

SHORELINE PROTECTION ORDINANCE 64A (REVISED) TABLE OF CONTENTES

SECTION 1. ENACTMENT	1
(a) "Title to the bed and banks"	1
(b) "Increasing population and ever greater utilization"	1
(c) "Under the Treaty of Hell Gate of July 16 th , 1855 12 Stat. 975."	1
(d) "That the power to promulgate these regulations"	1
SECTION 2. DEFINITIONS	1
(a) "Tribes"	1
(b) "Tribal Council"	1
(c) "Reservation"	2
(d) "Person"	2
(e) "Navigable Water"	2
(f) "High Water Mark"	2
SECTION 3. LANDFILLS AND GREDGING	2
(a) "It shall be prohibited"	2
(1) "To make or cause to be made"	2
(2) "To dredge, or otherwise remove"	2
(b) "Any till or deposit"	2
SECTION 4. CONSTRUCTION PERMITS FOR NEW STRUCTURES AND FOR REPAIRS AFFECTING FIFTY PERCENT OR MORE OF ANY CURRENTLY REGISTERED STRUCTURE	3
(a) "It shall be prohibited"	3
(b) "It shall be prohibited"...	3
(1) "construction permits"	3
(2) " exceeds fifty percent"	3
(3) "repairs to fifty percent or more of the dark surface"	3
(c) "A permit as required by this Ordinance"	4
(1) "The Tribal Council, before granting a permit"	4
(2) "A permit issued under this Section shall specify the term"	4
(3) "Applications for permits-non-refundable fee"	4
(4) "Reasonable annual charge or rental"	4
SECTION 5. PERMITS FOR REPAIRS AFFECTING LESS THAN FIFTY PERCENT OF AN CURRNTLY REGISTERED STRUCTURE	5

(a) "It shall be prohibited"	5
(b) "No fee"	5
(c) "A repair permit is required"	5
(1) " The Tribal Council, before granting a permit"	5
(2) "Any permit issued pursuant to this Section"	5
(3) "Reasonable annual charge or rental fee"	6
SECTION 6. ANANDONED STRUCTURES	6
(a) "Any structure—located on bed – shall be removed by the owner	6
SECTION 7. INSPECTION AND REPAIR OF STRUCTURES	6
(a) "Have the right to inspect --- on navigable water--- ----Determining the condition"	6
SECTION 8. SHORELINE PROTECTION BOARD	6
(a) "Established a --- board --- composed of seven members--- Four--- enrolled members --- terms shall expire'	6
(b) "Board shall be changed with --- issuance or denial of permits Promulgate--- rules, regulations and standards"	7
(c) "Action and decisions --- shall be final--- unless--- petition The Tribal Council--- unless an appeal decision"	7
SECTION 9. JURISDICTION	7
(a) "Tribal Court of the Tribes--- jurisdiction of all violations --- pursuant of this Ordinance"	7
SECTION 10. PENALTIES	7
(a) "Any person--- make---landfill---dredge---construct ---contrary to the---Ordinance---penalty--- twenty— Five dollars--- each day"	7
SECTION 11. ENFORCEMENT	7
(a) "Any landfill---dredging---constructed---violation of--- Ordinance---remedies provided by law	7

SECTION 12. AMENDMENTS	7
(a) “approval by---Secretary of the interior”	7
SECTION 13. SEVERABILITY	8
(a) “Head invalid by any court---remainder---shall not	8
SECTION 14. EFFECTIVE DATE	8
(a) “Effective---first day---month next succeeding---month--- Approved---by Secretary of the Interior”	8

ORDINANCE
OF THE GOVERNING BODY
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA
SHORELINE PROTECTION ORDINANCE

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

Section 1. The Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, finds and declares that—

