

AQUATIC LANDS CONSERVATION ORDINANCE

BE IT ENACTED BY THE COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES that:

PART I

SHORT TITLE, AUTHORITY

Section 1. Short Title.

This Ordinance may be referred to as the Aquatic Lands Conservation Ordinance or "ALCO".

Section 2. Authority.

This Ordinance is enacted pursuant to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Article VI, Section 1, Subsections (a), (l), (n), (t) and (u), approved by the Secretary of the Interior, October 28, 1935.

PART II

FINDINGS AND POLICY

Section 1. Findings.

The Tribal Council finds that:

a. The self-governing capabilities, political integrity, health and welfare, and economic security of the Tribes will be

protected and enhanced by Tribal governmental control, regulation and protection of aquatic lands which are critical for the perpetuation of Reservation fisheries and wildlife, the preservation of Reservation water quality, and the maintenance of the health, safety and welfare of Tribal members and thereby of all persons residing on the Reservation.

b. The Treaty of Hellgate July 16, 1855 (12 Stat. 975) reserved to the Confederated Salish and Kootenai Tribes (hereinafter the "Tribes") the exclusive right to hunt and take fish within the exterior boundaries of the Flathead Reservation. The exclusive Treaty right to hunt and fish within the Reservation confers upon the Tribes the right, duty and responsibility to protect those Tribal interests.

c. Reservation population growth and increased unregulated utilization of aquatic lands are causing adverse impacts upon the quality of Reservation waters, fisheries and wildlife habitat, and therefore, there exists an immediate need to regulate and manage the use of aquatic lands to preserve and protect them.

Section 2. Policy.

It is the policy of the Tribal Council to prevent the degradation of Reservation waters and aquatic lands by regulating construction or installation of projects upon aquatic lands whenever such project may cause erosion, sedimentation, or other disturbances adversely affecting the quality of Reservation waters and aquatic lands.

PART III
GENERAL PROVISIONS

Section 1. Definitions.

For the purposes of this Ordinance the following definitions will apply:

- a. "Adjacent" means bordering, contiguous or neighboring.
Wetlands separated from other Reservation waters by man-made dikes or barriers, natural river berms and the like are "adjacent wetlands."
- b. "Administrator" means the chief executive officer of the Shoreline Protection Office of the Confederated Salish and Kootenai Tribes.
- c. "Aquatic Lands" means, all land below the mean annual high water mark of a Reservation water body.
- d. "Board" means the Shoreline Protection Board of the Confederated Salish and Kootenai Tribes.
- e. "Discharge of dredged material" means any addition or placement of dredged materials into Reservation waters or on aquatic lands whether through direct placement, or by secondary means such as run-off, slumping or overflow from a disposal site.
- f. "Discharge of fill material" means any addition or placement of fill materials into Reservation waters or onto aquatic lands.
- g. "Dredged material" means material that is excavated, displaced, or removed from aquatic lands.

- h. "Fill material" means any material used for the purpose of replacing Reservation waters with dry land or dredged material.
- i. "Mean Annual High Water Mark" means that line on the shore of Reservation waters established by the fluctuations of water and indicated by physical characteristics such as a clear, naturally occurring line impressed on the bank; shelving changes in the character of soil; paucity or lack of terrestrial vegetation; or the presence of water borne litter or debris.
- j. "Office" means the Shoreline Protection Office of the Confederated Salish and Kootenai Tribes.
- k. "Person" means any individual, partnership, association, corporation, and any other entity composed of individuals, and governmental entities.
- l. "Project" means a physical alteration of aquatic lands, wetlands, or Reservation waters, not otherwise exempted by this Ordinance or implementing regulations, which has the potential to cause a material change in the condition of such lands or water in contravention of the policy of this Ordinance, and includes but is not limited to dredging, filling, unregulated access detrimental to aquatic lands, irrigation diversions and returns, drainage ditches and construction on aquatic lands, and furthermore, includes maintenance or repair involving any of the above activities.

