

CORPORATION OF THE VILLAGE OF
SILVERTON

FORESHORE GUIDELINES

April 1995

BACKGROUND

The purpose of this report is to present information concerning the use of foreshore lands along the west side of Slocan Lake within the boundaries of the Corporation of the Village of Silverton.

A public meeting was held on July 4, 1994 to review management options and policies contained in this report. Subsequently, minor clarifications were incorporated in the text. It is expected that portions of this report will ultimately be incorporated in the Village of Silverton Official Community Plan.

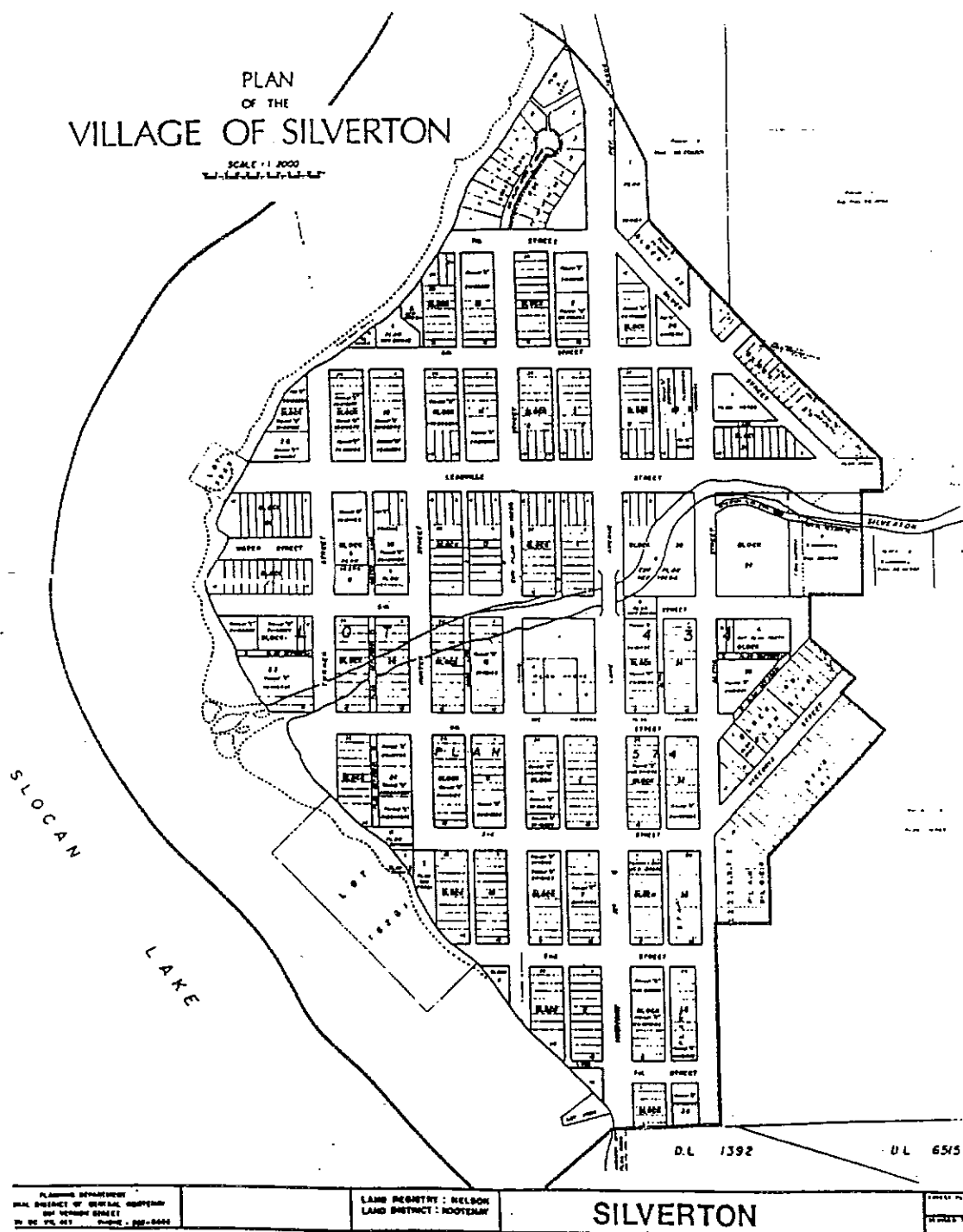
Following this meeting a Foreshore Committee was formed consisting of 8 interested residents and four Village Councillors.

