



Committee Report

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Subject: KOOTENAY LAKE DPA REVIEW – PHASE 3 ENGAGEMENT UPDATE
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Electoral Area/Municipality Electoral Areas A, D, E, and F

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is to update the Rural Affairs Committee with the results of Phase 3 of the Kootenay Lake Development Permit Area Review prior to proceeding with the remaining public consultation activities for the Project.

Phase 3 of the Review focuses on the “analysis of options”. Staff has completed extensive background research as part of this Phase in order to inform what types of Environmental Development Permit Area (EDPA) approaches could be adapted to the Kootenay Lake context. Feedback received from focus groups held in May 2022 on the various approaches was used to draft options for EDPA guidelines, exemptions, and widths for further public consultation. The rationale behind suggested approaches is included in Attachment A and the draft options are included in Attachment B of this Staff Report.

This Staff Report is being provided to the Rural Affairs Committee for information.

SECTION 2: BACKGROUND/ANALYSIS

2.1 BACKGROUND

The Kootenay Lake Development Permit Area Review project is split into three key phases based on the engagement activities being undertaken, as follows:

1. Project Initiation
 - Present project to and solicit feedback from the Kootenay Lake Partnership (KLP), RDCK Board of Directors, and RDCK Departments who may be affected by the outcome of the project.
 - Comparative review of DPA guidelines and exemptions.
 - Review of relevant background materials, including but not limited to: KLP Shoreline Guidance Document, Friends of Kootenay Lake Stewardship Society’s “The Future of Kootenay Lake: Community Values Survey Results”, UVIC Environmental Law Clinic’s *Green Bylaws Toolkit for Conserving Sensitive Ecosystems and Green Infrastructure*.
2. Values Identification
 - Creation of project webpage, FAQ, Environmental Development Permit Area (EDPA) information videos, *A Resource for Kootenay Lake Living*, and project manager appearance on the Friends of Kootenay Lake: *Voices of the Lake* podcast.
 - Two values identification workshops and a survey for those unable to attend.

- Draft EDPA “Objectives” based on stakeholder feedback from values identification workshops and existing background documents for the area.
3. Analysis of Options
- Complete buffer analysis of Kootenay Lake to understand potential impacts of policy and regulatory changes to the RDCK and shoreline properties.
 - Establish preferred direction for drafting an EDPA for Kootenay Lake, informed by stakeholder input received to date, the buffer analysis completed by RDCK staff in summer and fall of 2021, and the 2021 Foreshore Integrated Management Planning (FIMP) results.
 - Targeted engagement using focus groups to solicit feedback on draft objectives and approaches from other jurisdictions.

As the first two phases of engagement were previously summarized to the Rural Affairs Committee (RAC) on July 14, 2021. This Report is focused on Phase 3 – the “Analysis of Options” – engagement and the outcomes of the focus groups.

Buffer analysis of Kootenay Lake

In the latter half of 2021, Staff completed a buffer analysis of the majority of privately-owned parcels (1723 total) along Kootenay Lake’s shoreline. The analysis was undertaken recognizing that if the Board is to make a decision on whether to implement a new or revised EDPA along Kootenay Lake, the decision should be evidence-based with a thorough understanding of potential impacts.

The Buffer Analysis Results Summary presented at the February 16, 2022 Rural Affairs Committee meeting suggested that a 30 metre wide EDPA along Kootenay Lake is staff’s preferred approach and that guidelines and exemptions could provide the flexibility needed to ensure that constrained properties along Kootenay Lake would not be sterilized of their permitted land uses. It is crucial to clarify that an EDPA is not the same as a ‘setback’, which would typically prohibit development of any kind. The intent of the Review is to ensure that new development and disturbance within riparian areas is carried out responsibly and the proper oversight is in place where necessary. The following excerpt from the Kootenay Lake Buffer Analysis Summary Report (February 16, 2022) provides additional commentary on this point:

“The purpose of EDPAs is not to prohibit development adjacent to watercourses; rather, it is to ensure that development activities are undertaken in a way that is consistent with a community’s expectations, which should be embedded into an EDPA’s guidelines. Specific to an EDPA for watercourses, such as Kootenay Lake, this usually means carrying out development in a way that is sensitive to the surrounding riparian area. Generally, the preference is to direct development away from riparian areas where suitable building sites are available to do so.

