



# **SHORELINE PROTECTION ORDINANCE 64 (A)**

SHORELINE PROTECTION RULES AND REGULATIONS  
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(Amendments as of  
January 25, 2018)**

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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 mean annual 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 these Regulations and to hear any appeal resulting from actions taken pursuant to this Ordinance and Regulations.

### **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.

CHAPTER 1 - FEDERAL RESERVATION

1.1 These regulations shall be... and referred to as the "Federal Reservation Rules and Regulations".

1.2 AUTHORITY  
These regulations are adopted under authority of Title 16, Chapter 604 (Reserved), which authorizes the adoption of regulations regarding the issuance of permits for work in navigable waters within the Tribe's jurisdiction including work done on the bed and banks below mean annual high water mark of all navigable waters within the exterior boundaries of the Federal Reservation.

- 1.3 PURPOSE  
The purpose of these regulations is to:
- A. Conserve and protect Federal lands and all navigable waters within the exterior boundaries of the Tribe and Reservation, because of their high scenic value and important natural resource value.
  - B. Conserve and protect the value of fisheries property.
  - C. Conserve and protect the value of all navigable waters for the use, enjoyment and pleasure of residents and visitors who may use and enjoy them.
  - D. Promote sound water quality practices and activities on all navigable waters within the Federal Reservation.

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

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 INTERPRETATION  
These regulations supplement all applicable federal, tribal, and state laws and regulations and are not intended to supersede or repeal the necessity for obtaining other permits as may be required by the United States Army Corps of Engineers or other federal government agency. Where any provision of these regulations, amendments or interpretations of these regulations, or 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 4.12B 3 d; to grant deny a major variance from these regulations pursuant to Section 7.1B 2 to institute a civil action in Tribal Court or to amend these regulations pursuant to Section 7.12. 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**

The 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 mean annual 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 mean annual high water mark area into the lake which is designed to facilitate launching or retrieving boats.



1.7. APPLICABILITY TO LOCAL PROBLEMS  
It shall be the policy of the Council to support and encourage the development of local initiatives to solve local problems. The Council shall support and encourage the development of local initiatives to solve local problems.

1.8. LOCAL AUTHORITY POLICY FUNCTIONS  
The Board shall have the authority to make and enforce all rules and regulations for the management and operation of the water supply system. The Board shall have the authority to make and enforce all rules and regulations for the management and operation of the water supply system.

CHAPTER 2 - DEFINITIONS

Whenever the following words or phrases are used in these regulations, they shall be given the meaning ascribed 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 shall include the singular. The word "shall" is always mandatory, and the word "may" indicates a use of discretion in making a decision.

2.1. ADD TO WASTEWATER

A substance designed and intended to be added to wastewater in order to improve its quality or to protect the environment. It shall be added to wastewater in order to improve its quality or to protect the environment.

2.2. APPLICABLE

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

2.3. BOARD

The Board of Directors of the Council, established by the Council, and the Board of Directors of the Council, established by the Council, and the Board of Directors of the Council, established by the Council.

2.4. BOAT RAMP SYSTEM

A facility consisting of a ramp or ramps for launching or retrieving boats. It shall be designed to launch or retrieve boats.

2.5. BOAT RAMP

A facility consisting of a ramp or ramps for launching or retrieving boats. It shall be designed to launch or retrieve 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 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. No commercial or for-profit activities shall be allowed on a common use dock. Common use docks may also include docks permitted to agencies, departments, Tribal, Federal, States or local governments.

2.9 **DAY AND/OR DAYS**

Will be defined as regular scheduled work days during the week as defined by the Tribes.

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 **FIFTY PERCENT**

1. repairs to fifty percent or more of the total number or volume of pilings, cribs or other materials connecting the structure to the bed and banks shall constitute a repair exceeding fifty percent of the structure; over the life 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; over the life of the structure
3. repairs to fifty percent or more of the deck surface area of the structure shall constitute repairs to twenty five percent of the structure ; over the life of the structure.

2.0	<u>BREAKWATER</u> A structure which is designed to protect a shore line from wave action.
2.1	<u>BUOY</u> A float especially a floating object used to mark a point or to measure depth.
2.2	<u>COMMON USE DOCK</u> A dock that is for recreational boating and permitted to a legal entity such as a municipality, but not limited to a municipality, or a corporation or other entity or their subsidiary for the personal use of owners or shareholders of such entity or their interest. No commercial or for-profit activity shall be allowed on a common use dock. Common use docks may also include docks permitted to agencies, departments, Tribal, Federal, State or local government.
2.3	<u>DAY ANCHOR DAY</u> Will be defined as regular scheduled work day's during the week as defined by the Tribes.
2.10	<u>DOCK LENGTH</u> 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 structure.
2.11	<u>DREDGING</u> 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 lake bottom protection wall and thereby lowering the elevation of the portion of the lake.
2.12	<u>FIFTY PERCENT</u> 1. repairs to fifty percent or more of the total number or volume of pilings, cribs or other materials connecting the structure to the bed and banks shall constitute a repair exceeding fifty percent of the structure over the life of the structure. 2. repairs to fifty percent or more of the structure or other materials connecting the pilings, cribs or other structures to the bed and banks shall constitute a repair exceeding twenty five percent of the structure over the life of the structure. 3. repairs to fifty percent or more of the total number or volume of pilings, cribs or other materials connecting the structure to the bed and banks shall constitute a repair exceeding twenty five percent of the structure over the life of the structure.

