



**SHORELINE  
PROTECTION  
ORDINANCE 87 (A)**

AQUATIC LANDS CONSERVATION ORDINANCE  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES;  
(December 5, 1986)

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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), (1), (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 water's 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 with 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 swamp, 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 V ENFORCEMENT

#### Section 1. Inspection.

The Administrator or his duly authorized agent 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 Administrative Procedures Ordinance Ordinance 86A. For purposes of administrative review a decision of the Board shall constitute final agency actions 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.

CERTIFICATION

The foregoing ordinance was adopted by the Tribal Council on December 13, 1985, with a vote of 9 for and 0 opposed, and 0 not voting, pursuant to the authority vested in it by Article VI, Sections 1(a), (1), (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.

\_\_\_\_\_  
Chairman, Tribal Council

Attest:

\_\_\_\_\_  
Executive Secretary

APPROVAL:

\_\_\_\_\_  
Title: \_\_\_\_\_  
Bureau of Indian Affairs  
Date: \_\_\_\_\_

APPROVED:

Superintendent  
Received Office of  
Superintendent

FINAL  
REGULATIONS  
FOR THE  
AQUATIC LANDS CONSERVATION ORDINANCE  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES;  
(December 5, 1986)

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REGULATIONS FOR  
AQUATIC LANDS CONSERVATION ORDINANCE

PART I.  
GENERAL PROVISIONS

Section 1.1 Authority.

These regulations are adopted under authority of Ordinance 87A of the Confederated Salish and Kootenai Tribes, the Aquatic Lands Conservation Ordinance.

Section 1.2 Severability.

If any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by the Tribal Court of the Confederated Salish and Kootenai Tribes, such judgment shall affect only that portion held invalid.

Section 1.3 Other Law

These regulations in no manner supersede or negate the necessity of obtaining other permits as may be required by federal or Tribal agencies with jurisdiction over a project. Where any provision of these regulations imposes more stringent regulations, requirements or limitations than imposed or required by 'any other applicable regulation, resolution, ordinance or statute, these regulations shall govern.

Section 1.4 Definitions.

- 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 environment" means Reservation waters, aquatic lands, wetlands, and fish, wildlife and plant life existent in or dependent upon such lands and waters.
- d. "Aquatic lands" means all land below the mean annual high water mark of a Reservation water body.

- e. "Board" means the Shoreline Protection Board of the Confederated Salish and Kootenai Tribes.
- f. "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.
- g. "Discharge of fill material" means any addition or placement of fill materials into Reservation waters or onto aquatic lands.
- h. "Dredged material" means material that is excavated, displaced, or removed from aquatic lands.
- i. "Fill material" means any material used for the purpose of replacing Reservation waters with dry land or dredged material.
- j. "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.
- k. "Mitigate" or "Mitigation" includes:
  - (a) Precluding the impact altogether by not taking a certain action or parts of an action.
  - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
  - (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
  - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - (e) Compensating for the impact by replacing or providing substitute resources or environments.
- l. "Office" means the Shoreline Protection Office of the Confederated Salish and Kootenai Tribes.
- m. "Person" means any individual, partnership, association, corporation, and any other entity composed of individuals, and governmental entities.
- n. "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.

o. "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 or waters identified in subpart (1) above.

(3) Wetlands adjacent to Reservation waters.

p. "Responsible person" means any person who undertakes a project or causes a project to be undertaken on aquatic lands.

q. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

r. "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.

PART II.  
PERMIT ADMINISTRATION

Section 2.1 Application Procedures.

a. The responsible person for a project shall submit a written application and plan for a proposed project to the Office on a form provided by the Office. Such plan shall contain, at a minimum, the following information:

(1) Name, address and telephone number of the applicant.

(2) A location map for the proposed project.

