

BLACKFEET TRIBE

AQUATIC LANDS PROTECTION ORDINANCE

NO. 117

MARCH 21, 2019



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ARTICLE I. GENERAL PROVISIONS

Section 1.1: Short Title

This Ordinance may be referred to as the Blackfeet Aquatic Lands Protection Ordinance.

Section 1.2: Authority

This Ordinance is enacted by the Blackfeet Tribe under its inherent and sovereign authority pursuant to Article VI 1(k) and 1(p) of the Blackfeet Constitution and is intended to replace in whole Ordinance No. 90 enacted on December 14, 1993 and amended on June 13, 2002 and February 14, 2012.

Section 1.3: Purpose

The Blackfeet Tribe has the duty and obligation to protect and preserve the political integrity, economic security, and health and welfare of the Tribe and its members, and to prevent or minimize impacts to aquatic lands from unregulated development. This Ordinance is intended to protect aquatic and riparian lands within the exterior boundaries of the Blackfeet Reservation, while providing for environmentally sensitive development and the preservation of cultural resources and values. The provisions of this Ordinance shall be liberally construed to achieve the purposes set forth herein.

Section 1.4: Applicability

This Ordinance shall apply to all aquatic lands within the Blackfeet Reservation through regulation of all undertakings affecting, or that may affect, aquatic lands. This Ordinance shall not apply to existing projects except to the extent that BEO determines that the project is failing or is technically inadequate, or substantial changes to the project are undertaken.

Section 1.5: Sovereign Immunity Preserved

Nothing herein is intended to be, and shall not be construed as, a waiver of the sovereign immunity, rights, powers or privileges of the Blackfeet Tribe.

Section 1.6: Implementation

The Blackfeet Environmental Office shall be responsible for implementing this Ordinance.

Section 1.7: Effective Date

This Ordinance shall become effective on the date it is adopted and approved by the Blackfeet Tribal Business Council.

ARTICLE II. DECLARATION OF PUBLIC POLICY

Section 2.1: Findings

The Blackfeet Tribal Business Council finds that:

- a. It is essential to the health, safety, welfare, political integrity and economic security of the Blackfeet Tribe, its members and all Reservation residents that aquatic lands and resources located within the exterior boundaries of the Blackfeet Reservation be fully protected and preserved for future generations, and that the impacts from the unregulated use of aquatic lands be prevented or minimized.
- b. Comprehensive protection of aquatic lands on the Blackfeet Reservation is critical to the protection of water quality, for the use of Tribal water on the Reservation, for ecosystem protection and for the maintenance of a strong and vital Reservation environment.
- c. Increased growth and development on the Blackfeet Reservation has caused greater utilization of aquatic lands with the potential for causing increased erosion, sedimentation and other disturbances, decreased functional integrity of aquatic lands and resources, impacts to water quality and quantity, and loss of native species habitat that have serious and substantial impacts on the lands and resources of the Tribe and its members.
- d. This Ordinance promotes the health, safety, and welfare of the Reservation, its residents, and the Reservation environment by regulating development that impacts or may impact aquatic lands within the Reservation.

Section 2.2: Declaration of Policy

It is the policy of the Blackfeet Tribe that all aquatic lands on the Reservation are to be protected to the maximum extent possible, and that the degradation of aquatic lands be prevented or minimized through appropriate regulation.

ARTICLE III. DEFINITIONS

As used in this title, the following words shall have the following meanings unless the context clearly and distinctly requires otherwise.

Adjacent: Land lying contiguous or adjoining to another piece of land;

Adverse Effect or Impact: A negative change in the quality of the existing characteristics of the environment of aquatic lands affected by a project;

Agent: A person who acts on behalf of another person or group in the permitting process;

Aquatic Lands: All Reservation land below the ordinary high water mark or within a wetland and associated riparian lands. Aquatic Lands includes lands overlying groundwater that borders or underlies perennial and intermittent streams;

Aquifer: An underground layer of water-bearing permeable rock or unconsolidated materials (gravel, sand or silt) from which groundwater can be extracted;

BEO: The Blackfeet Environmental Office of the Blackfeet Tribe;

Contractor: A person or business performing work for a project owner on the Reservation;

Corporation: An entity organized as a corporation under state or tribal law;