- 2.13 **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.
- 2.14 **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.
- 2.15 **GOVERNING BODY**  
The Confederated Salish and Kootenai Tribal Council.
- 2.16 **GROIN**  
Any structure designed to arrest water, sand or gravel movement along the shoreline or along a dock, breakwater, retaining wall, or similar structure.
- 2.17 **IMPERVIOUS**  
Not permeable, impenetrable by water.
- 2.18 **JETTIES**  
Structures, usually in pairs, which extend from the shoreline into the lake at the mouth 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 within the exterior boundaries of the Reservation.
- 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.

<p>The process of dredging material into a lake bottom and thereby raising the elevation of a portion of the lake bottom. This shall include the elimination of an existing embankment or wetland and the replacement of the embankment with a new embankment or wetland area.</p>	<p><u>HILLING</u> 2.13</p>
<p>The open area beneath a hook, which pierces through or other structure which is totally free of any obstruction to water passage under the structure.</p>	<p><u>HOOK WATER AREA</u> 2.14</p>
<p>The (un)rested (fish and) (water) (level) (control).</p>	<p><u>CONTROLLED BODY</u> 2.15</p>
<p>Any structure designed to direct water flow or prevent movement along the shoreline or along a hook, bank, or other structure, including a wall or similar structure.</p>	<p><u>GRAB</u> 2.16</p>
<p>Not permeable, impermeable to water.</p>	<p><u>IMPERVIOUS</u> 2.17</p>
<p>Structure usually in pairs, which extend from the shoreline into the lake in the form of piers or in the manner of a dam, which are designed to confine the flow of water to a narrow zone.</p>	<p><u>PIERS</u> 2.18</p>
<p>An artificial harbor created by excavating the shoreline, removing earth, rocks and debris, creating an aquatic environment into a dry land area.</p>	<p><u>LAKE</u> 2.19</p>
<p>The southern half of Finland. Also within the exterior boundaries of the reservation.</p>	<p><u>LAKE</u> 2.20</p>
<p>The portion of the property which borders on the reservation. For the purpose of measurement, this boundary shall be the straight distance between side property lines of the water's edge.</p>	<p><u>LAKE FRONTAGE</u> 2.21</p>
<p>A hook facility from which sewage and refuse are removed, such as not fitted for incineration or reuse, which shall be disposed of in a sanitary manner.</p>	<p><u>MANHOLE</u> 2.22</p>

- 2.23 **MATERIALS**  
All natural and manmade untreated materials utilized in construction of structures such as but not limited to steel, aluminum, wood and composite manmade
- 2.24 **MEAN ANNUAL HIGH WATER MARK**  
“Mean Annual High water Mark” means, on Flathead Lake, elevation 2893.2’, and, on any other 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 date of this Ordinance, or as it may naturally change thereafter, or, where such mark cannot be found, the line of mean annual high water.
- 2.25 **NAVIGABLE WATER(s)**  
The south part of Flathead Lake, being the portion of the Lake located within the exterior 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 in fact and are located within the outer boundaries of the Reservation.
- 2.26 **PERMIT**  
A document issued by the Tribes verifying compliance with the requirements and provisions of these regulations.
- 2.27 **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.
- 2.28 **PIER**  
A non-floating fixed platform usually extending out over the water from shore and to which gangways are usually attached.
- 2.30 **PRIVATE 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, or swimming, owned by no more than one family or family member or family legal entity such as a trust, corporation or partnership. No commercial or for profit activities shall be allowed on a private dock.
- 2.31 **REPAIR**  
To restore up to fifty percent of a currently registered structure to sound condition by replacing components of the structure with like materials or reattaching original components of the structure

- 2.32 **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.
- 2.33 **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) lake ward 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.
- 2.34 **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.
- 2.35 **SHORELINE PROTECTION AREA**  
The area below mean annual high water mark on that portion of the Flathead Lake which is located within the exterior boundaries of the Flathead Reservation.
- 2.36 **SHORELINE PROTECTION BOARD**  
Seven member board appointed by the Confederated Salish and Kootenai Tribes Council to oversee the regulations and administration of the south half of Flathead Lake as required under Section 8, Ordinance 64A (Revised).
- 2.37 **SHORELINE PROTECTION ADMINISTRATOR**  
The director of the Shoreline Protection Office who is responsible to the Shoreline Protection Board through the Natural Resources Department.
- 2.38 **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).
- 2.39 **SIDE WALL AREA (of a dock)**  
The side of that portion of a dock which is generally perpendicular to the shoreline.
- 2.40 **STRUCTURE**  
Anything built or constructed or any piece of work artificially built up or composed of parts joined together in some defined manner that is floating, attached to the bed or banks or extended beyond or above the mean annual high water mark
- 2.41 **TRIBES**  
The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

