

CHAPTER 44
ENCROACHMENTS

- 44- 1.01 Jurisdiction and Intent
- 44- 2.01 No Rights Conferred
- 44- 3.01 Definitions
- 44- 4.01 Waters/Submerged Lands Regulated
- 44- 5.01 Tribal Council Duties Regarding Encroachment
- 44- 6.01 Coeur d'Alene Tribe Lake/River Board
- 44- 7.01 Encroachment Fee Schedule
- 44- 8.01 Encroachments Generally
- 44- 9.01 Single-Slip Docks
- 44- 10.01 Cooperative Docks with up to 4 Slips
- 44-11.01 Community Ownership Docks with 5 or more Slips
- 44-12.01 Commercial Marina
- 44-13.01 Pilings
- 44-14.01 Fills, Dikes, Jetties, Piers, Private Booms and Buoys
- 44-15.01 Log Storage Booms
- 44-16.01 Float homes
- 44-17.01 Boat Garages and Boat Covering Structures without Walls
- 44.18.01 Encroachments Owned by other Governmental Entities
- 44-19.01 Utility Lines

Coeur d'Alene Tribal Code

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44-1

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- 44-20.01 Dredging
- 44-21.01 Boat Ramps
- 44-22.01 Winter Dock Storage
- 44-23.01 Inspection of Encroachments
- 44-24.01 Enforcement
- 44-25.01 Water Rights

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44-2

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CHAPTER 44

ENCROACHMENTS

44-1.01 **Jurisdiction and Intent**

Jurisdiction. The Coeur d'Alene Tribe has exercised exclusive sovereignty and dominion over the submerged lands and waters within the area now known as the Coeur d'Alene Reservation since time immemorial. The submerged lands and waters within the Coeur d'Alene Reservation are owned by the Coeur d'Alene Tribe and the Tribe is legally entitled to the exclusive use and occupancy of them. These submerged lands and waters are essential to the Tribe's "dignity and ancient right." *Idaho v. The United States and Coeur d'Alene Tribe* 533 U.S. 262 (2001). The regulation of use of the submerged lands and waters are an essential governmental function of the Tribe. The Tribal and public health, safety and welfare requires that any allowed use of an encroachment upon these waters and submerged lands be regulated to protect water quality and quantity, navigation, fish and wildlife habitat, aquatic life, aesthetic beauty and Tribal values.

Tribal Intent. Although the Coeur d'Alene Tribe has the right of exclusive use and occupancy and to exclude non-Tribal member uses of the waters and submerged lands within the Reservation, the Coeur d'Alene Tribe may permit non-Tribal members the privilege to use these waters and submerged lands in certain specific, well-defined ways. This non-Tribal member use is by permission only and is to be narrowly construed. Except as specifically otherwise authorized in this Chapter, it is the intent of the Coeur d'Alene Tribe to reserve for enrolled members of the Coeur d'Alene Tribe the exclusive use and occupancy of all waters within the Coeur d'Alene Reservation and of all submerged lands underlying navigable waters within the Coeur d'Alene Reservation.

44-2.01 **No Rights Conferred**

No enforceable rights or privileges regarding use of the waters or submerged lands of the Coeur d'Alene Reservation are conferred on those who are not enrolled members of the Coeur d'Alene Tribe. All use of the waters or submerged lands by non-Tribal members are at the sole discretion of the Tribe. Permissive use by non-Tribal members is allowed only to the extent specifically authorized by this Chapter. Additional uses are neither inferred nor implied and are denied.

44-3.01 Definitions

For the purposes of this Chapter, the following definitions are applicable:

- (A) Board means Coeur d'Alene Tribe Lake/River Board.
- (B) Boat Garage means any covered structure on Tribal waters with one or more solid sides.
- (C) Boom means a series of logs, buoys, or other material connected together to enclose an area of water.
- (D) Breakwater means any encroachment which is designed to control or minimize wave action.
- (E) Buoy means a float or floating object moored to the submerged lands.
- (F) Commercial Marina means a facility which is owned or operated by a person, extends into Tribal waters and offers services to the public or members of the marina for docking, loading or other servicing of watercraft.
- (G) Commercial Use or Occupancy means any use or occupancy of Tribal waters in connection with providing commercial services. Commercial use or occupancy shall include, but not be limited to uses in connection with, a commercial marina, private club, public or private boat launch, homeowner association docks, dock building and transport services or log transport services.
- (H) Compliance Order means any Order issued by the Lake Management Department to a person directing an action.
- (I) Conditional Encroachment Permit means written authorization to construct and maintain an encroachment as defined herein on Tribal waters. All such permits for encroachments shall be conditional in nature and subject to all conditions of this code, supporting rules and regulations. Permits are subject to review, inspection, renewal, and revocation as deemed necessary by the Tribe and shall not be construed in any way as a granting of right, title or interest.
- (J) Co-operative Dock means any dock, which provides moorage intended to serve more than one and up to four primary properties that are under separate ownership.

