

## CHAPTER 4-15 SHORELINE MANAGEMENT

### 4-15-1 Findings

(a) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the shoreline resources of the Colville Indian Reservation. It is the purpose of this Chapter to establish the shoreline regulatory structure for the management of shoreline areas within the Reservation through the planning and fostering of all reasonable and appropriate uses.

(b) The Tribes, in adopting this Chapter for shoreline management will give preferences to uses which:

- (1) Preserve, protect, enhance and restore the natural character and ecology of shoreline areas, as well as its natural and cultural resources;
- (2) Produce long term over short term ecological and economic benefit;
- (3) Encourage appropriate access to the shoreline of the Reservation; and
- (4) Increase and enhance tribal members' opportunities for traditional cultural activities in accordance with Tribal and federal law.

(c) The Colville Confederated Tribes have jurisdiction to enforce this Shoreline Management Chapter in order to protect the economy, health, safety and welfare of the Tribes and the Reservation community.

### 4-15-2 Territory Subject to Shoreline Code

The provisions of this Chapter, known as the Shoreline Use and Development Chapter of the Colville Tribal Code, shall apply to all shoreline areas within or touching upon the Reservation. The shoreline areas subject to regulation under this Chapter shall include all Waters of the Reservation including wetlands, their underlying lands, 100-year floodplains, and associated areas extending landward.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

### 4-15-3 Use of the Shoreline Code

The following Code sections shall be interpreted and applied in the following manner:

Waters of the Reservation have been typed as either 1, 2, 3, or 4. These waters are identified on a Water Type Map which is available for public inspection at the Planning Department of the Colville Tribes. All persons within two hundred (200) feet of any water within the exterior boundaries of the Reservation are encouraged to reference the Water Type Map for their applicable shoreline regulatory conditions and requirements

(a) All shoreline uses within the shoreline area for the respective water type are subject to the General Shoreline restrictions and conditions outlined in sections 4-15-6 through 4-15-16 of this Chapter.

(b) All shoreline uses within the shoreline area for the respective water type are subject to all the applicable shoreline use activity restrictions and conditions for their respective shoreline use or activity outlined in sections 4-15-17 through 4-15-31 of this Chapter. These use activity restrictions and conditions are based in part on shoreline designations. All persons are encouraged to reference the Shoreline Designation Maps located at the Planning Department of the Colville Tribes to determine their applicable shoreline designations for determining any shoreline management requirements. In addition to review of the maps, operators and landowners shall verify accurate water types for all waters within and near their activity based upon the actual characteristics and locations of the waters, and provide the appropriate protections required by this Chapter. Note that many activities and uses will be subject to both general restrictions and conditions in all shoreline designations and additional restrictions and conditions within specific shoreline designations.

(c) All shoreline uses within the shoreline areas for the respective water type are subject to all the applicable permit requirements and dimensional requirements identified in the "Use and Activity Chart" and "Setback, Height, and Dimensional Requirements Chart." The "Use and Activity Chart" identifies by use activity, which

(August 2022)

activities require a shoreline development permit, require a conditional use permit, are exempt from permit requirements, and are prohibited within each type of shoreline designation. The "Setback, Height, and Dimensional Requirements Chart" identifies, by shoreline designation, the applicable setback, height limits, and dimensional requirements for each type of shoreline use and activity within each type of shoreline designation. All persons are encouraged to reference these charts located at the Planning Department of the Colville Tribes to determine their applicable use activity shoreline management requirements.

(d) All uses and activities that are exempt from the permitting requirements of this Chapter (4-15) remain subject to all permit requirements of the Colville Tribal Code.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### 4-15-4

#### **General Definitions**

For the purposes of this section, words in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word "shall" is mandatory and not permissive.

(a) "Accessory Structure or Use" means a structure or use, incidental, appropriate, and subordinate to the main structure or use of the property, and which is located on the same lot or in the same building with the main use.

(b) "Administrator or Shorelines Administrator" means the person within the Tribal Planning Department designated to administer this Code.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

(c) "Agriculture" means the tilling of the soil, the raising of crops, horticulture, gardening, keeping or raising of livestock, including open range grazing of cattle, and poultry for commercial purposes, and any agricultural industry or business such as dairies, nurseries, greenhouses, or similar uses.

(d) "Aquaculture" means the farming or culturing of food fish, shellfish or other aquatic plants and animals in lakes, streams, inlets, estuaries and other natural or artificial water bodies.

(e) "Archaeological/Historical resources" means any material remains of past human life or activities which are of archaeological or historic interest and all historic property. Such material remains shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, graves, human skeletal remains, or any portion or piece thereof, whether or not found in an archaeological context. Historic property includes any prehistoric or historic site, building, structure or object significant in Tribal history, architecture, culture or religion. The term includes all artifacts, records, remains, and reburial sites as designated. No item shall be treated as an archaeological /historic resource unless such item is at least fifty (50) years of age.

(f) "Archeological/Historical site" means any location where an archeological/historical resource is identified. Archeological/historical sites include historic camping and gathering grounds, traditional fishing sites, sweat lodge locations, military forts, old settlers' homes, historic buildings, historic trails, and kitchen middens.

(g) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure.

(h) "Barnyard" means that area on a ranch or farm that traditionally and/or presently is used for the periodic enclosure of less than ten head of livestock at a density of less than 500 square feet per animal for greater than six (6) months per year.

(i) "Beach Enhancement" means the upgrading of shorelines for the purposes of recreation, aquatic habitat restoration, or both. The materials used depend on the proposed use. For recreation purposes, various grades of clean sand or pea gravel are often used to create a beach. Native materials and vegetation, and occasionally combinations of other appropriate materials (for example, concrete weirs), may be used to enhance a beach or stream for habitat purposes. Beach and stream enhancement may occur above and below the water line.

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(August 2022)

(j) “Conditional Use” means a use or shoreline development which is classified as a conditional use or is not listed in use chart (providing the proposed use is substantially similar to an allowed use) classified within this management plan.

(k) “Confinement Lot” means any area used for the continuous feeding of less than one hundred head of livestock, confined at a density of less than of less than five hundred (500) square feet per head for three (3) months or more, except for barnyards as defined herein.

(l) “Cultural Resources” means resources associated with the practice of “Traditional Cultural Activities” (as defined by this Chapter) by a member of the Confederated Tribes of the Colville Reservation for the subsistence of body and spirit.

(m) “Cultural sites” includes all archeological/historical sites plus all locations where “traditional cultural activities” take place.

(n) “Department” means the Tribal Planning Department.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

(o) “Development” means a use or activities consisting of, but not limited to the following:

- (1) Construction or exterior alteration of structures;
- (2) Dredging;
- (3) Drilling;
- (4) Dumping;
- (5) Filling;
- (6) Removal of any sand, gravel, or minerals;
- (7) Bulkheading;
- (8) Driving of piling;
- (9) Pacing of obstructions;
- (10) Subdivision of land;
- (11) Any project of a permanent or temporary nature which interferes with natural or existing flow patterns, historic and cultural uses, and the normal use of the surface of the waters of the Reservation.

(p) “Director” means the director of the Tribal Planning Department.

(q) “Dwelling, Multi-Family” means a building containing two or more dwelling units.

(r) “Dwelling, Single-Family” means a detached building containing one dwelling unit.

(s) “Dwelling Unit” means a building or portion thereof designed for occupancy by one family having cooking and toilet facilities.

(t) “Earth fill” means the filling of a shoreline area or wetland by the intentional deposition of sand, soil, gravel or other organic debris (excluding solid waste as defined herein).

(u) “Feedlots” means any area used for the continuous feeding of one hundred (100) or more head of livestock, confined at a density of less than 1 five hundred (500) square feet per head for three months or more. This shall not be interpreted to include dairy operations with a Washington State Grade A license.

(August 2022)

(v) “Floodplain” is synonymous with one hundred (100) year floodplain and means that land area susceptible to being inundated by stream derived waters with a one percent (1%) chance of being equaled or exceeded in any given year. When used herein, said floodplain must be mapped and officially approved by the appropriate Tribal and/or federal agency/department.

(w) “Floodway” means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

(x) “Guidelines” means any standards adopted to implement the Code sections contained in this Chapter. Such standards may also provide criteria for the department to use in development of updates and/or revisions to this Shoreline Management Program for the Reservation.

(y) “Local Government” means any county, incorporated city, or town that contains within its boundaries any lands or waters subject to this management program.

(z) “Management Program” means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts or other descriptive material and text, and a statement of desired goals and standards.

(aa) “Multi-Family Development” means a development with three or more dwelling units on the same parcel, lot or tract. Such units may be in one or more structures.

(bb) “Non-water-oriented use” means upland uses that have little or no relationship to the shoreline. All uses which do not meet the definition of water-dependent, water-related or water-enjoyment are classified as non-water-oriented uses. Adding public access features to a non-water-oriented use does not automatically change the inherent use to a water-enjoyment use. Examples may include, but are not limited to, professional offices, automotive sales or repair shops, mini-storage facilities, multi-family residential development, convenience stores, and gas stations.

(cc) “Noxious Weeds” mean plants of foreign origin that can directly or indirectly injure agriculture, navigation, fish, wildlife, or public health.

(dd) “Official Shoreline Environment Maps” mean all maps adopted as part of this management program delineating the geographic boundaries of all water bodies and shoreline designations of the Reservation coming under the jurisdiction of the of this management plan.

(ee) “One way glazing” means windows or doors that allow those inside the structure to see out while limiting the ability of those on the outside to see in.

(ff) “Permit” means any form of permission required under this management program or other tribal regulation prior to undertaking activity within shoreline areas, including shoreline development permits, variances, conditional use permits, permits for oil or natural gas exploration activities, permission which may be required for selective commercial timber harvesting, livestock grazing, and shoreline exemptions.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

(gg) “Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation or agency of the state or local government unit however designated. This term shall include both tribal members and non-tribal members.

(hh) “Planning Commission” or “Commission” means the group of persons appointed under Chapter 4-3 Land Use of the Colville Tribal Code.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(August 2022)

(ii) "Public" means of, relating to, or affecting all people including both tribal members and non-tribal members.

(jj) "Public Access" means an access to and within the shoreline area that is open to the public.

(kk) "Shoreline Areas" means all surface waters of the Reservation (as defined in Chapter 4-7 of the Colville Tribal Code), including lakes, reservoirs, streams, and wetlands, and underlying lands, lands extending landward for two hundred feet in all directions as measured on a horizontal plan from the ordinary high water mark or wetland, and in addition shall include 100-year floodplains.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

(ll) "Shoreline Development" means any development which materially interferes with normal use of the water or shoreline areas of the Reservation: PROVIDED, That the following uses shall not be considered Shoreline Developments for the purpose of this Chapter: PROVIDED FURTHER, That the following non-Shoreline Developments must still comply with the policies and provisions of this Chapter:

- (1) Normal maintenance or repair of existing permitted structures or developments, including damage by accident, fire, or natural elements;
- (2) Normal and routine operation of existing uses (e.g. agriculture) provided such activity does not constitute an expansion of a non-conforming use or a significant modification which may have a negative effect on the shoreline area;
- (3) Emergency construction necessary to protect property from damage by the elements;
- (4) Construction or modification of navigational aids such as channel markers and anchor buoys;
- (5) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing and operational on January 1, 1997, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking;
- (6) The marking of property lines or corners, when such marking does not significantly interfere with normal use of the surface of the water;
- (7) The practice of traditional cultural activities by Colville Tribal members;
- (8) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this policy, only if the following conditions are met:
  - (A) The activity does not interfere with normal use of the surface waters;
  - (B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
  - (C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - (D) Any person or entity (public or private) seeking development authorization under this policy first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
  - (E) The activity is not subject to the permit requirements of this Chapter.

(August 2022)

(mm) “Solid Waste” means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid and semisolid, materials that are not the primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to sludge from wastewater treatment plants and septage, waste from septic tanks, woodwaste, dangerous waste, and problem wastes.

(nn) “Subdivision” means any subdivision or redivision of a subdivision, tract, parcel, or lot of land into two (2) or more parts by means of mapping, platting, conveyance, change or rearrangement of boundaries. All subdivisions are also developments.

(oo) “Subdivision – Major” means any subdivision other than a minor subdivision.

(pp) “Subdivision – Minor” means a subdivision that does not include any of the following:

- (1) The creation of more than a total of three (3) lots;
- (2) The creation of any new public streets;
- (3) The extension of a public water or sewer system.

(qq) “Traditional Cultural Activities” mean any activity by a member of the Confederated Tribes of the Colville Reservation that has been traditionally practiced by the indigenous members of this region for the subsistence of body and spirit, such as food gathering practices of root digging, berry picking, hunting, fishing, medicine gathering, the assembly of and use of sweat lodges, the use of spiritual/vision quests areas, and the retrieval of plants, trees, rocks, water, skins/hides and feathers which are within the cultural tradition of the membership.

(rr) “Tribes” means the Confederated Tribes of the Colville Reservation.

(ss) “Tribal Member” means a person who is listed as a member of the Confederated Tribes of the Colville Reservation in the official enrollment records of the Tribes.

(tt) “Uplands” means that land area lying outside of the shoreline jurisdiction or shoreline area as defined herein.

(uu) “Use” means the purpose for which land or a structure is primarily designed, occupied, maintained, or arranged or intended for.

(vv) “Variance” is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the management program; however, this term does not apply to uses of shoreline areas.

(ww) “Water-dependent use” means a use or portion of a use that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include marinas, water intake systems and sewer outfalls.

(xx) “Water-related use” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location. Water-related uses may include fish hatcheries.

(yy) “Water-enjoyment use” means a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a primary character of the use and which, through location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. Additionally, in order to qualify as a water-enjoyment use, the use must be open to the public and the shoreline oriented space within the project must be devoted to the specific aspects of the use that foster shoreline enjoyment. Examples of "water-enjoyment uses" may include shoreline parks, piers, and other improvements facilitating public access to shoreline areas.

(zz) “Water-oriented use” means any one or a combination of water-dependent, water-related or water-enjoyment uses.

(aaa) “Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and may include those artificial wetlands intentionally created from nonwetland areas to mitigate for the conversion of wetlands that are approved by the Tribes or the federal government. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after January 1, 1997, that were unintentionally created as a result of the construction of a road, street, or highway.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

#### **4-15-6 Water Type Designations**

(a) Waters have been designated within the Reservation boundaries as type 1,2,3, or 4. Chapter 4-7 of the Colville Tribal Code provides water type definitions which are adopted by this Chapter, and a process for correcting water mapping and type designations.

(b) Water types within the Reservation have been identified on a “Water Type Map.” Copies of the water type map shall be available for public inspection at the Planning Department of the Colville Tribes.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

#### **4-15-7 General Shoreline Restrictions and Conditions**

(a) The following Chapter sections, organized by topical areas, and including sections 4-15-7 through 4-15-16, are rooted in the Tribes' Holistic Goal, the goals and policies in the Shoreline Management Plan, the Integrated Resources Management Plan, and the Tribal Comprehensive Plan.

(b) The following Code sections apply to all shoreline uses and activities:

(1) Shoreline uses and development, and shoreline modification activities, whether it requires a permit or not must be consistent with the goals, policies, Code sections and intent of the Shoreline Management Plan and the applicable Shoreline Code sections.

(2) Shoreline modifications must be in support of a permissible shoreline use activity or development and must conform with the provisions of this Code Chapter. Unless otherwise noted herein, all shoreline modification activities not associated with a permissible shoreline use activity or development are prohibited and shall not be eligible for a variance or conditional use permit.

(3) All shoreline development shall be designed in accordance with all applicable Tribal land use and environmental protection Codes.