2.32	<u>RETAINING WALL</u> Any structure built parallel and contiguous to the shoreline of a lake which is designed to protect the land area inland from erosion or wave action.
2.33	<u>RIVERIAN BOUNDARY</u> A projection of the property line from their point of intersection with the shoreline of the lake to the mean normal high water elevation (for Flathead Lake, 2882.2 feet) lake level as a right angle to the normal shoreline. Where a structure has caused the shifting of an artificial shoreline the artificial shoreline cannot be utilized to establish the riverian boundary.
2.34	<u>RIP RAP</u> A layer, bank, or protective material of stones, logs, or other materials randomly placed to prevent erosion, scour, or shifting of a structure or embankment.
2.35	<u>SHORELINE PROTECTION WALL</u> The area below mean normal high water level on that portion of the Flathead Lake which is located within the exterior boundaries of the Flathead Reservation.
2.36	<u>SHORELINE PROTECTION BOARD</u> Seven member board appointed by the Flathead and Kootenai Tribes Council to oversee the regulations in administration of the south half of Flathead Lake as required under Section 8.0 (Finance and Revenue).
2.37	<u>SHORELINE PROTECTION ADMINISTRATOR</u> The Director of the Shoshone Protocol Office who is responsible to the Shoshone Protocol Board through the Natural Resources Department.
2.38	<u>SHORELINE PROTECTION STAFF</u> The staff employed by the Confederated Shoshone and Kootenai Tribes to assist in the administration and enforcement of Tribal Ordinance 0-4A (Revised).
2.39	<u>SHORE WALL AREA (of a dock)</u> The side of that portion of a dock which is generally perpendicular to the shoreline.
2.40	<u>STRUCTURE</u> Anything built or constructed or any piece of work artificially built up or composed of parts joined together in some defined manner that is located attached to the bed or banks or extends beyond or above the mean normal high water mark.
2.41	<u>TRIBE</u> The Confederated Shoshone and Kootenai Tribes of the Flathead Reservation.



2.42 TRIBAL COUNCIL

The governing body of the Tribes, or its designee.

2.43 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.

2.44 WHARVES

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**

3.0 VEHICLE USE BELOW MEAN ANNUAL HIGH WATER

- a. Vehicle Equipment Use- below the mean annual high water mark is only allowed during drawdown periods 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, redistribution 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.

2.42	<u>TRIBAL COUNCIL</u>	The governing body of the Tribe, or its designee.
2.43	<u>WETLANDS</u>	Wetland waters are defined as waters which are inundated or saturated by surface water or ground water at the frequency and duration of time periods sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include wetlands that are not limited to swamps, bogs and similar areas. Wetland waters may be separated from the main body of water by maintaining barriers or natural barriers.
2.44	<u>WHAVERYS</u>	A structure built on the shore of a body of water to receive and discharge cargo and passengers.
2.0	<u>VEHICLE USE BELOW AN AVERAGE HIGH WATER</u>	Vehicle equipment (also referred to as "water mark") is only allowed during low water periods only. (See definition of "water mark" causing excess sediment.)
2.1	<u>POLICY CONSIDERATIONS</u>	<p>a. Dredging of the bed and banks of a navigable body of water may have adverse effects on the transportation, navigation, and maintenance of the navigable waterway. Exposure of stable bed sediments to nutrients and toxic materials, removal of bed materials and erosion of steep banks may result in increased sedimentation and erosion of steep banks. (See Ordinance (Chapter 2) section 2 (a) (2).</p> <p>b. Filling of a portion of a lake, pond or other adverse effects due to the destruction of an aquatic environment, loss of habitat for fish and wildlife, erosion of an unusual shape, or creation of a steep bank may result in attention of current flows and wave action.</p> <p>c. Filling of wetlands may have adverse effects due to destruction of an aquatic environment, loss of habitat for fish and wildlife, erosion of an unusual shape, or creation of a steep bank may result in attention of current flows and wave action.</p>
2.2	<u>STANDARDS</u>	Dredging for the purpose of increasing the water depth of an area or creating an artificial harbor or channel is strictly prohibited.

- b. Dredging for any other purpose is prohibited except to the extent that the variance provisions of section 7. 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 PROCEDURES AND STANDARDS FOR CONSTRUCTION OF NEW STRUCTURES OR REPAIRS OF CURRENTLY REGISTERED STRUCTURES

##### 4.0 PERMIT REQUIRED

- a. It shall be unlawful for any person to construct, repair, improve, or make additions to, or cause to be constructed or repair, any wharf dock, boat shelter, pier, breakwater, jetty, groin, bulkhead, marina, common use dock or other structures, on or below the mean annual high water mark, unless that person has obtained and has possession of a valid permit from the Shoreline Protection Board.
- b. The person who performs such work is responsible for assuring that a valid permit has been obtained from the Shoreline Protection Board.
- c. The permit issued shall be prominently displayed, during work activity, so that it is conveniently visible to the public.
- d. The person shall have one (1) year from the date the permit is issued to complete the construction authorized therein. In the event construction cannot be completed within this time period, an extension of one (1) year may be granted upon application to the Shoreline Protection Board.

##### 4.1 PROPERTY RIGHTS

Work approved by a permit issued under these regulations shall not create a vested property right in the permitted project by the permit itself.

##### 4.2 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 during the permit process.
- b. In making application for a 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, construction or repair process and upon completion of construction.

- b. The right for any other purpose is prohibited except to the extent that the variance provisions of section 7 of these regulations are applicable.
- c. Fill projects for the purpose of expanding existing land areas is prohibited.
- d. Discharge of fill material directly into the lake shall not be permitted.