- (a) Title to the bed and banks below high-water mark of all navigable waters of the Flathead Indian Reservation is held by the United States in trust for the Confederated Salish and Kootenai Tribes, and such waters and their shorelines are among the most valuable and fragile of the natural resources of the Reservation and are high in scenic and resource value;
- (b) Increasing population and ever greater utilization of, unrestricted construction on and other activities along these shorelines are causing much of the value of the shorelines to become permanently lost and the shorelines to become permanently and irreparable despoiled, and there therefore exists an immediate need to regulate such activities and manage the shorelines so as to preserve and protect them and, to the greatest extent possible, restore them to their original condition; and
- (c) Under the Treaty of Hell Gate of July 16, 1855 12 Stat. 975, the Confederated Salish and Kootenai Tribes hold the exclusive right to fish in the waters within the Reservation, and the aforementioned activities along the shorelines of such waters are causing significant harm to the ecology of the waters and are destroying the shores as a habitat for p, fish and other animal life and thereby are interfering with Tribes' fishing rights, and for this reason also there exists an immediate need to regulate such activities and manage the shorelines so as to protect and preserve the plant, fish and other animal life in said waters and the general ecology of the shorelines.
- (d) That the power to promulgate these regulations is based on the Constitution and by laws of the Confederated and Salish and Kootenai Tribes of the Flathead Reservation, Montana, Article VI, section 1 (a), 1 (1), and 1(n).

DEFINITIONS

Section 2. For the purposes of this Ordinance, the term---

- (a) "Tribes" Mean the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana;
- (b) "Tribal Council" means the governing body of the tribes, or its designee;

- (c) "Reservation" means the Flathead Reservation, Montana;
- (d) "person" Me an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, local governmental unit however designated, agency of the State of Montana or of any other state, or any other legal entity;
- (e) "Navigable water" or "navigable waters" means 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 any 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;
- (f) "High water mark" means, on Flathead Lake, elevation 2893.2 feet, and on any other navigable 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 is all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of this Ordinance or as it may naturally change thereafter, or where such mark cannot be found, the line of mean high water.

LANDFILLS AND DREDGING

Section 3.

- (a) It shall be prohibited, after the effective date of this Ordinance, for any person---
 - (1) To make or cause to be made, on the bed or banks of any navigable water below high water mark, any fill or deposit of rock, earth, sand, soil, gravel, shells or other materials, or refuse matter of any kind or description, whether for the purpose of constructing a landfill or other structure other than a structure referred to in Section 4 or Section 5 or this Ordinance, or otherwise; and
 - (2) To dredge, or otherwise remove or displace by any means any sand, gravel, shells or other material, whether or not of intrinsic value, from the bed and banks of any navigable water below high water mark except that which has been identified from inspection by authorized staff as normal or abnormal accumulation of silt, sand or gravel behind existing structure. If at which time of identification it is determined that removal of said accumulation would not cause significant damage to the lake or lakebed a variance may be granted at the discretion of the Shoreline Protection Board.

- (b) Any fill or deposit of the type referred to in subsection (a)(l) of this section which was prior to and is in existence on the effective date of this Ordinance is hereby declared to be unlawful, and, not later than six months following the effective date of this Ordinance, the person who made such fill or deposit or caused such till or deposit to be made, or the successor interest of the property, riparian to the navigable water, to which such fill or date of this Ordinance, or any or all of them, shall remove such fill or deposit and return the land underlying such fill or deposit to its original condition: Provided, that, upon application submitted to the Tribal Council by any such person, the Tribal Council may grant a variance with respect to any such fill or deposit, exempting the fill or deposit from the application of this subsection (b), if it determines that the removal of the fill or deposit would be more harmful to the environment than leaving the fill or deposit in place: Provided further, that the grating of any such variance shall not prevent the Tribal Council from terminating the same at a later time upon reaching a different determination and requiring the person to comply with the provisions of this subsection (b) within three months after receiving notification of such termination from the Tribal Council.

CONSTRUCTION PERMITS FOR NEW STRUCTURES AND PERAIRS AFFECTING MORE THAN FIFTY PERCENT OF CURENTLY REGISTERED STRUCTURES

Section 4.

- (a) It shall be prohibited from any person who has not first obtained a construction permit from the Tribal Council to construct or cause to be constructed, on the bed or banks of any navigable water below high water mark, any wharf, dock, pier, breakwater, jetty, groin, bulkhead, marina or other structure. The determination of when repairs affect fifty percent or more of a currently registered structure shall be determined pursuant to following cumulating formula.
- (b) It shall be Prohibited for any person who has not first obtained a construction permit and variance, if needed, from the Tribal Council to undertake, or cause to be undertaken, repairs to a currently registered structure when such undertaking will affect fifty percent or more of such structure over the life of structure. The determination of when repairs affect fifty percent or more of a currently registered structure. The determination of when repairs affect fifty percent or more of currently registered structure shall be determined pursuant to following cumulating formula.
- (1) Repairs to fifty percent or more of the total number or volume of pilings, cribs, or other materials connecting the structures to the bed and banks shall constitute a repair exceeding fifty percent of the structure;