(4) Existing nonconforming uses and development are permitted to continue subject to the nonconforming use and structure provisions of Chapter 4-3 of the Tribal Code, however, current uses and activities are permitted to continue providing such uses and activities are in compliance with all applicable tribal and federal laws and regulations other than this management plan. As leases are renewed, range management or landscape plans approved, structures destroyed or other conditions exist that result in a change of practice, any continued use must be done in compliance with this management program.

(5) All shoreline developments and uses shall utilize best management practices (BMPs) to minimize any increase in surface water runoff and to control, treat and release runoff so that receiving water quality and shore properties and features are not adversely affected. Such practices may include but are not limited to dikes, berms, catch basins or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains and landscaped buffers.

(August 2022)

(6) All shoreline development shall be located, designed, constructed, and maintained to minimize removal of native vegetation and interference with beneficial natural shoreline processes such as water circulation, sand and gravel movement, accretion (accumulation of sand, etc.), depletion, and erosion.

(7) All development shall be located, designed, constructed and managed to protect and/or not adversely affect those natural features which are valuable, fragile or unique to the region, including but not limited to:

(A) Wetlands, marshes, bogs, swamps, and river deltas;

(B) Natural resources including but not limited to, sand and gravel deposits, timber, or natural recreational beaches;

(C) Fish, shellfish and wildlife habitats, migratory routes and spawning areas; Accretion shore forms; and

(D) Natural or man-made scenic vistas or features.

(8) All development shall be located, designed, constructed and managed to protect and preserve both cultural resources and archeological/historical resources.

(9) Where provisions of this Chapter conflict, the more restrictive of the provisions shall apply unless specifically stated otherwise.

(10) The location, design, construction and management of all shoreline uses and activities shall protect and/or enhance the quality and quantity of surface and ground water adjacent to the site and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and related regulatory agencies.

(11) Solid and liquid wastes and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto land.

(12) The release of oil, chemicals or hazardous materials onto land or into the water is prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

(13) All shoreline uses and activities shall utilize effective erosion control methods during project construction and operation.

(14) Herbicides and pesticides shall not be applied or allowed to directly enter water bodies or wetlands unless approved for such use by the Tribal Natural Resources Department.

(15) When a development site encompasses environmentally sensitive areas (floodplains, wetlands, steep slopes and fish and wildlife habitat), these features shall be left intact and maintained as open space or buffers. All development shall be set back from these areas to prevent hazardous conditions and property damage as well as to protect valuable shoreline features and resources.

(16) Areas with either existing or high potential for aquaculture activities shall be protected from degradation by other types of uses which are located or are proposed to be located within one mile of adjacent uplands. A conclusive finding that such an adjacent use would result in irreparable damage to or destruction of an existing aquaculture enterprise shall be grounds for denial of such use or activity.

**4-15-8 Archeological/Cultural/Historic**

(a) One of the most crucial functions of Tribal Government is the protection and preservation of, and education about, the Tribes history and culture. Due to the fact that most camps, villages and other settlements were

(August 2022)



located close to water, the protection and preservation of these significant resources is one of the highest priorities of this shoreline Code.

(b) The following Code sections apply to all shoreline uses and activities:

(1) Developers shall immediately stop work and notify the Tribes' History and Cultural Department if any cultural resource or archeological/historical resource is uncovered during excavations. In such case, the developer shall be required to allow site inspection and evaluation by a tribally designated and approved archeologist to ensure that all valuable cultural and archeological area are protected and any data are properly preserved.

(2) Significant cultural, archeological and historic sites shall be protected from any damage resulting from shoreline uses and activities. When the Tribes determines scientific, cultural or historical value, no permit will be issued which would pose a threat to the site. The Tribes may require that development be postponed in such areas to allow investigation of Tribal acquisition potential and/or retrieval and preservation of significant artifacts.

(3) In the event that unforeseen factors constituting an emergency as defined in Chapter 4-4 of the Tribal Code and/or Section 106 of the National Historic Preservation Act of 1996 necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of this Chapter.

(4) Archeological excavations are permitted in shoreline areas subject to these General Regulations and other applicable Tribal and Federal law.

(5) Commercial developments focusing on archeological/historical sites and cultural sites are subject to the Code sections for Commercial Development contained herein.

#### **4-15-9 General Parking Use Restrictions and Conditions**

(a) The location and development of parking facilities in shoreline areas creates the potential for adverse environmental impacts due to leaking fluids and deposition of road grime and sedimentation as well as degradation of shoreline views. The regulation of parking within the shorelines is intended to minimize or eliminate potential adverse impacts.

(b) The following Code sections apply to all shoreline uses and activities:

(1) Parking as a primary use is prohibited over water or within the shoreline area.

(2) Parking in shoreline areas must directly serve a shoreline use.

(3) Parking facilities within shoreline areas shall be designed and landscaped to minimize adverse impacts upon adjacent shorelines and abutting properties. The landscaping shall consist of native vegetation, to be established within one year after completion of construction and provide an effective screening three (3) years after planting.

(4) Developed shoreline uses shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.

(5) Commercial parking facilities shall not be permitted over water or in shoreline areas.

(6) Parking facilities serving permitted shoreline uses shall be located landward from the principal building or use being served, except when the parking facility is within or beneath a structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.

(7) Parking facilities shall provide provisions to control surface water runoff to avoid contamination of water bodies. A storm water pollution prevention plan may be required by the Department.

(August 2022)

**4-15-10 General Utilities Use Restrictions and Conditions**

(a) The installation or construction of new utility facilities (e.g. water, sewer, power, cable, telephone, etc.) and the maintenance and operation of existing facilities may cause adverse environmental impacts. Since much of the population of the Reservation resides in or near shoreline areas, it is highly likely that utilities will be constructed or expanded to meet their needs.

(b) All proposed utilities, whether stand-alone projects or part of another project, are subject to the following Code sections:

(1) Applications for installation of utility facilities shall include the following:

(A) Description of the proposed facilities;

(B) Reason(s) why the utility facility requires a shoreline location;

(C) Alternative locations considered and reasons for their elimination when the utility is not serving existing or proposed shoreline uses;

(D) Location of other utility facilities in the vicinity of the proposed project and any plans to include the facilities of other types of utilities in the project;

(E) Plans for reclamation of areas disturbed by construction;

(F) Plans for control of erosion and turbidity during construction; and

(G) Identification of any possibility for locating the proposed facility within an existing utility right-of-way.

(H) Description of flood potential and how facility will be protected from flooding.

(I) Description of operations that will be required to maintain the facility and associated resource impacts.

(2) Utility development shall, through coordination with tribal and local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline cultural resource protection, access points, trail systems and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, or endanger public health and safety.

(3) The following utility facilities, which are not essentially water-oriented, are prohibited in shoreline areas unless authorized by conditional use permit (in all shoreline designations) where it can be shown that no reasonable alternatives exist or a significant hardship is created:

(A) Water and sewer system treatment plants;

(B) Utility substations and control facilities; and

(C) Accessory uses and administrative structures for utilities.

(4) Power generating facilities shall comply with all Code sections contained in this Chapter and shall require approval of a conditional use permit in all shoreline designations.

(5) In shoreline areas, utility transmission lines, pipelines, and cables shall be placed underground unless demonstrated to be not feasible or will result in greater damage to the shoreline environment. Further, such lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the unfeasibility of existing routes and minimize the shoreline area impacted.

(August 2022)

(6) Utility facilities shall be located and designed to avoid destruction of or damage to wetlands, cultural resources, archeological/historical resources, important wildlife areas, and other environmentally sensitive areas.

(7) Necessary underwater pipelines that transport material intrinsically harmful to aquatic life or potentially injurious to water quality, including sewer lines, shall be provided with automatic shut off valves at each end of the underwater segments.

(8) Where major utility facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy or obstruct existing scenic views.

(9) Utility development allowed in shoreline areas shall utilize required setback areas (see "Setback, Height, and Dimensional Requirements Chart") for screening of facilities from water bodies. Additional screening may be required as determined on a case-by-case basis.

(10) Clearing for the installation or maintenance of utilities shall be kept to a minimum and upon project completion any disturbed area shall be restored as nearly as possible to preproject conditions including seeding and planting with native species and maintenance care until the newly planted vegetation is established.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-11 General Shoreline Access Use Restriction and Conditions**

(a) Appropriate public access to the shoreline areas of the Reservation is an important part of this management program.

(b) All proposed shoreline uses and activities shall be subject to the following Code sections:

(1) Development shall not block or interfere with existing, lawful access to the shorelines and water bodies of the Reservation.

(2) Shoreline access shall be required for all shoreline development provided that access may not be required where it is demonstrated by the applicant and determined by the Tribes in its findings that one or more of the following provisions apply:

(A) The shoreline development is primarily for cultural preservation, single family residential or agricultural/ranching activities - excluding tribal range units which may require access if appropriate;

(B) Unavoidable hazards exist which cannot be prevented by any practical means;

(C) Inherent security requirements of the use cannot be satisfied through the use of alternative design features or other solutions;

(D) The cost of providing the access, easement, or an alternative amenity, is unreasonable disproportionate to the total cost of the proposed development;

(E) Environmental or cultural resource harm will result from the access which cannot be mitigated; or

(F) Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated. PROVIDED FURTHER, that the applicant has first demonstrated and the Tribes have determined in its findings that all reasonable alternatives have been exhausted, including but not limited to:

(i) Regulating access by such means as maintaining a gate and/or limiting hours of use;

(August 2022)

(ii) Designing separation of uses and activities, i.e. fences, terracing, use of one-way glazings, hedges, landscaping, etc.;

(iii) Provision of an access at a site geographically separated from the proposal such as a street end or trails system.

(3) Development located in shoreline areas may be required to provide view corridors, public access ways, recreational trail easements or other amenities upon a determination by the Tribes that the action would enhance enjoyment of the shoreline and not unduly conflict with the proposed use, adjacent uses or public safety nor adversely impact the shoreline environment.

(4) Any required public access easements shall be of a size and design appropriate to the site, size and general nature of the proposed development. Such easements shall be recorded on a property deed or face of a plat as a condition running in perpetuity with the land.

(5) When required by the Administrator, signs which indicate the public's right of access shall be installed and maintained by the developer in conspicuous locations at required public access sites. Public use may be limited to daylight hours.

(6) Public access sites shall have direct and easy access from a public road.

(7) Required shoreline access sites shall be available for public use at the time of occupancy of the development.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### **4-15-12 General Signage Use Restrictions and Conditions**

(a) The location, design and maintenance of signage within shoreline areas can have an adverse visual and potentially physical impact.

(b) All signs to be placed in shoreline areas are subject to the following Code section.

(c) The following types of signs are permitted in any shoreline environment:

(1) Water navigational signs, and highway or railroad signs necessary for direction, safety, public information or direction.

(2) Public information signs directly relating to a permitted local shoreline activity.

(3) Off-premise, free standing signs for community identification, information, or directional purposes.

(4) On-premise commercial signs subject to this Chapter.

(5) National, Tribal, site and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.

(6) Temporary directional signs to public or quasi-public events. Such signs shall be removed and properly disposed of within ten (10) days following the event.

(d) The following types of signs are prohibited in any shoreline environment:

(1) Signage in view corridors which impair visual access.

(2) Off premises detached outdoor advertising signs are prohibited.

(3) Spinners, streamers, pennants, flashing lights used for commercial purposes (excepting flashing highway and railroad signs) and other attention getting devices.

(4) Signs placed in trees or other natural features.

(August 2022)

(5) Commercial signs for products, services or facilities located off-site.

(e) All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access to the shoreline. When feasible, signs shall be flush mounted against existing buildings.

(f) All sign plans and designs shall be submitted for review and approval at the time of shoreline permit approval.

(g) On premise signs related to specific on-site activities shall not exceed thirty-two (32) square feet in surface area. FURTHER, on premise signs that are freestanding shall not exceed six (6) feet in height.

(h) Lighted signs shall be hooded, shaded or aimed so that direct light of lamps will not result in glare when viewed from surrounding properties, rights-of-way, or watercourses.

(i) Temporary or obsolete signs shall be removed and properly disposed of within ten (10) days of elections, closures of business, or termination of any other intended function. Examples of temporary signs include: real estate signs, directions to events, political advertisements, event or holiday signs, construction signs.

(j) Overwater signs or signs on floats or pilings shall be related to water-dependent uses only.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### 4-15-13

#### **General Clearing and Grading Use Restrictions and Conditions**

(a) The clearing, grading, filling of shoreline areas and alteration of natural drainage features within shoreline jurisdiction can cause immediate adverse impacts to water quality and quantity, native vegetation and fish and wildlife habitat. Such activities may also result in long term, irreparable environmental degradation. No such clearing, grading, filling of shoreline areas and alteration of natural drainage features within shoreline areas shall be undertaken without prior review and approval by the Administrator.

(b) All proposed shoreline uses and activities that require or include clearing, grading, filling or alteration of natural drainage features are subject to the following:

(1) Land clearing, grading, filling and alteration of natural drainage features, landforms and vegetation shall be limited to the minimum necessary for development.

(2) Surfaces cleared of vegetation which are not immediately developed shall be replanted the first growing season following modification or other as approved by the Administrator.

(3) Surface drainage systems or substantial earth modifications shall be designed to prevent maintenance problems, erosion, or adverse impacts on shoreline features and shall be replanted with native vegetation as soon as practical.

(4) Clearing and grading within required shoreline setback areas established in Chart 2 of this code shall be limited to the minimum area and water frontage necessary to support approved water-dependent, -related, or -enjoyment development for the site. Clearing and grading within required shoreline setback areas shall be subject to mitigation requirements established by the Administrator.

(5) All permitted clearing and grading shall be designed with the objective of maintaining natural diversity in vegetation species, age and cover density.

(6) For extensive clearing and grading proposals, a clearing and grading plan addressing species removal, seeding and planting, irrigation, erosion and sedimentation control and other methods of riparian corridor protection shall be required conforming to the maximum percentage of site clearing permitted.

(7) Negative environmental and shoreline impacts of clearing and grading shall be avoided through proper site planning, construction timing and practices, bank stabilization, bioengineering and use of erosion and drainage control methods as well as adequate maintenance.

(August 2022)

(8) Land clearing, grading, filling or alteration that involves greater than five-hundred (500) cubic yards of material shall be certified by a licensed engineer to prevent maintenance problems or adverse impacts to adjacent properties or shoreline features.

(9) Normal nondestructive pruning and trimming of vegetation for maintenance purposes shall not be subject to these clearing and grading regulations. In addition, clearing by hand held equipment of invasive nonnative shoreline vegetation or plants listed on the Tribe, County or State Noxious Weed List is permitted in shoreline areas if native vegetation is promptly reestablished in the disturbed area.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### **4-15-14 Generally Environmentally Sensitive Areas Use Restrictions and Conditions**

(a) One of the basic tenets of the Holistic Goal is the protection of the environment with the acknowledgment of its importance to the quality of life for tribal members. Environmentally sensitive areas include: geological hazard areas, wetlands, Threatened and Endangered species habitats, floodplains, areas with a high water table, and channel migration zones.

(b) All shoreline uses and activities that take place within environmentally sensitive areas are subject to the following Code sections.

(c) Geological Hazard Areas:

(1) Geological hazard areas are areas susceptible to severe erosion or slide activity (such as unstable bluffs, steep slopes, or channel migration zones) and include areas with high potential for earthquake activity. In general, they are not suitable for placing structures or locating intense activities or uses due to the inherent threat to public health and safety and potential adverse environmental impacts.