CHAPTER 4 PROCEDURES AND STANDARDS FOR CONSTRUCTION OF  
NEW STRUCTURES OR REPAIRS OF CURRENTLY REGISTERED  
STRUCTURES

PERMIT REQUIRED

4.0

- a. It shall be unlawful for any person to construct, repair, improve or make additions to, or cause to be constructed or repaired any wharf, dock, boat shelter, pier, bulkhead, jetty, groin, bulkhead, manna, common use dock or other structure on or below the mean annual high water mark unless that person has obtained and has possession of a valid permit from the Shoreline Protection Board.
- b. The person who performs any work is responsible for assuring that a valid permit has been obtained from the Shoreline Protection Board.
- c. The permit issued shall be prominently displayed during work activity, so that it is conveniently visible to the public.
- d. The person shall have one (1) year from the date the permit is issued to complete the construction authorized therein. In the event construction cannot be completed within this time period, an extension of one (1) year may be granted upon application to the Shoreline Protection Board.

PROTECTED RIGHTS

4.1

Work approved by a permit issued under these regulations shall not create a vested property right in the permitted project by the permit holder.

PERMISSION TO ENTER

4.2

- a. The Shoreline Protection Board, its staff and its consultants may contact and investigate, maintain and file evaluations as it may deem necessary to verify that conditions required during the permit process.
- b. In making application for a permit, the applicant grants to the Board, County, the Shoreline Protection Board, their staff and their designees permission to enter upon the land during the application, construction or permit process and upon completion of construction.

4.3 **WORK REQUIRING A PERMIT**

Without limitation, the following activities, when conducted on the beds and banks of any navigable waters below the mean annual 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 new or repair of fifty percent or more of existing retaining walls and breakwaters; over the life of the structure
- b. Construction of new or repair of fifty percent or more of existing wharves, docks, boat shelters, piers and other structures which extend out over the mean annual high water mark of 2893.20'; over the life of the structure
- c. Construction of new or repair of fifty percent or more of existing boat rail systems, boat ramps, buoys, floating docks, personal watercraft lifts, boat lifts, rip rap and pilings; over the life of the structure.
- e. Activities involving the removal of accumulated silt, and soil behind a dock.

**PART 2 - REVIEW PROCEDURES**

4.4 **APPLICATION**

- a. Any person who proposes to engage in any activity subject to these regulations shall submit a current and complete application or form available from the Shoreline Protection Office with the appropriate non-refundable application fee identified below:
  - 1. New construction permits and repair permits for construction or repairs exceeding fifty percent of currently registered structure. Currently registered individual family or single family structure \$50.00.
  - 2. New construction permits and permits for repairs exceeding fifty percent of currently registered common use docks \$500.00.
  - 3. New construction permits and permits for repairs exceeding fifty percent of currently registered Marinas \$1000.00.
  - 4. Repair permit for less than fifty percent of currently registered structure NO CHARGE.
- b. As part of the permit application, the following information shall be submitted, unless portions are waived by the Shoreline Protection Board.

WORK REQUIRED AT PERMIT

4.3

- Without limitation, the following activities which conducted on the beds and banks of any ripable waters below the mean annual 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 new or repair of fifty percent or more of existing retaining walls and breakwaters over the life of the structure.
  - b. Construction of new or repair of fifty percent or more of existing levees, dikes, bulkheads, boat shelters, piers and other structures which extend out over the mean annual high water mark of 2003 (MHW) over the life of the structure.
  - c. Construction of new or repair of fifty percent or more of existing boat lifts, boat ramps, booms, floating docks, personal watercraft lifts, boat lifts, rip rap and pilings over the life of the structure.
  - d. Activities involving the removal of accumulated silt and soil behind a dock.

PART 2 - PERMIT PROCEDURES

APPLICATION

4.4

- a. Any person who proposes to engage in any activity subject to these regulations shall submit a permit application to the appropriate authority for review and approval. The application shall be available from the appropriate authority for review and approval. The application shall be available from the appropriate authority for review and approval.
  - 1. New construction permits and repair permits for construction or repairs exceeding fifty percent of currently registered structures. (Currently registered individual family or single family structures \$30,000)
  - 2. New construction permits and repair permits for repairs exceeding fifty percent of currently registered common law docks \$200,000.
  - 3. New construction permits and repair permits for repairs exceeding fifty percent of currently registered structures \$100,000.
  - 4. Repair permits for less than fifty percent of currently registered structures \$10,000.
- As part of the permit application, the following information shall be submitted, unless otherwise specified by the appropriate authority:

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.

Mean annual 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 1/2" 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 and by whom it was prepared.

1. A site plan of the land on which the proposed work is to be carried out shall be submitted to the Council together with a plan showing the location of the proposed work on the site.

2. The site plan shall be drawn to a conventional scale and shall show:  
a) the boundaries of the site;  
b) the boundaries of the proposed work;  
c) the location of the proposed work;  
d) the location of the proposed work in relation to the surrounding area;  
e) the location of the proposed work in relation to the surrounding area;  
f) the location of the proposed work in relation to the surrounding area;

3. The site plan shall be drawn to a conventional scale and shall show:  
a) the boundaries of the site;  
b) the boundaries of the proposed work;  
c) the location of the proposed work;  
d) the location of the proposed work in relation to the surrounding area;  
e) the location of the proposed work in relation to the surrounding area;  
f) the location of the proposed work in relation to the surrounding area;

4. The drawings shall be submitted to the Council together with a plan showing the location of the proposed work on the site. The drawings shall be drawn to a conventional scale and shall show:  
a) the boundaries of the site;  
b) the boundaries of the proposed work;  
c) the location of the proposed work;  
d) the location of the proposed work in relation to the surrounding area;  
e) the location of the proposed work in relation to the surrounding area;  
f) the location of the proposed work in relation to the surrounding area;

5. A one-half inch margin is required on the other three edges. The drawings shall be submitted to the Council together with a plan showing the location of the proposed work on the site. The drawings shall be drawn to a conventional scale and shall show:  
a) the boundaries of the site;  
b) the boundaries of the proposed work;  
c) the location of the proposed work;  
d) the location of the proposed work in relation to the surrounding area;  
e) the location of the proposed work in relation to the surrounding area;  
f) the location of the proposed work in relation to the surrounding area;



4. Additional Information

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

4.6 SHORELINE PROTECTION OFFICE REVIEW PROCEDURE

- a. The Shoreline Protection Office shall review a correct and complete 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 Office, all materials shall be forwarded to the Shoreline Protection Board, together with the Shoreline Protection offices findings for final approval, conditional approval, or disapproval.