- (2) Repairs to fifty percent or more of the stringers or other materials connecting the pilings, cribs, or other structures to the deck surface area of the structure shall constitute repairs of twenty five percent of the structure;
 - (3) Repairs to fifty percent or more the deck surface area of the structure shall constitute repairs to twenty five of the structure.
- (c) A construction permit as required by this Ordinance, may be granted upon application to the Tribal Council. The application shall describe in reasonable detail the nature of the structure to which the construction permit is to relate, including its location, size, shape, building materials to be used, use for which intended, and any other plans and information which the Tribal Council deems relevant. The Tribal Council shall determine whether, in its sole discretion, and subject to what conditions, if any, to issue the permit: Provided, that, in reaching its decision, the Tribal Council shall be governed by the rules and principles:
- (1) The Tribal Council, before granting a construction permit, shall ascertain the probable effect of the structure, or addition or improvement 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, religious and cultural resources and scenic beauty of the affected area, or on any other resource value. It shall review plans and, as a condition to the issuance of the permit, may prescribe such conditions and limitations as appear necessary to avoid or minimize any such effect of an adverse nature, or if such adverse effects cannot be avoided or sufficiently minimized, may refuse to issue such permit
 - (2) A construction permit used under this Section shall specify the term for which it is issued, which shall not exceed one year, although the Tribal Council may issue a new construction permit upon expiration of a prior permit, either upon the same or new terms and conditions depending upon developments occurring since the issuance of the expired permit. A construction permit which does not specify the term or duration for which it is being issued shall be revocable by the Tribal Council any time after one year following its issuance. Any construction permit issued under this Section may be revoked by the Tribal Council at anytime for failure to comply with any application provision of this ordinance or the type of permit issued.

- (3) Applications for construction permits as specified pursuant to this Section shall be accompanied by a non-refundable fee the amount of which shall be set from time to time by the Tribal Council and which shall be reasonable
- (4) The Tribal Council may require the payment to the Tribes of a reasonable annual charge or rental fee for the use of Tribal land by any structure constructed or maintained pursuant to this Section. The annual charges or fees set by the Tribal Council may vary based on the type of structure involved and, as to any type of structure, may vary based on the size thereof.

**REPAIR REMITS FOR MAINTENANCE AND REPAIR AFFECTING LESS THAN FIFTY PERCENT OF THE
CURRENTLY REGISTERED STRUCTURE**

Section 5

- (a) It shall be prohibited for any person who maintains or causes to be maintained a structure on the bed and banks of any navigable water below the high water mark any wharf, dock, pier, breakwater, jetty, groin bulkhead, marina or other structure to undertake or cause to be undertaken repairs or maintenance to such structure without first obtaining from the Tribal Council a repair permit authorizing such maintenance or repair.
- (b) No fees shall be required to obtain a repair permit.
- (c) A repair permit as required by this Ordinance may be granted upon application to the Tribal Council. The application shall describe in reasonable detail the nature of the structure to which the construction permit is to relate, including its location, size, shape, building materials to be used, use for which intended, and any other plans and information which the Tribal Council deems relevant. The Tribal Council shall determine, in its sole discretion, whether and subject to what conditions, if any, to issue the permit: Provided, that, in reaching its decision, the Tribal Council shall be governed by the following rules and principles:
 - (1) The Tribal Council, before granting a repair permit, shall ascertain the probable effect of the structure, or addition or improvement 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, religious and cultural resources and scenic beauty of the affected area, or on any other resource value. It shall review plans and, as a condition to the issuance of the permit, may prescribe such conditions and limitations as appear necessary to avoid or minimize any such effect of an adverse

nature, or, if such adverse effects cannot be avoided or sufficiently minimized, may refuse to issue such permit.

- (2) A repair permit issued under this Section shall specify the term for which it is issued, which shall not exceed one year, although the Tribal Council may issue a new repair permit upon expiration of a prior permit, either upon the same or new terms and conditions depending upon developments occurring since the issuance of the expired permit. A repair permit which does not specify the term or duration for which it is being issued shall be revocable by the Tribal Council any time after one year following its issuance. Any repair permit issued under this Section may be revoked by the Tribal Council at any time for failure to comply with any applicable provision of this ordinance or the type of permit issued.
- (3) The Tribal Council, as a condition to the issuance and continued effectiveness of construction permits issued hereunder, may require the payment to the Tribes of a reasonable annual charge or rental fee for the use of Tribal land by any structure repaired or maintained pursuant to this Section. The annual charges or fee set by the Tribal Council may vary based on the type of structure involved and, as to any type of structure, may vary based on the size thereof.