Culturally Significant Areas: Areas designated by the Blackfeet Tribe as having cultural sites or cultural resources requiring special protection;

Degradation: A decline in the quality of a resource or area such that it is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or welfare, or impairs the usefulness or the tribal enjoyment of the resource or area;

Dewatering: Any process of completely removing water from a stream, river, aquifer, wetland or other water body on a temporary or permanent basis;

Director: The Director of the Blackfeet Environmental Office (BEO) who shall have the overall responsibility of implementing this Ordinance, including the authority to assign technical and scientific responsibilities to the staff of the BEO to implement this Ordinance, and authority to promulgate regulations to implement this Ordinance;

Discharge: The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, injecting or dumping of waste or a hazardous substance into surface water bodies and groundwater aquifers of the Tribe;

Drainfield or Soil Absorption Field: A shallow covered excavation made in unsaturated soil into which pretreated wastewater is discharged through piping onto porous soil surfaces that allow the wastewater to filter through the soil for treatment and dispersal;

Emergencies: a. Emergencies caused by natural disasters including but not limited to high winds, flooding, fires, and storms causing an imminent or substantial threat to public health, welfare or the environment; b. Emergencies caused by human activity including but not limited to any and all events initiated or caused by human activity resulting in an imminent or substantial threat to public health, welfare or the environment, including but not limited to all discharges;

Ephemeral Drainage: The naturally occurring topographic areas on the landscape that collect and convey spring snow melt and that have the ability to support native vegetation that differs from the surrounding area;

Ephemeral Stream: A stream that flows only during and following a period of precipitation;

Erosion: The gradual wearing away of rock or soil by physical breakdown, chemical solution, and transportation of material caused by water, wind or ice;

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of waters or the unusual and rapid accumulation of runoff of surface waters from any source;

Floodplain: The low, flat, periodically flooded lands adjacent to rivers and lakes and subject to hydrologic water flow processes;

Floodway: A channel built to convey flood waters;

Groundwater: The natural water that flows or collects below the ground surface;

Holding Tank: A sealed, buried tank used to hold waste from a house or other building. Holding tanks do not empty into drainfields and must be pumped out when they are full;

Landowner: The individual or individuals who possess title or are the trust beneficiary of title possessed by the United States to the land upon which a project is taking place or being built;

Native Vegetation: Plant species with a geographic distribution indigenous to the applicable life zone within the Blackfeet Reservation. Plant species which have been introduced by man are not native vegetation;

Natural State: Topography, hydrologic regimes, flood and discharge patterns, and soils and vegetation that existed prior to the development of a project;

Ordinance 117 Coordinator: The BEO staff person who works under the supervision of the Director and the 106 Program Coordinator and oversees and reviews project technical feasibility and assesses the impact of a project on Reservation waters and lands;

Ordinary High Water Mark (OHWM): The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas;

Permittee: An individual or entity issued a permit under this Ordinance; same as project owner;

Permit Conditions: The project-specific requirements added to a permit that tell the permittee what they must do to protect the environment and people while undertaking the permitted activity, including applicable setback requirements from Appendix 1. They are based on the type of project being done and describe the standards and measures the permittee must use to control the most common risks of pollution from the permitted activity;

Pollution: The contamination or other degradation of the physical, chemical or biological properties of land, water or air, including a change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance onto the land or into the water or air that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wildlife, birds, fish or other aquatic life;

Project: Any physical alteration of aquatic lands or any activity that affects or may affect aquatic lands or any associated upland buffers;

Project Owner: An individual or entity issued a permit under this Ordinance to undertake a project within aquatic lands; same as permittee;

Reservation Waters: All naturally occurring bodies of water within the exterior boundaries of the Blackfeet Reservation regardless of alteration by man, including but not limited to lakes, rivers, reservoirs, streams, intermittent streams, ephemeral streams, mudflats, wetlands, springs, sloughs, potholes, ponds, groundwater, ephemeral drainages, irrigation return water that flows into a naturally occurring body of water, tributaries of waters identified above, including any bodies of water classified as “tribal waters” under the Blackfeet Tribe Surface Water Quality Standards and Antidegradation Policy;

Restoration: The process of reclaiming a natural area to a natural state similar to pre-disturbance conditions following disturbance, use or construction, that includes the re-establishment of pre-disturbance hydrologic conditions, topography, native soil and native vegetation;