4.7 SHORELINE PROTECTION BOARD REVIEW PROCEDURE

- a. The Shoreline Protection Board shall review the application, other information, and the Shoreline Protection Office findings in order to ascertain the probable effect of the proposed project, on the water quality, 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 4.11, 4.12.
- 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 7.1 of these regulations, the Shoreline Protection Board may request additional information and staff findings with recommendations for the Shoreline Protection Board's final review.

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

SHORELINE PROTECTION BOARD REVIEW PROCEDURE

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

SHORELINE PROTECTION BOARD REVIEW PROCEDURE

- a. The Shoreline Protection Board shall review the application other information and the Shoreline Protection Board findings in order to determine the probable effect of the proposed project on the water quality, use of the affected area for a fish and wildlife resource, exercise of the riparian rights and scenic beauty of the affected area, other resources values and compliance with the commission and design criteria of Sections 4.11, 4.12.
- b. If the Shoreline Protection Board determines that the proposed project has a minimal or negligible impact on the water quality, use of the affected area for a fish and wildlife resource, exercise of the riparian rights and scenic beauty of the affected area, other resources values and compliance with the commission and design criteria of Sections 4.11, 4.12, the Board 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 adverse impact or other effect 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 4.1 of these regulations, the Shoreline Protection Board may require additional information and shall findings with recommendations for the Shoreline Protection Board's final review.

**4.8 REVIEW PERIOD**

- a. Review of a current and complete permit application and its approval, conditional approval or denial by the Shoreline Protection 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 Office shall so notify the applicant and the review period shall not commence until the application requirements stated in Section 4.5 are fully met.

**4.9 PERMIT TERM**

A permit issued under this chapter shall specify the term for which it is issued, as is specified by Section 4.1(d) of the Ordinance.

**PART 3 - CRITERIA FOR ISSUANCE OF A PERMIT**

**4.10 POLICY CRITERIA FOR ISSUANCE OF A PERMIT**

- a. Any proposed or currently registered 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 stated purpose(s) of the application.

**4.11 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.

REVIEW PERIOD

- a. Review of a permit and any associated conditions shall be completed by the reviewing authority within the period specified in the permit. If a review period is not specified in the permit, the review shall be completed within the period specified in the permit. If a review period is not specified in the permit, the review shall be completed within the period specified in the permit.
- b. If an application is not approved, the reviewing authority shall notify the applicant and the applicant shall be notified of the reasons for the denial of the application.

PERMIT TERM

A permit issued under this chapter shall specify the term for which it is issued as specified by section 4.1.1.1 of the regulations.

PART 3 - CRITERIA FOR ISSUANCE OF A PERMIT

4.10 POLICY CRITERIA FOR ISSUANCE OF A PERMIT

- a. Any proposed or currently regulated structure shall not during either in 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 riparian rights;
  5. Interfere with the scenic beauty of the area;
  6. Interfere with any other resource value;
  7. Damage critical, 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 stated purpose(s) of the applicant.

4.11 GENERAL CONSTRUCTION STANDARDS

- a. Any proposed project or action shall be in compliance with the following requirements:
  1. Design that address a more comprehensive approach will be preferred over all other applications.

1. POLICY CONSIDERATIONS

- a. Any activity which will affect the bed and banks of a navigable water body shall incorporate all necessary means to prevent pollution of navigable waters, including erosion, sediment and storm runoff controls.
- b. The proposed activity shall 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. Proposed 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 7.1A.2 for a major variance request.

2. STANDARDS

- a. The interface of fill materials below the mean annual high water, such as rip rap, 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 materials to discourage soil erosion and slumping of banks.
- b. The natural protective armament shall be preserved wherever possible.
- c. Proposed 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 rock naturally occurring in the affected navigable water is prohibited. Clean round field rock or washed round rock may be used to fill in and around rip rap.

POLICY CONSIDERATIONS

- a. Any activities which will affect the bed and banks of a navigable water body shall incorporate all necessary measures to prevent pollution of navigable waters, including erosion sediment control and runoff controls.
- b. The proposed activity shall not cause, directly or indirectly, increased sedimentation, an increase in sedimentation, or a increased discharge of nutrients into the lake or other during construction or utilization of the structure for which the permit has been issued.
- c. Proposed erosion control structures of over 100' will require a review period by the 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 61A.1.1. The project manager must:

STANDARDS

- a. The interface of fill materials below the mean annual high water shall be sloped to a minimum of 0.0 to 1 ratio or natural slope of the shoreline to dissipate wave energy which over is local. The face of the slope shall be covered with erosion control materials to discourage soil erosion and slumping of banks.
- b. The natural protective environment shall be preserved wherever possible.
- c. Proposed rip rap projects to prevent erosion may not exceed more than 5' into the Mean Annual High Water Mark of 2003 207 and will have their fabric incorporated into the design.
- d. Rip rap material must be clean and angular and be placed in from off shore. The size of rock naturally occurring in the affected navigable water is prohibited. Clean sand and field rock or washed and rock may be used to fill in and around rip rap.

