

Kootenay Lake Shoreline Guidance Document Frequently Asked Questions

1. How was the Kootenay Lake Partnership established?

On January 21, 2010, Fisheries and Oceans Canada invited several federal and provincial agencies, as well as First Nations, and local government representatives to a meeting in Nelson B.C. to talk about development pressures on and around Kootenay Lake. At the meeting discussions were focused on the increased development pressures on the lake and surrounding area, where individual development proposals could no longer be adequately evaluated by municipal, provincial, federal and First Nation authorities to determine cumulative impacts without lengthy delays and additional costs. There were expressed concerns about sustaining water quality, and supporting aquatic life, recreation quality and drinking water.

All participants agreed to join together in this effort and the Kootenay Lake Partnership was created. Participants include the Regional District of Central Kootenay, Fisheries and Oceans Canada, BC Ministry of Forests, Lands, and Natural Resource Operations, Ministry of Transportation and Infrastructure, Interior Health Authority, Yakan Nukiy (Lower Kootenay Band), Ktunaxa Lands and Resource Council, Canadian Columbia River Inter-Tribal Fisheries Commission, City of Nelson, and Village of Kaslo represented by Regional District of Central Kootenay.

The Kootenay Lake Partnership is solely a government-to-government partnership that brings together agencies to address overlapping jurisdictional responsibilities in an effort to reduce redundancy.

2. Who developed the Shoreline Guidance Document?

The Shoreline Guidance Document has been developed collaboratively by the Kootenay Lake Partnership and specifically by the Ktunaxa Nation Council, Fisheries and Oceans Canada, provincial Ministry of Forests Range and Natural Resource Operations, the Regional District of Central Kootenay and the Ministry of Transportation and Infrastructure.

3. Where can I find the documents and maps?

The documents and mapping can be found at www.kootenaylakepartnership.com. The mapping can be found in both pdf format and via an interactive web link. This enables proponents to zoom in to better view segment classifications, designations and property parcels.

4. Does the Shoreline Guidance Document have the force of law?

No. The Shoreline Guidance Document has been developed to help residents navigate complex local, provincial and federal regulations but does not itself have the force of law. It is a tool that provides direction on how to obtain necessary approvals for various forms of development on Crown land within the Kootenay Lake foreshore while protecting sensitive archaeological, cultural and ecological values.

5. How will local policy reflect this work?

The Shoreline Guidance Document will be integrated into local government bylaws through the establishment of Development Permit Area Guidelines much the same as there are in Areas A, E and D.

6. Are there new regulations being proposed in the document?

No. The Shoreline Guidance Document is not introducing new regulations or changing existing regulations. It is consolidating existing regulations in an effort to streamline the regulatory process and help residents and developers navigate complex local, provincial and federal regulations. It identifies sensitive habitats to improve

evidence based decision making in order to protect ecological, archaeological and Ktunaxa cultural values around the lake.

7. What is the foreshore?

Foreshore is the land between the high and low water marks of streams, rivers, lakes, and the ocean. Aquatic Crown land is all the land, including the foreshore, and from the high water mark out to the limits of provincial or regional jurisdiction. On Kootenay Lake the high water mark is considered the “natural boundary”.

8. How far upland does the document apply?

The Shoreline Guidance Document applies to Crown land below the natural boundary and up to the boundary with private land. The assessment area included up to approximately 30m upland.

9. How is the present natural boundary (high water mark) determined?

The natural boundary changes depending on the location around the lake, therefore it needs to be determined by a legal land surveyor. Factors that are used include the presence of terrestrial vegetation and/or changes to soil type. Elevation for where permits are required under the Water Sustainability Act is identified legally by a land surveyor. This is not always the high water mark. Water Stewardship Division identified the Geodetic Elevation for the lake, which identifies the present natural boundary, however it changes depending on location. Accretions follow vegetation type or soil type changes along the shoreline.

10. Is the shoreline considered private property?

All water in BC is owned and regulated by the Crown. The Crown owns and regulates land below the natural boundary (high water mark). Upland owners have riparian rights to access the foreshore. A license is required to use, possess or modify the foreshore. Natural accretion that is surveyed and registered under the Land Titles system is considered private land.

11. How can you determine if property ownership extends into the lake?

In rare circumstances, older survey plans did not use the ‘natural boundary’ and properties extend into the lake or remain inundated with water for parts of the year – the RDCK can investigate based on private or public ownership but can not release private property ownership information. You may contact FrontCounterBC or the Land Titles Office for more information specific to your foreshore.

12. How are ‘accretions’ determined?

The Surveyor must follow standards as set by the Land Title and Survey Authority.