- m. "Reservation waters" means:
- (1) all naturally occurring bodies of water within the exterior boundaries of the Reservation regardless of alteration by man, including but not limited to lakes, rivers, streams (including intermittent streams), mudflats, wetlands, sloughs, potholes and ponds from which fish and wildlife are or could be taken, but does not include wholly manmade water bodies.
 - (2) tributaries of waters identified in subpart (1) above;
 - (3) wetlands adjacent to Reservation waters.
- n. "Responsible person" means any person who undertakes a project or causes a project to be undertaken on aquatic lands.
- o. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.
- p. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do 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.

Section 2. Administration.

The Shoreline Protection Board of the Tribes, as created by Ordinance 64A (Revised), shall have the powers and duties associated with implementation of this Ordinance and any regulations

promulgated hereunder. The rights, responsibilities and immunities of the Board, and the Tribal Council, as specified in Ordinance 64A (Revised) remain unchanged.

Section 3. Water Rights.

This Ordinance shall not be construed to diminish or divest any existing water uses established in accord with applicable law.

Section 4. Regulations.

The Tribal Council may promulgate regulations to implement the provisions of this Ordinance upon recommendation of the Board. Regulations shall be promulgated pursuant to procedures contained in the Tribal Administrative Procedures Ordinance.

PART IV

PERMITS

Section 1. Permit Required.

- a. No work may commence on a project until the responsible person has been issued a permit for the project.
- b. All work on a project shall be conducted pursuant to the terms and conditions of the project permit.
- c. A permit shall be prominently displayed at the project site for the duration of construction activities and for two weeks thereafter.

Section 2. Permit Fees.

An application for a permit shall be accompanied by payment of a non-refundable fee to cover some costs associated with

permit issuance and administration. The amount of the fee shall be fixed from time to time by regulation, shall take into account the scope of the proposal, and shall be reasonable.

Section 3. Application for Permit.

a. Any person who intends to undertake a project shall present a written application for the project to the Office.

b. The application shall be on a form provided by the Office and shall include, but is not limited to, a location map, a specific description of the proposed project, the purpose and need for the project, practical alternative methods of implementing the project, and a plan specifying the type, quantity and source of materials to be used, means of access to the project area, the length of time necessary to complete the project, and the name, address and telephone number of the responsible person.

Section 4. Evaluation of Proposed Projects.

a. The Administrator of the Office shall review an application for a permit for adequacy and for project technical feasibility, shall determine if the proposal constitutes a project, and may make such on-site investigations as are necessary to perform these duties.

b. If the Administrator determines that the proposal is not a project the Administrator shall so state in a written notice to the person responsible for the project within 14 days of receipt of the application.

c. If the Administrator determines that the proposal is for a project, the Administrator shall bring the application before

the Board at the next regularly scheduled Board meeting or may call a special Board meeting if circumstances so require.

d. The Board shall review all applications. The Board shall either approve, approve with modifications or alternatives, or disapprove an application and shall state its decision in writing to the responsible person.

e. Upon approval or upon approval with modification or alternatives, the Administrator shall forward to the responsible person a permit which shall relate to the plan for the project approved by the Board, and which may include provisions for mitigation of adverse impacts associated with the project.

Section 5. Emergencies.

a. The provisions of this Section do not apply to emergency actions which are necessary to safeguard life or property during periods of immediate and substantial endangerment to life or property. The responsible person under this Section shall notify the Office in writing of the emergency undertaking within fifteen (15) days of commencement of such undertaking.

b. The Administrator shall make an on-site inspection of an action and cause a written report of such observations to be filed in with the Office and a copy shall be sent to the responsible person. The report shall include:

(1) a finding as to whether or not an emergency situation existed at the time the action was taken;

(2) a finding as to whether or not the action constitutes a project; and

(3) if the findings required in subparagraphs (1) and (2)

above are affirmative, and a permanent solution is feasible, recommend in writing that the responsible person put the solution into effect within a specified reasonable amount of time pursuant to a duly issued permit. Failure of the responsible person to put the solution into effect is not a violation of this Section unless a substantially similar action arises from such failure to act.