ABANDONED STRUCTURES

Section 6.

Notwithstanding any other provision of this Ordinance, whenever any structure of the type referred to in this Ordinance and located on the bed or banks of any navigable waters below the high water mark is abandoned, such structure, whether or not a valid permit exists therefor, shall be removed by owner thereof and the land underlying such structure restored to its original condition within 60 days of such abandonment. Provided, that the Tribal Council may order that such removal and restoration be delayed for up to 12 months whenever it determines that such delay will lessen the harm to the environment which may be caused by such removal restoration.

INSPECTION AND REPAIR OF STRUCTURES

Section 7.

The Tribal Council shall have the right to inspect from time to time any structure located on navigable water below high water mark for the purpose of determining the condition of the structure, including its general state of repair or disrepair and its structural strength, and may order the owner of such structure to undertake such repairs of the structures or to build such reinforcements thereto as the Tribal Council deems necessary to eliminate.

Failure to comply with any such order shall be grounds for revoking any existing permit in effect for such structure.

SHORELINE PROTECTION BOARD

Section 8.

- (a) There is hereby established a Shoreline Protection Board, to be composed of seven members no more than four of whom at any one time may be enrolled member of the Tribes. The members of the Board shall be appointed by the Tribal Council, each to hold office for a term of three years and until this or her successor is appointed. Prior to the expiration of the one-year terms in progress on the effective date of these amendments, the members of the Board shall, by drawing lots, select three among their number whose terms shall expire on such expiration date, two whose terms shall expire one year thereafter, and two whose terms shall expire two years thereafter. Each year the Tribal Council shall appoint a number of members equal to the number whose terms expire that year. any vacancy on the Board shall be filled by the Tribal Council for the unexpired portion of the term. Members of the Board shall not be personally liable for damages for actions performed within the actual or apparent scope of the authority described herein.
- (b) The Shoreline Protection Board shall be charged with carrying out all of the functions of the Tribal Council under this Ordinance including, but not limited to, the issuance or denial of permits or variances, the issuance of orders, the levying of penalties and the making any and all decisions and determinations necessary in connection therewith. The Shorelines Protection Board is authorized to issue such rules, regulations and standards as are necessary to carry out purpose of this Ordinance pursuant to the rulemaking provisions of the Tribal Administrative procedures Ordinance.
- (c) A person aggrieved by final action of the Shoreline Protection Board may seek review of such action pursuant to procedures contained in the Tribal Administrative Procedures Ordinance. For purposes of review, a decision of the Board shall constitute an appealable final agency action.

JURISDICTION

Section 9.

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

PENALTIES

Section 10.

Any person or persons whether as principal, agent, employee or otherwise, who shall make or cause a landfill to be made, dredge, or construct any structure contrary to the provisions of this Ordinance, or who shall commence to fill, dredge, or construct any structure for which a permit is required, without obtaining a permit therefor from the Tribal Council, and any person or persons whether as a principal, agent, employee or otherwise, who shall use any landfill, material from dredging, or structure contrary to the provisions of this Ordinance shall be subject to a penalty not less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500.00), Each day during which such violation shall continue shall be deemed to be a separate infraction of this Ordinance.

ENFORCEMENT

Section 11.

In case any landfill or dredging is undertaken, or existing landfill or dredging operation is in violation of this Ordinance, or any structure is erected, constructed or used within the exterior boundaries of the Flathead Reservation in violation of any provision of this Ordinance, the Confederated Salish and Kootenai Tribes, in addition to other remedies provided by law, may institute injunctive, abatement or any other appropriate actions or proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

AMENDMENTS

Section 12.

Any amendments to this Ordinance must be approved by the Secretary of the interior and shall become effective upon promulgation of implementing regulations if any should be necessary to implement such amendment.

SEVERABILITY

Section 13.

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.

EFFECTIVE DATE

Section 14.

- (a) This Ordinance shall become effective on the first day of the month next succeeding the month during which the Ordinance is approved by the United States Secretary of the Interior.