(3) A specific description of the proposed project, including:

- (A) Need for the proposed project.
- (B) Types and extent of construction activities involved.
- (C) Types, quantity, and source of construction materials to be utilized.
- (D) A description of the types of vehicles and construction equipment to be used in construction of the project.
- (E) Methods of ingress and egress to the proposed project and frequency of crossing or entry into Reservation waters and aquatic lands.
- (F) A time frame for initiation and completion of the project and any seasonal constraints imposed upon construction.
- (G) Plans to minimize or preclude adverse environmental impacts from the proposed project in conformity with these regulations. The Administrator may request of the applicant any additional information necessary to clarify or evaluate information contained in an application. In the event that additional information is requested from the responsible person the time constraints specified in this Part shall not commence until such time as the responsible person submits the requested information in writing to the Office.

- b. An application fee of twenty-five dollars (\$25) will be charged upon submission to the Administrator of a completed application.

#### Section 2.2 Application Review.

- a. The Administrator shall review an application for a project, conduct the necessary research, investigation, and consultation to satisfy the requirements of these regulations and elicit additional technical assistance to aid his review. The applicant may participate in study and investigation of an application.
- b. The Administrator shall review an application within fourteen (14) days of receipt of such proposal and shall determine if the proposed activity constitutes a project pursuant to guidelines contained in these regulations.
- c. (1) If the Administrator determines that the proposal is not a project, the Administrator shall send a written finding of "no project" to the applicant within fourteen (14) days of receipt of an application.

- (2) Should the applicant, upon receipt of a written finding of "no project", commence implementation and subsequently determine that the activity will require a change from the original proposal submitted to the Office he shall stop work and immediately submit an amended application. An amended application shall be processed as a new application.
- d. If the Administrator does not make a finding of "no project" he shall bring the application, together with all comments from scientific and technical staff with expertise in the matters involved, before the Board at the next regularly scheduled Board meeting or if the circumstances so merit, may request a special meeting of the Board. Within thirty (30) days of submission of a complete application and supporting scientific and technical information to the Board for review by the Administrator, the Board may approve, disapprove, or approve with modification or alternatives, an application. The Board shall either issue a permit or state its reasons for denial of a permit in writing to the applicant.
- e. The Board may, upon written notice to an applicant extend the time limitations contained in this Section for an additional forty five (45) days upon a determination that the time provided is insufficient to carry out consultation and technical review of an application.
- f. No work on a project may commence unless the Board has issued a permit for the project.

### Section 2.3 Public Hearings.

- a. The Board may direct the Administrator to conduct a public hearing for the purpose of soliciting comment relative to an application that has the potential to cause substantial adverse impacts to the aquatic environment or if the application is for a project that has the potential to adversely affect the public or if the application is for a project without precedent.
- b. If the Board finds that a public hearing is necessary it will direct the Administrator to conduct a hearing. The Administrator shall then cause a public notice to be published in at least two newspapers of general circulation within the Reservation once a week for two weeks prior to the hearing. At the hearing the Administrator shall explain the application. Any member of the public may present oral or written comment at the hearing. Comments shall be compiled by the Administrator for review by the Board at the next scheduled Board meeting.
- c. If a public hearing is called, time frames for review of an application contained in the Ordinance and these regulations shall be held in abeyance from the date the Board calls for such



hearing until such time as the Board is presented with the compilation of public comments.

PART III.  
PROJECT REVIEW CRITERIA

Section 3.1 Preliminary Review.

The Administrator shall initially review proposals for projects for satisfactory compliance with the terms and conditions of these regulations. Should the Administrator determine that the application is deficient or in need of further information he shall then notify the responsible person of such deficiencies in writing, and inform him or her of the additional information that will be necessary to bring the application into compliance.

Section 3.2 Record Maintenance.

The Administrator shall maintain a record of all correspondence, consultation, conferences, scientific and technical findings, and Board meetings relative to each application.

Section 3.3 Exempted Activities.

The following activities, when conducted in such a manner as to minimize or preclude adversely impacting the natural or existent condition of Reservation waters and aquatic lands shall not constitute a project for which a permit is required.

- a. Regular operation and maintenance of an existing project that involves no pollutants, toxins, dredging, filling, excavation or other similar agents or activities.
- b. Environmentally sound agricultural practices of cropping, cultivation or grazing.

Section 3.4. Standard of Review.