Review Committee: Members appointed by the Director or Ordinance 117 Coordinator and made up of the Coordinator and two or more BEO staff members and/or Tribal department directors to review project technical feasibility and to assess the impact of a project on Reservation waters and lands, if such additional review is deemed necessary;

Riparian Lands: Lands above the ordinary high water mark that are adjacent to Reservation water, where terrestrial vegetation is or would be strongly influenced by the presence of water, or which are essential for groundwater recharge or discharge, or are critical as habitat for wildlife;

Sediment: Soil or other surface material transported by wind, gravity or surface water as a product of erosion;

Septic System: An underground wastewater treatment structure commonly used in rural areas without centralized sewer systems. A typical septic system consists of a septic tank and a drainfield or soil absorption field;

Septic Tank: A chamber made of concrete, fiberglass, PVC or plastic, through which domestic wastewater (sewage) flows for primary treatment; may include more than one tank and the tanks may contain pumps;

Setback Distance: The minimum distance a project must be separated from a water body, wetland or riparian area; listed in Appendix 1;

Standard Conditions: The requirements added to every permit that tell the permittee what they must do to protect the environment and people while undertaking the permitted activity. These conditions are listed on the permit form;

Structure: Any physical structure that is installed on, above, or below the surface of land or water;

Wastewater: Water that has been used in the home, in a business, or as part of an industrial process and returned to aquatic lands or to a location affecting aquatic lands;

Water Quality Standards: Applicable Tribal or Federal laws regulating water quality on the Reservation, including but not limited to the designation of use or uses for Reservation waters or waters of the United States, water quality criteria for such waters based upon such uses, and any antidegradation policy and implementation procedures;

Watershed: An area of land that drains all the streams and rainfall to a common outlet such as the outflow of a reservoir, mouth of a bay, or any point along a stream channel;

Wetland: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include but are not limited to mudflats, seeps, swamps, marshes, bogs, fens, potholes, wet meadows, and similar areas;

ARTICLE IV. PERMITTING

Section 4.1: Permit Required

No person, corporation, association or other entity of any kind shall undertake a project on the Blackfeet Reservation within any aquatic lands as defined in this Ordinance, or that may affect any aquatic lands, without applying for and being granted a permit by the Director of the Blackfeet Environmental Office.

Section 4.2: Application Requirements

- a. The application shall be on a form provided by the Blackfeet Environmental Office and shall include, but is not limited to:
 1. A location map, preferably on a topographic map, with township, range, and section number, including latitude and longitude and/or GPS coordinates;
 2. A specific description of the proposed project along with the purpose and need for the project;
 3. A project plan specifying the type, quantity and source of materials and any water to be used during project construction, the means of access and egress to and from the project area, and an estimate of the time-line for completion of the project;
 4. A description of whether the project will cause:
 - a. Dewatering of any Reservation surface water or groundwater;
 - b. Impacts to fish, wildlife and plants occurring in aquatic and riparian habitats;
 - c. Turbidity and/or increased sedimentation to waterbodies from construction activities;
 - d. Impacts to drinking water and surface water quality.
 5. A construction mitigation plan, including a description of how the project will minimize or prevent any of the activities listed in paragraph 4. above, or any other impacts to aquatic lands, describes how the project will minimize or prevent use of gravel or other materials taken from any aquatic or riparian lands; and describes the steps that will be taken to insure that the project site will be left, to the extent possible, in an undisturbed condition during the course of construction and during the life of the project.
 6. When additional permits or approvals are required by other governmental departments or agencies, the applicant shall include copies of such permits or approvals, including

but not limited to business licenses, Tribal Employment Rights Office (TERO) permit, water permit, Bureau of Land Management (BLM) permits and notices, lease and easement or access permit, and including any environmental reviews under the National Environmental Policy Act (NEPA), such as an Environmental Impact Statement or Environmental Assessment.