While it is preferred to avoid disturbance of riparian areas altogether, development within them is not prohibited. On smaller or otherwise constrained sites, development within a riparian area may be the only option available. However, requiring a Development Permit (DP) ensures professional oversight by a QEP to understand and recommend mitigation strategies to minimize impacts to sensitive riparian areas and the SPEA [Streamside Protection and Enhancement Area] when development takes place.” (Page 4)

2021 Foreshore Integrated Management Planning Report

In 2021, Living Lakes Canada completed a Foreshore Integrated Management Planning (FIMP) Project for Kootenay Lake. The 2021 FIMP Project was undertaken to update the inventory information that was collected on the Lake in 2012, and to document changes that have occurred over the 9-year period between inventories.

Key findings of the 2021 FIMP Project to consider in the context of the Kootenay Lake DPA Review include:

- 256.1 km (63%) of shoreline was in natural condition while 150.7 km (37%) had been disturbed;

- Approximately 4.5 km of natural shoreline was lost between 2012 and 2021 at a rate of 0.488 km (0.12%) annually;
- 91% of natural shoreline loss was on rural residential (2.1 km) and single-family residential (2.0 km) lands;
- disturbances occurred primarily as a result of development activities in previously existing urban areas as well as in areas that were undeveloped at the time of the 2012 inventory;
- habitat loss was almost always greatest in un-urbanized areas throughout the West Arm, Grey Creek, Kaslo, Riondel to Pilot Bay Provincial Park, Procter, sporadically in the North Arm, and north of Lockhart Beach Provincial Park;
- between 2012 and 2021, there has been a 10.1% decrease in ‘very high’ and ‘high’ value habitat (this decrease takes into account the changing methodology between the two FIMPs, as the 2012 data was updated in 2021 to reflect methodological changes).

The findings of the 2021 FIMP work demonstrate that the current regulatory framework is failing to preserve high value riparian areas along Kootenay Lake’s shoreline. The report notes that:

Even though there are several legislative mechanisms in place to help protect the foreshore (e.g., Federal Fisheries Act, BC Water Sustainability Act, Local Government Official Community Plans, etc.), anthropogenic pressures often result in incremental losses leading to habitat fragmentation and degradation. These impacts can reduce the ability of a lake to provide habitat necessary to sustain healthy populations of fish, wildlife, and ecosystems (p.3).

It is crucial to ensure that development activities along the shoreline are undertaken in a way that is sensitive to the surrounding riparian area in order to mitigate the negative impacts of anthropogenic pressures. Further, the Report specifically addresses the need for a consistent EDPA around Kootenay Lake by stating that:

Development permit areas should be prepared and identified for all watercourses including Kootenay Lake and its tributaries or adjacent wetlands. Development permit area buffers should be consistent for the entire lake, consider ZOS [zones of sensitivity], and other important features, regardless of location on the local, Electoral Area, municipality, or other type of jurisdiction. It is noted here that even with Development Permit areas in place, loss will still occur, but the rate of loss will be reduced if policies such as Development Permits are created. Without consistency around the lake, development may become focused on areas with lesser requirements, and could actually create greater lake wide impacts (p.79).

2.2 PHASE 3 – FOCUS GROUPS

Staff held two focus groups on May 10th and 11th, 2022. The purpose of the focus groups was to engage with two small groups of stakeholders, including: representatives from regulatory agencies, stewardship organizations and the development community as well as qualified environmental professionals from around the region, long-time residents with waterfront property, and members of RDCK Advisory Planning and Heritage Commissions (APHCs). Attendees were selected in order that we might hear from a diverse cross-section of opinions, and to provide insight into guideline and exemption practicality based on participant interests.

The focus groups were used to evaluate draft objectives for the Kootenay Lake EDPA and common guidelines and exemptions from other local governments that could be applied here. Time was also dedicated to evaluating EDPA width approaches used elsewhere in the Province.

It was recognized that the limited amount of time would not permit an in-depth analysis of all DPA aspects. To account for this, and ensure that participants were able to contribute their feedback in a meaningful way, a primer document and workbook were forwarded to participants ahead of time and were structured as follows:

- The primer document outlined the existing DPA language, the issues and concerns that have been identified in the Review, and jurisdictions with approaches in place that could potentially address those issues and concerns.
- The workbook was designed to walk through the subject matter discussed at the focus group so if participants were unable to contribute due to time constraints, had additional thoughts after the discussion had passed, or were unable to attend for the entire duration they could still provide their feedback.