The Board shall deny a permit if it finds, after consideration of applicable mitigation measures, that a proposed project fails to minimize or preclude potential adverse impacts to the aquatic environment.

Section 3.5 Impacts Upon Fish Wildlife and Plants.

The following list of considerations shall be evaluated by the Administrator, in consultation with scientific and technical staff, in determining if an application constitutes a project and by the Board in determining whether to disapprove, approve, or approve with modifications or alternatives, an application brought before it. Such evaluation will address the immediate impacts

reasonably foreseeable long-term impacts, and cumulative impacts of the proposed project on:

1. Fish, wildlife, and plant life of any dredge or fill activities on aquatic lands.
2. Fish, wildlife, and plant life of construction upon aquatic lands.
3. Changes to, or creation of, flow patterns, currents, turbidity, and volume of Reservation waters resulting from construction of the proposed project.
4. Disruptions of life cycles, seasonal uses, and populations of fish, wildlife, and plant life existent on or in or dependant upon aquatic lands.

#### Section 3.6 Construction Activities.

a. General Requirements. The following list of considerations will be evaluated by the Administrator, in consultation with scientific and technical staff, in determining if an application constitutes a project and by the Board in determining whether to disapprove, approve, or approve with modifications or alterations, an application brought before it. Such evaluation will address the immediate impacts, any reasonably foreseeable longterm impacts, and cumulative impacts as follows:

1. The proposed project will be designed and constructed in such a manner as to provide for the smallest, least obtrusive structure that will satisfy the stated need for the project.
2. All construction activities shall be accomplished in such a manner as to minimize or preclude adverse impacts on the human and natural environment.
3. If the application is for a permanent structure it shall be designed and constructed in such a manner as assure permanence.
4. The project will pass reasonably anticipated water flows currents or fluctuations in surface elevation without creating erosional situations upstream, downstream or on the project location.
5. The project will minimize or preclude adverse impacts upon fish, wildlife and plants existent in or dependent upon Reservation waters and aquatic lands.
6. The project will minimize or preclude adverse impacts of turbidity or other water quality problems.

7. The project will be constructed in such a manner as to minimize or preclude use of gravels and other materials constituting aquatic lands as construction or fill material, and further, that such materials are to the extent possible left in an undisturbed condition during the course of construction and during the life of the project.

b. Specific Requirements. In furtherance of the concerns and considerations discussed in Subsection (a) above, the following list of construction regulations will apply:

1. Wetlands shall not be filled, dredged, drained or otherwise impacted unless no feasible alternative exists and such action, after consideration of all relevant factors, is necessary for the completion of a project that has been determined by the Board to satisfy all other requirements of these regulations.
2. No construction equipment shall be operated below the existing water surface without specific authorization contained in a permit.
3. All temporary methods of ingress and egress crossings, bridge supports, cofferdams, culverts or other structures that will be needed during the period of construction shall be designed to satisfactory pass and withstand high water conditions and to minimize or preclude siltation, turbidity and the introduction or reactivation of pollutants or toxic substances into Reservation waters. All such temporary structures shall be removed upon conclusion of construction and the affected areas shall be restored to their preconstruction condition, subject to any conditions placed upon restoration during the permitting process.
4. All technically feasible steps shall be taken to minimize or preclude removal, relocation, siltation or other adverse impacts to aquatic lands.
5. Heavy equipment used in construction of projects or portions thereof, when occurring in or on wetlands, shall be placed on industrial strength mats to minimize or preclude adverse impacts to such wetlands if required by the terms of a permit.
6. Construction of roads, bridges, culverts, and similar methods of crossing or channeling Reservation waters and aquatic lands, shall be designed and constructed in such a manner as to allow free and unrestricted passage of flowing waters and to accommodate and interfere to the least degree technically possible with any current or bed load patterns or erosional and depositional characteristics of Reservation waters at or

near the project location. Such structures will be designed and constructed so as to cause the least change in sediment load and turbidity of Reservation waters and to minimize or preclude adverse impacts to aquatic lands.