- (K) Community Ownership Dock means any dock, which provides moorage for more than four upland owners as a benefit related to membership in homeowners group or other similar association that is the legal owner of primary waterfront property and intends to provide moorage for members (or other dock ownership group)
- (L) Department means Lake Management Department of the Coeur d'Alene Tribe.
- (M) Dock means any platform either floating or non-floating which extends into, over or across the waters to provide boat moorage, access to a moorage area, swimming facilities, or other related activities
- (N) Dredging means the process of excavating materials from the submerged lands thereby altering the elevation of a portion of the submerged lands. The term includes the process of extending the water area landward by excavating material from the lake shore thereby allowing the waters to flow over areas they had not otherwise flowed.
- (O) Encroachment means any dock, pier, float home, boat garage, jetty, float, piling, breakwater, boat ramp, channel, basin, land fill, fill, sea wall or other structure on, in or above the submerged lands or waters of the Coeur d'Alene Reservation.
- (P) Encroachment Fee Schedule means a schedule listing the application fees and annual lease payments for all encroachments to be charged such fees and payments for the time period indicated on the schedule.
- (Q) Fill means the process of discharging material into Tribal waters or upon the submerged lands and thereby raising the elevation of a portion of the submerged lands.
- (R) Float Home means any dwelling structure floating on Tribal waters that is affixed directly or indirectly to the shore or submerged lands and is not intended to be used primarily for navigation. A float home does not include other structures appurtenant to or affixed to the dwelling structure and not used for dwelling purposes.
- (S) High Water Mark means the line, as of the date the Coeur d'Alene Reservation was opened to non-Indian homestead or thereafter, below which action of the water renders the land not useful for agricultural purposes.
- (T) Jetty means a structure often in pairs which extends from the shoreline into the lake and is designed to control the water current.

- (U) Lease means a written agreement under which the Tribe will allow a person to use Tribal waters or submerged lands underlying navigable waters for a specified period of time pursuant to this Chapter.
- (V) Pier means a non-floating fixed platform extending out over the water from the shore which is attached to the shoreline or is connected with the shoreline by a gangway
- (W) Piling means a pole or other object driven into the submerged lands.
- (X) Repair means to restore an existing encroachment to comply with applicable standards by replacing component parts of the encroachment.
- (Y) Replacement means to rebuild an existing encroachment to comply with applicable standards by removing that encroachment and constructing a new one.
- (Z) Retaining Wall means any structure built parallel or contiguous to the shoreline of Tribal waters which is designed solely to protect the land mass inland from erosion or wave action. A retaining wall includes a bulkhead, wall, or any other structure built for the purposes stated herein.
- (AA) Rip Rap means a layer, facing or protective mound of stones, logs or other material placed to prevent eroding, scouring or sloughing of a structure or embankment.
- (BB) Slip means the location or point of mooring a single watercraft to a dock or other structure.
- (CC) Staff means the employees, contractors or agents of the Coeur d'Alene Tribe charged with the implementation and enforcement of this Chapter.
- (DD) Submerged lands means all lands lower than the high water mark of navigable waters.
- (EE) Tribal Court means the Court of the Coeur d'Alene Tribe.
- (FF) Tribal Expenses means those expenses above and beyond the routine costs incurred in processing applications, and includes, but is not limited to expenses associated with major environmental reviews, environmental testing, and/or policy reviews.