7. In the case of any person, corporation, association or other entity undertaking a project on the lands of another person, corporation, association or other entity, documented permission from the landowner(s) consenting to the project shall be included with the application. Legal land ownership documents such as a deed or Title Status Report (TSR) must be included with all applications, as well as any lease or written agreement. In the case of multiple owners, consent from the majority of owners or the Bureau of Indian Affairs (BIA) shall be sufficient.
 8. All permits expire one year after issuance unless granted for a longer period not to exceed three years. For a project that needs an extension of time, the permit holder must submit a written request to the Director. Permit extension requests are due 30 (thirty) days before the permit expiration date, along with the applicable fee listed in the fee schedule regulation, available to the public. The Director shall have discretion to grant a permit for shorter or longer periods than provided for herein.
- b. The Director may require additional information such as technical reports, safety reports, and other analyses as necessary to evaluate the permit application.

Section 4.3: Permit Fees

An application for a permit shall be accompanied by payment of a fee to cover costs associated with review of the application, issuance of a permit, and monitoring a project. The Director shall establish by regulation a fee schedule detailing the fees to be charged for permits, permit extensions and permit modifications. Such policy shall be made available to the public.

Section 4.4: Permit Application Review Process

- a. The Ordinance 117 Coordinator shall review each permit application for completeness and technical feasibility, and, in consultation with any Review Committee and with BEO technical staff, shall undertake an assessment of the impacts of the proposed project on Reservation waters and aquatic and riparian lands, and shall make a recommendation to the Director on the application, including any necessary conditions of the permit. The Director may request such additional information from the applicant as may be necessary to review the application and may request an on-site inspection prior to issuing a permit.
- b. The Director shall make the final decision on the application. The Director shall notify the applicant in writing of the approval or disapproval of the application within sixty (60) calendar days of the date of receipt of a complete application, unless the Director notifies the applicant that additional time is needed. If approved, the approval notice shall include

any conditions attached to the approval of the permit, and any time limits on the project. The applicant shall notify the Director within 30 days of the date of the permit if the applicant does not intend to proceed with the project.

- c. The Director shall evaluate, in consultation with technical staff, the following (but not limited to) effects in connection with an application:
 1. The impacts of any dredge or fill activities;
 2. Impacts to water quality;
 3. Any impact to water quantity;
 4. Creation or change of flow patterns, currents, and/or turbidity of any Reservation waters resulting from the project;
 5. Disruption of life cycles, seasonal uses, and populations of fish, aquatic animals, wildlife and plant life existent on or dependent on Reservation waters, aquatic and riparian lands;
 6. If the application is for a permanent structure, whether the structure will be designed and constructed in a manner to assure permanence;
 7. Whether the project will pass reasonably anticipated water flows, currents or fluctuations in surface water elevations without creating erosion or siltation upstream, downstream or at the project location;
 8. An assessment of cumulative impacts;
 9. Any other pertinent project effects.
- d. The denial of a permit by the Director may be appealed to the Blackfeet Tribal Court in accordance with Section 4.6.

Section 4.5: Approved Permit Requirements

- a. All parties involved on any project are individually responsible for compliance with this Ordinance.
- b. No work may commence on a project until a permit has been issued to the owner of the project. The project owner and project contractor are jointly responsible for compliance with permit conditions.
- c. The permit shall authorize construction of the project in accordance with the terms and conditions of the project permit.

- d. A contractor shall not commence any construction activities until the project owner provides a permit to the contractor. The permit shall be prominently displayed at the project site for the duration of construction and mitigation activities.
- e. If the Director determines that a project may impact groundwater quality, the Director may require as part of a permit, that the permittee complete a baseline groundwater quality sampling program acceptable to BEO using existing and available groundwater wells within a reasonable distance of the project. Additional groundwater sampling may be required at relevant time periods during construction, and final groundwater sampling shall be required upon completion of the project. All results shall be provided to BEO.
- f. The permit shall authorize personnel from BEO to inspect the project site as necessary at reasonable times.
- g. A permit expires one year from the issuance of the project permit. An extension of time may be granted at the discretion of the Director if requested in writing no later than thirty (30) days before the expiration date of their approved permit. A permittee shall pay the required fee for an extension, if granted. See permit fee schedule available to the public.

Section 4.6: Appeal to Tribal Court

Any decision by the Director denying a permit may be appealed within fourteen (14) days of the date of the Director's decision denying the permit to the Blackfeet Tribal Court by filing a Notice of Appeal with the Director. The Director shall provide copies of the Notice of Appeal, along with the administrative record, to the Tribal Court within thirty (30) days of the date of the Notice of Appeal.