7. Riprap of banks and shorelines will be allowed upon a showing of no or minimal adverse impact to riparian lands, aquatic lands, and Reservation waters due to changes in velocity sediment load, current and wave pattern or channel readjustment, and then only as a last alternative solution to resolve the matter the proposed project has been formulated to address.
8. Diversions to obtain water for agricultural purposes shall be designed and constructed in such a manner as to minimize or preclude adverse impacts to aquatic lands. Furthermore, diversions shall be constructed in such a manner as to minimize or preclude loss of fish from the source waters. Diversions may involve, depending upon technical feasibility, screening of open diversions, construction of a return flow structure of sufficient quality to provide an avenue for fish that enter an open diversion to return to the source water in a healthy condition, or pumping in lieu of open diversion.
9. Use of explosives in or near Reservation waters or aquatic lands shall be evaluated on a case by case basis and shall take into account alternatives to blasting, the impact upon resident fish, wildlife or plants, and any special seasonal requirements such as spawning or nesting.
10. Creation of impoundments may be permitted if the impacts to flora and fauna, Reservation waters and aquatic lands is otherwise acceptable under these regulations and such impoundment is the only technically feasible method to achieve the purposes of the project.
11. Scientific devices such as staff gauges, recording devices and fish weirs will necessitate application to the Office prior to commencing placement.
12. Pipelines and other similar structures either buried or placed above ground shall be constructed in such a manner as to preclude the potential for leakage of the transported substance into or on Reservation waters and aquatic lands and shall be built to incorporate the highest degree of technologically available safety and environmental standards.
13. Power lines, utility lines, guy lines and similar structures shall be located as to incorporate the most direct and fewest number of crossings over or under Reservation waters and aquatic lands so as to minimize or preclude interference or other disturbance or destruction of flyways

for avian species and to minimize or preclude the potential for adverse impacts upon the natural, scenic, and esthetic values of Reservation waters and aquatic lands;

14. Docks, weirs, breakwaters, jetties and similar structures not otherwise subject to regulation under Ordinance 64A (Revised) of the Confederated Salish and Kootenai Tribes, the Shoreline Protection Ordinance, shall be constructed in such a manner as to minimize or preclude interference with navigation, fish, wildlife and plant life cycles and habitat, natural and scenic values, existent water flow patterns and sediment loads, public health, and property interests.

#### Section 3.7 Variances.

The Board may grant variances from these regulations upon the motion of the Applicant when it is presented with clear and convincing evidence that due to unusual circumstances a strict enforcement of these regulations would result in undue hardship and the Board determines that no reasonable alternatives exist to meet the standards herein.

#### Section 3.8 Supplemental Review Criteria.

The Administrator or the Board may, in furtherance of review of an application, utilize project criteria contained in either the Technical Guide for Statewide Standards and Specifications of the Soil Conservation Service or Fact Sheets of the Army Corps of Engineers that outline compliance with the Clean Water Act and related federal law.

### PART IV EMERGENCY SITUATIONS

#### Section 4.1 Emergency.

The provisions of this Part apply to emergency situations, which are defined as an unforeseeable circumstance not of the, responsible person's making or cause that poses an immediate and substantial endangerment to life or property of the person and in response to which the person undertakes an action otherwise subject to these regulations and Ordinance SPA on aquatic lands without a permit.

#### Section 4.2 Notification of Emergency Action.

A person who engages in an activity otherwise subject to the permitting requirements of these regulations under a claim of emergency without first obtaining a permit shall notify the Office in writing within 15 days of such undertaking. The notification shall include the following information:

1. Name, address and telephone number of the responsible person.
2. A map showing the location of the action taken.
3. The circumstances that precipitated the emergency action.
4. A description of the action taken, including type of action, materials used, size of action, and affected lands and waters.
5. The responsible person's determination of whether or not the action taken will constitute a permanent solution.
6. An application for a project if the responsible person deems further work is necessary to either permanently resolve the problem or stabilize the action taken under this Part.