Although consensus was not always reached the committee recommendations and the comments from the follow-up public meeting held on February 7, 1995, the Village of Silverton Council believes the following criteria highlight the detailed principles, guidelines and comments contained in this report:

- Access to and along the foreshore is vital;
- Natural boundary be clearly determined;
- Works on the foreshore be limited to boatramp/slipways and floating wharves or docks that are in no way permanently affixed to the foreshore or bed of adjacent water body, except for a community dock or docks;
- Bylaw be drafted to require accepted swimming attire on the foreshore within the Village boundaries;
- That appropriate areas be identified and set aside as "Public Beaches"

FIGURE 1 - STUDY AREA LOCATION

(map of Silverton & foreshore)



Foreshore developments could range from those with relatively low impacts, such as temporary wharves/docks, to works which could permanently alienate public access. Included in the latter category are privately owned structures such as retaining walls and boathouses, as well as community owned facilities such as marinas, which serve the needs of a number of users.

The area comprising the foreshore is defined in reference to the natural boundary where land and water meet. The term "natural boundary" is defined in the Land Act as the "visible high water mark of any lake, river, stream or other body of water where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself." Title to waterfront land extends only to the natural boundary.

Any works that are permanently affixed to land below the natural boundary require approval from BC Lands, Ministry of Environment, Lands and Parks. Before authorizing any such work, BC Lands carries out a referral process to government bodies which may have an interest in the proposal. These include Federal departments, Provincial ministries, and local governments, in this case, the Village of Silverton. Advertising is also a requirement to ensure the opportunity for public input.

The Village of Silverton receives referrals from BC Lands and makes recommendations on a case by case basis. In order to provide consistency in its evaluations, it is appropriate for the Village to have a policy to guide the decision-making process.