Section 4.7: Emergencies

- a. In the event of an emergency requiring action necessary to safeguard life or property, a permit need not be obtained under this Ordinance, provided that the responsible agency or person shall notify the BEO in writing within twenty-four (24) hours of any work undertaken within aquatic lands as a result of the emergency. In the event of any safety concern notification must be made to the BEO immediately or as soon as the emergency situation is discovered.
- b. The Ordinance 117 Coordinator shall make an on-site inspection of the site and provide a written report to the Director with a copy to the person or entity taking the action. The report shall include:
 - 1. A finding as to whether or not an emergency situation existed at the time the action was taken;
 - 2. A finding as to whether the action would have required a permit in the absence of emergency condition;

3. Any recommendations for a permanent solution;
 4. Such other information that is deemed pertinent.
- c. The responsible person or entity shall implement any proposed permanent solution within the time period recommended by the Director.

Section 4.8: No Liability of Tribe

The Blackfeet Tribe and its officers, employees and representatives shall not be liable for, and does not waive its sovereign immunity from suit for any purpose as a result of the issuance of a permit or the enforcement of a permit under this Ordinance, or any actions of third parties taken under a permit, or for any other matters covered under this Ordinance.

ARTICLE V. GENERAL REQUIREMENTS OF PERMITS

Section 5.1: Construction Requirements

The following construction requirements apply to all projects permitted under this Ordinance:

- a. Aquatic lands shall not be filled, dredged, drained or otherwise impacted unless no feasible alternative exists and such action, after consideration of all relevant factors, is necessary for the completion of a project that has been determined by the Director to satisfy all other requirements of this Ordinance;
- b. All reasonable steps shall be taken to minimize or preclude adverse impacts to aquatic lands and riparian lands;
- c. No construction equipment shall be operated on or within ten (10) feet of aquatic lands without specific authorization contained in a permit;
- d. All temporary methods of ingress and egress, crossings, bridge supports, culverts or other structures that will be needed during construction shall be constructed to minimize or preclude siltation, turbidity and the introduction or reactivation of pollutants into Reservation waters. All such temporary structures shall be removed upon conclusion of construction and the affected areas shall be restored to their pre-construction condition, subject to any conditions placed upon restoration during the permitting process;
- e. Heavy equipment used in construction of projects when occurring in, on or adjacent to wetlands, shall not cause any permanent damage unless a mitigation plan is approved as part of the permit. In cases where permanent damage occurs without a pre-approved mitigation plan, the Director shall require all measures necessary for reclamation to mitigate the damage;
- f. Construction of roads, bridges, culverts, and similar methods of crossing or channeling Reservation waters and aquatic lands, shall comply with all applicable tribal, state and/or federal design and construction criteria, and shall be constructed in such a manner to allow

free and unrestricted passage of flowing waters up to the 100-year flood event to the extent possible. These structures or crossings shall also be constructed to minimize impacts to stream current or bedload patterns or erosion and deposition characteristics of Reservation waters at or near the project location. Such structures shall be constructed to minimize sediment load and turbidity of Reservation waters and other adverse impacts to aquatic lands and riparian lands;

- g. All temporary diversions of streams or connections between wetlands will be returned to original flow paths. Sites must pass inspection by BEO staff after removal of temporary diversions;
- h. Riprap of banks and shorelines may be allowed upon a showing of no or minimal impacts to riparian lands, aquatic lands and Reservation waters. In the case of changes in velocity, sediment load, current and wave pattern or channel readjustment, riprap shall be allowed only if there is no other available alternative to achieve the purposes of the project;
- i. Diversions of water for agricultural purposes shall be designed and constructed to minimize or preclude adverse impacts to aquatic lands and riparian lands. Diversions shall also be constructed to minimize or preclude loss of fish from the source waters and dewatering of the stream. Diversions may involve, depending upon technical feasibility, screening of open diversions, construction of a return flow structure of sufficient quality to provide an avenue for fish that enter an open diversion to return to the source water in a healthy condition, or pumping in lieu of open diversions;
- j. Use of explosives on or near Reservation waters or aquatic lands shall be evaluated on a case by case basis and shall consider alternatives to blasting, the impact upon resident fish, wildlife or plants, and any special seasonal requirements of tribal wildlife resources such as migration, feeding, spawning or nesting;
- k. Creation of water impoundments may be permitted if the impacts to flora and fauna, Reservation waters, aquatic lands and riparian lands are otherwise acceptable under this Ordinance and such impoundment is the only technically feasible method to achieve the purposes of the project. Construction of impoundments such as reservoirs or large stock ponds shall comply with any additional tribal, federal or state law requirements;
- l. Devices such as staff gauges, recording devices and fish weirs will require a permit prior to commencing placement;
- m. Pipelines, railroad beds and lines, and other similar structures either buried or placed above ground shall avoid aquatic lands to the maximum extent possible. Only if there is no other available feasible route shall construction on or near aquatic lands be permitted. Construction of such structures shall preclude the potential for leakage of the transported substances into or on Reservation waters, aquatic lands and riparian lands and must be built to incorporate the highest reasonable degree of technologically available safety and environmental standards. All pipelines must have easily accessible emergency shut off valves. All pipeline and emergency shut off valves must be accurately mapped using Global Positioning System (GPS) coordinates. Hardcopy maps and GPS coordinates of all

