The Administrator must notify the responsible person by mail at least five (5) days in advance of the planned enforcement action that it plans to remove the project and perform any necessary restoration.

8.11 FINES

- A. Any person responsible for a project constructed or maintained contrary to the provision of Ordinance 64A, these regulation, or terms of a permit shall be subject to penalty of not less than twenty-five (\$25) or more than five hundred dollars (\$500) for each act of non-compliance.
- B. Each day during which said violation shall continue shall be considered a separate infraction of these regulations and of the Shoreline Protection ordinance.
- C. Nothing in these regulations will be interpreted to deny the use of other civil remedies available under Tribal and Federal Law.

8.12 AMENDMENTS

The Shoreline Protection Board shall have the authority to adopt such additional regulations, or to make revisions to existing regulations, as it deems necessary, pursuant to the rulemaking procedures in TAPO.

8.13 LIABILITY

The Tribal Council, Shoreline Protection Board, or any of their agents acting within the scope of their authority under Tribal Ordinance 64a (Revised) and these regulations, may not be held liable for any property damage incurred by the applicant, or any other person, as a direct or indirect result of the issuance, or refusal to issue any permit. In accepting a permit from the Shoreline Protection Board, the permittee so absolves, the Tribal Council and their agents from all such responsibility.