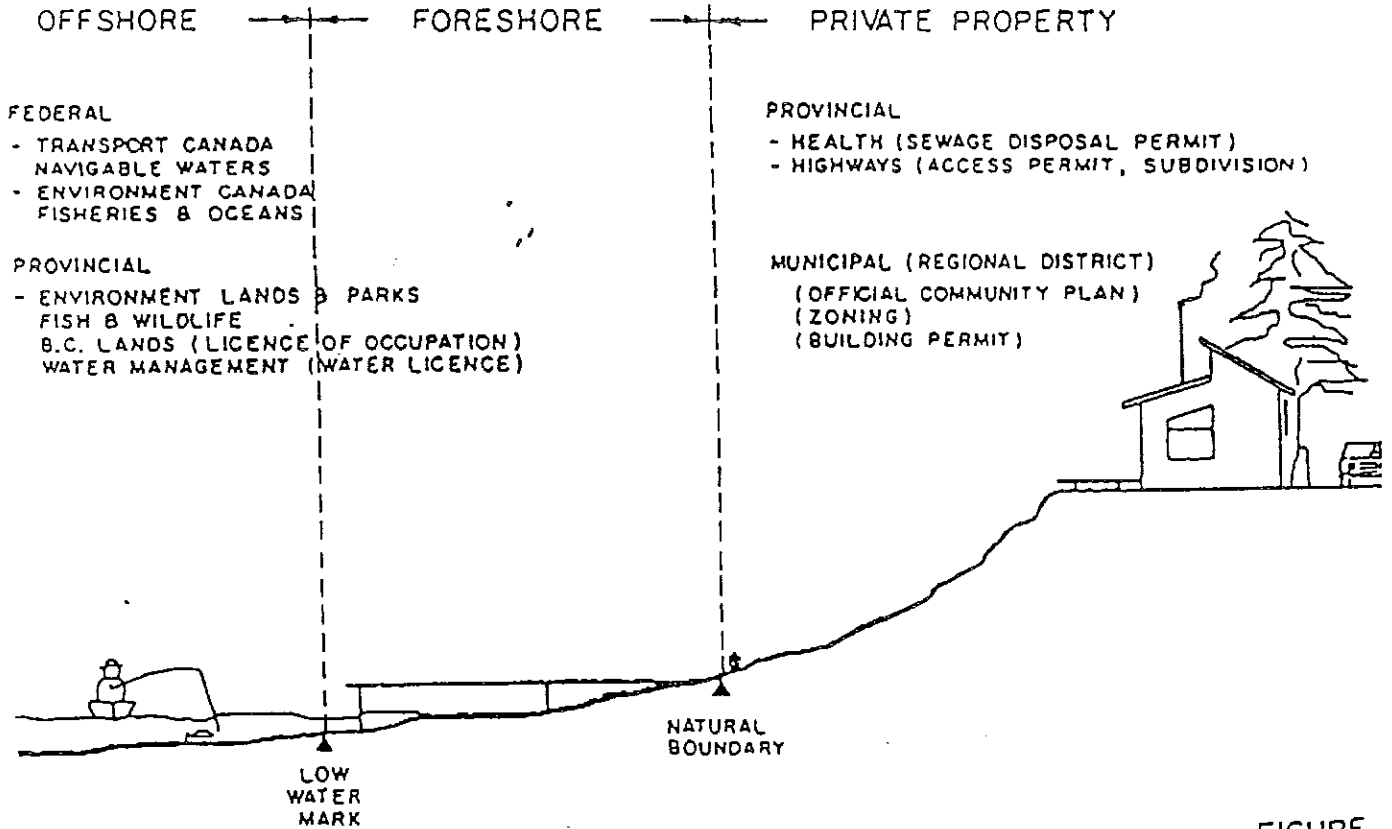
Approval by BC Lands, under a Land Act tenure, authorizes the construction and use of a structure for a specific purpose. An example might be a community wharf/dock. However, the licence does not permit the licence holder to restrict the use of adjacent foreshore, including the beach.

AREAS OF JURISDICTIONAL RESPONSIBILITY

All three levels of government have jurisdictional responsibilities with respect to the foreshore, but only those agencies having jurisdiction for the foreshore of the east side of Slocan Lake, within the Village of Silverton, are described in this report. Additional government agencies may be included in the referral process for other areas. Areas of jurisdiction are shown on Figure 2.

- FIGURE 2 -

FORESHORE LANDS - REGULATORY AUTHORITIES



FIGURE

FEDERAL GOVERNMENT:

Transport Canada - Canadian Coast Guard

Under the Navigable Waters Protection Act, the Coast Guard's main interest is ensuring that Slocan Lake is protected as a navigable waterway. Maintaining the public's right of access to the water is also a priority. While formal approval for works such as buoys is not required from the Coast Guard, those works must not impair the navigability of the lake.

Department of Fisheries and Oceans - Habitat Management Sector

The Department of Fisheries and Oceans' mandate is to manage and protect fish and fish habitat to ensure that there is no net loss of fish habitat productivity. A habitat assessment may be required where habitat values are unknown. Where works are proposed which could result in habitat alteration, disruption or destruction, approval under the Fisheries Act is required, along with an associated habitat compensation plan.

PROVINCIAL GOVERNMENT:

Ministry of Environment, Lands and Parks - BC Lands

Under the Land Act, BC Lands is the final approving authority for works on the foreshore of Slocan Lake. Generally, approvals take the form of licences. These are usually issued for a 10-year period and are unsurveyed. Alternatively, a lease may be issued. Leases are normally for 20 years and must be surveyed. While the Land Act requires approval from BC Lands for any work within the foreshore, current policy of BC Lands exempts floating docks that are not permanently affixed (i.e. those that are removed seasonally) to Crown Land from the approval process.