4. Failure to comply with the terms or conditions of this Ordinance or any regulations promulgated under this Ordinance;
 5. Failure to comply with orders of the Director;
 6. Providing false information on a permit application.
- b. When the Director has reason to believe that there has been a violation of this Ordinance or any regulations implementing the Ordinance, a Notice of Violation shall be issued. The Notice of Violation shall be served personally or by Certified Mail, Return Receipt Requested. The Notice shall:
1. Specify the nature of the violation; the legal description of the location; the owner of the land and the project; and such other information determined to be necessary by the Director;
 2. Require the violator to meet with the Director within 15 working days of the receipt of the Notice of Violation;
 3. Specify the method and time to remedy the violation, if any; and
 4. Specify the type and amount of fine or penalty being assessed, if any, as determined by the Director.
- c. The Director may also serve a Cease and Desist Order with the Notice of Violation if the nature of the violation is such that permanent or temporary impacts to aquatic or riparian lands may occur if the activity is not immediately stopped.
- d. If the entity that has received a Notice of Violation agrees to undertake the curative measures specified in the Notice or otherwise approved by the Director, and all curative measures are completed within a reasonable time and to the satisfaction of the Director, no further proceedings may be necessary. This Section shall not preclude imposition of penalties or fines.

Section 6.2: Appeal to Tribal Court

Any final enforcement decision or order of the Director may be appealed within fourteen (14) days of the date of the decision or order to the Blackfeet Tribal Court by filing a Notice of Appeal with the Director. The Director shall provide copies of the Notice of Appeal, along with the administrative record, to the Tribal Court within thirty (30) days of the date of the Notice of Appeal.

Section 6.3: Remedies for Violation

- a. Upon a finding by the Director that a violation has occurred and that no curative measures can remedy the violation, the Director may:
 1. Revoke the permit;
 2. Order that the project be removed and the property restored;
 3. Prescribe such other remedial or curative measures as may be appropriate;
 4. Order the violator to pay a monetary penalty;
 5. Order such other measures deemed appropriate at the discretion of the Director.
- b. In the event the Director orders that a project be removed and the property restored, the Director shall specify a time period within which the action must be completed. If the owner responsible for the project does not comply with the Directors' orders, the Director shall take steps to remove the project and restore the land, and the owner of the project shall be assessed the cost of the required work and any fees. The Director shall notify the responsible owner by mail at least fifteen (15) calendar days in advance of removal of the project and any necessary restoration.
- c. Each day during which a violation continues and during which a reasonable attempt to comply with the Notice of Violation is not made, shall be considered a separate violation.
- d. The Director shall establish by regulation a penalty policy addressing the factors to be considered in imposing a monetary penalty. Such policy shall be made available to the public. Revenue from all penalties assessed shall be set aside in a separate account and shall be used to help defray the costs of implementing and enforcing the Tribe's environmental laws and regulations.
- e. The Director may levy fines in accordance with the penalty policy which is available to the public.

Section 6.4: Actions to Enforce

The Director may institute an action in Tribal Court to enforce his or her orders, including actions to collect against any person who has been ordered to pay a penalty or perform remedial measures and who has not successfully appealed such decision or who has not paid an assessed penalty or performed remedial measures within the time limit imposed. The Director may also pursue any other legal remedies that may be available under applicable tribal laws.

