

TITLE 24
ENVIRONMENTAL PROTECTION

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TITLE 24

ENVIRONMENTAL PROTECTION

Chapter 24.01 General Provisions

24.01.01 Purpose

The Port Gamble S'Klallam Reservation was acquired under the provisions of the Indian Reorganization Act and proclaimed on June 16, 1938 to be an Indian reservation "...for the benefit and use of the Port Gamble Band of Clallam Indians...". The reservation was ultimately purchased with the Tribe's own funds.

The Tribe waited for more than eighty years for a reservation and more than one hundred twenty years for compensation for the lands that were ceded. Today, our reservation is entirely in tribal trust status with no individual or outside ownership.

The Port Gamble S'Klallam Tribal Council finds that development activities have long-term impacts on our reservation's ecological, cultural, and spiritual resources. Such activities have a direct effect on and may threaten the political integrity, the economic security, and the health, welfare, and safety of the tribe and its members.

The spirit of S'Klallam people has always been inextricably linked to our land and continues to be the unifying base for our tribal community. The Port Gamble S'Klallam Tribal Council adopts this code to protect the environmental quality of our beautiful land.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.01.02 Definitions

The words below shall have the meaning set forth in this section when they appear in this title, unless a different meaning is clearly intended.

- a) "Buffer" means an undisturbed area of land adjacent to a critical area (streams, wetlands, marine shorelines, erosion hazard areas) that protects the functions and values of the critical area.
- b) "Construction" means any onsite activity which is directly related to building or modifying a structure. It does not include minor repairs to or painting of existing structures.
- c) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or

other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

- d) "Mitigation" and "Mitigating" mean to take steps to address environmental impact in the following sequence which are listed in order of priority: a) avoid the impact by not taking certain actions or parts of an action, b) minimize impacts by limiting the degree or magnitude of the action, c) rectify the impact by repairing, rehabilitating or restoring the affected area and d) compensating for the impact by replacing, enhancing or providing substitute resources in another area.
- e) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- f) "Planning Director" means the person appointed or employed by the Tribe to carry out the duties set forth in this title.
- g) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water.
- h) "Wetlands" or "wetland areas" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands have one or more of the following attributes: (1) At least periodically, the land supports predominantly hydrophytes (water loving plants; those which typically grow in water, whether the water is present year round or seasonally); (2) the substrate is predominantly hydric (damp or undrained) soil; and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.02.01 Permit Required for Certain Activities

Any person conducting an activity within the jurisdiction of the Port Gamble S'Klallam Reservation that will or is likely to significantly impact the environment shall be required to obtain a permit from the Port Gamble S'Klallam Tribe under this title prior to commencing the activity. Activities requiring a permit include, but are not limited to, the following:

- a) Preparation of a site for the construction of a building or area for purpose of business use or public use;

- b) The construction of any structure except single family residences and construction which expands the square footage of the exterior of an existing structure by more than 500 square feet.
- c) New road construction or road widening;
- d) Road construction or repair and right of way maintenance that alters a natural drainage course;
- e) Construction, installation, or repair of culverts and drainage ditches;
- f) Construction of any water related project regardless of the nature or extent of the construction activity;
- g) Any docks or other projects of a permanent or semi-permanent nature which interfere with the normal use of the tidelands or surface of the waters overlying lands within the Port Gamble S'Klallam Reservation at any state of water level;
- h) Dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulk heading; diking; rip rapping; or driving of piling;
- i) Timber harvesting;
- j) Spraying or other application of pesticides and herbicides, except for use by single family residences;
- k) Clearing and grading involving the removal of more than 150 cubic yards of soil, sand, or gravel; and
- l) Storage, application, disposal, or incineration of solid waste and/or hazardous materials as those terms are defined under the Resource Conservation Recovery Act (42 U.S.C. §§ 6903), as it may be amended.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.02.02 Exceptions to Permit Requirement

The following activities shall not require a permit under this title:

- a) Construction and site preparation for single family residence and residential home improvements;
- b) Construction of sheds or smokehouses which are accessory to existing residential use;
- c) Business conducted in the home, except where construction is required;