Ministry of Environment, Lands and Parks - Fish and Wildlife Branch

Protection of fish and wildlife habitat is the primary concern of the Fish and Wildlife Branch. Water quality must be maintained, and the types of structures and materials used in construction must not be detrimental to the viability of fish and wildlife populations.

Ministry of Environment, Land and Parks - Water Management Branch

The Water Management Branch, under the Water Act, issues water licences for domestic or irrigation purposes and regulates works that are placed in a body of water. At this time, the Water Management Branch does not require a permit for works other than those that result in water diversion. Another function of the Water Management Branch is to monitor the presence of aquatic weeds.

Ministry of Environment, Lands and Parks - Environmental Protection

In cases where the volume of waste water is at least 22.7m³ (5,000 gallons) per day, the Environmental Protection Branch issues Waste Management Permits for sewage disposal. In addition, where waste water is discharged into a surface source of water, Environmental Protection is the approving authority regardless of the volume of waste water.

Ministry of Health

The Ministry of Health issues sewage disposal permits for septic fields and samples water quality of the lake on an as-requested basis.

Ministry of Transportation and Highways

The Ministry of Transportation and Highways maintains public roadways and controls access to private lands by means of Highway Access Permits.

The Ministry of Transportation and Highways is also the approving authority for subdivisions. Provision for public access to the lake is a requirement under the Land Title Act.

Ministry of Tourism - Archaeology Branch

Archaeological sites are known to exist at a number of locations around the shores of Slocan Lake. The Archeology Branch advises of any recorded or potential sites as part of the referral process, and may require an assessment to be prepared prior to subdivision or development.

LOCAL GOVERNMENT

In this area the local government is the municipality. In areas of the Province not located within a municipality, the Regional District is the local government. A local government may adopt policies to guide development through an Official Community Plan. All or part of this foreshore study is expected to form part of the Official Community Plan for the Village of Silverton.

Development is also regulated by means of a zoning bylaw. The Village of Silverton Zoning Bylaw No. 244, 1987 sets out regulations for the use of land, buildings and structures within village boundaries. Requirements for construction of buildings and structures are contained in the Building Regulation Bylaw. Any structures on the foreshore should comply with the requirements of both of these bylaws.

CURRENT STATUS

The Letters Patent of the Corporation of the Village of Silverton describe the municipality as containing by admeasurement 38.41 hectares of land, more or less, and 24.79 hectares of foreshore and land covered by water, more or less.

The total length of foreshore from north to south boundaries is approximately 1400 metres in length, with approximately 700 metres of upland properties being private and approximately 700 metres under Village jurisdiction.

From base maps of the Surveys and Mapping Division, Ministry of Environment, Victoria, B.C., Slocan Lake water elevation ranges from an average high of 537.20 metres (1762') to an average low of 534.76 metres (1754').

Normally the Lake begins to rise in early to mid April and reaches its peak by early June and begins to fall by early July. Low water is reached again by September or early October.

During the high water period most of the existing foreshore is covered by water.

Currently there is one (1) active foreshore lease (Lot 3989) and two longstanding but inactive leases indicated (Lot 16261 and Lot 14211).

There is one current application on file with BC Lands and possibly one other pending.

Presently none of the foreshore areas under Village jurisdiction are classified as public beaches, however the Village intends to pursue creating these as required as quickly as possible.

PRINCIPLES AND GUIDELINES

From the comments received to date, a number of management principles can be identified. These are listed in the following section with supporting guidelines and comments. The guidelines presented in this interim report will be discussed at the next public meeting.

1.0 PRINCIPLE

Protection of the water quality of Slocan Lake is the highest priority.

1.1 Guideline:

All works constructed on the foreshore must meet Ministry of Health requirements to protect the lake as a potential source of drinking water.

Comment: The use of construction materials that could adversely effect the lake are prohibited. For example, creosote timbers would not be permitted if they would be in a location that comes in contact with the water.

1.2 Guideline:

Works that could have a negative effect on water intakes are not permitted.

Comment: Some water intakes, particularly those located close to the shore, are subject to damage through siltation. The locations and types of foreshore structures built close to intakes could change the water flows in the immediate area and contribute to siltation.