The feedback received from the focus groups and workbooks is summarized in detail in Attachment A. Attachment B contains a draft EDPA, with potential guideline, exemption, and area options for further public consultation. The options are based on the results of the engagement and research completed to date.

The general direction for the EDPA and supporting rationale is summarized in Section 2.3 below and outlined in greater detail in both Attachments.

2.3 PLANNING DISCUSSION

Objectives

Objectives are used to specify what is trying to be achieved by a Development Permit Area. The EDPA objectives for Kootenay Lake seek to address four key thematic areas: a healthy natural environment; fish and wildlife habitat; water quality; and, effectively managing human disturbances. The original draft objectives and feedback received in the focus groups are discussed in detail in Attachment A. Upon consideration of the feedback received in the focus groups, the following refined objectives are suggested for further public consultation:

- **Natural Environment:** To protect and restore riparian areas in order to enhance the function of their adjacent ecosystems, watercourses, and natural features.
- **Fish and Wildlife Habitat:** To protect biodiversity and ensure landscape connectivity between watercourses and upland riparian areas.
- **Water Quality:** To protect water quality and prevent pollution and contamination of watercourses through the preservation and enhancement of riparian areas.
- **Human Interaction with Riparian Areas:** To ensure activities within riparian areas are undertaken in a way that is sensitive to the natural environment and encourages shoreline stewardship.

Guidelines

Guidelines refer to the guiding principles for development activities that are used to achieve the objectives laid out in a Development Permit Area. Not all guidelines will be relevant to every proposal, and proposals are evaluated based on the specific attributes and characteristics of a particular site. Five key areas were identified for EDPA guidelines to address: riparian assessment reports; building and parcel siting; fish and wildlife habitat protection; setback areas; and storm water and hazard management.

Based on the research and engagement to date, as well as staff's experience, guidelines have been drafted based on the following principles (see Attachment B):

- Riparian Assessment Reports from QEPs should continue to be mandatory, recognizing that the RDCK does not have professional expertise in-house to evaluate proposals and make discretionary decisions on whether a report should be required. The flexibility sought in making Reports discretionary can largely be addressed through exemptions.
- Guidelines should encourage the evaluation of development proposals based on individual site values.

- Language should be clear and consistent, and guidelines should avoid the use of discretionary language (“may”, “encourage”, “should”, etc.).
- Arbitrary concepts and statements (such as “no-net loss” and “leave strips”) are better addressed through thoughtful guideline design that uses existing resources to the area, such as the Kootenay Lake Partnership Shoreline Guidance Document and FIMP work.
- Overall, guidelines should encourage the preservation and enhancement of riparian areas.
- Recognizing the cumulative impacts that storm water and hazards from individual parcels can have on a watercourse, addressing these items in the guidelines is advisable.

Exemptions

Exemptions refer to the specific instances or activities where a Development Permit should not be required. They are intended to provide flexibility and cut down on the duplication of efforts between agencies and from previous approvals.

Current EDPA exemptions, particularly for agricultural activities and institutional development, do not reflect current best practices. Additionally, the exemptions that currently exist do not consider activities that would have negligible impacts on riparian areas. Exemptions can be refined to address those issues. Where site impacts and risks are low, additional exemptions can allow for more flexibility to address implementation challenges.

The exemptions drafted in Attachment B, and proposed for further public consultation, are based on the following principles:

- Previously approved developments that do not result in further disturbance of the riparian area are of less concern than disturbance on undeveloped lands. However, it should also be recognized that previous development and disturbance has the potential to have prolonged negative impacts on the riparian area and should be identified and addressed.
- A development permit may not be necessary in cases where the disturbance is minor in nature and anticipated to have negligible impacts on the riparian area. What these activities are must be clearly defined in order to ensure they are in fact minor.
- When the activity has already been addressed through a previous Development Permit approval or by a different regulatory body, such as the Provincial Ministry of Forests or Fisheries and Oceans Canada.
- Certain emergency works completed under very strict circumstances and where notice is provided to the RDCK could be included to account for instances where these works will inevitably occur.
- Farming activities that adhere to current best practices and recommended setbacks can have negligible impacts on the riparian area if they are carried out correctly.