- d) Fireworks stands licensed by the Port Gamble S'Klallam Tribe;
- e) Woodcutting performed in compliance with Title 12 of this Code;
- f) Gathering berries, plants, or other forest products for personal use;
- g) Emergency public works projects as identified by the Planning Director and deemed necessary to protect health, safety, and welfare;
- h) Fishing and gathering of shellfish in compliance with Title 17 of this Code;
- i) Day to day operation of the Little Boston Hatchery; and
- j) Any repair or right of way maintenance that does not alter a natural drainage course.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.02.03 Grandfathered Activities

Structures in existence prior to the adoption of this title are exempt from the permit requirements of this title. Modifications to such structures made after the date of adoption of this title, and which fall under section 24.02.01, are subject to this title.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.02.04 Environmental Review by Outside Jurisdictions

When an activity covered under this title requires an environmental review by an outside governmental entity, the Planning Director may accept an Environmental Site Analysis (ESA) prepared for the outside government in lieu of the tribal ESA, provided the ESA addresses substantially the same elements as required under this title.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

Chapter 24.03 Permit Application

24.03.01 Obtaining a Permit Application and Environmental Checklist

Any person requiring a permit under section 24.03.01 shall obtain a Port Gamble S'Klallam permit application and environmental checklist from the receptionist at the Tribal Center.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.03.02 Filing

The completed permit application and environmental checklist shall be

filed with the Planning Director or his/her designee prior to the commencement of the activity. These documents shall include an address where the applicant will receive notices and correspondence. Record of these documents shall be maintained by the Planning Director, along with any technical documents generated in the course of environmental review.

If the activity requiring a permit is a tribal activity or project, the tribal department, agency, or official proposing the action shall complete any required application for environmental review.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

Chapter 24.04 Permit Review

24.04.01 Initial Review of Permit Application

The Planning Director, in consultation with the Natural Resources Department, shall initially determine whether the permit application and environmental checklist is complete. The application is complete if it contains adequate information to determine whether the proposed activity will or is likely to significantly impact the environment and to conduct a review for compliance with the purpose and standards set forth in sections 24.01.01 and 24.08.01 of this title. The Planning Director may require supplemental information from the applicant if necessary to complete the review.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.02 Circulation of Application for Comment by Tribal Departments

When the application is complete, the Planning Director shall circulate the permit application, environmental checklist, and any supplemental information to appropriate staff and/or departments for comment. Comments shall be submitted within fifteen(15) calendar days after request is made by the Planning Director. An extension of this time may be requested by commenting staff or department. Extensions shall be granted at the discretion of the Planning Director.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.03 Review and Recommendation of Planning Director

The Planning Director shall review the permit application, environmental checklist, supplemental information, and staff comments for the purpose of determining whether the proposed activity will or is likely to significantly impact the environment and whether it can be conducted in compliance with the purpose and standards of sections 24.01.01 and 24.08.01. The Planning Director may require additional information to be provided, at the applicant's expense, and may use any technical assistance he or she may require in making the review. Based on this review, he or

she shall submit one of the following findings to the Port Gamble S'Klallam Tribal Council:

a) Finding of No Significant Impact (FONSI)

In those instances when the proposed project will not have a significant effect on the environment and can be conducted in compliance with the purpose and standards of this title, the Planning Director shall prepare a FONSI and recommend to the Tribal Council that the permit application be approved. A FONSI means a document that briefly presents the reasons why an activity will not or is not likely to significantly impact the environment.

b) Conditioned FONSI

In those instances when a proposed project substantially, but not entirely, meets the requirements set forth in this title and will not or is not likely to significantly impact the environment and the activity could be conducted in harmony with the Tribe's purpose and goals under this title if certain acts or omissions are performed by the applicant, the Planning Director shall prepare a conditioned FONSI and recommend to the Tribal Council that a conditioned permit, requiring the applicant to perform those acts or omissions when conducting the proposed project, be approved. A conditioned permit issued by the Tribal Council is subject to those conditions and is revocable if those conditions are not met by the applicant.