**B. Impervious Cover**

**1. POLICY CONSIDERATIONS**

- a. Excessive impervious cover shall be discouraged as it may affect water quality, detract from the aesthetic values of the shoreline or alter natural shoreline characteristics.
- b. Porous or permeable materials shall 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 navigable water, at mean annual high water mark, 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 navigable water 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 mean annual high water mark of the affected navigable water in such a manner and in such a location so as to prohibit its re-entry into any navigable water.

**D. Setback Requirements**

**1. POLICY CONSIDERATIONS**

Interim Cover B.

1. POLICY CONSIDERATIONS

- a. Excessive impurities in the water shall be determined as follows:
  - (1) The average daily flow of the water shall be determined on a daily basis.
  - (2) The average daily flow of the water shall be determined on a daily basis.
- b. Excessive impurities in the water shall be determined as follows:
  - (1) The average daily flow of the water shall be determined on a daily basis.
  - (2) The average daily flow of the water shall be determined on a daily basis.

2. STANDARDS

- a. The total of all impurities in the water shall not exceed eight (8) percent of the total flow of the water.
  - (1) The average daily flow of the water shall be determined on a daily basis.
  - (2) The average daily flow of the water shall be determined on a daily basis.
- b. The total of all impurities in the water shall not exceed one (1) percent of the total flow of the water.
  - (1) The average daily flow of the water shall be determined on a daily basis.
  - (2) The average daily flow of the water shall be determined on a daily basis.

Removal of Debris C.

1. POLICY CONSIDERATIONS

- a. Construction debris that remains in the water shall be removed as follows:
  - (1) The debris shall be removed from the water within a reasonable time.
  - (2) The debris shall be removed from the water within a reasonable time.

2. STANDARDS

- a. All construction debris shall be disposed of within the mean annual high water mark of the affected water body.
  - (1) The debris shall be disposed of within the mean annual high water mark of the affected water body.
  - (2) The debris shall be disposed of within the mean annual high water mark of the affected water body.

Retreat Requirements D.

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 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 back 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 mean annual 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.

### 4.12 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

a. Structures shall be adequately setback from the right-of-way boundary lines in order to prevent overhanging and to maintain the aesthetic values of the structure.

b. Common facilities shall be provided and shared by two or more landowners. The number of facilities on the lot shall be determined by zoning regulations. Where such a situation exists, setback requirements from the right-of-way boundary 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. Structures and signs on lots shall be setback from the right-of-way boundary in order to provide screening and to provide for maximum lot coverage as well as a variety of lot uses. Structures should be adequately setback from each other in order to prevent fire hazard.

STANDARDS 2

a. A structure shall be set back the lesser of (i) twenty-five (25) feet from a right-of-way boundary or (ii) if less than 75 feet, shall not be greater than 60% of the lot width. The setback shall be back one-third the lot width to the opposite right-of-way boundary and proportion with less than 60% of the lot width. Structures shall be setback a minimum of twenty-five (25) feet from any other structure on the lot. Structures and signs shall be setback a minimum of twenty-five (25) feet from any other structure on the lot. Structures and signs shall be setback a minimum of twenty-five (25) feet from any other structure on the lot.

4.12 DESIGN STANDARDS FOR FACILITIES

Any structure which shall be constructed on the lot and which extends into the water shall meet the following design standards:

A. Docking Structures

1. POLICY CONSIDERATIONS

a. Open and floating docks are encouraged as they allow complete water access to the lot. Such docks shall

**64A Regulations  
(Amendments as of  
January 25, 2018)**

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

large that were...  
and historic...

partially open...  
a table may be...  
component of...  
or crib...  
structure...

Boat...  
no...  
new...

Books...  
with...  
owner has...  
A...  
before...  
consideration...  
thereby...

STANDARDS

All facilities

Books...  
there is...  
dock when...  
elevation...

Where...  
dock is...  
be...  
depth...  
(100) feet...  
lowest high...  
the dock...

When...  
minimum...  
between...

The...  
reasonably...  
within...

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

The property's electronic drawing or utility (00) floor plan shall show the location of the dock which is less than 20 feet from the dock edge. The dock shall extend to the edge of the dock edge.

All docks shall be open or partially open to the water. The dock shall meet the following standards:

STANDARD	DOCK LENGTH (FEET)
One or more openings with a length of 8' along the dock edge as measured in the water.	20 or less
Two or more openings with a length of 8' along the dock edge as measured in the water.	More than 20 and less than 30
Three or more openings with a length of 8' along the dock edge as measured in the water.	30 or more
No solid portion of the dock extending more than 20 feet from the dock edge. The dock shall extend to the edge of the dock edge.	
Solid docks (20) feet or less in length may be allowed under special circumstances.	
The free water area of partially open docks shall be at least eight (8) feet wide and the distance between such docks shall be no less than eight (8) feet.	
The width of the dock on the dock shall not be greater than eight (8) feet.	
No dock device shall exceed four (4) inches in diameter and be installed in the end of the dock in order to increase dock stability for lake traffic.	

Michigan and Commercial Docks

1. POLICY CONSIDERATIONS

**64A Regulations  
(Amendments as of  
January 25, 2018)**

- a. All policy statements stated in Section 4.12 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 4.10 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.
- f. 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.