DPA Width

Since 2010, there have been a total of 40 Environmental Development Permits issued along Kootenay Lake: 16 in Electoral Area ‘A’; 15 in Area ‘D’; and, 9 in Area ‘E’. Of the 40 Riparian Assessment Reports received with these applications, a SPEA – the area typically containing the most sensitive habitat – smaller than 15 metres has never been identified. Following best management practices, the SPEA will typically be the recommended setback for any development activities, as disturbance of this area is likely to result in a permanent loss of fish and wildlife habitat.

EDPAs that are 15 metres wide suggest that disturbance and development in the SPEA is acceptable when in many cases this will, and has, led to permanent habitat loss. To better preserve habitat, the EDPA – the area where disturbance or development triggers the need for an Assessment by a QEP – must be larger than 15 metres. Development within the SPEA may still be considered on a case-by-case basis where site constraints limit the ability to develop elsewhere on the land and will be evaluated based on the relevant guidelines for that site.

Four different types of approaches have been identified in the Review, and were discussed with each focus group:

1. A 30 metre-wide EDPA
2. A 15 metre-wide EDPA
3. A DPA that is based on specific mapped features
4. A DPA that is based on the habitat values associated with that segment of shoreline, as identified in the Kootenay Lake FIMP work.

The individual strengths and weaknesses of each of these four approaches are discussed in greater detail in Attachment A. Staff's preferred direction continues to be a 30 metre-wide EDPA around the entirety of Kootenay Lake at this time because it:

- provides the greatest potential to preserve, enhance, and restore fish and wildlife habitat, which will inevitably see losses as the shoreline continues to develop regardless of EDPA size;
- no longer implies that development will be approved within the SPEA, which will often result in a loss of sensitive habitat;
- encourages development outside of the riparian area altogether;
- is the most common practice in the Province, including Electoral Areas 'D', 'G', and 'H' of the RDCK, and is recommended by the vast majority of local QEPs that have participated in the engagement for this project (including QEPs who do not typically submit Reports for DP applications);
- likely results in less enforcement issues, as it is simpler and requires a lower level of public awareness than approaches based on mapped features and segment-specific habitat values;
- maximizes the opportunities for restoration of previously damaged or disturbed riparian areas; and,
- results in the least amount of habitat loss.

Recognizing there are still reservations about implementing a 30 metre wide EDPA for Kootenay Lake, a major focus of the remaining public consultation will be to solicit feedback on the two most heavily discussed approaches in the focus groups: a 30 metre wide EDPA and one that is based on habitat values.

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan: Yes No Financial Plan Amendment: Yes No
Debt Bylaw Required: Yes No Public/Gov't Approvals Required: Yes No

N/A

3.2 Legislative Considerations (Applicable Policies and/or Bylaws):

Section 488(1)(a) of the *Local Government Act* enables local governments to designate Development Permit Areas for the purpose of "protection of the natural environment, its ecosystems and biological diversity." The Official Community Plans for Electoral Areas 'A', 'D', and 'E' currently contain EDPAs designated for this purpose. The Kootenay Lake DPA Review Project seeks to re-examine these existing DPAs to ensure they are protecting riparian areas and upholding shared values

Staff recommend the EDPA be applied to Electoral Area 'F', as past disturbances in the area have been significant but there are still substantial habitat values present.

3.3 Environmental Considerations

The 2021 Kootenay Lake FIMP Project demonstrates that there have been measurable losses of natural shoreline and fish and wildlife habitat since the last inventory in 2012. These losses have been observed under the current regulatory framework, and recommendations moving forward will seek to curb that trend.

Kootenay Lake is also a drinking water source for residents. Impacts from industry and heavily developed areas have added uncertainty to previously relied upon surface water sources. Ensuring that negative impacts from shoreline disturbance that pollute or contaminate the Lake are mitigated is crucial for future water security.

3.4 Social Considerations:

The Kootenay Lake DPA Review seeks to align EDPAs along Kootenay Lake with community values and concerns. It also seeks alignment with the Shoreline Guidance Document, which identifies Ktunaxa cultural values and archaeological potential.

3.5 Economic Considerations:

Kootenay Lake offers significant economic benefits to the regional economy, leveraging the unique local character and aesthetic to contribute to the tourism and recreation industries, which has spillover impacts on local businesses and service providers. Additionally, the settlement and development of the area, benefits the construction industry and growth of local businesses.