c) Environmental Site Analysis Required

In those instances when the proposed project will or is likely to have a significant environmental impact or will not comply with the purpose and standards set forth in this title, the Planning Director shall prepare a recommendation that the Tribal Council require the applicant to prepare an Environmental Site Analysis (ESA) consistent with section 24.04.07 of this title. [HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.04 General Factors for Evaluation of Environmental Impacts

The determination of whether an activity will or is likely to significantly impact the environment shall be made in the context of Port Gamble S'Klallam tribal culture and values. Factors to be taken into consideration in evaluating an application for a permit and the environmental checklist for significant impacts on the environment include:

- a) The degree to which the proposed activity will adversely affect the quantity and quality of the fish and shellfish resources of the Tribe;

- b) Unique or sensitive characteristics of the geographic area or hydrologic area (water and adjacent area) in which the proposed activity will take place;
- c) The degree to which the action may adversely affect an endangered or threatened species or its habitat;
- d) Whether the proposed activity may cause loss or destruction of cultural, historical, or scientific resources;
- e) Whether the proposed activity may cause loss or destruction of culturally significant plant materials;
- f) The degree to which the proposed activity affects health and safety of the Port Gamble S'Klallam tribal community;
- g) The degree to which the effects of the proposed activity are uncertain or involve unique or unknown risks;
- h) The degree to which the proposed activity may establish a precedent for future actions with significant impacts;
- i) The level of tribal community support for or opposition to the proposed activity;
- j) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. If it is reasonable to anticipate a cumulatively significant impact on the environment, the activity is significant;
- k) Whether the action threatens a violation of applicable law or interlocal cooperation agreement to which the Tribe is a party imposed for the protection of the environment.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.05 Initial Notice to Applicant

Within forty (40) calendar days from the date a completed permit application and environmental checklist are received, the Planning Director shall provide written notice to the applicant of the findings set forth in section 24.04.03. If additional time is needed by the Planning Director to make the required determinations and recommendations, the applicant shall be so notified.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.06 Tribal Council Review

The Planning Director shall forward the permit application,

environmental checklist, findings, recommendation, and if applicable, any comments received from interested persons to the Tribal Council. The Tribal Council shall review these materials at its next regularly scheduled meeting. The Committee may approve the Planning Director's FONSI and the applicant's permit, or issue a conditioned permit, or deny the permit and require the applicant to prepare an Environmental Site Analysis (ESA).

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.07 Environmental Site Analysis (ESA)

If the Planning Director determines that the proposed project will have or is likely to have a significant impact on the environment and cannot be conducted in compliance with the purpose and standards of this title, the Tribal Council may require the applicant to prepare an Environmental Site Analysis (ESA). The ESA shall be written in plain language so that it can be easily understood by the Tribal Council and the Port Gamble S'Klallam tribal community. Supplemental materials which are of a technical nature may be included for review by the Tribe's technical staff and advisors. The ESA shall substantially follow the format set forth below:

a) Project Description / Purpose and Need Statement.

This section shall contain a description of the proposed activity and the affected environment and a statement briefly specifying the underlying purpose and need for the proposed activity.

b) Environmental Impacts.

This section shall provide an analysis of the adverse environmental impacts of the proposed activity, including a discussion of any general standards with which the Planning Director has determined the project does not comply under section 24.07.01, all relevant cultural, socio-economic, and cumulative aspects of the proposed activity, and any adverse environmental impacts that cannot be avoided should the activity be conducted. The Planning Director may require that the applicant consult with outside experts to complete this analysis and include any reports prepared by outside experts in the ESA.

c) Alternatives.

This section shall identify and evaluate all reasonable alternatives to the proposed activity that would allow the applicant to achieve or partially achieve the purpose of the activity with less environmental impact. Alternatives may include conducting the activity using mitigation measures, conducting the activity in an alternate location, or conducting the activity with changes in its design, size, or scope. This section shall include a discussion of the actual and potential

environmental impacts and costs for each alternative. The Planning Director may identify alternatives to be included in the ESA. The Planning Director may require that the applicant consult with outside experts to complete this analysis and include any reports prepared by outside experts in the ESA.