- (GG) Tribal Member means an enrolled member of the Coeur d'Alene Tribe.
- (HH) Tribal Waters means all navigable waters within the Coeur d'Alene Reservation. These waters include, but are not limited to, the southern portion of Lake Coeur d'Alene, the southern portion of Black Lake, the St. Joe River downstream from St. Maries, Lake Chatcolet, Hidden Lake, Benewah Lake, Round Lake and Hepton Lake.
- (II) Tribe means Coeur d'Alene Tribe.
- (JJ) Water Use Permit means a permit which authorizes the use of the waters of the Tribe, regardless of navigability, subject to the right of water use permits which are superior as to quantity and priority date.
- (KK) Wetlands mean the water land interface area which are inundated or saturated by surface and/or groundwater at a frequency or duration of time periods sufficient to establish, and under natural conditions, support a prevalence of vegetation typically adapted to life in saturated conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs and similar areas. Wetland areas may be separated from a main body of water by barrier or natural berm.

44-4.01 Waters/Submerged Lands Regulated

The Coeur d'Alene Tribe regulates all submerged lands and waters wherever they come to be located within the Coeur d'Alene Reservation regardless of whether the watercourse is navigable or not and regardless of whether the watercourse is in its natural condition or has been altered by impoundment, dredging or otherwise.

44-5.01 Tribal Council Duties Regarding Encroachment

The Tribal Council shall exercise ultimate legislative and administrative authority over encroachments on Tribal submerged lands and waters as set out in this Chapter. Specifically, the Tribal Council shall:

- (A) Appoint all members of the Board.
- (B) Receive periodic recommendations and issue final decisions on all matters involving encroachments that are referred to the Tribal Council by the Chairman of the Board, or by any other Tribal Council member.
- (C) Exercise program supervision over the Lake Management Department as it does all other Tribal Departments.

- (D) Take such other actions regarding the Tribe's submerged lands and waters as it deems in the best interests of the Tribe.

There is no right to appeal to the Tribal Council any decision made under this Chapter.

44-6.01 **Coeur d'Alene Tribe Lake/River Board**

(A) The Board shall be composed of five (5) members appointed by the Tribal Council. The Board shall be composed of:

1. Three Tribal members, one of whom shall be appointed by the Tribal Council to serve as Chairman of the Board, and
2. Two community members of the general Reservation community. They may be non-Indian, members of other tribes or members of the Coeur d'Alene Tribe. They may reside on or off the Reservation. The Tribal Council will give special consideration regarding appointment to recommendations of the Benewah and Kootenai County Commissioners for one of these positions, but the Tribal Council is not required to appoint the recommended person, and

(B) Term of Board Members. The term of the initial members of the Board shall be for one (1) year. Thereafter, the term shall be staggered two (2) year terms.

(C) Board Powers and Duties. The powers and duties of the Board shall be as follows:

1. Hear appeals from Tribal staff encroachment determinations and issue decisions.
2. Reconsider its own decisions.
3. Make recommendation to the Tribal Council on all recommended legal action.
4. Report to Tribal Council at least annually on all matters regarding lake management including any recommended statutory or policy changes.
5. Adopt necessary rules and procedures to carry out the Board's powers and duties.

44-7.01 **Encroachment Fee Schedule**

The Lake Management Department is authorized to adopt appropriate fees for all encroachments. Fees for encroachments include application fees and annual lease payments. The Lake Management Department shall develop a fee schedule listing the application fees and annual

Coeur d'Alene Tribal Code

44-8

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lease payments for the time period indicated in the schedule. The amounts listed in the fee schedule shall supercede and control any conflicting amounts, which may appear in this Chapter or on fees schedules for previous time periods. Tribal Council shall approve, by resolution, any changes to the fee schedule of more than ten percent (10%) of the amount listed on any fee schedule for the previous time period.

44-8.01 Encroachments Generally

All encroachments on Tribal submerged lands or waters shall be strictly and completely prohibited unless specifically permitted by a valid lease pursuant to this Chapter.

(A) Policy. It is the policy of the Tribe to initially permit many existing (as of April 14, 2003) encroachments on Tribal submerged lands and waters so long as:

1. Application for the encroachment is made to the Tribe pursuant to this Chapter,
2. All fees and payments required by this Chapter are paid in full,
3. A person who holds an expired State of Idaho permit for an existing dock.
4. A Tribal lease for the encroachment has been granted and has not expired.

(B) Moratorium on New Dock Construction. As of June 30, 2005, the moratorium placed on new dock construction will be lifted. Application for new encroachments will be accepted through the Lake Management Department under well-defined conditions outlined within the Tribal Encroachment Standards.

(C) Standards. The Tribal staff is authorized to adopt appropriate standards for all encroachments. This includes standards for existing, repaired, replaced and new encroachments. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. of Engineers, but need not be.