#### Section 4.3 Review of Emergency Action.

Upon receipt of a notice of emergency action the Administrator shall conduct an on-site investigation of the claimed emergency action and compile a written report within ten (10) days from the date of such inspection. Such report will include the following information, and any additional information deemed necessary by the Administrator:

1. A finding of whether or not an emergency situation existed at the time the action was taken, supported by relevant facts and evidence.
2. A finding of whether or not the action engaged in under a claim of emergency would constitute a project.
3. If the action constitutes both an emergency and a project and a permanent solution is feasible, recommend 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 Part unless a similar subsequent emergency action results from such failure to act.
4. If the action taken is determined to constitute a project and there is a finding made of no emergency, the Administrator shall issue a Notice of Non-Compliance for a project in non-compliance with Ordinance 87A.

PART V  
ENFORCEMENT

Section 5.1 Violations.

The following actions shall constitute an act of non-compliance with these regulations and Ordinance 87A:

1. Commencement or initiation of a project without the responsible person first obtaining a permit.
2. Continuation of work on an unpermitted project by any person.
3. Failure to comply with the terms or conditions of a permit.
4. Failure to comply with the terms and conditions of Ordinance 87A and these regulations.
5. Failure to comply with orders of the Board.

Section 5.2 Notice of Non-compliance.

- a. When the Administrator has reason to believe that a violation of Ordinance 87A, these regulations, or any permit or order issued pursuant thereto has occurred, he shall issue a Notice of Non-Compliance. A Notice of Non-Compliance shall serve as a summons and complaint for purposes of the violation.
- b. A Notice of Non-Compliance shall advise the person to whom issued of the following information:
  - (1) there may exist 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 Office within fifteen days of receipt of a Notice.
  - (3) the consequences of failing to Answer.
  - (4) the nature of each alleged violation.
  - (5) the type and amount of any fine or penalty that may be assessed for each alleged violation.
  - (6) the date and place at which a hearing on each alleged violation will be held, if not cured, which shall not be less than thirty (30) days nor more than sixty (60) days after the date of issuance of a Notice.

- c. A Notice of Non-Compliance shall be served either personally or by registered or certified mail.

Section 5.3 Answer.

- a. A person to whom a Notice of Non-Compliance has been issued shall answer within fifteen (15) days of the date of receipt of the Notice of Non-Compliance. Answer shall be made by mail and may be accompanied by a personal appearance before the Board or its designated agent.
- b. An Answer shall admit or deny the violation, raise all affirmative defenses, and state whether or not the person in 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 curative measures that may be specified in the Notice, the hearing scheduled in the Notice may be held in abeyance for a 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 the satisfaction of the Administrator the hearing may be cancelled at the discretion of the Administrator. Satisfactory completion of curative measures does not obviate imposition of other fines or penalties if a reasonable basis exists for their imposition.

Section 5.4 Contested Cases.

- a. A hearing for the resolution of a contested case shall be held pursuant to the procedures contained in Ordinance 86A of the Confederated Salish and Kootenai Tribes, 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 is 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.

Section 5.5 Penalties.

Upon a finding that the person served with a Notice of Non-Compliance has committed a violation of Ordinance 87A, 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 an applicable permit.
- (2) removal of the project and restoration of the underlying property.
- (3) imposition of a monetary fine.
- (4) prescription of remedial measures.

#### Section 5.6 Actions to Enforce.

The Administrator 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 measures pursuant to these regulations and who has not appealed such decision or who has not paid an assessed fee cost or penalty.

#### Section 5.7 Revocation of Permit and Restoration of Permitted Area

- a. In addition to revocation of a permit the responsible person may be ordered to remove a project and to 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 months if it is determined that such delay would reduce the likelihood of environmental damage resulting from such removal and restoration.

#### Section 5.8 Failure to Comply With an Order to Remove.

- 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 lapse of a sixty-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 costs 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.

Section 5.9 Fines.

- a. Any person responsible for a project constructed or maintained contrary to the provisions of Ordinance 87A, these regulations, or the terms of a permit shall be subject to a penalty of not less than twenty-five dollars (\$25) or more than five hundred dollars (\$500) for each act of non-compliance.
- b. Each day during which an act of non-compliance shall continue shall be considered a separate violation of these regulations and of Ordinance 87A.
- c. Nothing in these regulations will be interpreted to deny the use of other civil remedies available under Tribal or federal law.