The purpose of the ESA is to identify design modifications or mitigation measures that will avoid or minimize adverse environmental impacts and achieve compliance with the purpose and standards of this title. If the ESA fails to identify modifications or mitigation measures that sufficiently avoid or minimize the adverse impacts, the permit application shall be denied.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.08 Cost of ESA

The cost of preparing the ESA shall be borne by the applicant.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.09 Recommendation of Planning Director Based on ESA

Based on the ESA, the Planning Director shall prepare written findings, addressed to the Tribal Council, outlining whether the proposed activity can be conducted without significant adverse impacts on the environment and in compliance with the purpose and standards of this title, and recommending that the Tribal Council approve or deny the issuance of a permit. If the proposed activity can be conducted without significant adverse environmental impacts and in compliance with this title only if certain mitigating factors are present, the Planning Director may recommend that a conditioned permit be considered. A copy of the findings and recommendation shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.10 Public Hearing

If a proposed activity requires an ESA, a public hearing shall be scheduled by the Planning Director with the Tribal Council to take place within thirty (30) calendar days of receipt of the ESA from the applicant. The applicant shall be given an opportunity to give a brief presentation on the proposed activity, not to exceed thirty (30) minutes. The Planning Director shall present the findings and recommendation he or she prepared under section 24.04.09. The Tribal Council shall preside over the hearing.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.11 Notice of Public Hearings

The Planning Director shall cause notice of public hearings under this title to be given to the applicant, the Tribal Council, and the Port Gamble S'Klallam tribal community. The notice shall state the date, time, and place of the hearing, as well as the subject matter. The notice shall be posted in at least two prominent locations on the Reservation. The notice shall be delivered or mailed to the address provided by the applicant at least ten (10) calendar days before the hearing. The Planning Director shall verify that the notices have been made as required.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.04.12 Tribal Council Decision

The Tribal Council shall decide whether to grant or deny the issuance of the permit or to issue a conditioned permit. The Committee shall give written notice of its decision to the applicant within thirty (30) calendar days of the public hearing.

The Tribal Council may request additional information from the applicant or the Planning Director and set a time limit for submission. If additional information is requested, the Tribal Council shall render a decision within thirty (30) calendar days from the date the information is received.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

Chapter 24.05 Appeals

24.05.01 Request for Reconsideration

An applicant may request reconsideration by the Tribal Council of a decision to: (a) deny a permit, or (b) impose conditions on a permit. Reconsideration is granted at the discretion of the Tribal Council.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.02 Notice of Request for Reconsideration

Any request for reconsideration under section 24.05.01 must be filed no later than fifteen (15) calendar days from the date the permit was approved or denied. The request for reconsideration shall be made in writing, and shall be delivered personally or by mail, to the Administrative Director of the Tribe and the Planning Director.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.03 Content of Request for Reconsideration

The request for reconsideration shall contain a brief description of the proposed project, the date on which the decision was rendered, the

specific reasons for the request for reconsideration, and what outcome the applicant is asking for. The request shall list the names and addresses of any persons the applicant intends to call as witnesses in the hearing. The applicant shall include a telephone number and address where he or she can be reached for notices.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.04 Stay Pending Reconsideration

No activity may proceed until all review under 24.05.01 through 24.05.07 is concluded.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.05 Tribal Council Review of Request for Reconsideration

Upon receiving a timely request for reconsideration, the Tribal Council may:

- a) Review the request along with any materials submitted by the Planning Director and render a decision under 24.05.08, or
- b) Request that the applicant appear at a hearing.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.06 Scheduling of Reconsideration Hearing

The Tribal Council may schedule a hearing no fewer than seven (7) and no more than forty (40) calendar days from the date it receives a timely request for reconsideration, unless the applicant requesting the hearing and the Committee agree otherwise. The Tribal Council shall cause a notice of hearing to be mailed or delivered to the person.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.07 Reconsideration Hearing

If the Tribal Council requests a hearing, the applicant requesting reconsideration shall appear personally before the Tribal Council and state why and how the decision should be changed. The Tribal Council may hear the testimony of witnesses on both sides of the issue who have reliable information relevant to the reconsideration. The hearing shall be tape recorded where practicable. The Tribal Council, in its discretion, may conduct the hearing by telephone.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.05.08 Decision of the Tribal Council on Reconsideration