Section 6.5: Access to Property, Records and Books

The BEO is authorized to enter into an alleged violator's place of business, operation or facility upon a forty-eight (48) hour notice to inspect the property or site, any books or other records at the site, and take contaminant samples, or for any other purpose necessary to determine if a violation has occurred, if such entry is a necessary part of the investigation of an alleged violation.

Section 6.6: Implementing Regulations

The Director is authorized to promulgate regulations for the purpose of implementing this Ordinance.

APPENDIX 1: SETBACK DISTANCES FROM WATER BODIES, WETLANDS AND RIPARIAN AREAS

Setback distances are variable and are dependent on the type of project and physical features of the project site.

Table 1-1. Setback Distances for Projects

PROJECT TYPE	WATERBODY TYPE	DISTANCE IN FEET
All	All	10 feet from property line when aquatic lands are adjacent to property line
Corrals	Lakes, reservoirs & free flowing streams	100 feet
Livestock feeding & salting locations	Lakes, reservoirs & free flowing streams	100 feet
Feedlot Operations	Lakes, reservoirs, and free-flowing streams.	1,320 feet (1/4 mile)
Wells	From septic system drainfields	100 feet
Logging	Stream protection zones 100 feet on both sides of intermittent and perennial streams	Motorized logging equipment (i.e. skidders, cats, trucks, etc.) will not be permitted within 100 feet of the ordinary high water mark (OHWM) of streams.
Forest Management Activities	Lee Creek, Otatso Creek, Kennedy Creek, Boulder Creek, Swiftcurrent Creek and Divide Creek drainages until an Aquatic Conservation Strategy is developed for the Forest Management Plan to protect the threatened bull trout	Motorized logging equipment (i.e. skidders, cats, trucks, etc.) will not be permitted within 300 feet of the ordinary high-water mark of streams. And no forest management activities will be allowed within 300 feet of the ordinary high water mark.
Oil and Gas activities	Wetlands	300 feet from wetland boundary
Oil and Gas activities	Reservoirs, lakes, and ponds and intermittent, ephemeral or small perennial streams.	500 feet from the OHWM
Oil and Gas activities	Larger perennial streams, rivers, and municipal water supplies	1,000 feet from the OHWM
Horizontal drilling and hydraulic fracturing	Horizontal drilling will not be allowed under larger perennial streams, rivers, municipal water supplies, lakes and ponds that support fish.	500 feet from the OHWM
Structures that use paint or treated lumber	Surface water (any body of water or watercourse)	Must be outside of OHWM

Table 1-2. Setback Distances for Individual Wastewater Systems

WASTEWATER SYSTEM COMPONENT	WATERBODY TYPE	DISTANCE IN FEET
Holding Tanks	Lakes and streams	100 feet from the OHWM
Septic Tanks	Wells & springs	50 feet
	100 year floodplain	50 feet
	Surface water (any body of water or watercourse)	50 feet
	High groundwater	none
	Absorption Systems and Outhouses	Wells & springs
Absorption Systems and Outhouses	100 year floodplain	100 feet
	Surface water (any body of water or watercourse)	100 feet
	Irrigation ditches that return water to a Tribal waterbody	100 feet
	High groundwater	4 feet (a, b)
	Lower Saint Mary and Duck Lakes	No absorption systems allowed within 500 feet of the OHWM

- (a) The separation to high groundwater, bedrock, or limiting layer shall be measured from the bottom of the drainrock for the absorption system.
- (b) For the protection of groundwater, the department may increase this separation distance for soils having excessively fast percolation rates (less than 5 min/inch).

Any other activity will follow regulations as referenced in all other tribal regulatory documents including but not limited to the following: Blackfeet Forestry Management Plan (Resolution #87-2009), The 208 Water Quality Management Plan, Ordinance Number 93-Water and Wastewater Ordinance (Resolution #147-96), Lower Saint Mary’s Lake Commercial Properties-Declaration of Covenants, Conditions and Restrictions, and any other tribal regulatory document that refers to setback distances from aquatic lands. If any of these documents contradicts another the most protective document language shall be followed.

A variance of the setback distances may be allowed on a case-by-case basis if the applicant can show that they will employ structures or devices that will guarantee protection of the water body in case of a spill or release of pollutant(s).