(2) A person desiring to use or develop the shoreline area shall be required to delineate any potential geological hazardous area.

(A) Development shall be permitted only in locations where no slope protection is necessary or where nonstructural protection is sufficient for the life of the project. Construction activity shall not increase or result in slope instability or sloughing.

(B) Foundations shall be located in areas with less than 30% slope, unless a geotechnical report indicates that slope stability will not be affected.

(C) Subdivision of lots on bluffs shall allow sufficient lot depth for development to occur without the need for bulkheading or other structural stabilization.

(D) Surface drainage down the face of the bluff shall be contained in a tight line (closed, nonleaking pipe) for discharge at the shoreline in such a way that erosion will not occur.

(E) Surface drainage away from the bluff shall also use a tight line or some other approved method for discharge into a natural drainage course.

(F) Any required storm water retention system shall be designed by a licensed civil engineer and accompanied by a geotechnical report verifying that slope stability shall not be affected.

(G) Proposals for developments on or immediately adjacent to unstable bluffs shall include the following information in their application and site plan:

(i) Soils, topography and existing vegetation;

(ii) Existing drainage patterns and how they may be changed;

(iii) Proposed vegetation removal and grading plan together with an erosion control plan; and

(August 2022)

(iv) Proposed structure and use locations.

(H) A geotechnical report shall be required for proposed development within geological hazard areas identified by the Department in consultation with the Natural Resources Department or other agencies, reports, or sources of geological hazard mapping and information.

(i) The geotechnical report shall contain:

- (1) Soils information and erosion rates;
- (2) Drainage;
- (3) Vegetation management options;
- (4) Recommended setback to avoid need for building bulkhead during life of project;
- (5) Evaluation and statement on stability and safety of structure; and
- (6) Evaluation and statement on stability of bluff.

(d) Wetlands:

(1) Wetlands serve many important ecological and environmental functions and values, and help protect public health, safety and welfare by providing flood storage and conveyance; erosion, pollution and sediment control; fish and shellfish production; plant, fish and wildlife habitat; recreation; water quality protection; water supply; education and scientific research. Wetlands should be preserved and protected to prevent their loss and degradation.

(2) All uses and activities that take place within the shoreline area of a wetland shall be subject to the following regulations:

(A) All wetlands identified by the Tribes' Natural Resources Department shall be protected from alterations that adversely impact them so that there is no net loss of wetland acreage, functions, and values.

(B) Additional wetland protection shall be provided to wetlands of exceptional resource value, defined as those wetlands that include rare, sensitive or irreplaceable systems such as, but not limited to:

- (i) Wetlands having traditional, cultural and/or ceremonial significance to Colville Tribal members;
- (ii) Documented or potential habitat for endangered, threatened, sensitive or culturally significant species;
- (iii) High-quality wetland systems;
- (iv) Significant habitat for fish or aquatic species;
- (v) Wetlands exhibiting a high mixture of wetland classes and subclasses as identified by the Tribes Natural Resources Department.
- (vi) Mature forested swamp communities.

(August 2022)

(vii) Wetlands providing benefits such as water quality improvement, flood storage, and shoreline erosion protection significant at the watershed scale.

(C) A wetland buffer zone of adequate width, in accordance with Appendix B-2, shall be maintained between a wetland and any adjacent development to protect the functions and integrity of the wetland. The width of the established buffer zone may be extended based upon the functions, values and sensitivity of the wetland, the characteristics of the existing buffer and the potential impacts associated with the adjacent land use.

(D) All activities that potentially affect wetland ecosystems shall be controlled within both the wetland and the buffer zone to prevent adverse impacts.

(E) Development or activities shall not be authorized in a wetland except where it can be demonstrated that:

(ii) The impact is both unavoidable and necessary;

(ii) Unavoidable and necessary impacts are minimized, and any remaining impacts are offset through the deliberate restoration, creation or enhancement of wetlands of equivalent or greater resource value, including acreage and function;

(iii) The restored, created or enhanced wetland will be as persistent and shall provide the equivalent type and amount of wetland function as the wetland it replaces; and

(iv) The applicant demonstrates sufficient scientific expertise, supervisory capability and financial resources to carry out the proposed replacement activity.

(F) Wetland restoration, creation and enhancement projects shall result in no net loss of wetland acreage, functions, and values. Where feasible, wetland quality should be improved.

(G) Wetlands that are impacted by activities of a temporary nature shall be restored immediately upon project completion.

(H) In-kind replacement of functions and values is preferred. Where in-kind replacement is not feasible or practical due to the characteristics of the existing wetland, substitute resources of equal or greater ecological value shall be provided.

(I) On-site replacement of wetlands is preferred. Where on-site replacement is not feasible or practical due to characteristics of the existing location, replacement shall occur within the same watershed and proximity.

(J) Wetland restoration, creation and enhancement projects shall be completed prior to wetland alteration, where possible. In all other cases, replacement shall be completed prior to use or occupancy of the activity or development.

(K) Applicants shall develop comprehensive mitigation plans in order to ensure long term success of the mitigation project. Such plans shall provide for sufficient monitoring and contingencies to ensure wetland persistence.

(L) Applicants shall demonstrate sufficient scientific expertise, supervisory capability and financial resources to complete and monitor the mitigation project.

(M) Proposals for restoration, creation or enhancement of wetlands shall be coordinated with appropriate resource agencies to ensure adequate design and consistency with other regulatory requirements.

(August 2022)



(N) Wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation shall be required. Developments and activities shall not be allowed within the buffer except for:

(i) Minor activities which are found to have no adverse impact on the wetland functions or integrity;

(ii) Storm water management facilities having no feasible alternative location outside of the buffer.

(O) The location of all required buffer zones shall be clearly and permanently marked on any project site prior to initiation of site work.

(P) Wetland buffer zones shall be reserved as common open space and designated as “native growth protection areas” where multiple ownership is involved and cooperative management is possible.

(Q) For identifying and delineating a marsh, bog or swamp, applicants shall use the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

(R) No development or activity including removing or disturbing soil, filling, changing the water level, placing obstructions, constructing a structure, destroying or altering vegetation or introducing pollutants may be permitted within a wetland or its buffer unless authorized by a conditional use permit.

(S) For wetlands of exceptional resource value, the applicant, in addition to complying with the provisions above, shall demonstrate that there is a compelling public need for the proposed activity or that denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

(T) Wetland functions and values shall be determined by the Department as advised by those with expertise.

(U) When wetland replacement is required, at a minimum, wetland acreage shall be replaced at a ratio of acreage replaced to acreage lost of 3:1. For wetlands of exceptional resource value, the minimum acreage replacement ratio shall be 6:1. Actual replacement acreage will be determined case-by-case, based on the following criteria:

(i) Projected losses or gains in wetland functions, structures, and value;

(ii) Location of replacement wetlands;

(iii) The time required to reestablish lost functions;

(iv) The uncertainty of the probable success of the project;

(v) The type of compensation (enhancement proposals shall require twice the acreage replacement as restoration and creation proposals); and

(vi) Variety of the wetland type being impacted.

(V) Acreage replacement may be authorized at 1:1 where it is found through special studies coordinated with agencies with expertise, or through advance compensation, that no net loss of wetland functions and values results.

(W) A compensation plan shall be required for developments or activities that result in unavoidable and necessary wetland alterations. The plan shall include the following elements:

(August 2022)

(i) Baseline information for the impacted wetland and the proposed replacement site;

(ii) Environmental goals and objectives describing the purposes of the mitigation measures, a description of the site selection criteria and identification of target evaluation species and resource functions;

(iii) Performance standards including specific criteria for fulfilling goals and objectives and for beginning remedial action or contingency measures;

(iv) Detailed construction plan including work schedule, revegetation information, buffers, estimated cost, site plan with contours and elevation and other information;

(v) Monitoring program outlining the approach for assessing a completed project over a five-year period. A report shall be submitted annually, at a minimum documenting milestones, success, problems and contingency actions; and

(vi) A contingency plan identifying potential courses of action and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

(X) Where restoration, creation or enhancement activities are proposed, the applicant shall be required to:

(i) File a performance bond in an amount to enable the regulatory authority to carry out the compensation plan should the applicant fail to do so;

(ii) Demonstrate that such compensation areas shall be permanently protected through appropriate measures. (e.g. conservation easements, purchase, deed restrictions, etc.)

(Y) A wetland buffer zone of 200 feet shall be required adjacent to wetland areas identified by the Tribes as having exceptional resource functions and values, unless a greater distance is required by other provisions of this program.

(e) Threatened and Endangered Fish Habitats:

(1) Fish, particularly salmon, are very important to the Tribes. The protection and enhancement of threatened and endangered fish spawning and rearing habitat and restoration of former habitat is critical to the maintenance and improvement native fish runs.

(2) All proposed shoreline uses and activities are subject to the following:

(A) Structures that prevent the migration of fish shall not be allowed in the portions of water bodies used by these fish or that have potential to provide fish habitat. Fish bypass facilities shall allow upstream migration of adult fish. Fish bypass facilities shall prevent fry and juveniles migrating downstream from being trapped or harmed.

(B) Unless the applicant demonstrates that bioengineering techniques will not be successful, bulkheads and other shoreline protection structures (includes rip-rap) are prohibited in habitat used by threatened and endangered species.

(C) Bulkheads, groins, rip-rap and other shoreline protection structures may intrude into salmon and steelhead habitats only where the proponent demonstrates all of the following conditions are met:

(i) Alternative alignment or location is not feasible;

(August 2022)

(ii) The project is designed to minimize its impacts on the environment;

(iii) The facility is in the resource's best interest;

(iv) If the project will create significant avoidable adverse impacts, the impacts are mitigated by creating in-kind replacement habitat near the project. Where in-kind replacement mitigation is not feasible, rehabilitating degraded habitat may be required as a substitute.

(D) Docks, piers, pilings and floats may be located in water areas used by salmon and steelhead for migration corridors, rearing, feeding and refuge, provided the facilities use open piling construction. Approach fills shall be located landward of the OHWM. Docks, piers, pilings and floats shall not be located in potential salmon and steelhead spawning habitats.

(E) Open pile bridges are the preferred water crossing structures over salmon and steelhead habitats. If a bridge is not feasible, one of the following water crossing structures may be approved if the impacts are acceptable: temporary culverts, bottomless arch culverts, elliptical culverts or round culverts. These structures are listed in priority order, with the first having the highest preference and the last the lowest preference.

(F) Bridges and in-water utility corridors may be located in salmon and steelhead habitat provided the proponent shows that all of the following conditions are met:

(i) An adverse alignment is not feasible;

(ii) The project is located and designed to minimize its impacts on the environment;

(iii) Any adverse impacts are mitigated;

(iv) Any earth fill (the placement of fill) is located landward of the OHWM. Open pilings and piers required to construct the bridge may be placed waterward of the OHWM, if no alternative method is feasible, PROVIDED, that when installing in-water utilities, the installer may place native material on the bed and banks of the water body or wetland to reestablish the preconstruction elevation and contour of the bed. The project shall be designed to minimize its impacts on the environment.

(G) Projects which propose water withdrawals or diversions shall maintain adequate flows within the water body to maintain threatened and endangered habitat, taking into account existing and likely future withdrawals and diversions.

(H) Landfilling, channelization and other activities which negatively impact habitat values are prohibited in wetlands, ponds and side channels which provide refuge or other habitat for salmon, steelhead and/or other fish species.

(I) Within salmon and steelhead habitats, permanent channel changes and realignments are prohibited.

(J) Aquaculture uses shall not be established in or expanded in salmon and steelhead habitat, except for areas that are only used for migration corridors. This regulation only applies to in-water aquaculture uses, not upland aquaculture uses.

(K) The removal of aquatic and riparian vegetation within or adjacent to salmon and steelhead habitats shall be minimized. Shaded side channels, streams, rivers, ponds and

(August 2022)

wetlands used by salmon and steelhead shall be protected. Areas of disturbed earth shall be revegetated.

(L) Unless removal is needed to prevent hazards to life and property or to enhance fish habitat, large woody debris below the ordinary high water mark shall be left in the waterway to provide salmon and steelhead habitat as determined by the Tribes' Fish and Wildlife Department.

(M) Outfalls (pipes discharging to surface waters) within or upstream of salmon or steelhead spawning areas shall be designed and constructed to minimize disturbance of salmon and steelhead spawning beds.

(N) Natural channel, shoreline, and floodplain creation processes and other natural floodplain functions that protect, create, and maintain habitat for threatened and endangered species shall be retained.

(O) Loss of hydraulic, geomorphic, and ecological functions of floodplains and stream channels shall be minimized.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### **4-15-15 General Vegetation Management Use Restrictions and Conditions**

(a) Vegetation management involves a variety of management strategies. The overall intent of the following Code section is to minimize habitat loss and lessen the impact of invasive plants, erosion, sedimentation and flooding.

(b) Restoration plans for disturbed sites within the Riparian Management Zone are required and shall include the following:

- (1) Specifications for planting;
- (2) Detailed site plan;
- (3) Schedule of implementation;
- (4) Plans regarding irrigation, weed management, and site maintenance.

(c) The following Code sub-sections apply to all shoreline uses and activities:

- (1) The use of herbicides and pesticides shall be prohibited to remove noxious plants in streams, lakes and wetland areas except where no reasonable alternatives exist and it is demonstrated that such activity is in the public interest. A conditional use permit (CUP) shall be required in such cases.
- (2) Mechanical removal of noxious weeds shall be timed and carried out in a manner to minimize any disruption of wildlife or habitat.
- (3) All unique and fragile shorelines identified by the Tribes' Natural Resources Department shall be protected from degradation caused by modification of the land surface within the shoreline area and/or the adjacent uplands.
- (4) Restoration of any shoreline that has been disturbed or degraded shall use native plant materials with a diversity and type similar to that which originally occurred on-site.
- (5) Stabilization of exposed erosion prone surfaces along shorelines including but not limited to river, lake and stream systems shall, wherever feasible utilize soil bioengineering techniques. (e.g. stabilization using vegetation and other natural mechanisms).
- (6) The use of commercial nursery stock in the restoration of disturbed or degrading shorelines shall emulate natural, native vegetation in size, structure and diversity.

(August 2022)

(7) Beach enhancement is prohibited in the following circumstances:

- (A) Within spawning, nesting or breeding habitat identified by the Tribes' Fish and Wildlife Department;
- (B) Where littoral drift (movement of materials by water currents) of the enhancement materials will adversely affect adjacent spawning grounds or other areas of biological significance;
- (C) When such enhancement will interfere with the normal public use of the navigable waters of the Reservation; and/or
- (D) Where the activity is in support of a nonconforming use unless such activities are necessary to maintain shoreline stability and the natural ecology;
- (E) Within identified cultural resource areas or cultural resource sites;
- (F) Where the activity may cause a violation of CTC 4-8 Water Quality Standards.

(8) Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.

(9) The control of aquatic weeds by hand pulling, mechanical harvesting, or placement of aquascreens, if proposed to maintain existing water depth for navigation, shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a shoreline substantial development permit.

(10) The control of aquatic weeds by derooting, rotovating or other method which disturbs the bottom sediments and related aquatic life shall be considered development for which a substantial development permit is required, unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity. In this case it shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a substantial development permit.

(11) Where large quantities of plant material are generated by control measures, they shall be collected and disposed of in an appropriate, identified upland location.

(d) Within Natural and Conservancy Designations, the removal of native and other existing vegetation (except for noxious weeds) in setback areas shall be prohibited. Whenever possible, noxious weed control should be accomplished by hand pulling in order to protect existing beneficial vegetation. Replacement of shoreline vegetation with lawns is prohibited.