(D) Permit and Lease.

1. All encroachments on Tribal submerged lands and waters are specifically prohibited and considered an unlawful trespass unless there is a solid permit and lease currently in effect for the encroachment.
2. Application must be made to the Tribe for a permit and lease for all encroachments, as set out in detail below, as to each type of encroachment. Application and lease is required regardless of whether the encroachment is a pre-existing encroachment, a new encroachment or the alternation or repair of an existing encroachment.
3. Payment in full of the application fee and lease payment is required at time of application. In the event the application and lease is denied the lease payment shall

be returned to the applicant, but the application fee retained by the Tribe.

4. Annual lease payments are required for all encroachments. Annual permit applications are required for all encroachments. Application fees are required only for new encroachments or for alteration or repair of existing encroachments, but not for existing encroachment.
5. Application for annual encroachment leases shall be made on an annual basis; lease fees must be made per the adopted fee schedule and must be paid by September 30 of each year previous to the term of lease.
6. The subsequent annual reapplications for an encroachment permit and lease can be on an abbreviated form developed by the Staff.

44-9.01 Single-Slip Docks

(A) Policy – Single-Slip Docks.

1. It is the policy of the Tribe to generally permit existing single-slip docks, so long as they are maintained in good repair, are in compliance with Tribal standards and a current Tribal permit and lease has been applied for, paid for and issued.
2. Only persons who are waterfront property owners shall be eligible to apply for an encroachment permit. The possession of an easement for the shoreline does not qualify a person to be eligible for an encroachment permit.
3. It is the policy of the Tribe to eventually eliminate all encroachment permits for single-slip docks where there is no waterfront property ownership. A person who holds an existing State of Idaho permit for a dock but does not own waterfront property as described in paragraph (2) may in appropriate situations be granted continued use of an existing dock.
4. A person that does not own waterfront property but has an expired State of Idaho permit may be issued a Tribal permit which shall be non-transferable, and shall terminate on transfer or sale of the property or death of the existing permit holder. These permits, if located on lakeshore owned by a legal association of property owners may be transferred to the association. The association will become the dock permittee and shall be responsible for its use, maintenance and payment of lease or permit fees. The association may assign exclusive use of a dock to an association member or otherwise manage use of the dock for all members in common.

(B) Standards – Single-Slip Docks. The Tribal staff is authorized to adopt appropriate

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44-10

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standards for single-slip dock encroachments consistent with the above policy. This includes standards for existing, repaired, replaced and new single-slip docks. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease – Single-Slip Docks.

1. Permit - Application shall be made for all existing and proposed single slip docks.
2. Annual Lease Payment - Application shall be made annually for an encroachment lease regarding single-slip docks.

44-10.01 Co-operative Docks with up to 4 Slips

(A) Policy – Co-operative Docks with up to 4 Slips.

1. It is the policy of the Tribe to generally permit existing Cooperative docks with up to 4 slips so long as they are maintained in good repair, are in compliance with Tribal standards and a current Tribal permit and lease has been applied for, paid for and issued.
2. Co-operative docks with up to 4 slips are generally encouraged as a means of providing lake or riverfront property owners access to the water.

(B) Standards - Co-operative Docks with up to 4 Slips. The Tribal staff is authorized to adopt appropriate standards for Co-operative docks with up to 4 slips consistent with the above policy. This includes standards for existing, repaired, replaced and new Co-operative docks with up to 4 slips. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Co-operative Docks with up to 4 Slips.

1. Permit - Application shall be made for all existing and proposed multi-slip or Cooperative docks with up to 4 slips.
2. Annual Lease Payment- Application shall be made annually for an encroachment lease regarding Co-operative docks with up to 4 slips.

44-11.01 Community Ownership Docks with 5 or More Slips

(A) Policy - Community Ownership Docks Docks with 5 or More Slips.

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44-11

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It is the policy of the Tribe to generally permit existing Community Ownership Docks with 5 or more slips, so long as they are maintained in good repair, are in compliance with Tribal standards and a current Tribal permit and lease has been applied for, paid for and issued.

(B) Standards - Community Ownership Docks with 5 or More Slips. The Tribal staff is authorized to adopt appropriate standards for Community Ownership Docks with 5 or more slips consistent with the above policy. This includes standards for existing, repaired, replaced and new Community Ownership Docks with 5 more slips. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Community Ownership Docks with 5 or More Slips Permit

1. Application shall be made for all existing and proposed Community Ownership Docks with 5 or more slips.
2. Annual Lease Payment - Application shall be made annually for an encroachment lease regarding Community Ownership Docks with 5 or more slips.