Section 6. Modification or Revocation of Permit.

The Board may, upon a finding of non-compliance or upon a finding of necessity, either modify or revoke a permit after the responsible person has been afforded notice and an opportunity to be heard.

PART VI
ENFORCEMENT

Section 1. Inspection.

The Administrator or his duly authorized agency may inspect any project for the purpose of determining compliance with this Ordinance, its implementing regulations, or permit terms and conditions.

Section 2. Projects in Non-compliance.

a. Except for emergency actions, a project engaged in by any person without a valid permit or in non-compliance with the terms of a valid permit shall be subject to proceedings brought by the Administrator for immediate abatement of a public nuisance.

b. Upon a finding that a non-complying project constitutes a public nuisance, the Tribal Court may penalize the responsible person in an amount not less than twenty five (25) dollars or more than five hundred (500) dollars for each day that the responsible person continues to engage in or maintains a non-conforming project at, in, or on aquatic lands.

c. In addition to any financial penalty imposed, the responsible person may be ordered by the Court to restore at his own expense the damaged lands and waters within such time as the Court may deem reasonable.

PART VI

REVIEW, SEVERABILITY, EFFECTIVE DATE

Section 1. Administrative Appeal of Board Action.

A person aggrieved by a final action of the Administrator or the Board may seek review of such action pursuant to procedures contained in the Tribal Administratives Procedures Ordinance, Ordinance 86A. For purposes of administrative review, a decision of the Board shall constitute final agency action, appealable to an administrative law judge.

Section 2. Judicial Review.

a. The Tribal Court of the Confederated Salish and Kootenai Tribe shall have jurisdiction to hear and decide all causes arising under this Ordinance and implementing regulations and to hear appeals from agency actions upon exhaustion of administrative remedies.

b. The decision of the Tribal Court shall be final.

Section 3. Severability.

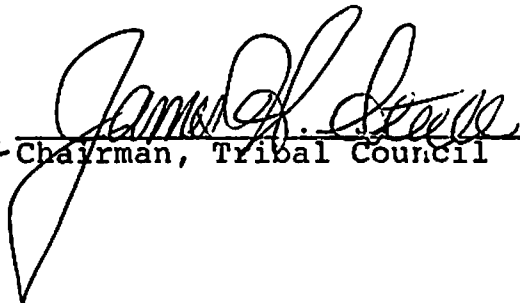
If any provision of this Ordinance or the applicability thereof is held invalid by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

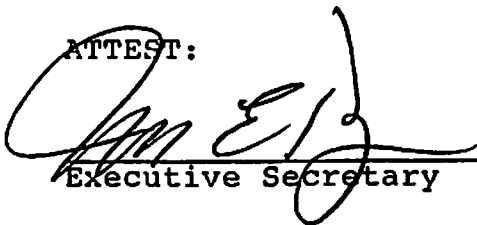
Section 4. Effective Date.

This Ordinance shall become effective, pursuant to the terms of Article VI, Section 2 of the Tribes' Constitution, upon promulgation of implementing regulations by the Tribes.

C E R T I F I C A T I O N

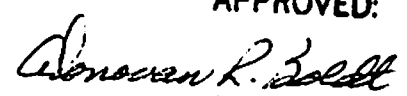
The foregoing ordinance was adopted by the Tribal Council on December 13, 1985, with a vote of 9 for, 0 opposed, and 0 not voting, pursuant to the authority vested in it by Article VI, Sections 1(a), (l), (n), (t) and (u) of the Tribes Constitution and Bylaws; said Constitution adopted and approved under Section 16 of the Act of June 18, 1934, (48 Stat. 984), as amended.


VICE-Chairman, Tribal Council

ATTEST:

Executive Secretary

A P P R O V A L:

Title: _____
Bureau of Indian Affairs
Date: _____

APPROVED:

SUPERINTENDENT

Received Office of
Superintendent

Date: DEC 16 1985