(e) Within Rural Agricultural and Recreational Residential Designations, the removal of native and other existing vegetation (except for noxious weeds) in setback areas shall be limited to selective pruning of trees for view purposes and selective noxious weed control where care is taken not to damage other existing vegetation. Whenever possible, noxious weed control should be accomplished by hand pulling in order to protect existing beneficial vegetation. Replacement of shoreline vegetation with lawns shall be limited to a twenty-five (25) foot area immediately adjoining the structure containing the commercial use.

(f) Within Medium Intensity and High Intensity Designations, the removal of native and other existing vegetation (except for noxious weeds) in setback areas shall be limited to selective pruning of trees for view purposes and selective noxious weed control where care is taken not to damage other existing vegetation. Whenever possible, noxious weed control should be accomplished by hand pulling in order to protect existing beneficial vegetation.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

(August 2022)

**4-15-16 General View Protection Use Restrictions and Conditions**

(a) Visual access to shoreline areas is an important part of the beauty of the Reservation. Protection and enhancement of existing views and provision of new shoreline views are important components of this shoreline management plan.

(b) All uses and activities shall be subject to the following:

(1) Shoreline uses and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's visual access to the water and shorelines.

(2) In providing visual access to the shoreline, the natural vegetation shall not be excessively removed either by clearing or by topping. Such activities shall comply with the provisions of this section.

(3) Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.

(4) Marinas with covered boathouses shall limit their height as required in the Specific Use Activity sections.

(5) Development on the water shall be constructed of nonreflective materials that are compatible in terms of color and texture within the surrounding area.

(6) Visual access shall be maintained, enhanced and preserved on shoreline streets ends, public utilities and right of ways where feasible.

**4-15-17 Shoreline Use Activities**

(a) The following sections, 4-15-17 through 4-15-31, set forth categories of use activities typically found in shoreline areas and provide Code restrictions specific to these use activities: Agriculture (including livestock grazing), Boating Facilities, Commercial, Industrial, Landfill, Mining, Recreational, Residential, Shoreline Stabilization and Flood Protection, Solid Waste Disposal, Transportation, Aquaculture and Forest Practices. The Code along with the goals, policies and management guidelines contained in the Shoreline Management Plan, provide basic rules for approving, approving with conditions or denying shoreline permit applications. The requirements of sections 4-15-17 through 4-15-31 are supplemental to the shoreline restrictions and conditions outlined in Code sections 4-15-7 through 4-15-16.

(b) Each use activity sub-section is separated into two parts:

(1) Part A contains requirements which apply to the use or activity in all shoreline designations; and

(2) Part B describes or references additional requirements for the use activity or development within specific shoreline designations

(c) These sub-sections were developed with consideration given to each shoreline designation and with recognition of the needs and desires of Tribal members.

**4-15-18 Use Activities Charts—Permits and Dimensional Standards**

A "Use and Activity Chart" and a "Setback, Height, and Dimensional Requirements Chart" have been created to visually demonstrate both the shoreline permit requirements and the dimensional requirements for all structures, uses, and activities subject to this Chapter. Specifically, the "Use and Activity Chart" indicates, by shoreline designation, which use activities require a shoreline development permit, a conditional use permit, are exempt from permit requirements or are prohibited. Regardless of permit status, all uses and activities initiated subsequent to enactment of this Chapter must comply with applicable goals, policies and regulations contained in this Shoreline Management Chapter, whether permitted by shoreline development permit, conditional use permit or exempt from permit processes.

(August 2022)

The “Setback, Height, and Dimensional Requirements Chart” indicates setback, height, and other dimensional requirements for structures, uses and activities in each shoreline designation.

These charts shall be available upon request from the Tribes' Planning Department. All interested parties are encouraged to review these charts to determine their applicable shoreline permit and dimensional requirements, in addition to reviewing Code section 4-15-18 through the end of this Chapter.

#### **4-15-19 Agriculture Use Restrictions and Conditions**

(a) Agriculture refers to all methods of livestock, tree fruit, crop, vegetation and soil management. These include but are not necessarily limited to the related activities of tilling, fertilizer application, soil preparation and maintenance, harvesting and the control of weeds, plant diseases and insect pests. Also included are animal husbandry practices associated with the grazing, feeding, housing, maintenance and marketing of animals such as beef cattle, milk cows, breeding stock, horses and poultry and their by-products. Facilities contained within this category include, but are not limited to, storage, feed lots, fences and ditches. Excluded are agricultural processing industries that are considered industrial uses for the purposes of shorelines planning.

(b) Requirements applicable in all shoreline designations:

(1) All agricultural uses are required to prepare farm or range management plans.

(A) Agricultural uses that receive approval of farm and range management plans may receive greater flexibility in the establishment of setbacks, permitted uses and development. All such farm and range management plans shall at a minimum address the following:

(i) Water resource use - when and how;

(ii) Impact on traditional plants and riparian vegetation impact on soil, stream channels, and stream banks;

(iii) Water quality impacts;

(iv) Consistency with other uses;

(v) Consistency with IRMP and shoreline goals, policies and guidelines;

(vi) Timing and number of livestock - when and where;

(vii) Known cultural sites, cultural resources, archeological/historical resources, and archeological/historical sites;

(viii) Weed control.

(ix) A Plan of Conservation Operation approved by the Bureau of Indian Affairs may satisfy the requirement for a farm or range management plan.

(2) Requirements specific to grazing uses:

(A) Grazing uses are specifically required to prepare range management plans within five years of the enactment of this Chapter. Following expiration of this five-year “grace period” grazing uses must submit a range management plan or conform to the requirements of this Chapter.

(B) Grazing within shoreline areas shall only be permitted subject to compliance with tribal grazing practices regulations and all other applicable tribal and federal regulations. The following minimum standards shall apply to such grazing practices:

(August 2022)

(i) Water sources for all stock shall be available away from surface water sources;

(ii) Areas identified as environmentally sensitive by the Tribal Natural Resources Department shall be fenced to preclude livestock use;

(iii) Salt blocks and other livestock attractions shall be placed at upland locations to prevent impacts to shoreline areas from concentrated livestock activity;

(iv) All livestock shall be actively managed, through bi-weekly monitoring and movement to minimize impacts on shoreline resources.

(3) The creation of new agricultural lands by diking, draining or filling of wetlands is prohibited.

(4) All agricultural development shall conform to all applicable Tribal and federal policies and regulations including but not limited to approved range management plans and water permits. Expansion of existing non-conforming agricultural activities (those that presently exist in areas designated as “natural” and in instances “conservancy”) shall be permitted subject to approval of a CUP.

(5) Cooperative arrangements shall be required between farmers and public recreation agencies and the Tribes to allow public use of shorelines where it does not conflict with agricultural operations or tribal management priorities.

(6) Farming and grazing management techniques, operations and control methods shall protect the productivity of the land base by maintaining or improving soil quality and minimizing soil losses through erosion in accordance with applicable Tribal Natural Resources Department guidelines.

(7) Appropriate farm and livestock management techniques shall be utilized to prevent contamination of nearby water bodies and adverse effects on valuable plant, fish and animal life from livestock wastes, fertilizer and pesticide use and application.

(8) Confinement lots, feedlot operations, lot wastes, stockpiles of manure solids and storage of noxious chemicals are prohibited in the shoreline area. Such uses that exist on the date of adoption of this Chapter shall be considered an existing non-conforming use for the purpose of regulation.

(9) A permanent buffer of native vegetation shall be established and maintained between areas converted to cultivation or intensive grazing and adjacent waters and marshes, bogs and swamps. The plant composition and width of the buffer shall be based on site conditions, including type of vegetation, soil types, drainage patterns and slope, but shall not be less than one-hundred (100) feet measured from the OHWM on lakes, streams and wetlands. The buffer shall be sufficient to retard surface runoff, prevent siltation and provide adequate riparian habitat.

(10) Streambanks and water bodies shall be protected from damage due to concentration and overgrazing by livestock by providing the following:

(A) Suitable bridges, ramps, culverts, or hardened rock crossings for stock crossing;

(B) Ample supplies of clean water in tanks on dry land for stock watering; and

(C) Fencing or other grazing controls to prevent overgrazing and damage to buffer vegetation, bank compaction, or bank erosion.

(11) Manure spreading for fertilization shall be kept back a minimum of one-hundred (100) feet from the OHWM, or otherwise conducted in a manner that prevents animal wastes from entering water bodies or wetlands adjacent to water bodies. The setback may be increased depending on the

(August 2022)



topography and geology of the site if required by the Tribal Environmental Trust Department in order to provide further protection of water quality.

(12) The disposal of inorganic farm wastes, chemicals, fertilizers and associated containers and equipment within shoreline areas is prohibited. The disposal of solid waste, including junk vehicles and equipment, dead animals, debris and brush, is also prohibited within the shoreline area.

(13) The application of agricultural chemicals shall be conducted in a manner to prevent the direct entry of chemicals or runoff of chemical laden waters into water bodies. Adequate provisions, including imposition of setbacks from the OHWM shall be made to prevent their entry into any body of water.

(c) Shoreline Designation Specific Requirements: Agricultural use activities and development shall comply with the following designation specific requirements and those set forth in the “Use and Activity Chart” and the “Setback, Height, and Dimensional Requirements.”

(1) In Natural and Conservancy Designations, the removal of native and other existing vegetation (except for noxious weeds) in the setback areas required within the Natural and Conservancy designations shall be limited to selective pruning of trees for view purposes and selective noxious weed control where care is taken not to damage other existing vegetation. Whenever possible, noxious weed control should be accomplished by hand pulling in order to protect existing beneficial vegetation.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### **4-15-20 Boating Facilities Use Restrictions and Conditions**

(a) Boating facilities include but are not limited to: marinas; boat launch ramps (public and private); wet and dry storage; related sales and service for pleasure and commercial water craft; and, community and public docks.

(b) Requirements applicable in all shoreline designations:

(1) All boating facilities shall be located and designed to minimize adverse effects upon riparian vegetation, fish and wildlife habitat and historic/cultural resources as well as scarce and valuable shore features including wetlands, and to minimize disruption of shoreline accretion and erosion processes.

(2) All boating facilities shall be located and designed so their structures, other features and operations will be aesthetically compatible with or will enhance the area visually affected, and will not unreasonably impair shoreline views of local residents and user groups.

(3) Public boating facilities shall be designed to accommodate public access and enjoyment of the shoreline location, including provisions for walkways, view points, restroom facilities and other recreational uses according to the scale of the facility.

(4) Boating facility development shall comply with all applicable tribal policies and regulations.

(5) The Tribes shall require and utilize the following information in its review of boating facility proposals:

(A) Existing natural shoreline and backshore features and uses;

(B) Geohydraulic processes and characteristics;

(C) Biological resources and habitats in the shoreline area;

(D) Cultural resources and traditional uses;

(E) Area of surface waters appropriated;

(F) Site orientation; exposure to wind, waves, flooding, erosion; type and extent of shore defense works or shoreline stabilization and flood protection necessary;

(August 2022)

(G) Impact upon existing shoreline and water uses including public access and recreation;

(H) The regional need for facilities; and

(I) The design of the facilities, including the provisions for the prevention and control of fuel spillage, storm water runoff and a landscaping plan.

(6) Accessory uses at boating facilities or public launch ramps shall be limited to those which are necessary for facility operation or which provide physical or visual shoreline access. Accessory uses shall be consistent in scale and intensity with the facility and surrounding uses.

(7) Boat launch ramps shall locate in areas that require minimal shoreline modification.

(8) Boating facilities shall not be located in wetlands.

(9) Boat launch sites on rivers shall be located, designed and constructed so as to not adversely affect flood channel capacity or otherwise create a flood hazard.

(10) Landscape plans shall enhance views from upland areas.

(11) The perimeter of parking, dry moorage and other storage areas shall be landscaped to provide a visual and noise buffer between adjoining similar uses or scenic areas. The permit application shall identify the size, type and location of landscaping.

(12) Garbage or litter receptacles shall be provided and maintained by the boating facility operator at several locations convenient to users.

(13) Marinas and boat launch ramps shall have adequate restroom facilities operated and maintained in compliance with Tribal health regulations.

(14) All existing permitted boating facilities shall be reviewed for their compliance with the regulations contained in this program.

(15) Floating docks shall be marked with owner identification and shall be moored minimizing disturbance to the shoreline, and riparian and aquatic vegetation.

(16) All existing boat launch ramps and docks constructed without the appropriate approval from the Tribes shall be removed on or before January 1, 2003.

(17) Boating facilities shall comply with the shoreline designation specific requirements set forth in the "Use and Activity Chart" and the "Setback, Height, and Dimensional Requirements Chart."

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### **4-15-21 Commercial Activity Use Restrictions and Conditions**

(a) Commercial use activities and development means those activities that are involved in wholesale, retail, service, and business trade. Included are such activities as hotels, motels, gaming facilities, grocery markets, shopping centers, restaurants, gas stations, shops, and recreation facilities (private and public).

Excluded from this category are residential and recreational subdivisions, boating and marina facilities, ports and industry, and mining activities.

(b) Requirements applicable in all shoreline designations:

(1) All new commercial use activities and developments should be located outside the shoreline area where possible. Commercial developments shall be prohibited over water, except for approved boating facilities.

(August 2022)

(2) New commercial development in shorelines shall be located in those areas with existing commercial uses or designated for future development in the Tribes Comprehensive Plan. All such uses and development shall be planned and constructed in a manner that will minimize sprawl and the inefficient use of shoreline areas.

(3) In order to minimize adverse impacts, an assessment shall be made of and consideration given to, the effect new commercial development will have on a scenic view. Structures shall not significantly impact views from upland properties, public roadways or from the water.

(4) Parking facilities shall be located so as to minimize their impact on the shoreline by placing such facilities outside the shoreline area, by screening parking areas to minimize visual impacts and by including in such developments devices to control surface water runoff, erosion, and pollution of nearby water bodies.

(5) Commercial development shall ensure that it is aesthetically compatible with the surrounding area and protects natural areas or systems identified as having geological, ecological, biological or cultural significance.

(6) Commercial development shall be prohibited within the floodway.

(7) Commercial developments permitted within the shoreline area, in descending order of preference are:

- (A) Water-dependent uses;
- (B) Water-related uses;
- (C) Water-enjoyment uses;
- (D) Non-water oriented uses.

(8) The Tribes shall require and utilize the following information in its review of commercial development proposals:

- (A) Specific nature of the commercial activity;
- (B) Need for shoreline frontage;
- (C) Special considerations for enhancing the relationship of the activity to the shoreline;
- (D) Provisions for public visual and/or physical access to the shoreline;
- (E) Provisions to ensure that the development will not cause substantial negative environmental impacts; and
- (F) Benefit to the Tribes.

(9) Commercial development shall be designed and maintained in an environmentally sound manner. To this end, the Administrator may adjust the project dimensions and increase required setbacks established in the "Setback, Height, and Dimensional Requirements Chart" and/or prescribe reasonable use intensity and screening as deemed appropriate. Need and special considerations for landscaping and buffer areas shall also be subject to review and approval.

(10) Drainage and surface runoff from commercial areas shall be controlled so that pollutants will not be carried into water bodies.

(11) Commercial use activities and developments are permitted to continue existing operations providing such operations are in compliance with all applicable Tribal and federal laws and regulations

(August 2022)

other than this management plan. However, as leases are renewed, re-development plans approved, existing structures converted to commercial use or other conditions exist that result in a change of practice, any continued use must be done in compliance with this management program.