44-12.01 Commercial Marina

(A) Policy - Commercial Marina. It is the policy of the Tribe to generally permit existing commercial marinas, so long as they are maintained in good repair, are in compliance with Tribal standards and a current Tribal permit and lease has been applied for, paid for and issued. New commercial marinas are generally discouraged.

(B) Standards - Commercial Marinas. The Tribal staff is authorized to adopt appropriate standards for commercial marinas consistent with the above policy. This includes standards for existing, repaired, replaced and new commercial marinas. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Commercial Marinas.

1. Permit - Application shall be made for all existing and proposed commercial marinas.
2. Application - Application shall be made annually for an encroachment lease regarding commercial marinas.

44-13.01 Pilings

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44-12

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Amended 06-19-08 by Resolution 182(2008)

- (A) Policy – Pilings. It is the policy of the Tribe to allow pilings only in conjunction with other permitted encroachments. All other pilings are prohibit.
- (B) Standards - Pilings. The Tribal staff is authorized to adopt appropriate standards for pilings consistent with the above policy. This includes standards for existing, repaired, replaced and new pilings. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.
- (C) Permit & Lease - Pilings. There shall be no specific permit or lease for pilings. The permit and lease for pilings shall be part of the permit and lease for the encroachment of which the piling is a part.

44-14.01 Fills, Dikes, Jetties and Piers

(A) Policy - Fills, Dikes, Jetties and Piers

1. It is the policy of the Tribe to generally permit existing fills, dikes, jetties and piers, so long as they are maintained in good repair, are in compliance with Tribal standards and a current Tribal permit and lease has been applied for, paid for and issued.
2. New fills, dikes, jetties or piers are generally discouraged.
3. It is the policy of the Tribe to prohibit all private booms and buoys.

(B) Standards - Fills, Dikes and Jetties. The Tribal staff is authorized to adopt appropriate standards for fills, dikes, jetties, piers, private booms and buoys consistent with the above policy. This includes standards for existing, repaired, replaced and new fills, dikes, jetties and piers. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Fills, Dikes and Jetties.

1. Permit – Application shall be made for all existing and proposed fills, dikes, jetties and piers.
2. Annul Lease Payment – Application shall be made annually for an encroachment lease regarding fills, dikes, jetties and piers.

44-15.01 Log Storage Booms

(A) Policy - Log Storage Booms.

1. It is the policy of the Tribe to generally permit existing log storage booms, so long as they are maintained in good repair, are in compliance with Tribal standards and a current Tribal permit and lease has been applied for, paid for and issued.
2. New log storage booms are prohibited.
3. It is the policy of the Tribe through its fee schedule and standards to encourage those holding log storage leases to use their tugs and other equipment to clean up debris in the lake.

(B) Standards - Log Storage Booms. The Tribal staff is authorized to adopt appropriate standards for log storage booms consistent with the above policy. This includes standards for existing, repaired or replaced log storage booms. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Log Storage Booms.

1. Permit - Application shall be made for all existing log storage booms.
2. Annual Lease Payment - Application shall be made annually for an encroachment lease regarding existing log storage booms.

44-16.01 **Float homes**

(A) Policy – Float homes.

1. It is the policy of the Tribe that float home owners as of July 28, 1998 will be eligible to enter into a permit and lease for the existing float home.
2. Float home leases will be non-transferable from the float home owner determined as of July 28, 1998.
3. Float Home owners must have an approved plan for upgrade to meet adopted encroachment standards within 90 days and complete necessary upgrades within one year of the adoption of new encroachment standards.
4. Upon date of decease of lessee, Lessee’s estate must complete a comprehensive plan for removal within 90 days and removal must be complete within one year; float home owner’s estate must ensure that all float homes, appurtenances (e.g. gangplanks, connecting ramps, etc.), and any pilings to which float homes or appurtenances are affixed are removed from Tribal waers and properly disposed of at

owners expense.

5. New float homes are prohibited.

(B) Standards – Float homes. The Tribal staff is authorized to adopt appropriate standards for existing float homes consistent with the above policy. Specifically, these standards shall include a requirement that all float homes provide, within 90 days of application, an environmental certification that sewage and gray water is being disposed of in accordance with Tribal standards. These standards may be similar to those used by the Panhandle Health District, State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease – Float homes.