- a. All other provisions of Section 4.10.A.1 shall also apply to marinas.
- b. Marinas shall be designed to protect the public and adjacent property. A marina should be designed to accommodate only the anticipated size and capacity needed to protect the navigational rights and safety of adjoining property owners and recreational users of the lake. To insure general compatibility with the character of the area, marinas shall not be sited in areas of high scenic or outdoor recreation value, 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 4.10 the Board shall also determine in connection with approval of a permit application for a marina that such marina will be compatible with the surrounding land and water uses.
- d. A marina is made of piers 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 narrower association of a limited size.

STANDARDS FOR COMMON USE DOCKS

- a. A minimum of one hundred foot (100') shall remain open between any dock structure and the adjacent boundary.
- b. A minimum twenty-five foot (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 foot (250') of lake frontage.
- d. The maximum length of each individual wing dock forming a pier slip shall not exceed twenty (20') feet.
- e. The number of boats or boat slips provided shall not exceed one foot in boat slip length (25') times the total shore frontage.
- f. Common use docks may incorporate a pier ramp no larger than ten feet (10') wide and no longer than sixty feet (60') lakeward.
- g. The 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 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 4.12.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)
- g. One boat ramp per marina may be constructed not to exceed twenty feet 20' wide and one hundred feet 100' long.
- h. 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.
- i. 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.

- d. Additional private mooring facilities may be allowed if the following conditions are met:
  - a. The total length of the mooring system shall not exceed 100' of mooring.
  - b. The mooring system shall be designed to provide the same level of protection as the mooring system provided for the mooring system.
  - c. The mooring system shall not exceed one structure for every two hundred fifty (250) lineal feet of lake shore frontage.
  - d. Structures shall meet the requirements set forth in Section 4.13.A.2.

STANDARDS FOR MARINAS

- a. Each marina shall have a minimum of three hundred foot (300') of shoreline frontage.
- b. In addition to Section 4.13.A design standards for docks, the maximum length of any 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 such 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 (300' of shoreline would accommodate 15 boat slips).
- d. One boat ramp per marina may be constructed not to exceed twenty feet (20') wide and one hundred foot (100') long.
- e. One shore side sewage facility and one shore side fuel station per marina may be constructed provided however, the one fuel pump may be allowed in the dock structure provided that it is continuously in compliance with all applicable Federal, Tribal laws and local regulations.
- f. Lake related services and rentals such as water use related merchandise such as boat fuel, oil, lubricants, fishing equipment and general 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 7.1 B.2. 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 4.8 shall be waived to accommodate the environmental analysis and public participation requirements of the regulations in chapter 7.

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 non-water 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.

**REGULATIONS FOR THE PROTECTION OF THE ENVIRONMENT**

The applicant for a permit to discharge into a stream or other body of water shall, in addition to all other requirements for permit applications, be responsible for producing a permit application that includes a detailed description of the proposed discharge, including but not limited to the following: (a) a description of the discharge, including the location, frequency, volume, and nature of the discharge; (b) a description of the receiving water body, including its location, flow, and other characteristics; (c) a description of the potential impacts of the discharge on the receiving water body and on the environment; and (d) a description of the measures that will be taken to prevent, minimize, and compensate for the impacts of the discharge.

**Permit Requirements for Discharge into Streams**

**1. POLICY CONSIDERATIONS**

- a. Discharges that are essential to the health, safety, and general welfare of the community, and that have a high potential for deterring from the aesthetic values of the receiving water body, shall be prohibited.
- b. Discharges that are essential to the health, safety, and general welfare of the community, and that have a high potential for deterring from the aesthetic values of the receiving water body, shall be prohibited, except as provided in this section.

**2. STANDARDS**

- a. The construction of a discharge structure 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 receive the discharge and suitable water depth for floating access into the discharge structure.
- c. Any structure which is constructed in or adjacent to a navigable water shall be located below the high water mark of any navigable water.

**Permit Requirements for Discharge into Streams**

**1. POLICY CONSIDERATIONS**

- a. Discharges that are essential to the health, safety, and general welfare of the community, and that have a high potential for deterring from the aesthetic values of the receiving water body, shall be prohibited.

- 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 shall be preferred and encouraged over all other methods.

### 1. POLICY CONSIDERATIONS

- a. Retaining walls significantly alter shoreline characteristics. They create an 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 navigable water

- c. Other alternatives, such as rip rap, shall be explored first. Retaining walls shall be constructed only as a last resort. When used, retaining walls shall be constructed only for the purpose of stopping shoreline erosion.
- d. Stone or log retaining walls shall be 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 mark whenever possible, and they shall conform to the contour of the shoreline.
- d. Retaining walls designed to extend the land area into navigable water 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 navigable water, 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 (e.g. 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 mark, 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 navigable water.
- 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 4.10 and the “Construction Standards” contained in Section 4.11 of these regulations.
- c. Breakwaters and wave breaks will be permitted, if required as an integral portion of a dock, provided that the standards contained in Section 4.12, A.2 (a) (4) and Section 4.11.