(c) Shoreline Designation Specific Requirements: Commercial use activities and development shall comply with the following designation specific requirements and those set forth in the “Use and Activity Chart” and the “Setback, Height, and Dimensional Requirements Chart.”

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### **4-15-22 Industrial Activity Use Restrictions and Conditions**

(a) Industrial developments are facilities for processing, manufacturing, and storage of agricultural and forest products, finished and semi-finished goods, removal of gravel and generation of electrical power. This includes the processing and packaging of agricultural products, processing of forest products, mining and processing of gravel, generation of electrical power through combustion of natural gas, wood waste or solid waste, manufacture of molded or cast concrete or asphalt products, or asphalt mixing and concrete batching operations.

(b) Requirements applicable in all shoreline designations:

(1) All new industrial uses proposed for location in shoreline area shall be water-dependent and/or water-related.

(2) Cooperative use of common industrial facilities is encouraged in shoreline areas.

(3) New or expanded industrial development along shorelines shall be designed, constructed, and maintained to minimize adverse visual and environmental impacts. New development shall be located adjacent to existing or planned industrial development.

(4) Public access along shoreline industrial areas is encouraged when it does not endanger public health, safety, or welfare.

(5) Storage and/or disposal of industrial wastes are prohibited in shoreline areas.

(6) All new or expanded industrial development shall be set back and buffered from adjacent shoreline properties which are in nonindustrial use (see setbacks contained in the Setback, Height, and Dimensional Requirements Chart). Buffers shall be landscaped, or maintained in natural vegetation, and maintained so as to provide a transitional area and to protect shorelines and adjacent properties from visual or noise intrusion, minimize erosion and protect water quality. Buffer areas shall not be used for storage of industrial equipment or materials, nor for waste disposal, but may be used for outdoor recreation activity.

(7) Display and other exterior lighting shall be designed and operated to minimize glare, avoid illuminating nearby properties and prevent hazards for public traffic.

(8) Accessory development which does not require a shoreline location should be sited outside the shoreline area. Such development includes parking, warehousing, open air storage, waste storage and treatment, utilities and land transportation development unless permitted as a conditional use.

(9) Proposals for new industrial shoreline development shall demonstrate the need for expansion into an undeveloped area.

(10) The developer must demonstrate that adequate consideration has been given to and plans made to mitigate negative environmental impacts including but not limited to air, water and noise pollution and the loss of fish and wildlife habitat.

(11) Industrial use activities and developments are permitted to continue existing operations providing such operations are in compliance with all applicable Tribal and federal laws and regulations other than this management plan. However, as leases are renewed, re-development plans approved, existing

(August 2022)

structures converted to industrial use or other conditions exist that result in a change of practice, any continued use must be done in compliance with this management program.

(c) Shoreline Designation Specific Requirements: Industrial use activities and development shall comply with the requirements set forth in the Use and Activity Chart and the Setback, Height, and Dimensional Requirements Chart.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-23 Earth Fill Use Restrictions and Conditions**

(a) "Earth fill" means the filling of a shoreline area or wetland by the intentional deposition of sand, soil, gravel or other organic debris (excluding solid waste as defined herein).

(b) Requirements applicable in all shoreline designations:

(1) Earth fills on the shoreline shall be designed and located so that there will be no significant damage to existing ecological systems or natural and cultural resources, and no alteration of local currents, surface water drainage or flood waters which would result in a hazard to adjacent life, property, and natural resource systems.

(2) In evaluating fill projects, such factors as total water surface or flood storage reduction, navigation restriction, impediment to water flow and circulation, reduction of water quality, and destruction of habitat shall be considered. Further, the Tribes should assess the overall value of the shoreline site in its present state versus the proposed shoreline use to be created.

(3) The perimeter of earth fills shall be designed to avoid or eliminate erosion and sediment transport, both during initial earth fill activities and over time.

(4) Applications for earth fill permits shall include the following:

- (A) Proposed use of the earth fill area;
- (B) Physical, chemical and biological characteristics of the fill material;
- (C) Source of earth fill material;
- (D) Method of placement and compaction;
- (E) Location of earth fill relative to natural or existing drainage patterns;
- (F) Location of the perimeter relative to the OHWM;
- (G) Perimeter erosion control or stabilization means; and
- (H) Type of surfacing and runoff control devices.

(5) Earth fill shall be permitted only when in conjunction with and necessary to facilitate use permitted (or exempt) by this shoreline plan.

(6) Earth fills are not permitted in floodplains unless it can be clearly demonstrated that the geohydraulic and floodplain storage capacity will not be altered to increase flood hazard or other damage to life or property.

(7) Perimeters of permitted fill projects shall be designed and constructed with silt curtains, vegetation, retaining walls, or other mechanisms and appropriately sloped to prevent erosion and sediment transport both during initial earth fill activities and afterwards.

(8) Fill materials shall be of such quality that they will not cause degradation of water quality.

(August 2022)

(9) Sanitary landfills and solid waste disposal sites are prohibited within shoreline areas.

(10) Earth fill shall be permitted only where it is demonstrated that the proposed action will not:

(A) Result in significant damage to water quality, fish, and/or riparian wildlife habitat; or

(B) Adversely alter natural surface water drainage and circulation patterns, currents, river flows or significantly reduce flood water capacities.

(11) Where earth fill is permitted, the fill shall be the minimum necessary to provide for the proposed use.

(c) Shoreline Designation Specific Requirements: Earth fill activities shall comply with shoreline designation specific requirements set forth in the “Use and Activity Chart” and the “Setback, Height, and Dimensional Requirements Chart” and detailed below:

(1) Natural Designation: Earth fills are prohibited.

(2) Conservancy Environment: Earth fills waterward of the OHWM or in wetlands are prohibited, except for water dependent and public uses, PROVIDED no upland or structural alternatives exist. Earth fills landward of the OHWM are permitted subject to approval of a conditional use permit PROVIDED the toe of the fill is setback a minimum of 50 feet from the OHWM, and FURTHER PROVIDED that the shoreline and all native vegetation is left undisturbed waterward of the fill.

(3) Rural Agricultural Designation: Earth fills are permitted, subject to the regulations contained herein, PROVIDED the toe of the fill is setback a minimum of 50 feet from the OHWM , and FURTHER PROVIDED that the shoreline and all native vegetation is left undisturbed waterward of the fill.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-24 Mining Use Restrictions and Conditions**

(a) Aggregate development and precious/based metals exploration, mining, and milling operations are subject to the provisions of CTC 4-6 Aggregate Development Reclamation Act.

(b) Requirements applicable in all shoreline designations: Mining and aggregate development is prohibited in the shoreline areas of the Reservation.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-25 Recreational Development Use Restrictions and Conditions**

(a) Recreational development provides opportunities for play, sports, relaxation, amusement or contemplation. It includes facilities for recreational activities such as hiking, canoeing, kayaking, photography, viewing and fishing. It also includes facilities for more intensive uses such as parks, campgrounds, golf courses and other outdoor recreation areas. This section applies to both publicly and privately owned shoreline facilities intended for use by the public or a private club, group or association.

(b) Requirements applicable in all shoreline designations:

(1) The use of shoreline street ends for access and recreational development shall be considered when appropriate.

(2) The coordination of tribal, local, state, and federal recreation planning should be encouraged. Shoreline developments shall be consistent with all adopted tribal park, land use, recreation, and open space plans. Public agencies, private individuals, groups, and developers shall coordinate development projects with the Tribes to mutually satisfy recreational needs.

(3) All proposed recreational developments shall be designed, located and operated to protect the quality of scenic views and to minimize adverse impacts on the environment. Favorable consideration

(August 2022)

should be given to those projects which complement their environment and surrounding land and water uses and which leave natural areas undisturbed.

(4) Recreational facilities shall make adequate provisions for:

(A) Access, both inside and outside the development;

(B) Proper water, solid waste and sewage disposal methods in accordance with Chapters 4-5 and 4-13 of the Colville Tribal Code;

(C) Security and fire protection;

(D) The prevention of overflow and trespass onto adjacent properties, including but not limited to: landscaping; buffering; fencing; and, posting of the property; and.

(E) Parking.

(5) Facilities for recreational activities shall be permitted only where sewage disposal and garbage disposal can be accomplished without adversely affecting the shoreline resource.

(6) Linkage of shoreline parks, recreation areas and public access points by linear systems, such as hiking paths, bicycle paths, easements and scenic drives shall be considered where appropriate.

(7) Trails and pathways in shoreline areas shall be designed to minimize impacts to shorelines, floodplains, and wetlands.

(8) All proposed recreational developments shall be analyzed for their potential effect on shoreline environmental quality, natural resources and historical/cultural resources.

(9) Recreational developments shall comply at all times with the current Tribal, local and State Health regulations and such compliance made a condition of the permit.

(10) Favorable consideration shall be given to developments that provide public recreational uses and which facilitate public access to shorelines.

(11) Perimeters of parking areas shall be landscaped to minimize visual impacts to the shorelines, roadways and adjacent properties.

(12) Recreational developments shall provide facilities for non-motorized access, such as pedestrian or bicycle paths to link upland recreation areas to the shoreline.

(13) All permanent recreational structures and facilities shall be located outside the shoreline area.

(14) Accessory facilities, such as restrooms, recreation halls, commercial services, access roads and parking areas shall be located outside of the shoreline area unless it can be shown that such facilities are shoreline dependent. These areas shall be linked to the shoreline by walkways.

(15) For recreation developments that will require the use of fertilizers, pesticides or other toxic chemicals, such as golf courses and playfields, the applicant shall submit plans demonstrating the methods to be used to prevent leachate from entering adjacent water bodies. Buffer strips shall be included in the plan. The Tribes shall determine the maximum width necessary for buffer strips, but in no case shall the buffer strip be less than 25 feet.

(16) In approving shoreline recreational developments, the Tribes shall ensure that the development will maintain, enhance or restore desirable shoreline features including fragile areas, wetlands, scenic views, public access, cultural resources and aesthetic values. To this end, the Tribes may condition project dimensions, location of project components on the site, intensity of use, screening, parking requirements and setbacks, as deemed appropriate to accomplish this.

(August 2022)

(17) No recreation building or structure, except piers, docks, or bridges shall be built over the water.

(18) Signs indicating the public's right of access to shoreline areas shall be installed and maintained by the developer in conspicuous locations at the point of access except in identified environmentally sensitive areas.

(19) Proposals for recreational developments shall include a landscape plan. Native, self-sustaining vegetation is preferred. The removal of on-site native vegetation shall be limited to the minimum necessary for the development of campsites, selected views or other permitted structures or facilities.

(20) Recreational use activities and developments are permitted to continue existing operations providing such operations are in compliance with all applicable tribal and federal laws and regulations. However, as leases are renewed, re-development plans approved, existing structures converted to industrial use or other conditions exist that result in a change of practice, any continued use must done in compliance with provisions of this code.

(c) Shoreline Designation Specific Requirements: Recreational use activities and development shall comply with the requirements set forth in the "Use and Activity Chart" and "Setback, Height, and Dimensional Requirements Chart"

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-26 Residential Development Use Restrictions and Conditions**

(a) Residential development means the division and/or subdivision of land for residential use and/or the construction or exterior alteration of one or more buildings or structures or portions thereof, which are designed for and used to provide a place of abode for human beings, including one and two family detached dwellings, multifamily residences, row houses, townhouses, mobile home parks, planned developments and subdivisions, and other similar group housing, together with accessory uses and structures normally common to residential uses (including decks, garages, and fences). Residential development shall not include hotels, motels, or any type of overnight or temporary housing or camping facilities.

(b) Requirements applicable in all shoreline designations:

(1) Residential development shall be permitted only where there are adequate provisions for utilities, circulation and access.

(2) Residential development shall be prohibited in environmentally and culturally sensitive areas including but not limited to wetlands, riparian areas, floodways and other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions.

(3) The overall density of development, lot coverage and height of structures shall be appropriate to the physical capabilities of the site and in compliance with Tribal Comprehensive Plan and zoning regulations.

(4) Recognizing the single purpose, irreversible and space consumptive nature of shoreline residential development, new development shall provide adequate setbacks from the water and ample open space between structures to provide space for outdoor recreation, protect natural features and cultural resources, preserve views and minimize use conflicts.

(5) Residential development shall be designed to protect, preserve, enhance and/or restore desirable shoreline vegetation, control erosion and protect water quality, shoreline aesthetic characteristics, and public use of the water.

(6) Residential developments shall provide access to the water in a manner that is appropriate to the site and the nature and size of the development. Subdivisions and planned unit developments of three (3) or more waterfront lots, building sites or residential units may be required to improve, dedicate, and provide maintenance provisions for a pedestrian easement which provides area sufficient to ensure

(August 2022)



usable access to and/or along the shoreline. When required, such access easements shall be a minimum of ten (10) feet in width.

(7) Residential development and accessory uses shall be prohibited over water.

(8) New residential development shall be encouraged to cluster dwelling units and utilize other innovative techniques in order to preserve natural features and wetlands, protect cultural resources and minimize physical impacts.

(9) Sewage disposal facilities, as well as water supply facilities, shall be provided in accordance with Chapters 4-5 and 4-10 of the Colville Tribal Code.

(10) New residential development shall not be approved for which flood control, shoreline protection measures or bulkheading will be required to create residential lots or site area. Residential development shall be located and designed to avoid the need for structural shore defense and protection works.

(11) All residential structures, accessory uses and facilities shall be arranged and designed to preserve views and vistas to and from shorelines and water bodies.

(12) Prior to issuance of a building permit, shoreline development permit or other development approval, the developer shall submit adequate plans for preservation of preferred shore vegetation, for control of erosion during and after construction and for the replanting of the site after construction resulting in permanent shoreline stabilization.

(13) Storm drainage facilities shall be required for residential development projects involving three (3) or more lots, building sites or residential units. Storm drainage facilities shall be separate from sewage disposal transport facilities and include provisions to prevent uncontrolled and untreated direct entry of surface water runoff into receiving waters. Storm drainage facilities may include, but not be limited to retention ponds, vegetated swales, and artificial and natural wetlands; PROVIDED that no adverse impacts to the receiving wetlands would occur.

(14) All livestock enclosures associated with residential developments are prohibited within the shoreline area.

(15) Residential development in shoreline areas shall meet the dimensional requirements established in the Setback, Height, and Dimensional Requirements Chart. The residential setbacks in the Setback, Height, and Dimensional Requirements Chart shall not apply in cases where the majority of existing development in the area does not meet these established setback standards. In such cases residential structures shall be setback common to the average of setbacks for existing dwelling units within three hundred (300) feet of side property lines or a minimum of fifty (50) feet, whichever is greater. If there is only one or no dwelling units within three hundred (300) feet of side property lines, the shoreline setback requirements of the Setback, Height, and Dimensional Requirements Chart shall apply. Setback relaxation allowed in this sub-section is subject to approval by the Administrator. Any further deviation from setback requirements, beyond that allowed in this sub-section shall require approval of a shoreline variance permit.

(16) Residential use activities and developments are permitted to continue existing operations providing such operations are in compliance with all applicable tribal and federal laws and regulations other than this management plan. However, as leases are renewed, re-development plans approved, existing structures converted to other permitted uses or other conditions exist that result in a change of practice, any continued use must be in compliance with this management program.

(c) Shoreline Designation Specific Requirements: Residential development shall comply with the environment specific requirements set forth in the "Use and Activity Chart" and the "Setback, Height, and Dimensional Requirements Chart."

(August 2022)

(1) Within High Intensity and Medium Intensity Designations, single family residential development is permitted (exempt) subject to the Code sections contained herein. Single family development greater than thirty-five (35) feet high requires approval of both a shoreline development permit and shoreline variance permit. Duplexes are permitted subject to approval of a shoreline development permit. Multifamily development is permitted subject to approval of a conditional use permit.