13. What is the remedy for ‘trespass’ and foreshore rights for upland property owners?

The first step is to determine where your property pins are or where your property ends (such as the natural boundary) – review your properties registered plan with the Land Titles Office. Upland owners have the right to unimpeded access to the foreshore fronting their property - known as “riparian right”. However, one must also consider right of navigation to that foreshore property. Since every circumstance is unique it is recommended to seek legal advice. In some cases, private land may extend below the high water mark. Trespass implies occupation without authorization, so you should know where your private land ends and Crown land begins. Lawful, natural accretion is considered as de facto part of the upland property – however, if a property owner has removed upland vegetation or modified the foreshore in a manner that makes the lawful and natural accretion difficult to detect, registering that accretion with land titles is more difficult to prove and determine – you should

seek advice from a land surveyor before attempting to impose your property rights. You should also remember that the public has a 'right to refuge' on the foreshore- such as in the case of storms on the lake, and can occupy Crown land for up to 14 days. Other provincial and federal legislation, or regional bylaws may apply which may act to limit the duration of Crown land occupation.

14. How do I apply for a dock?

The Shoreline Guidance Document provides direction on how to do this, specifically the flowchart on page 38. You may also contact FrontCounter BC for more information.

15. How do I comply with regulations for a mooring buoy?

Mooring buoys fall under Transport Canada, Navigable Waters Private Buoy Regulation. The Shoreline Guidance Document provides information on page 22. The Private Buoy Regulation can be found at <http://laws-lois.justice.gc.ca/eng/regulations/SOR-99-335/page-1.html>.

16. Is this document related to the declining kokanee population?

Not directly. However, it is the hope of the Kootenay Lake Partnership that by identifying and protecting high value habitats for fish (including Kokanee) through this document, that the population will improve over the long term. Near shore spawning habitat is identified through the Foreshore Inventory and Mapping component of the project.

17. Why can't I build a groyne?

Groynes are significant habitat modifications. Construction of groynes is often accomplished by utilizing local lake bed substrates. Removal of these substrates to groynes can result in significant impacts including loss of emergent vegetation zones, sediment deposition in shore spawning areas, and impacts to the migration of juvenile fish potentially forcing them into deeper water where they are more susceptible to predation. Groynes are no longer permitted on Kootenay Lake in an effort to improve aquatic habitat.

18. Do I require approvals for removing vegetation on the foreshore?

Alterations of vegetation on Crown land requires a Section 11 approval under the Water Sustainability Act, it may also fall under a Development Permit Area in the RDCK if you live in Electoral Areas A, D or E.

19. What are Section 16 Land Reserves?

Section 16 Land Act Reserves restrict new applications for Crown land tenures on the foreshore. These Reserves are often established to protect critical habitat for species designated under the federal Species at Risk Act such as White Sturgeon, or for public recreational purposes such as Kokanee Creek Park.

20. How does the interactive mapping relate to information on iMAP?

The interactive mapping tool is specific to this project and is not related to iMAP. The information available on it is specific to the Kootenay Lake Shoreline Guidance Document and is more detailed than data found on iMAP. The tool also allows for searching and reporting on the specific values unique to Kootenay Lake.

21. What if I have illegal works on my property?

The Shoreline Guidance Document does not apply to private property but rather to Crown land. Private land works are guided by the the Building Code, other local bylaws and provincial regulation. For more information about works on private land contact the RDCK at 1-800-268-7325 or by email at plandep@rdck.bc.ca.

The Shoreline Guidance Documents pertains to all construction and works on Crown land in the foreshore immediately adjacent to your property and below the natural boundary. The Shoreline Guidance Document provides guidance on how to achieve conformance with various local, provincial and federal legislation.

22. What is archaeology values vs. cultural values?

In British Columbia, the Heritage Conservation Act protects both archaeological sites that pre-date 1846 and historic shipwrecks. Currently, the Shoreline Guidance Document reflects archaeological sites that pre-date 1846 only. For the purpose of this document, mapped archaeological values include the physical remains of past human occupation of the land, such as stone tools, rock features, rock art (i.e. pictographs), house features, etc., and makes no distinction between various groups, and shared/overlapping traditional territories. The Okanagan Nation Alliance reviewed the archaeology methodology and chose not to complete a cultural values study for Kootenay Lake due to their prioritized geographical area, however, they are participating in a similar project for Brilliant Headpond.

The Cultural Values study is specific to Ktunaxa people, and identifies values along the lake that are culturally significant to Ktunaxa. This can include archaeological sites, environmental sites, habitation areas, and areas where aboriginal rights such as hunting and fishing are practiced.