The Tribal Council may affirm, reverse, or modify the decision being considered. If the applicant fails to appear at the reconsideration hearing or participate in the discretionary telephonic hearing, the decision may be automatically affirmed.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

Chapter 24.06 Enforcement

24.06.01 Stop Work Order

- a) Grounds for Issuance. The Planning Director may issue a stop work order to any person who: 1) fails to obtain a permit; or 2) fails to comply with the terms of a permit; or 3) causes unforeseen damage or threat of damage to tribal property that significantly impacts the environment based on one or more of the following factors:
 - i) Adverse effects on the quantity and quality of the fish and shellfish resources of the Tribe;
 - ii) Unique or sensitive characteristics of the geographic or hydrologic area (water and adjacent area) in which the activity is taking place;
 - iii) Adverse effects on an endangered or threatened species or its habitat;
 - iv) Loss or destruction of culturally significant plant materials;
 - v) Loss or destruction of cultural, historical, or scientific resources;
 - vi) Adverse effects on the health and safety of the Port Gamble S'Klallam tribal community;
 - vii) Whether effects of the activity are uncertain or involve unique or unknown risks;
 - viii) Whether the activity may establish a precedent for future actions with significant environmental impacts; or
 - ix) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the environment; or
 - x) Whether the action threatens a violation of applicable law or interlocal cooperation agreement to which the Tribe is a party imposed for the protection of the environment.

- b) Contents. A stop work order shall set forth the facts alleged to constitute a violation or unforeseen damage or threat of damage to tribal property and the time and date when such acts or practices must be terminated.
- c) Remedy Not Exclusive. A civil infraction or criminal offense may be charged regardless of whether the Planning Director has issued a stop work order.
- d) Service. A stop work order shall be posted at the site of the alleged violation, and if an address has been provided on the permit application, shall be sent by certified mail, return receipt requested. It may also be served in person.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.06.02 Stop Work Order for Failure to Obtain a Permit

Any person who receives a stop work order for failure to obtain a permit must apply for a permit and is not eligible to request an informal hearing.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.06.03 Informal Hearing

The Planning Director may conduct an informal hearing upon request by any permit holder subject to a stop work order. The purpose of this hearing is to determine whether the activity subject to the stop work order may resume under any circumstances. This determination shall be made at the discretion of the Planning Director. If the activity may be resumed without further violations of this title or further unforeseen damage or threat of damage to tribal property, the Planning Director may suspend the stop work order and issue a temporary permit. The temporary permit may include such clean up provisions, conditions, or any other measures as are necessary for prevention, mitigation, or remediation of adverse environmental impacts. Activity may resume upon issuance of the temporary permit, which shall be submitted to the Tribal Council for review. The Tribal Council may:

- a) Approve the Temporary Permit: No action by the Tribal Council constitutes approval of the temporary permit. There is no reconsideration or appeal if the temporary permit is approved.
- b) Amend the Conditions in the Temporary Permit: If such amendments materially alter the temporary permit, the temporary permit holder may petition for reconsideration under chapter 24.05.
- c) Suspend or Revoke the Temporary Permit: If the activity cannot be continued without significant impact to the environment under any reasonable circumstances, the Tribal Council may suspend or revoke

the temporary permit. The temporary permit holder may petition for reconsideration under chapter 24.05.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.06.04 Stop Work Order—Decision of Tribal Council

If the Planning Director does not issue a temporary permit after an informal hearing under section 24.06.03, the Planning Director shall make a recommendation to the Tribal Council to either amend the existing conditions to the permit, add conditions to the permit, or suspend or revoke the permit. Amendments to the conditions or additional conditions to the permit may include clean up provisions, conditions, or other measures necessary for the prevention, mitigation, or remediation of adverse environmental impacts caused or likely to be caused by the activity. The Tribal Council shall make a decision to suspend or revoke the permit, amend the existing conditions to the permit, or add conditions to the permit within thirty (30) calendar days of receipt of the Planning Director's recommendation. The permit holder may appeal the decision of the Tribal Council in accordance with chapter 24.05.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

Chapter 24.07 Penalties

CIVIL INFRACTIONS

24.07.01 Failure to Obtain a Permit

Any person who fails to obtain a permit required under this title has committed a civil infraction.