(2) Within Rural Agricultural and Recreational Residential Designations, single family residential development is permitted (exempt) subject to the regulations contained herein. Single family development greater than thirty-five (35) feet high requires approval of a shoreline development permit and shoreline variance permit. Duplexes and multi-family residential developments are permitted subject to approval of a conditional use permit.

(3) Within Conservancy Designation

(A) Single family residential development is permitted (exempt) subject to the regulations contained herein.

(B) Single family development greater than twenty-five (25) feet high requires a shoreline variance permit. Single family development greater than thirty-five (35) feet high requires approval of both a shoreline development permit and a shoreline variance permit.

(C) Duplexes and multifamily residential development are prohibited.

(D) Within Natural Designation, new residential uses are prohibited.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

#### 4-15-27

#### **Shoreline Stabilization and Flood Protection**

(a) Shoreline stabilization and flood protection are actions taken to reduce adverse impacts caused by current, flood, wake or wave action. These actions include all structural and non-structural means to reduce impacts due to flooding, erosion and accretion. Specific structural and non-structural means included in this use activity are riprap, bulkheads, barbs, and groins, bank stabilization and other means of shoreline protection.

(b) When appropriate, proposals for shoreline stabilization and flood protection shall conform to other applicable use and activity requirements in this Chapter, including earth fill, transportation facilities, and mining.

(c) Requirements applicable in all shoreline designations:

(1) Shoreline stabilization and flood protection activities planning shall be undertaken in a coordinated manner among affected property owners, the Tribes and local government and should consider entire systems or sizeable stretches of riverine shorelines. This activity shall consider the off-site erosion, accretion or flood damage that may occur as a result of stabilization or protection structures.

(2) All new development shall be located and designed to prevent or minimize the need for shoreline stabilization measures and flood protection works. New development requiring shoreline stabilization and flood protection shall be prohibited.

(3) Shoreline stabilization and flood protection works shall be located, designed, constructed and maintained to provide:

(A) Protection of the physical integrity of shoreline fluvial and hydrologic processes and other properties;

(B) Protection of water quality and natural ground water movement;

(C) Protection of valuable fish and wildlife habitat;

(August 2022)

(D) Protection of cultural resources;

(E) Preservation of valuable recreation resources and aesthetic values such as point and channel bars, islands, braided streamway banks, other shoreline features and scenery; and

(F) Upon completion, restoration of shoreline areas to as near preproject configuration as possible, reestablishing vegetation with native species.

(4) Bank stabilization measures shall be located, designed and constructed primarily to prevent damage to existing development.

(5) Stabilization and protection works which are more natural in appearance, more compatible with on-going shore processes and more flexible for long term shoreline management such as protective berms or vegetative stabilization shall be required over structural means such as concrete revetments or extensive riprap.

(6) Structural solutions to reduce shoreline damage shall be allowed only after it is demonstrated, using examples of actual projects and engineering reports, that non-structural solutions would not be able to reduce the damage.

(7) Use of car bodies, indiscriminate dumping of wood/tree waste, old tires, scrap building material, asphalt from street work, or any discarded equipment or appliances for shoreline stabilization shall be prohibited.

(8) Substantial stream channel direction modification realignment and straightening shall be prohibited unless required to implement the Tribes' Integrated Resource Management Plan or the Tribal Comprehensive Plan.

(9) The design of stabilization or protection works shall provide for the long term multiple use of shoreline resources and public access to public shorelines. In the design of works financed or subsidized by the Tribes, consideration shall be given to providing public pedestrian access to shorelines for low-intensity outdoor recreation.

(10) Natural features such as snags, stumps or uprooted trees which support fish and other aquatic systems, and which do not intrude on the navigational channel or threaten agricultural land and existing structures and facilities, shall be left undisturbed or evaluated for potential threats prior to removal.

(11) All flood protection measures shall be placed landward of the floodway boundary, including associated marshes bogs and swamps which are directly interrelated and interdependent with the stream proper.

(12) All applicable tribal permits shall be obtained and complied with in the construction and operation of shoreline stabilization and flood protection works.

(13) The Tribes shall require and utilize the following information during its review of shoreline stabilization and flood protection proposals:

(A) Purpose of project;

(B) Hydraulic characteristics of river within a minimum of one-half mile on each side of proposed project;

(C) Existing shoreline stabilization and flood protection devices within a minimum of one-half mile on each side of proposed project;

(D) Construction material and methods;

(August 2022)

- (E) Physical, geological and/or soil characteristics of the area;
- (F) Predicted impact upon area shore and hydraulic processes, adjacent properties and shoreline and water uses; and
- (G) Alternative measures (including non-structural) which will achieve the same purpose.

(14) Shoreline stabilization and flood protection measures shall not be designed and constructed in such a manner as to result in channelization of normal stream flows.

(15) Upon project completion, all disturbed shoreline areas shall be restored to as near preproject configuration as possible and seeded and/or planted with native grasses, shrubs, and/or trees in keeping with existing bank vegetation.

(16) Shoreline stabilization and flood protection works are prohibited in wetlands and on point and channel bars.

(17) Shoreline stabilization and flood protection works are prohibited in salmon and trout spawning areas except for fish or wildlife habitat enhancement.

(18) Dikes and levees shall be limited in length and height to the minimum required to protect adjacent lands from the predicted 100-year flood.

(19) The Tribes shall require dedication and improvement of linear shoreline access along new dikes when it determines such access to be in the Tribes interest.

(20) Shoreline stabilization or flood control works shall, to the extent possible, be planned, designed and constructed to allow for channel migration. These works shall not reduce the volume and storage capacity of rivers and adjacent wetlands or flood plains.

(21) Shoreline stabilization and flood protection shall comply with the environment specific requirements set forth in the “Use and Activity Chart” and the “Setback, Height, Dimensional Requirements Chart.”

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-28 Solid Waste Disposal Use Restrictions and Conditions**

(a) Solid waste disposal includes any biodegradable or non-biodegradable material discarded as unwanted.

(b) Requirements applicable in all shoreline designations:

(1) Shorelines shall not be used for any sanitary landfill operations or the disposal of solid wastes.

(2) Approved solid waste facilities (garbage collection) in shoreline areas shall fully comply with the CTC Chapter 4-13 Solid Waste.

(3) Solid waste disposal activities shall comply with the environment specific requirements set forth in the “Use and Activity Chart” and the “Setback, Height, Dimensional Requirements Chart.”

(4) Solid waste disposal is prohibited in all shoreline environments. Temporary storage in litter and refuse containers is permitted in the shoreline area if maintained in sanitary condition in compliance with all Tribal and federal health requirements.

(5) Outhouses are considered on-site sewage systems subject to the provisions of CTC 4-5 On-site Wastewater Treatment and Disposal. Where feasible, outhouses shall be located outside the shoreline area. Outhouses shall not be located within the 100-year floodplain of any water.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

(August 2022)

4-6-29

**Transportation**

(a) Transportation facilities are those structures and developments that aid in land, air, and water surface movement of people, goods and services. They include roads and highways, bridges and causeways, bikeways, trails, railroad facilities, airports and other related facilities. (See General Regulations for parking areas).

(b) Requirements applicable in all shoreline designations:

(1) Proposals for shoreline transportation facilities shall adequately demonstrate the following:

(A) Need for a location within the shoreline area and that no reasonable alternative exists;

(B) That the construction is designed to protect the adjacent shoreline against erosion, uncontrolled or polluting drainage and other factors detrimental to the environment both during and after construction;

(C) That the project has been designed to fit the existing topography as much as possible, thus minimizing alterations to the natural environment;

(D) That all debris, overburden and other waste materials from construction will be handled, maintained, and disposed of in such a way as to prevent their entry into any water body.

(2) All transportation facilities in shoreline areas shall be located, designed, constructed and maintained to cause the least possible adverse impact on the land and water environment, and should respect the natural character of the shoreline and make every effort to preserve wildlife, aquatic life and associated plant communities, their habitats, and wetland areas.

(3) Major highways and railways shall be located away from shoreline areas.

(4) Road locations shall be planned to fit the topographical characteristics of the shoreline such that minimum alterations of natural conditions will be necessary. New transportation facilities shall also be located and designed to minimize the need for shoreline protection measures. The number of waterway crossings shall be minimized to the maximum extent possible.

(5) Trail and bicycle systems that are sensitive to the shoreline environment should be encouraged along shorelines providing they do not harm the natural, ecological and cultural resources of the shorelines.

(6) Transportation facilities shall avoid hazardous shoreline areas (i.e. slide and slump areas, poor foundation soils, 100-year floodplain, and wetlands).

(7) Joint use of transportation corridors within shoreline areas for roads, utilities and non-motorized forms of transportation shall be encouraged.

(8) Location of roads and railroads shall not require the rerouting of river channels.

(9) Roads and railroads shall be designed, constructed and maintained to minimize erosion and to permit natural movement of ground water and flood waters to the maximum extent practical.

(10) Culvert installations and replacements in all waters shall meet the requirements of CTC 4-9 Hydraulic Projects.

(11) All excess construction materials shall be removed from the shoreline area following completion of construction.

(12) All excavation materials and soils exposed to erosion by all phases of road, bridge and culvert work shall be stabilized and protected by seeding, mulching or other effective means, both during and after construction.

(August 2022)

(13) New roads or railroads shall be located outside shoreline areas where feasible, and forest roads shall comply with the provisions of CTC 4-7 Forest Practices.

(14) Earth fills for transportation facility development are not permitted in water bodies or on associated wetlands except when all structural or alternatives have been proven infeasible, the transportation facilities are necessary to support uses consistent with this program and appropriate mitigation provides for identified adverse impacts.

(15) Roads and railroads shall cross shoreline areas and water bodies by the shortest, most direct route feasible, unless such route would cause more damage to the environment.

(16) Roads and railroads shall be located to minimize the need for routing surface waters into and through culverts.

(17) Water crossings shall comply with the provisions of CTC 4-9 Hydraulic Projects.

(18) Foot or vehicular bridges crossing rivers for the private use of individual land owners shall be evaluated for need and design. They shall meet the same standards for water quality protection and erosion control as all other bridges.

(19) Private road construction and maintenance shall conform to the following standards:

(A) Road subgrade widths shall be the minimum commensurate with the intended use, generally not more than 20 feet for single lane roads;

(B) Roads shall follow natural contours where possible. Natural benches, ridge tops and flat terrain are preferred locations;

(C) Erodible cuts and filled slopes shall be protected by planting or seeding native vegetation or by matting immediately following construction as approved by the Administrator.

(c) Shoreline Designations Specific Requirements: Transportation facilities shall comply with the shoreline designation specific requirements set forth in the "Use and Activity Chart" and the "Setback, Height, Dimensional Requirements Chart."

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

#### **4-15-30 Aquaculture**

(a) Aquaculture is the farming or culturing of food fish, shellfish or other aquatic plants and animals in lakes, streams, inlets, and other natural or artificial water bodies. Activities include the hatching, cultivating, planting, feeding, raising and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, shellfish rafts, racks and long lines.

Potential locations for aquaculture enterprises are relatively restricted because of water quality, temperature, oxygen content and current. The technology associated with some forms of aquaculture is still experimental and in its formative stages. Therefore the policies and regulations for aquaculture reflect both the necessity for some latitude in the development of this emerging economic water use as well as its potential impact in existing uses and natural systems. When consistent with control of pollution and prevention of damage to the environment or loss of diversity, aquaculture activities are a permitted shoreline use.

For the purpose of this section, related uses such as wholesale and retail sales, processing and product storage facilities are not considered aquaculture practices. These uses are subject to the commercial use regulations in addition to the standards established in this section.

(b) Requirements applicable in all shoreline designations:

(August 2022)

(1) Permitting of aquaculture activities shall take into consideration both the possible positive impacts and the possible detrimental impacts aquaculture development might have on the physical environment, on other existing and approved land and water uses, including navigation, tribal “usual and accustomed fishing grounds”, public access, cultural resources, the aesthetic qualities of the project area, and in addition shall consider the size of the proposed activity relative to the carrying capacity of the waterbody.

(2) Aquaculture shall be prohibited in the following areas:

(A) Areas that have little natural potential for the type(s) of aquaculture under consideration;

(B) Areas that have water quality problems that make the areas unsuitable for the type(s) of aquaculture under consideration;

(C) Areas devoted to established uses of the aquatic environment with which the proposed aquaculture method(s) would substantially and materially conflict. Such uses would include but are not limited to navigation, moorage, sport or commercial fishing, sustainable wild fisheries, underwater utilities and active scientific research;

(D) Areas where the design or placement of the facilities would substantially degrade the aesthetic qualities of the shoreline;

(E) Areas where an aquaculture proposal will result in any significant adverse environmental impacts that cannot be eliminated or adequately mitigated through enforceable conditions or approval;

(F) Areas near wildlife refuges or critical habitats (as defined herein) where the proposed activity will adversely affect the refuge/habitat use or value.

(3) Preference shall be given to those forms of aquaculture that involve lesser environmental and visual impacts. In general, projects that require no structures or submerged structures shall be given preference over those that involve substantial floating structures. Projects that require few land-based facilities shall be given preference over those that require extensive facilities. Projects that involve little or no substrate modification shall be given preference over those that involve substantial modification.

(4) In instances where a choice of aquaculture methods are available, or where two or more incompatible aquaculture projects are proposed in the same area, the relative environmental impacts of each method or proposal should be considered. In general, preference shall be given to methods listed in sub-subpart (A), below, over those listed in sub-subpart (B) below:

(5) The density and size of net-pen and raft culture operations shall be limited as necessary to minimize cumulative environmental impacts.

(6) Experimental aquaculture projects shall be limited in scale and shall only be approved in accordance with a research permit and research design as approved by Tribal Fish & Wildlife, Environmental Trust, and the Colville Business Council, for a limited (specified) period of time.

(7) Applicants shall include in their application all information needed to conduct thorough evaluations of their aquaculture proposals, including but not limited to the following:

(A) Species to be reared;

(B) Aquaculture method(s);

(C) Anticipated use of any feed, pesticides, herbicides, antibiotics or other substances and their predicted impacts;

(August 2022)

- (D) Manpower/employment necessary for the project;
- (E) Harvest and processing location, method and timing;
- (F) Location and plans for shoreside activities, including loading and unloading of the product and processing;
- (G) Method of waste management and disposal;
- (H) Environmental assessment, including best available background information on water quality, prevailing storm wind conditions, current flows, flushing rates, aquatic and benthic organisms and probable impacts on water quality, biota, currents, littoral drift and any existing shoreline or water uses. Further baseline studies may be required depending upon the adequacy of available information, existing conditions, the nature of the proposal and probable adverse environmental impacts. Baseline monitoring shall be at the applicant's expense unless otherwise provided for;
- (I) Method(s) of predator control;
- (J) Use of lights and noise generating equipment over water that minimizes interference with surrounding uses; and
- (K) Other pertinent information deemed necessary by the Administrator.

(8) The location of floating and submerged aquaculture structures shall not unduly restrict navigation to or along the shoreline or interfere with general navigation lanes and traffic or “usual and accustomed fishing locations.” Floating structures shall remain shoreward of principal navigation channels. Other restrictions on the scale of aquaculture activities in order to protect navigational access may be necessary based on the size and shape of the affected water body.

(9) No aquatic organism shall be introduced into the waters of the Reservation without prior written approval of the Tribal Fish and Wildlife Department or the appropriate regulatory agency for the specific organism proposed for introduction, and in accordance with CTC 4-1 Fish, Wildlife, and Recreation. The required approval shall be submitted in writing to the Tribal Business Council prior to the introduction or the granting of the permit, whichever comes first.