The economic benefits associated with tourism and recreation can act as a continual driver for economic stimulation over the long term. Recognition of the importance of the natural function of Kootenay Lake's riparian areas as invaluable natural assets that buffer against hazards and pollution is vital for the economic future of this region.

3.6 Communication Considerations:

The DPA Review is currently in the third and final phase of the project. The remaining engagement activities are centered on broad public consultation, with the feedback being used to determine a preferred direction for an EDPA around Kootenay Lake.

3.7 Staffing/Departmental Workplace Considerations:

The main staff person responsible is the Planner 2. The project is part of the Planning Department's Work Plan.

During the focus groups, it was mentioned that there are other Regional Districts in the Province that have a QEP on staff to provide professional oversight, and their service is also shared with member municipalities. Staff's current recommendations are based on there being no QEP oversight available within the RDCK's existing resource pool. If a similar approach were to be desired by the Board in the future, staff could investigate further at the direction of the Board.

3.8 Board Strategic Plan/Priorities Considerations:

This project aligns with the following objectives/strategies of the Board's Strategic Plan:

- Strategic objective #4: "to adapt to our changing climate and mitigate greenhouse gas emissions".
- 5.1(c): "modernize the RDCK policy framework" to be "innovative, reflect best practices, and consider unique RDCK requirements"
- 5.4.1(a): "protect our water courses"
- 5.4.3(a): "consider climate adaptation and mitigation impacts in decisions the RDCK makes"

Riparian areas play an important role in buffering against the impacts of climate change by acting as large carbon sinks while also buffering private properties from flooding and erosion.

SECTION 4: SUMMARY

4.1 SUMMARY

The Kootenay Lake DPA Review is in its third and final phase of engagement, and two focus groups in May were held to initiate this phase. Remaining engagement activities are centered on broad public consultation to determine a preferred EDPA direction for Kootenay Lake. Staff's preferred approach is based on the background

research completed to date, including a buffer analysis of Kootenay Lake and the 2021 FIMP project completed by Living Lakes Canada.

Based on the results of the buffer analysis, there are a number of sites constrained by topography and size that will require special consideration and their development will result in a permanent loss of riparian areas. As such, guidelines and exemptions are drafted in a way that allows for flexibility to ensure these sites are not sterilized of their permitted land uses (see Attachment B).

The FIMP project demonstrates that the current regulatory framework has been unsuccessful in protecting riparian areas. Between 2012 and 2021, 4.5 km of natural shoreline was lost and there was a 10.1% decrease in 'very high' and 'high' value habitat. The study emphasizes the importance of mitigating the incremental losses of habitat that result from anthropogenic pressures. It also advocates for a consistent EDPA approach along Kootenay Lake's shoreline to ensure development does not become focused in areas with lesser requirements, which could result in greater cumulative impacts on Kootenay Lake.

The focus groups in May framed the Review to participants in the context of these two resources and provided examples of different EDPA approaches (guidelines, exemptions, and DPA widths) from other local governments. Feedback was solicited on the draft objectives as well as the different approaches. Based on this feedback, and the background research completed to date, staff experiences, and the previous two phases of engagement, draft options for EDPA guidelines, exemptions, and widths have been created for further public consultation (Attachment B). Attachment B also includes the refined EDPA objectives. Specific feedback on the approaches and a rationale for staff's approach is also included in Attachment B.

Based on the feedback received and the existing regulatory framework, the EDPA is recommended to continue to apply to watercourses other than just Kootenay Lake, including: rivers, creeks, and wetlands. The EDPA width recommended will reflect the characteristics of each watercourse, as smaller ones may warrant a smaller EDPA. As such, the EDPA in Attachment B is drafted for riparian areas rather than just Kootenay Lake to encourage an updated approach for all watercourses in the four Electoral Areas.

Respectfully submitted,

Corey Scott, Planner 2

CONCURRENCE

Planning Manager – Nelson Wight
General Manager of Development Services and Community Sustainability – Sangita Sudan
Chief Administrative Officer – Stuart Horn

ATTACHMENTS:

Attachment A – Focus Group and EDPA Direction Summary Document
Attachment B – Draft Riparian Development Permit (RDP) Area