A court appearance for this infraction shall be mandatory. Upon finding that a person has committed the infraction, the Court shall impose a minimum mandatory civil fine of not less than \$50 and not to exceed \$5,000 for the first violation. For second and subsequent violations of this section, the Court shall impose a minimum mandatory civil fine of not less than \$100 and not to exceed \$5,000. Each day of continued activity requiring a permit but conducted without a permit shall constitute a separate violation. The Court may order restitution in an amount intended to compensate the community.

[Cross reference: title 15—Civil Infractions Code.]

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04. Violation of section 24.07.01 constitutes a Violation of Tribal Ordinance under section 5.06.01 of the Criminal Code and may be grounds for exclusion. See: Title 5—Criminal Code, Title 22—Exclusion Code]

24.07.02 Failure to Comply with Permit, Temporary Permit, or Stop Work Order

Any person who fails to comply with the terms and conditions of a permit, temporary permit, or stop work order under this title has committed a civil infraction.

A court appearance for this infraction shall be mandatory. Upon finding that a person has committed the infraction, the Court shall impose a minimum mandatory civil fine of not less than \$50 and not to exceed \$5,000 for the first violation. For second and subsequent violations of this section, the Court shall impose a minimum mandatory civil fine of not less than \$100 and not to exceed \$5,000. Each day of continued activity conducted in violation of the terms or conditions of a permit, temporary permit, or stop work order shall constitute a separate violation. The Court may order restitution in an amount intended to compensate the community.

[Cross reference: title 15—Civil Infractions Code]

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04. Failure to comply with a permit, temporary permit, or stop work order is a Violation of Tribal Ordinance under section 5.06.01 and may be grounds for exclusion under title 22. See: Title 5—Criminal Code]

CRIMINAL OFFENSES

[Cross reference: Title 5—Criminal Code, section 5.02.02]

Chapter 24.08 Environmental Standards

24.08.01 General Standards

The following general standards apply to proposed activities under this title:

a) No Harm to Human Health.

No activity shall occur in a manner which harms or poses a significant threat of harm to human health.

b) Natural Character Preserved.

All development shall be consistent with the natural characteristics and ecological systems of the Reservation. Development in sensitive areas, such as streams, wetlands, marine shorelines, steeply sloped land, flood plains, erosion hazard areas and wetlands, if allowed, shall have only a minimum level of impact upon the functioning of the natural systems.

c) Natural Buffers.

There shall be undisturbed, natural, vegetated buffers left adjacent to rivers, streams, and wetlands, marine shorelines, flood plains, and erosion hazard areas. No construction, accessory uses septic tanks, or agriculture is allowed in the buffer. No timber harvesting is permitted within the buffer, except that trees which have naturally fallen across the waterway may be removed, provided prior authorization is obtained from the Tribe, through the Planning Director. A buffer of 150 feet shall remain adjacent to all fish bearing streams, including Shipbuilders at The Bars, Little Boston, and Middle creeks. A buffer of 100 feet shall remain adjacent to all non-fish bearing perennial streams. A buffer of 50 feet shall remain adjacent to all non-fish bearing seasonal streams and all mapped and unmapped wetlands. The Tribe may increase or decrease the size of a buffer for a particular activity in order to meet other goals, purposes, and standards of this title, or other applicable law. Buffers shall be measured landward from the ordinary high water mark. Buffers shall be left on both sides of the waterway.

d) No Interference with Fishing and Shellfishing Rights.

No activity shall occur in a manner which causes interference with the exercise of Port Gamble S'Klallam treaty fishing and shellfishing rights. No activity shall block or impede the free movement of fish and shellfish.

e) Culturally Significant Plant Materials.

Activities shall be located, designed, constructed, and operated in a manner which minimizes adverse affects on culturally significant plant materials including but not limited to plants used in S'Klallam medicine, basketry, food plants and plants used for ceremonial purposes.

f) Water Quality / Fish and Wildlife Quality.