(10) Aquaculture structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall be located inland of the OHWM, upland of water dependent portions of the project and shall minimize detrimental impacts to the shoreline. Such uses are subject to the General Regulations contained herein.

(11) Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Structures and equipment installed within the Ordinary High Water Mark shall conform to CTC 4-9 Hydraulic Projects. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner. Where any structure might constitute a potential hazard to the public in the future, the Tribes shall require the posting of a bond commensurate with the cost of removal or repair. The Tribes may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in thirty (30) days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies

(12) Legally established aquaculture enterprises, including authorized experimental projects, shall be protected from incompatible uses that may seek to locate nearby. Demonstration of a high probability that such an adjacent use would result in damage to, or destruction of, such an aquaculture enterprise shall be grounds for the denial of that use.



(13) All processing and processing facilities shall be located on land and, in addition to these provisions shall be governed by the policies and regulations of other applicable sections of this management program, in particular provisions addressing commercial and industrial uses.

(14) Aquaculture wastes shall be disposed of in a manner that will ensure compliance with all applicable governmental waste disposal standards. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.

(15) Aquaculture uses and facilities shall be located at least 600 feet from any wildlife refuge lands and/or habitats of special significance for birds or mammals (as identified by the Tribal Fish and Wildlife Department); provided that fish net-pens and projects involving substantial substrate modification shall be located 1,500 feet or more from such areas; provided further that lesser distances may be authorized by permit other than a variance if it is demonstrated by the applicant that the wildlife resource will be protected and if the change is supported by reviewing resource agencies. Greater distances also may be required if supported by the reviewing tribal agencies.

(16) Hatchery and other aquaculture operations shall be required to maintain a minimum 50-foot wide vegetated buffer zone along the affected streamway, PROVIDED that clearing of vegetation shall be permitted for essential water access points and as required to maintain protective levees.

(17) Onshore support structures shall meet the height and setback standards established (see Setback, Height, and Dimensional Requirements Chart) except that reduced setbacks may be permitted where necessary for the operation of hatcheries and rearing ponds.

(18) Predator control shall only be conducted in accordance with the requirements of Tribal Fish & Wildlife authorized under CTC 4-1.

(19) Permit applications shall identify all pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents or other chemicals and their inert ingredients that the applicant anticipates using. No such materials shall be used until approval is obtained from all appropriate state and federal agencies, including but not limited to the Tribal Health Department, U.S. Food and Drug Administration, the Environmental Trust and Fish and Wildlife Departments, as required, and proof therefore is submitted to the Tribes. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing or hand washing, rather than chemical treatment and application.

(20) For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the ordinary high water mark shall be limited to containers of not more than 3 feet in height, as measured from the surface of the raft or dock; provided that in locations where the visual impact of the proposed aquaculture structures will be minimal, the Tribes based upon written findings and without requiring a variance may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored seaward of the ordinary high water mark.

(21) Fish net-pen facilities and operations shall comply with all applicable Tribal codes.

(22) Net-pens that occupy more than 2 surface acres of water area, excluding booming and anchoring requirements shall only be permitted on the Columbia River.

(23) Aquaculture proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquaculture facility that includes net pens or rafts, provided that a lesser distance may be authorized by the Tribes if the applicant can demonstrate to the Tribes' satisfaction that the navigational, environmental and aesthetic concerns expressed in this management program will be protected. If a lesser distance is requested, the burden of proof shall be on the applicant to demonstrate that the cumulative impacts of the existing and proposed operations would not be contrary to the policies and regulations of this management program.

(August 2022)

(24) Where necessary to preserve the integrity of any research data collected, aquaculture developments which would be likely to jeopardize an experimental aquaculture development shall not be allowed within the same bay or cove with any such aquaculture development (or within 1 mile of such a development if the water body is larger than 1 square mile in area) until after the experimental project is granted nonexperimental status or terminated.

(25) For floating culture facilities the Tribes shall reserve the right to require a visual impact analysis consisting of information comparable to that found in the Washington State Department of Ecology's "Aquacultural Siting Study" 1986. Such analysis may be prepared by the applicant, without professional assistance, provided that it is competently prepared.

(26) All aquaculture facilities and accessory uses must conform to the General Use Code sections and pertinent Use Activity Restrictions and conditions, including setback, height, and open space standards, stated in this Code Chapter.

(27) When a development site encompasses environmentally sensitive areas, these features shall be left intact and maintained as open space or buffers. All development shall be set back from these areas to prevent hazardous conditions and property damage, as well as to protect valuable shore features.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-31 Forest Practices Use Restrictions and Conditions**

(a) Forest Practices are uses and activities relating to the growing, harvesting and limited processing of timber. This includes, but is not limited to: site preparation and regeneration; protection from insects, fire and disease; silviculture practices such as thinning, fertilization and release from competing vegetation; and harvesting. Forest practices do not include log storage (see section on Industrial Activities). Timber cutting, alone, is not a development subject to a substantial development permit. However, road building or grading for landings or fire lines around timber blocks are developments and may require shoreline development permits. Although some forest practices may not be developments, all forest practices are uses which must comply with the Shoreline Management Chapter and the Code sections contained herein, including applicable conditional use and variance permit requirements.

(b) Requirements applicable in all shoreline designations: All forest practices in the shoreline area shall conform to CTC 4-7 Forest Practices and the standards and objectives of the Integrated Resources Management Plan (IRMP).

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**ADMINISTRATION OF SHORELINE PROGRAM**

**4-15-40 Shoreline Management and permit Administration**

There is hereby established an administrative system designed to assign responsibilities for implementation of the Shoreline Management Program and Shoreline Permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this program are treated in a fair and equitable manner. To the greatest extent practical, the Tribes shall utilize the process and protocols established by the Intergovernmental Land Use Planning Agreement in the implementation of the shoreline regulations contained herein.

**4-15-41 Severability**

(a) The Shorelines Administrator shall report to and be under the supervision of the Planning Director, but shall regularly consult with the Director of the Natural Resources Department or his/her designees, in fulfilling the Administrator's duties under this Code.

(b) The Administrator's duties include, but are not limited to:

(1) Overall administrative responsibility for the Shoreline Management Plan and the Shoreline Use and Development Code Chapter.

(August 2022)

- (2) Authority to approve, approve with conditions or deny Shoreline Development Permits, blanket or programmatic permits and permit revisions in accordance with the goals and policies of the Shoreline Management Plan and the Code Chapter.
- (3) Authority to grant statements of exemption from Shoreline Development Permits.
- (4) Establishing the procedures and preparing forms deemed essential for the administration of this Code Chapter.
- (5) Advising interested tribal members, others and applicants of the goals, policies, regulations, and procedures related to the protection of the Tribes' shoreline resources.
- (6) Making administrative decisions and interpretations of the goals and policies Shoreline Management Plan and this Code Chapter.
- (7) Collecting applicable fees.
- (8) Determining that all applications and necessary information and materials are provided.
- (9) Making field inspections, as necessary.
- (10) Reviewing, insofar as possible, all provided and related information deemed necessary for appropriate application needs.
- (11) Determining if a Shoreline Development Permit, Conditional Use Permit or Variance Permit is required.
- (12) Conducting a thorough review and analysis of Shoreline Development Permit applications making written findings and conclusions and approving, approving with conditions, or denying such permits.
- (13) Submitting Variance and Conditional Use Permit Applications and making written recommendations and findings on such permits to the Planning Commission for their consideration and official action. The Administrator shall assure that all relevant information and testimony regarding the application is made available to the Board during their review.
- (14) Assuring that proper notice is given to appropriate persons and the public for all hearings.
- (15) Providing technical and administrative assistance to the Tribal Business Council and Planning Commission as required for effective and equitable implementation of the Shoreline Management Plan and this Chapter.
- (16) Provide summary report of the shoreline management permits issued during the past calendar year to the Tribal Business Council and Planning Commission in February of each year. The report should include findings and conclusions on significant administrative determinations and appeals, identification of problem areas and recommendations on how the protection of shoreline resources can be improved.
- (17) Investigate, develop and propose amendments to the Shoreline Management Plan and this Chapter as deemed necessary to more effectively and equitably protect the Tribes' shoreline resources.
- (18) Seeking remedies for alleged violations of this Chapter, the provisions of the Shoreline Management Plan, or of conditions of any approved Shoreline Permit.
- (19) Coordination of information, permitting, enforcement and appeals with affected agencies.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(August 2022)

**4-15-42 Planning Commission**

The Planning Commission, hereinafter known as the Commission, is vested with authority to:

- (a) Approve, approve with conditions, or deny shoreline Variance and Conditional Use Permits after considering the findings and recommendations of the Administrator; PROVIDED that any decisions on these matters may be appealed to the Colville Tribal Court as provided in Chapter 4-3-256 of the Tribal Code.
- (b) Decide local administrative appeals of the Administrator's actions and interpretations.
- (c) Consideration of Variances, Conditional Uses, and administrative appeals of the Administrator's actions on regular meeting days or public hearings.
- (d) Review of the findings and conclusions for permit applications or appeals of the Administrator's actions and interpretations.
- (e) Approve, approve with conditions, or deny shoreline Variance and Conditional Use permits.
- (f) Conduct public hearings on appeals of the Administrator's actions, interpretations and decisions.
- (g) Base all decisions on shoreline permits or administrative appeals on the criteria established in this Chapter.
- (h) At the discretion of the Board, requiring any applicant granted a shoreline permit to post a bond or other acceptable security with the Tribes conditioned to assure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent (150%) of the estimated development cost including attached conditions. Such bonds or securities shall be approved as to form by the Reservation Attorney.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

**4-15-43 Tribal Business Council**

- (a) The Colville Business Council, in its legislative capacity, shall retain the exclusive authority to adopt and amend the Shoreline Management Plan and any implementing Code sections. The Council may consider recommendations for revision or amendment from the Administrator, board or any interested party. The Council shall make all revisions or amendments to the plan or its Code Chapter only after holding a public meeting after which they can deliberate the facts and policy considerations involved in the proposed amendment.
- (b) In considering amendments to this Plan and Code Chapter, the Colville Business Council shall follow regular voting and other requirements as set forth in the relevant provisions of the Colville Tribal Code, the Colville Tribal Constitution, or general tribal law and custom.

**4-15-44 Applicability to Shoreline Development**

- (a) Any person wishing to undertake development within the shoreline areas of the Reservation shall apply to the Administrator for a shorelines permit or a Statement of Exemption.
- (b) Whenever a development falls within the exemption criteria outlined below and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Statement of Exemption, and transmit a copy to the applicant, the Tribal Business Council, Reservation Attorney's Office and the Director of the Tribal Natural Resources Department.
- (c) Before determining that a proposal is exempt, the Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the Shoreline Management Plan, this Code Chapter and other tribal regulations.
- (d) Exempt development as defined herein shall not require a Shoreline Development Permit, but may require a Conditional Use Permit, Variance and/or a Statement of Exemption.

(August 2022)

(e) Exemption from shoreline development permit requirements does not constitute exemption from the goals and policies of the shoreline management plan or the use and development Code Chapter, and other applicable tribal, county, city, state or federal permit requirements.

**4-15-45**     **Statement of Exemption**

(a) Applicants for all non-shoreline permits or approvals within the shoreline area must obtain a written “Statement of Exemption” from securing a Shoreline Development Permit. This process verifies that the action is exempt and offers an applicant an itemization of Shoreline Management Plan and Shoreline Use and Development Regulations and other requirements applicable to the proposed project.

(b) In the case of development subject to the goals, policies and regulations of the Shoreline Management Plan and the Shoreline Use and Development Regulations but exempt from the Shoreline Development Permit process, the Administrator or other permit authorizing official shall attach shoreline management terms and conditions to the building permits and other permits and approval. For example, the approval of a building permit for a single-family residence, or any other tribal permit, can be conditioned with provisions from the Shoreline Management Plan and the Shoreline Use and Development Code.

**4-15-46**     **Fees**

A filing fee in an amount established by the Tribal Business Council shall be paid to the Tribes as part of the requirements for an application for a shoreline permit.

**4-15-47**     **Permit Application**

(a) The Administrator shall provide the necessary application forms for Shoreline Development, Conditional Use and Variance Permits.

(b) Shoreline permits applications may be consolidated or combined and processed concurrently with other land use and zoning permit applications under Chapter 4-3 of the Tribal Code and in accordance with the processes and protocols established under the Intergovernmental Land Use Planning Agreement.

(c) Complete application and documents for all shoreline permits shall be submitted to the Administrator for processing and review. Any deficiencies in the application or documents shall be corrected by the applicant prior to further processing.

(d) In addition to the information requested on the application the applicant shall provide, at a minimum, the following information:

(1) Site Plan-drawn to scale and including:

(A) Site boundary;

(B) Property dimensions in vicinity of project;

(C) Ordinary high water mark;

(D) Typical cross section or sections showing;

(i) existing ground elevation;

(ii) proposed ground elevation;

(iii) height of existing structures;

(iv) height of proposed structures.

(E) Where appropriate, proposed land contours using five-foot intervals in water area and ten-foot intervals on areas landward of ordinary high water mark, if development involves grading, cutting, filling, or other alteration of land contours;

(August 2022)

- (F) Show dimensions and location of existing structures which will be maintained;
- (G) Show dimensions and locations of proposed structures; parking and landscaping;
- (H) Identify source, composition, and volume of fill material;
- (I) Identify composition and volume of any extracted materials, and identify proposed disposal area;
- (J) Location of proposed utilities, such as sewer, septic tanks and drain fields, water, gas and electricity;
- (K) For developments that propose septic tanks, compliance of the proposed development with tribal and federal health regulations;
- (L) Shoreline designation according to the Shoreline Program.

(2) Vicinity Map-that includes the following:

- (A) Indicates site location using natural points of reference and sufficient detail and scale to accurately locate the site (roads, state highways, prominent landmarks, etc.).
- (B) If the development involves the removal of any soils by dredging or otherwise, identifies the proposed disposal site on the map. If disposal site is beyond the confines of the vicinity map, provides another vicinity map showing the precise location of the disposal site and its distance to nearest city, town, wellhead or surface water.
- (D) Provides a brief narrative description of the general nature of the improvements and land use within 1,000 feet in all directions from development site.

(3) List of Adjacent Land Owners: Provide names and addresses of all real property owners within 300 feet of property where development is proposed.

**4-15-48 Blanket or Programmatic Permits**

The Administrator shall work with staff from the Natural Resources Department's Project Proposal Planning (PPP) team and the Planning, Public Works and Road Departments on the preparation of blanket permits for activities that are consistent with approved tribal plans. Such plans include range management plans, landscape plans and annual road improvement plans. The issuance of a blanket permit does not eliminate compliance with the requirements, goals and policies of the Shoreline Management Code and Plan.

**4-15-49 Permit Process**

(a) Within ten (10) days of receipt of a complete application and associated information, the Administrator shall mail notice of proposed project to all real property owners named on the list as supplied by the applicant, shall provide notice and a copy of application materials to the appropriate county or city according to the process and protocols established by the Intergovernmental Land Use Planning Agreement, shall post or require the applicant to post notice (minimum of 8"x 10" in size) in a conspicuous manner on the property upon which the project is to be constructed, and shall submit copies of the application and related materials to the appropriate tribal departments.

(b) The Administrator shall also be responsible for ensuring a legal notice of application is published once in the newspaper of general circulation within the area in which the development is proposed. Said notice must include a description of the project, project location, applicant's name and address, and the date which comments are due. Advertising costs will be the responsibility of the applicant.