1.3 Guideline:

All beaches serving the community shall have sanitary facilities placed or constructed and maintained on the adjoining upland by the holder of the licence of occupation or lease holder.

Comment: Sanitary facilities which meet the requirements of the Ministry of Health, must be provided and maintained to protect water quality and to provide a healthy environment for beach users and surrounding property owners.

Presently the only recognized beach area meeting the above requirements is The Slip.

1.4 Guideline:

Works shall not have a negative impact on the quality of water which, in turn, would contribute to the health problem in the fish population.

Comment: It is important to recognize the recreational fishery and to ensure that fish do not pose a health problem when consumed by humans.

1.5 Guideline:

Works constructed along the foreshore shall not have a negative impact on fish and waterfowl habitat.

Comment: Excavation and deposition of material can result in loss of habitat for fish and waterfowl. This includes damage to or loss of habitat for food sources. Approval for works by the Department of Fisheries and Oceans and BC Environment's Fish and Wildlife Branch may be required.

1.6 Guideline:

All construction along the foreshore shall be structurally sound to minimize erosion.

Comment: A building permit is required for all retaining walls to be constructed on the boundary of the foreshore. Walls greater than 1.2 metres (3.94 feet) in height require plans certified by a registered engineer. Slipway/boat launching ramps should be constructed so that they are safe, this may require consultation with a structural engineer. Riparian owners are encouraged to exercise the limited right to construct floating wharves/docks that do not interfere with the public right to access along the foreshore.

1.7 Guideline:

A licence of occupation or lease will only be issued to parties having a legal interest in the adjoining upland property.

2.0 PRINCIPLE

The Slocan Lake is a public resource for everyone to use. Maintaining access to the water and along the foreshore for both waterfront residents and other members of the community is important.

2.1 Guideline:

Proposals which maintain or enhance the public's access along the foreshore will generally be supported.

Comment: Historically, in some places along the water's edge, construction along the foreshore has taken place without formal approval. It is recognized that some construction, such as marinas that may in the future serve a community need, and other structures such as retaining walls, protect land from erosion. Therefore, in some cases, it is neither practical nor desirable to require that permanent structures be removed provided they meet the applicable guidelines defined in this plan and BC Lands.

2.2 Guideline:

Where there are opportunities to develop or enhance public access, the Village will support existing encroachments on Crown Land on a temporary basis only.

Comment: In areas where it may be possible to maintain public access, legalization of existing structures which are of acceptable environmental and structural quality will be supported for a maximum period of five (5) years at which time they may be required to be removed. Earlier removal of these structures may be required as replacement or repair becomes necessary, or upon application by a community association to develop or manage the area for public use.

2.3 Guideline:

The Village will not support new construction of boat-houses or other similar structures which are located on Crown Land.

Comment: Boathouses should be constructed on private land. This should maximize opportunities to maintain the public's right of access to use the foreshore.

2.4 Guideline:

Where public access to or along the foreshore is possible, any authorized encroachments onto the foreshore should be designed in a way that will not obstruct access.

Comment Examples of low impact encroachments might be floating wharves/docks which is removable during periods of low water or when retaining wall construction for erosion protection cannot be confined to an area above the natural boundary.

2.5 Guideline:

Where possible, the Village will support the establishment of communal slipways, breakwater or docking facilities.

Comment: In the interest of maintaining public access to the foreshore, individual wharves/docks should be restricted to those that are in no way permanently affixed to the foreshore or bed of the adjacent waterbody. This approach should also help to protect the foreshore.

2.6 Guideline:

Opportunities for the development of pedestrian access along the waterfront shall be protected.

Comment: Development along the foreshore should respect the public's right of access. Any new development should be carried out to minimize any impact. While access may not be possible during periods of high water, it may be possible to utilize parts of the foreshore at other times of the year. Applications for Crown Land tenure should explain the way in which the proposal will protect or enhance public access.

2.7 Guideline:

Works which restrict the safe use of the lake as a navigable waterway will not be supported.