Activities shall be located, designed, constructed, and operated in a manner which minimizes adverse affects on fish, shellfish, wildlife, wildlife habitat, water quality, water quantity, and existing shore and stream processes.

g) Marine Bluff Setback.

Structures or activities that are not marine shoreline dependent shall be located inland, at least 150 feet from the mean high water level or at a distance equal to the height of the shoreline bluff, whichever is greater.

h) Disposal and Recycling.

All wastes and refuse from any activity shall be properly disposed of and should be recycled when practicable.

i) Point Julia Development and Flood-Proofing.

All proposed development on Point Julia shall be reviewed on a case by case basis. Any new design shall make use of existing filled areas in order to protect area wetlands when practicable. Structures on Point Julia shall be constructed to withstand periodic flooding.

j) Erosion and Runoff Control.

Erosion control measures must be approved prior to issuance of a permit under this Act for any activity which would pose a risk of erosion during or after the activity. No earth, debris, wastes, or other chemicals resulting from the activity shall be allowed to enter streams, lakes, or marine waters. No activity shall contribute to foundation instability or mass soil movement.

k) Use of Fill.

There shall be no excavation or filling of stream channels, lakes, or wetlands, or alteration of stream courses unless required for a project which would enhance the biological productivity of the aquatic environment, in which case it will be a conditioned use.

l) Clearing and Grading.

Clearing and grading shall be limited to only that which is necessary to construction, and shall be performed so as to preserve as much of the natural topography (surface or form of the land) as possible.

m) Sewage Disposal/Drinking Water.

Any activity which requires sewage disposal or extraction of drinking water shall not result in erosion, mass movement of soil, contamination of groundwater, saltwater intrusion, or any other adverse impacts to the environment. The Tribe may require the applicant to submit a report of a licensed engineer to prove the absence of all adverse environmental impacts.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.08.02 Modification of Buffers and Setbacks

An applicant may request waiver of the buffer or setback requirements outlined under the general standards section. Such waivers will be granted only at the discretion of the Planning Director, in consultation

with the Natural Resources Department. To obtain a waiver, the applicant must demonstrate that there:

- a) Is no other alternative location for the proposed activity;
- b) Will be no adverse impacts to beach environment, neighboring property, wildlife habitat, fish and shellfish resulting from the proposed activity; and
- c) Is no historical pattern of erosion at the site of the proposed activity.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.08.03 Surface Water and Groundwater Protection Area

- a) The surface water within the Protection Area as described in Exhibit A shall not be used for any drinking water or agricultural purposes. The groundwater underlying the Protection Area down to the depth of the Kitsap Formation (as shown in Figure 2) shall not be used for any drinking water or agricultural purposes. Groundwater below the upper boundary of the Kitsap Formation may be used for any purpose, but such groundwater shall not be accessed by a well located in the Protection Area.
- b) Within the Protection Area, no surface disturbances shall occur that would disturb any sampling locations used by the Landfill Parties or that would encounter groundwater and /or change the hydrology of the area.
- c) Tribal members may access the Protection Area for recreational and other activities, such as the gathering of plants for traditional and medicinal uses, provided that such activities do not include the restricted uses listed in paragraphs 1 and 2 above, or as may be imposed by Ecology.

In determining the protection area, "Exhibit C, Map of Protection Area" is incorporated by reference as a part of this code.

[HIST: Source – Resolution No. 11-A-131 passed 10/11/2011 to reflect the Landfill Settlement Agreement requirements to codify institutional controls.]

Chapter 24.09 Sovereign Immunity and Severability

24.09.01 Sovereign Immunity

The sovereign immunity of the Port Gamble S'Klallam Indian Tribe is in no manner waived by this title. The employees and appointees of the Port Gamble S'Klallam Indian Tribe, the members of the Port Gamble S'Klallam Tribal Council, and the personnel of the Port Gamble S'Klallam Community Court are cloaked with the sovereign immunity of the Port

Gamble S'Klallam Indian Tribe. No person named above shall be liable for his or her actions or failure to act under this title.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

24.09.02 Severability

If any provision of this title or its application to any person or circumstance is held to be invalid, the remainder of the title shall not be affected.