(c) The burden of proving that a proposed development is consistent with the approval criteria and management program policies and regulations shall be the applicant's.

(August 2022)

(d) No public hearing is required for Shoreline Development permits acted upon by the Administrator.

(e) If the application is for a conditional use permit or variance, in addition to the preceding requirements, the Administrator shall also be responsible for ensuring a legal notice of the public hearing required for these actions is published once in the newspaper of general circulation within the area in which the development is proposed. Said notice, which must be consistent with the requirements of Chapter 4-3-211 of the Tribal Code, must include a description of the project, project location, applicant's name and address, the date which comments are due, and the date, time and location of the public hearing.

(f) Publication costs shall be the responsibility of the applicant.

(g) The Administrator shall schedule a public hearing before the Planning Commission for all Conditional Use Permit (CUP) or Variance Permit applications. For the purpose of scheduling a public hearing, the date of submittal of a complete application shall be considered the date of application. The public hearing shall be held no more than 45 days from the date of application to the Tribes.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(h) Any interested person may submit his/her written views upon applications for shoreline development, conditional use or variance permits to the Department within 21 days of the date the notice of application is published or notify the Department, in writing, of his/her desire to receive a copy of the action taken upon such applications. All persons who so submit their views on an application shall be notified in a timely manner of the action taken upon the application.

(i) Charts will be available from the Administrator or his designee that graphically depict the shoreline permitting process.

(j) Application Review-Administrator Action: The Administrator shall make decisions in the case of Shoreline Development permits or requests for revisions to approved permits pursuant to this title and shall prepare staff reports and make recommendations in the case of Variance and Conditional Use permits based upon:

(1) The goals, policies and requirements of the Shoreline Management Plan and this Code Chapter as amended;

(2) Other applicable tribal land use and environmental protection regulations.

(k) Public Hearings: At least one public hearing shall be held by the Planning Commission regarding applications for permits where:

(1) The proposal involves a Variance;

(2) The proposal involves a Conditional Use;

(3) The Administrator makes a finding, based on information contained in the completed application, that the proposed development has the potential to significantly adversely affect the environment, or significantly adversely affect wildlife, natural or cultural resources;

(4) The proposal involved an appeal of the Administrator's decision on a Shoreline Development Permit or Exemption;

(5) The Board shall review applications, hold hearings and make decisions for Conditional Use Permits, Variances and appeals of Shoreline Development Permits and Exemption decisions based upon the record presented which may include the following types of information:

(A) The application;

(B) Applicable environmental checklists, shoreline program provisions and Tribal and other local land use regulations;

(August 2022)

- (C) Written and oral comments from interested persons;
- (D) The Tribes' Shoreline Program;
- (E) Policies and Procedures of related tribal laws and regulations;
- (F) Written and oral comments from interested persons;
- (G) The comments of the Administrator.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(6) The decisions of the Board shall be the final decision of the Tribes on all applications and the Board shall render a written decision including findings, conclusions, and a final order, and transmit copies of the decision within five (5) days of the Board's final decision to the following:

- (A) The applicant;
- (B) The Tribal Business Council;
- (C) Interested parties who requested notice of action.

(l) Duration of Permits: The Tribes may issue permits with termination dates of up to five years. If a permit does not specify a termination date, the following requirements apply:

(1) Time Limit for Substantial Progress: Construction, or substantial progress toward completion, must begin within two years after approval of the permits.

(2) Extension for Substantial Progress: The Tribes may at its discretion extend the two-year time period for the substantial progress for a reasonable time up to one year based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

(3) Five Year Permit Authorization: If construction has not been completed within five years of approval by the Tribes, the Tribes will review the permit and, upon showing of good cause, either extend the permit for one year, or terminate the permit. Prior to authorizing any permit extensions, the Tribes shall notify any parties of record. Note: Only one single extension is permitted.

(m) To the extent feasible, the permitting and appeals process shall be coordinated with the permitting and appeals process under Chapter 4-3 of the Tribal Code. The Shorelines Administrator and Board are authorized to issue joint land use/shoreline permits, and to hold coordinated public hearings involving issues under Chapter 4-3 of the Tribal Code and this Chapter. To the extent the application provisions under Chapter 4-3 of the Tribal Code and this Chapter conflict, the provisions which afford the greatest protection shall control.

**4-15-50 Revision of Permits**

(a) When an applicant desires to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. If the Administrator determines that the revisions proposed are within the scope and intent of the original permit, the Administrator may approve the revision. "Within the scope and intent of the original permit" means compliance with all of the following conditions.

- (1) No additional over-water construction is involved, except that pier, dock or float construction may be increased by five hundred (500) square feet or ten percent (10%), whichever is less;
- (2) Ground area coverage and height is not increased more than ten percent (10%);
- (3) Additional structures do not exceed a total of two hundred fifty (250) square feet;

(August 2022)



(4) The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the Tribes' Shoreline Program or Code;

(5) Additional landscaping is consistent with conditions (if any) attached to the original permit;

(6) The use authorized pursuant to the original permit is not changed;

(7) No substantial adverse environmental impact will be caused by the project revision.

(b) If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new shoreline permit must be submitted.

(c) If the revision involves a Conditional Use or Variance which was conditioned by the Board, the revision also must be reviewed and approved by the Board.

(d) A Tribal decision on revision to the permit may be appealed within thirty (30) business days of such decision.

(e) Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.

**4-15-51 Appeals to the Planning Commission**

(a) Any decision made by the Administrator on a shoreline development permit, shoreline program policy or regulation interpretation, permit revision, or other action within the purview and responsibility of the Administrator, may be appealed by the applicant, private or public organization, or individual to the Planning Commission in accordance with the procedures contained in Chapter 4-3-170.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(b) All appeals must be filed within thirty (30) business days after the date of the decision or order appealed.

**4-15-52 Variations and Conditional Use Permits**

The following provisions shall apply to conditional uses and variations. These provisions should be applied in a manner which, while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner.

(a) Variations:

(1) The purpose of a Variance Permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in this Chapter, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the shoreline management program would impose unnecessary hardships on the applicant.

(2) Construction pursuant to this permit shall not begin nor can construction be authorized except as provided in the Tribal Code. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(3) Application: An application for a Shoreline Variance shall be submitted on a form provided by the Tribes accompanied by maps, completed environmental checklist, applicable fees, and any other information specified in the Shoreline Management Plan and this Chapter or requested by the Administrator.

(4) Criteria for Granting Variations: Variance Permits for development that will be located landward of the ordinary high water mark, except those areas designated by the Tribes' Natural Resources Department as marshes, bogs, or swamps, may be authorized provided the applicant can demonstrate all of the following:

(August 2022)

(A) That the strict requirements of the bulk, dimensional, or performance standards set forth herein preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by this Chapter.

(B) That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the regulations contained herein, and not, for example, from deed restrictions or the applicant's own actions.

(C) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

(D) That the Variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

(E) That the Tribes' interest will suffer no substantial detrimental effect.

(5) Variance Permits for development that will be located either waterward of the ordinary high water mark or within marshes, bogs, or swamps may be authorized provided the applicant can demonstrate all the criteria stated above (CTC § 4-15-44) in addition to demonstrating that the public rights of navigation and use of the shorelines will not be adversely affected by granting the Variance.

(6) In the granting of all Variance Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. Thus, for parties requesting a variance permit under this subsection, if Variances were granted to other developments in the area where similar circumstances exist, the total of the Variances shall remain consistent with tribal law and shall not produce substantial adverse effects to the shoreline environment.

(7) Requests for varying the use to which a shoreline area is to be put are not requests for Variances, but rather requests for Conditional Uses. Such requests shall be evaluated using the criteria set below for Conditional Uses.

(b) Conditional Uses:

(1) The purpose for a Conditional Use Permit is to allow greater flexibility in varying the application of the use regulations of this Chapter; provided, that Conditional Use Permits should also be granted in a circumstance where denial of the permit would result in a thwarting of tribal policy. In authorizing a Conditional Use, special conditions may be attached to the permit by the Planning Commission to prevent undesirable effects of the proposed use.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(2) Uses classified as conditional uses in the "Use and Activity Chart" may be authorized provided that the applicant can demonstrate all of the following:

(A) That the proposed use will be consistent with the Holistic Goal, the goals and policies of the IRMP, the Comprehensive Plan, and the Shoreline Management Plan and this Code Chapter.

(B) That the proposed use will not interfere with the normal use of the shorelines.

(C) That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

(D) That the proposed use will cause no unreasonably adverse effects to the Shoreline designation in which it is to be located.

(August 2022)

(E) That the tribal interest suffers no substantial detrimental effect.

**4-15-53 Unclassified Uses**

Uses not specifically listed and not synonymous with or substantially or materially the same as a listed use shall be prohibited unless the Administrator finds, by clear and convincing evidence and based on formal written findings of fact that such use is consistent with the goals and policies and the management principles and guidelines of the Shoreline Management Plan and with the shoreline designation criteria of the particular shoreline designation in which the proposal is to be located. Such uses, once reviewed by the Administrator, may be authorized through the issuance of a Conditional Use Permit.

**4-15-54 Nonconforming Development**

Nonconforming development is a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Use and Development Code Chapter, or applicable amendment thereto, but which does not conform to present regulations or standards contained herein or the goals, policies and management principles of the Shoreline Management Plan. In such cases, the following standards shall apply:

(a) Nonconforming development may be continued provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity unless authorized by a Conditional Use Permit;

(b) A nonconforming development which is moved any distance must be brought into conformance with this Code Chapter;

(c) If a nonconforming development is damaged to an extent not exceeding seventy-five (75) percent of the replacement cost or market value of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration begins within one year and completed within three years of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;

(d) If a nonconforming use is discontinued for six (6) consecutive months any subsequent use shall be conforming or must obtain the appropriate shoreline permit;

(e) A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed;

(f) An undeveloped lot, tract, parcel, site, or division which was established prior to the effective date of the Shoreline Program and this Code Chapter but which does not conform to the present lot size or density standards may be developed so long as such development conforms to all other requirements of the Shoreline Program;

(g) Agricultural uses which become non-conforming as a result of the adoption of the this Code Chapter shall be permitted to continue normal agricultural activities exempt from shoreline permitting provided best management practices are implemented and no other tribal, federal or state regulations are violated.

**4-15-55 Inspection—Right of Entry**

(a) The Department shall inspect shoreline regulatory areas, before, during and after the conducting of shoreline development activities as necessary for the purpose of insuring compliance with this Chapter and to insure that no material damage shall occur to either Reservation resources or the health and welfare of the Reservation population as a result of such practices.

(b) Any duly authorized representative of the Department shall have the right to enter upon shoreline regulatory areas at any reasonable time to enforce the provisions of this Chapter.

(c) In the event a duly authorized representative of the Department is denied access to enter upon any shoreline regulatory areas at reasonable times to enforce the provisions of this Chapter, the Department may apply for administrative civil search warrant to the Colville Tribal Court which shall have authority to issue such search warrant upon reasonable cause.

(August 2022)

**4-15-56 Permit Process**

(a) **Complaints Regarding Violations:** Whenever the Administrator receives a written, signed complaint alleging a violation of this Code Chapter, he/she shall investigate the complaint, take whatever action is warranted, and inform the complainant what actions have been or will be taken.

(b) **Persons Responsible:** The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Chapter may be held responsible for the violation and be subject to the penalties and the remedies herein provided.

(c) **Procedures Upon Discovery of Violations:**

(1) If the Administrator finds that any provision of the regulations contained herein is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator's discretion.

(2) The final written notice (and the initial written notice may be the final notice) shall state what action the Administrator intends to take if the violation is not corrected and shall advise that the Administrator's decision or order may be appealed to the Planning Commission.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(3) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Chapter or pose a danger to the public health, safety, or welfare, the Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Chapter 4-3-253.

(d) **Penalties And Remedies For Violations:**

(1) Any act constituting a violation of the provisions of this Chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances, conditional or special-use permits, shall subject the offender to a civil penalty of \$100.00 per day.

(2) If the offender fails to pay this penalty within thirty (30) days after being cited for a violation, the penalty may be recovered by the Confederated Tribes of the Colville Reservation in a civil action in the nature of debt. The Reservation Attorney, upon request of the Planning Department, shall bring a civil action in the Colville Tribal Court to recover such debt.

(3) A civil penalty may not be appealed to the Planning Commission if the offender was sent a final notice of violation in accordance with Chapter 4-3-252 and did not take an appeal to the Review Board as provided in Chapter 4-3-170.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

(4) This Code Chapter may also be enforced by civil action brought by the Reservation Attorney to enjoin development in violation of this Chapter. In such action, any persons in violation of this Chapter may be ordered to restore and remediate the property or pay all costs of restoration and remediation.

(5) Each day that any violation continues after notification by the Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

(6) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Code Chapter.

(August 2022)

(e) Permit Revocation:

- (1) A shoreline, conditional use or variance permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Code Chapter, or any additional requirements lawfully imposed by the permit.
- (2) Before a conditional use or variance permit may be revoked, all of the notice, hearing and other requirements on Hearing Procedures for Appeals and Applications under this Chapter shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.
- (3) The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in the subsection titled "Procedures upon discovery of violations" shall be upon the party advocating that position. The burden of persuasion shall also be on that party.
- (4) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- (5) Before a shoreline permit may be revoked, the Administrator shall give the permit recipient ten (10) days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to an informal hearing on the allegations. If the permit is revoked, the Administrator shall provide the permittee a written statement of the decision and the reasons therefor.
- (6) No person may continue to make use of land or buildings in the manner authorized by any shoreline, conditional-use or variance permit after such permit has been revoked in accordance with this section.
- (7) Exhaustion of Administrative Remedies: Any decision or order of the Administrator that is reviewable by the Planning Commission shall not be considered a final order or decision subject to judicial review. Exhaustion of all available administrative remedies including any administrative appellate review is a jurisdictional requirement to judicial review.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)

- (8) Judicial Review: Every final order decision or action of the Planning Commission shall be subject to review by the Colville Tribal Court upon the filing of a timely petition of review pursuant to the procedures set forth in Chapter 2-4-19 of the Colville Administrative Procedures Act. The petition for review shall briefly set forth that portion of the decision appealed from; the statutory reference(s) relied upon to support the relief requested; and, which standard of review set forth in Chapter 2-4-19(g) provides the basis for petition.

(Amended 08/18/22, Certified 08/23/22, Resolution 2022-555)  
(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

**4-15-57 Shoreline Program Review**

The Shoreline Management Plan and Shoreline Use and Development Code Chapter shall be reviewed annually and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in tribal statutes and regulations. This review process shall be consistent with normal tribal processes and shall include a tribal member and other local citizen involvement effort and public hearing to obtain the views and comments of the public.

(Amended 6/6/19, Resolution 2019-324, Certified 6/12/19)

**4-15-58 Amendments to Plan and Code**

Any of the provisions of the Shoreline Management Plan and the Shoreline Use and Development Code may be amended. Amendments or revisions do not become effective until approved by the Tribal Business Council.

(August 2022)

Proposals for shoreline redesignations must demonstrate consistency with the criteria set forth in the Shoreline Management Code, Shoreline Designation Criteria.

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)

**4-15-59**

**Severability**

If any provisions of this Shoreline Chapter, or its application to any person or legal entity or parcel of land or circumstances is held invalid, the remainder of the Shoreline Code, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

(Chapter 4-15 Adopted 11/5/98, Resolution 1998-820)

(Certified 11/10/98)

(Amended 6/6/19. Resolution 2019-324, Certified 6/12/19)