1. Permit - Application shall be made for all existing float homes.
2. Annual Lease Payment - Application shall be made annually for an encroachment lease regarding existing float homes.

44-17.01 Boat Garages and Boat Covering Structures without Walls

(A) Policy - Boat Garages and Boat Covering Structures without Walls.

1. It is the policy of the Tribe that, on December 31, 2010, it will require that all boat garages be converted to boat covering structures without walls. Until that time, boat garages must continue to be maintained in good repair, be in compliance with Tribal Encroachment Standards and have a current Tribal permit. Lake Management Department staff reserve the right to, upon 30 days written notice, inspect existing boat garages for compliance with Tribal Encroachment Standards.
2. New boat garages are prohibited.

(B) Standards - Boat Garages and Boat Covering Structures without Walls. The Tribal staff is authorized to adopt appropriate standards for boat garages and boat coverings without walls consistent with the above policy. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease -Boat Garages and Boat Covering Structures without Walls.

1. Permit - Application shall be made for all existing boat garages and boat covering

- structures without walls.
2. Annual Lease Payment - Application shall be made annually for an encroachment lease regarding boat garages and boat covering structures without walls.

44-18.01 Encroachments Owned by Other Governmental Entities

(A) Policy - Encroachments Owned by Other Governmental Entities. It is the policy of the Tribe to generally permit encroachments owned by other governmental entities, so long as they are maintained in good repair, are in compliance with Tribal standards and possess a current Tribal permit.

(B) Standards - Encroachments Owned by Other Governmental Entities. The Tribal staff is authorized to adopt appropriate standards for encroachments owned by other governmental entities consistent with the above policy. This includes standards for existing, repaired, replaced and new encroachments. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Encroachments Owned by any Governmental Entities.

1. Application must be made for lease and permit regarding encroachments owned by any governmental entities.
2. There is no permit application fee or annual lease payment.

44-19.01 Utility Lines

(A) Policy - Utility Lines.

1. It is the policy of the Tribe to permit existing utility lines on the submerged lands so long as they do not pose a threat to the public health, safety or welfare, are in compliance with Tribal standards, and possess a current Tribal permit and lease.
2. It is the policy to discourage overhead utility lines over the submerged lands.

(B) Standards - Utility Lines. The Tribal staff is authorized to adopt appropriate standards for utility lines consistent with the above policy. This includes standards for existing, repaired, replaced and new utility lines. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy.

(C) Permit & Lease - Utility Lines.

1. Permit - Application shall be made for all existing and proposed utility lines.
2. Annual Lease Payment - Application shall be made annually for an encroachment lease regarding utility lines.

44-20.01 Dredging

- (A) Policy - Dredging. It is the policy of the Tribe to generally prohibit dredging of submerged lands.
- (B) Standards - Dredging. The Tribal staff is authorized to adopt appropriate standards for dredging consistent with the above policy. These standards may be similar to those used by the State of Idaho or U.S. Army Corps. Of Engineers to the extent consistent with the above policy. If dredged material is left on the submerged lands, it shall be treated as a fill requiring additional application and lease.
- (C) Permit & Lease - Dredging.
1. Permit - Application shall be made for all proposed dredging.
 2. Annual Lease Payment - There shall be no lease for dredged areas and consequently no annual lease payment.

44-21.01 Boat Ramps

- (A) Policy – Boat ramps. It is the policy of the Tribe to generally discourage boat ramps on submerged lands.
- (B) Standards – Boat ramps. The Tribal staff is authorized to adopt appropriate standards for boat ramps consistent with the above policy. These standards may be similar to those used by the State of Idaho or U. S. Army Corps. Of Engineers to the extent consistent with the above policy.
- (C) Permit & Lease – Boat Ramps.
1. Permit – Application shall be made for all proposed boat ramps.
 2. Annual Lease Payment – Application shall be made annually for an encroachment lease regarding boat ramps and annual lease payment shall be made for private boat ramps.

44-22.01 **Winter Dock Storage**

(A) Policy - Winter Dock Storage.

1. It is the policy of the Tribe to permit the winter storage at alternative locations within Tribal waters of docks for which there is a currently valid Tribal permit and lease without additional lease or permit.
2. Winter storage on Tribal waters of any docks without currently valid Tribal permit and lease is prohibited, although a Tribal permit and lease may be applied for and granted for such docks.