G. Buoys

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

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 shall 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 mark i.e., on Flathead Lake 2893.2 feet.**
- c. **Anchor lines shall be weighted or made of non-floatable materials.**
- d. **Anchors shall 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 and must have the owners permit number clearly written on it.**
- 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 navigable water and the lake bed restored.**

H. **Utility Lines and Water Withdrawal Systems**

1. **POLICY CONSIDERATIONS**

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

b. **STANDARDS**

- a. **Where necessary, the lakebed and lakeshore below navigable water shall be disturbed only to the extent necessary to install the line.**



64A Regulations  
(Amendments as of  
January 25, 2018)

- 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 of Montana 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 mean annual high water mark of navigable water, 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 navigable water, 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 to shorelines.

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 Shoreline Protection Office.
- 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 4.10 and the "Construction Standards" contained in Section 4.12 of these regulations.

**CHAPTER 5 - ABANDONED STRUCTURES**

- A. Any structure located on the bed and/or banks of any navigable waters below the mean annual 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.

5.1 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.

5.2 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 consecutive 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 Shoreline Protection 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 Shoreline Protection Board that a structure located within their riparian boundary has been found to have been abandoned, and the order of the Shoreline Protection Board has ordered its removal and the restoration of the underlying property, any interested party may present to the Shoreline Protection Board, within fifteen days of receipt of notice, evidence to show cause 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 to show cause that a riparian structure has not been abandoned shall be heard in the first instance by the Board. In the event the Shoreline Protection Board rejects the proffered evidence, any interested party may seek review of the Shoreline Protection Board's decision pursuant to Sections 7 and 10 of the Ordinance.

5.3 EFFECT OF AN APPEAL

- A. In the event it is determined as a result of either initial Shoreline Protection 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 shall remain in effect, provided, however, that as a condition to the continued effectiveness of such permit, the Shoreline Protection Board may order the permittee to undertake any, necessary repairs or restoration.

- B. In the event the Shoreline Protection Board determines that a structure has been abandoned, it 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 days of the receipt of the initial determination of abandonment by the Board, or such other time period the Board may prescribe.

#### 5.4 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.

#### 5.5 EFFECT OF PERMIT

A structure which meets the criteria for an abandoned structure as set forth in Section 7.2 shall be subject to the provisions of this chapter notwithstanding the existence of a Board permit for such structure.

### **CHAPTER 6 - INSPECTION OF STRUCTURES**

- A. The Shoreline Protection Office shall have the authority to inspect any and all structures located on the bed and banks of the navigable water below the mean annual 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.

#### 6.1 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.

## 6.2 REMEDIAL ORDERS

- A. In the event the Shoreline Protection Office becomes aware of a violation of Ordinance 64A, these regulations, 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 Shoreline Protection 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 7.4:
  - 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 Shoreline Protection Board pursuant to the provisions of Section 7.4 of these regulations.
- C. Failure to comply with the order of the Shoreline Protection Office 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.

## 6.3 INSPECTION PROCEDURE

- A. Inspections of riparian structures subject to the provisions of the Ordinance 64A, and these regulations, shall take place on a periodic basis.
- B. Issuances of a permit under the provisions of the Ordinance 64A 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 7 - ADMINISTRATION OF SHORELINE PROTECTION BOARD**

**7.1 VARIANCES**

**A. GENERAL CRITERIA**

**1. MINOR VARIANCE**

The Shoreline Protection Office 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 7.1 (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 Office, 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 Office recommendations and act upon the application. The Board may grant or deny the variance request.

## 2. MAJOR VARIANCE

- a. When the Shoreline Protection Office 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 analysis report. 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 .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 analysis report 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 Office 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.

### 7.2 FEES (see fee schedules)

### 7.3 VIOLATIONS

The following actions shall constitute a violation of Tribal Ordinance 64A (Revised), and shall subject the person liable thereof to the provisions of Sections 7.11, 7.12 and 7.13.

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 Shoreline Protection 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 7.1 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 7.13.

#### **7.4 NOTICE OF NON-COMPLIANCE**

- A. Whenever the Shoreline Protection Board determines that a violation has occurred of Ordinance 64A, 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 may be 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 30 days or more than 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.

#### 7.5 ANSWER

- A. A person to whom a Notice Of Non-Compliance has been issued shall answer within 15 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 an admission of the violation.
- B. An answer shall either, admit or deny, the violation, raise all affirmative defense, within 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.

#### 7.6 CONTESTED CASES

- A. A hearing for the resolution of contested case shall be conducted by a hearing officer designated by the Tribal Council 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 64A and these regulations.

- C. If a contested case involves a significant public interest the Shoreline Protection Board may, at its discretion, solicit public comment. The Shoreline Protection Board may condition or limit public comment as necessary for prudent administration of these regulations. In the event that the Shoreline Protection Board determines public input is necessary it may toll any time frames contained in these regulations for the duration of the public comment period

#### **7.7 PENALTIES**

Upon the Shoreline Protection Boards 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 Shoreline Protection 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.

#### **7.8 ACTIONS TO ENFORCE**

The Shoreline Protection Board may recommend to the Tribes' legal department that it institutes, 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.

#### **7.9 REVOCAION OF PERMIT RESTORATION OF AN AREA**

- A. In addition to revocation of a permit, 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.

#### **7.10 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 shall assess the responsible person for the cost of such work.
- B. The Shoreline Protection Board 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.

#### 7.11 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 act of non-compliance of these regulations and of Ordinance 64A.
- C. Nothing in these regulations will be interpreted to deny the use of other civil remedies available under Tribal and/or Federal Law.

#### 7.12 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.

#### 7.13 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. By accepting a permit from the Shoreline Protection Board, the permitted so absolves, the Tribal Council and their agents from all such responsibility.