[HIST: Source – Resolution No. 04-A-053 passed 6/8/04.]

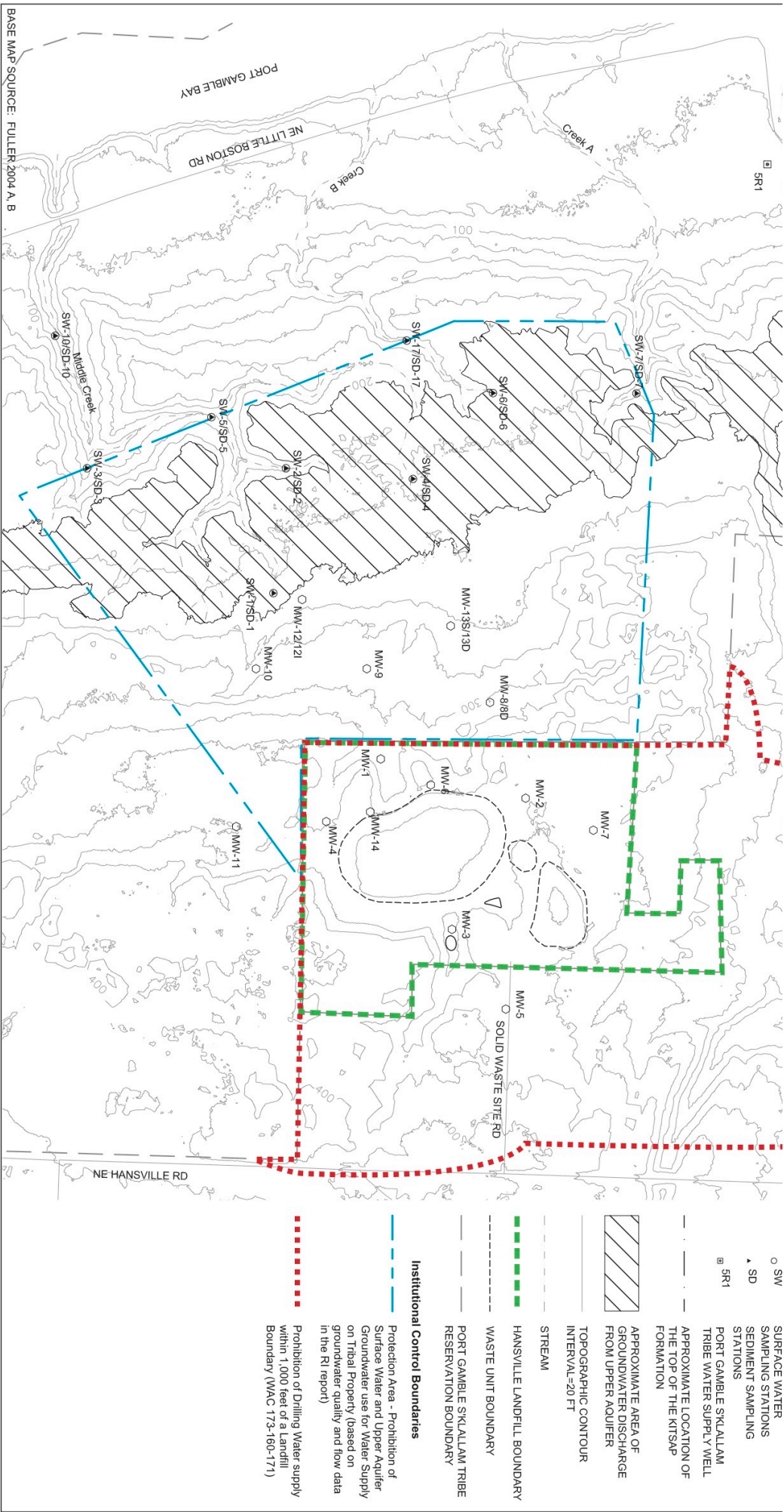


Exhibit C
Map of Protection Area