(B) Standards - Winter Dock Storage. The Tribal staff is authorized to adopt appropriate standards for winter dock storage consistent with the above policy. These standards may be similar to those used by the State of Idaho or U.S. Army Corps Of Engineers to the extent consistent with the above policy. If dredged material is left on the submerged lands, it shall be treated as a fill requiring additional application and lease. Alternative winter dock storage shall be noted on the annual lease application.

(C) Permit & Lease - Winter Dock Storage.

1. Permit - Application for a permit regarding winter dock storage of docks holding current Tribal permits and leases is not required.
2. Application - All other docks stored for the winter on Tribal waters must obtain permits and leases under the Residential Docks Section of this Chapter with each dock so stored securing both a permit and annual lease.

44-23.01 **Inspection of Encroachments**

(A) Right to Inspect. Tribal staff shall have the right to inspect all encroachments on Tribal waters or submerged lands at any time for any reason. The scope of Tribal inspections regarding encroachment may include, but are not limited to:

1. Compliance with Tribal permits or laws.
2. Safety.
3. To verify application information.
4. To verify construction compliance.

Permission to inspect encroachments at any time for any reason is deemed included in all encroachment applications and leases. Prior notice is not required for any inspection, but may be given at the discretion of the Staff.

(B) Denial of Access to Inspect. Denial of access to a Tribal inspector inspecting an encroachment shall automatically void, forfeit and revoke application, encroachment lease and/or authorization for the encroachment. The encroachment shall thereupon be deemed abandoned and may be disposed of according.

44-24.01 Enforcement

(A) Violations. The following actions are prohibited:

1. Maintaining or constructing an encroachment without, or in violation of a Tribal Permit.
2. Dredging submerged lands without a permit.
3. Failing to perform any repair ordered by Tribal staff.
4. Failing to comply with a Tribal directive to remove an encroachment.
5. Non-payment of a required fee or payment.

Violations of such prohibited conduct shall render the property owner and any individual violator civilly liable as set out herein.

(B) Compliance Orders. Anytime the Tribal staff finds an individual or entity is out of compliance with this Chapter, it shall issue a written Compliance Order. Compliance Orders may direct that:

1. Work be stopped immediately.
2. An encroachment be repaired.
3. An encroachment be removed.
4. An encroachment be vacated.

All Compliance Orders shall be in writing and shall state why the encroachment or activity is out of compliance with Tribal law. Stop work orders shall require immediate compliance. All other Compliance Orders shall state the period of time to come into compliance.

(C) Failure to Obey a Compliance Order. Failure to obey a final Compliance Order shall result in:

1. The person or entity being liable for a civil penalty not to exceed \$500/day for each day of non-compliance.
2. The automatic forfeiture of any permit obtained and/or payments made under this Chapter.
3. Any lease issued under a Chapter shall be deemed automatically void.

4. The encroachment being automatically deemed a trespass on Tribal land.

(D) Appeal of Compliance Order.

1. Any person or entity served with a written Compliance Order shall have ten (10) calendar days from the date of service to appeal the Compliance Order to the Board.
2. An appeal must be in writing and contain a narrative that includes a written explanation of the appeal requested, the applicable sections of this Chapter, and the relief requested.
3. The Chairman of the Board shall schedule a hearing before the Board and notify the appellant of the hearing. The Board shall conduct a denovo hearing and may consider any issue or evidence relevant to the appealed matter.
4. The Board may affirm or reverse in whole or in part the action, decision or determination of the Lake Management staff that is the subject of the appeal. The Board shall issue a written decision within two (2) weeks of the hearing, except that the Board may extend this deadline one time for a period up to but not exceeding an additional two weeks where it determines that its deliberations would benefit by the allowance of the additional time, and notice of such extension is provided by written Order to the parties.
5. Failure to appeal within the required time shall render the Compliance Order final for all purposes.
6. A final Compliance Order shall also render any application, permit or lease void and forfeited and the encroachment shall thereafter conclusively be deemed an unlawful trespass on Tribal property.
7. An appeal of a Compliance Order shall automatically stay the effect of the Compliance Order unless the Compliance Order expressly states that the public health, safety and welfare requires immediate compliance. There shall be no appeal to Tribal Council.
8. The aggrieved party may appeal the decision of the Board to the Tribal Court within thirty (30) days of the Board's decision. The findings of the Board, if supported by substantial evidence, shall be accepted by the Court as conclusive and there shall be no further appeal.