23. How were the archaeological values determined?

Each shoreline segment had an archaeological overview assessment completed and segments were then ground-truthed for potential – sites are not permitted to be identified, so the focus was on segments – portions of which may be natural and portions where potential is limited – Provincial and Ktunaxa Nation Council staff know where specific data occurs and should be able to specify more detailed assessment requirements. Consulting Archaeologists also have access to archaeological site data.

24. What impact did the changing lake levels have on determining archaeological values?

The overview assessments took into account that lake levels have changed over time (pre/post dam construction).

25. Why does the document only consider Ktunaxa Nation Cultural Values?

The Cultural Values Study is specific to Ktunaxa Cultural Values. The Ktunaxa First Nation represents four bands: Aqam, Akisqnuq, Tobacco Plains and Yaqaan Nukiy. The other First Nations in the region chose not to participate in this process given their priority geographical areas, however, they have been, and continue to be kept informed. The Ktunaxa Nation Cultural Values Study is an outcome of the Strategic Engagement Agreement between the Ktunaxa First Nation and the Province. The Ktunaxa are one of the few First Nations in the province to sign such as agreement. The agreement outlines which parts of the regulatory process they wish to be consulted on. For the Ktunaxa First Nation, their cultural values around Kootenay Lake are significant. This does not mean that there are not other cultural values around the lake. Referral fees that are sometimes requested by various First Nations are determined on an individual band basis based on the available resources that each band has to accommodate the influx of referrals they receive to try and recuperate the costs of review and response, not by the Shoreline Guidance Document. The Shoreline Guidance Document does not relieve government of their responsibility to ensure adequate consultation with First Nations. It is the responsibility of the Crown (provincial or federal government) to ensure adequate consultation has taken place prior to any statutory decision. The Kootenay Lake Partnership hopes that where there is “enhanced engagement” identified for Cultural Values, proponents will take the opportunity to build a relationship with the Ktunaxa First Nation. The Ktunaxa do not currently charge a fee for the review and response on referrals they receive.

26. How is the 'enhanced consultation' intended to be used?

'Enhanced Consultation' is intended to inform the Province and Federal government where the Ktunaxa desire more dialogue on identified values, under the Strategic Engagement Agreement between all parties. The guidelines are intended to inform the public and proponents that there may be additional consultation with the Province and Federal government on applications or referrals in the indicated areas. There are no fees associated with referrals or to make contact with the Ktunaxa and build relationships.

27. Does the document relieve government of their responsibility to ensure adequate consultation with First Nations?

No. It is the responsibility of the Crown (provincial or federal government) to ensure adequate consultation has taken place prior to any statutory decision. The Kootenay Lake Partnership hopes that where there is an "enhanced engagement" identified for Cultural Values, proponents will take the opportunity to build a relationship with the Ktunaxa First Nation.

28. What should I do if I find an artifact?

If an artifact is found it is sent to the Ktunaxa Nation for an assessment – if it is a Ktunaxa artifact or other First Nation in this area, it is kept in a museum repository in Cranbrook or sent to the applicable nation with known history in an area. You could also donate the artifact to several other museums in British Columbia. The British Columbia Archaeology Branch has a list of provincially approved archaeological artifact repositories.

29. What monitoring and enforcement is being done to ensure compliance of the Shoreline Guidance Document?

Compliance and Enforcement of the Provincial regulations associated with structures on Crown land are driven by reports submitted through the RAPP (Report All Poachers and Polluters) line at 1-877-952-7277. The Ktunaxa Fisheries Guardians, RDCK and Provincial Compliance Officers have been coordinating efforts and it is expected that this will improve things over time – but there is a lot of work to be done.

30. Who is the Friends of Kootenay Lake, and what is their role?

The Friends of Kootenay Lake Stewardship Society is a community based stewardship organization that is dedicated to sustaining a health Kootenay Lake for future generations. The Friends of Kootenay Lake is not a signatory to the Terms of Reference of the Kootenay Lake Partnership, but rather they act as a resource or connection to the broader lake community. The Friends of Kootenay Lake have established a Lake Advisory Committee, which represents various sectors around the lake.

31. Where can I find Best Management Practices for development on the foreshore?

Best Management Practices are in section 2.2.3 of the Shoreline Guidance Document, beginning on page 12.

32. How can the public become involved in the development of policy for Kootenay Lake?

Can contact RDCK staff to become involved when they start to draft Development Permit Area Guidelines for Kootenay Lake – it is expected that this project will commence over the winter of 2018.

33. Who do I contact for more information?

- Kootenay Lake Partnership at klp.coordinator@gmail.com.
- Regional District of Central Kootenay at plandept@rdck.bc.ca.
- FrontCounter BC at FrontCounterBC@gov.bc.ca.