(E) Tribal Court Jurisdiction. Coeur d'Alene Tribal Court shall have exclusive jurisdiction over any suit for possession, trespass or civil penalty resulting from:

Coeur d'Alene Tribal Code

Amended 08-12-99 by Resolution 333 (99)
Amended 09-28-02 by Resolution 307 (2000)
Amended 03-07-02 by Resolution 106 (2002)
Amended 03-27-03 by Resolution 161(2003)

44-20

Amended 04-10-03 by Resolution 172(2003)
Amended 04-14-03 by Resolution 180 (2003)
Amended 01-20-05 by Resolution 86(2005)
Amended 06-30-05 by Resolution 222(2005)
Amended 04-13-06 by Resolution 117(2006)
Amended 06-19-08 by Resolution 182(2008)

1. Any violation of this Chapter.
2. Non-compliance with a Compliance Order.
3. Continued possession of an encroachment (trespass) in violation of this Chapter.

(F) Tribal Court Action for Possession or Trespass.

1. A hearing for immediate possession shall be had within five (5) calendar days of service of process in any action by the Tribe claiming the right to possession or trespass regarding any violation of this Chapter. The standard of review shall be abuse of discretion.
2. If the Court determines at this hearing that the Staff or Board has not abused its discretion under this Chapter, it shall order the application, permit and/or lease in question to be forfeited and void, declare the encroachment to be an unlawful trespass upon Tribal property and order its removal if requested. If the Court determines that discretion has been abused it shall remand the matter to the Board for appropriate consideration.

(G) Tribal Court Action for Civil Penalty. A Tribal Court action for damages based on a civil penalty assessed shall proceed under normal Tribal Court civil procedure except that the standard of review shall be abuse of discretion.

(H) Nothing in this Chapter shall be deemed a waiver of Tribal sovereign immunity.

44-25.01 **Water Rights**

(A) Water Rights. It is the policy of the Coeur d'Alene Tribe to retain the use of all waters within the Reservation, regardless of navigability, but to allow use by others subject to specific limitations.

(B) Standards - Water Rights. The Tribal Staff is authorized to adopt appropriate standards and procedures for application and implementation of Tribal water permits in compliance with this Section.

(C) Exclusive Tribal Water Right. The Tribe has the exclusive right of use to all surface and ground water within the Coeur d'Alene Reservation with a priority date of time immemorial.

(D) Other Water Permits. The Tribe recognizes other water permits as subordinate to the Tribe's water rights as follows:

Coeur d'Alene Tribal Code

Amended 08-12-99 by Resolution 333 (99)
 Amended 09-28-02 by Resolution 307 (2000)
 Amended 03-07-02 by Resolution 106 (2002)
 Amended 03-27-03 by Resolution 161(2003)

44-21

Amended 04-10-03 by Resolution 172(2003)
 Amended 04-14-03 by Resolution 180 (2003)
 Amended 01-20-05 by Resolution 86(2005)
 Amended 06-30-05 by Resolution 222(2005)
 Amended 04-13-06 by Resolution 117(2006)
 Amended 06-19-08 by Resolution 182(2008)

1. Subject to the limitations contained herein, all water rights previously granted by the state of Idaho affecting waters on the Reservation are recognized as Tribal water use permits with the priority date, place of division and quantity as recognized by the State.
2. All Tribal water use permits hereafter permitted by the Tribe shall be with a priority date of the date of issuance. Such water permits shall be only for such quantity of water that the applicant can reasonably put to beneficial use.
3. All holders of Tribal water permits are liable to the Tribe for past and future compensation for the use of waters on the Reservation, except that no compensation is required for individual domestic use.

Coeur d'Alene Tribal Code

Amended 08-12-99 by Resolution 333 (99)
Amended 09-28-02 by Resolution 307 (2000)
Amended 03-07-02 by Resolution 106 (2002)
Amended 03-27-03 by Resolution 161(2003)

44-22

Amended 04-10-03 by Resolution 172(2003)
Amended 04-14-03 by Resolution 180 (2003)
Amended 01-20-05 by Resolution 86(2005)
Amended 06-30-05 by Resolution 222(2005)
Amended 04-13-06 by Resolution 117(2006)
Amended 06-19-08 by Resolution 182(2008)