Comment: Permanently anchored wharves/docks on the foreshore and beyond, adversely affect the use of the lake as a navigable waterway and compromise public safety.

3.0 PRINCIPLE:

The natural boundary of the lake should be respected.

3.1 Guideline:

A survey may be required for works on the foreshore if the property boundaries cannot be identified.

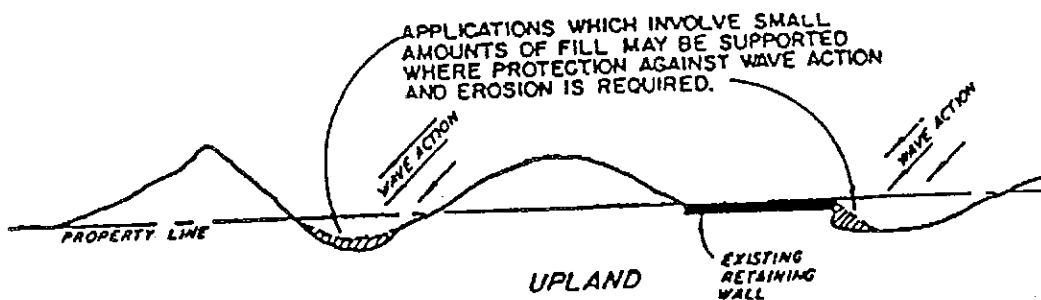
Comment: In order to determine whether works, either existing or proposed, are to be located on private land or Crown Land, or both, it will be necessary in some cases to have the land surveyed or reposted and a plot plan prepared by a B.C. Land Survey. The property owners may realize some cost savings by having several properties surveyed at the same time. The survey will need to be completed prior to the Village's making a recommendation to BC Lands. The Village will accept the boundary as identified by a BC Land Survey. Any individual or group contesting this must accept the costs for any re-survey or further investigation.

3.2 Guideline:

No additional filling of the lake will be supported by the Village, except where necessary for erosion control or to protect adjacent structures from wave action as illustrated in Figure 3 below:

FIGURE 3

USE OF FILL IN PROTECTION AGAINST EROSION
LAKE



Comment: Filling of the lake will not be supported by the Village if the sole purpose of the fill is to add land for the benefit of the upland owner. Where fill is permitted, the licence holder may be required to structurally secure the fill so that erosion of the fill does not occur. This will protect the fish and wildlife habitat as well as the licensee's investment. BC Lands policies with respect to existing fills, accretions and erosion are set out in Appendix A

4.0 PRINCIPLE

The natural beauty of Slocan Lake should be respected.

4.1 Guideline:

Works and structures along the foreshore should be aesthetically pleasing and as unobtrusive as possible.

Comment: Structures such as large monolithic retaining walls and large boathouses adjacent to private property will not be supported.

5.0 PRINCIPLE

All approved existing works and structures shall be covered by agreements with BC Lands.

5.1 Guideline:

The Village will not support proposals which are at variance with the policies contained in this document, including those which seek to legalize an existing situation.

Comment: In order to provide more certainty for residents, the decision-making process by the Village will be consistent with these policies.

OVERALL STRATEGY

Authority for approving works on the foreshore currently rests with BC Lands. Applications are evaluated on a case by case basis. Adoption of this policy paper and finally inclusion in the Official Community Plan for Village of Silverton will provide a framework to guide the Village, other referral agencies, and BC Lands in the decision making process.

APPENDIX A

BC LANDS POLICY

1. FILLS

- a. Existing fills along the foreshore will initially be tenured by BC Lands as part of a Private Moorage program. Rental rate will be consistent with the value of the waterfront property.
- b. All filled areas are to be rationalized with the existing titled property. any sales would be priced at full market value.
- c. Time Frame: It is expected that the value and disposition assessment will be completed within the first term of the Private Moorage tenure.

2. ACCRETIONS

Accretion is the gradual and imperceptible change in the natural boundary over time, due to natural forces of deposition.

- a. Applications for accretions are made by the property owner, through a B.C. Land Surveyor.
- b. If accretion is proven, the accreted land is added to the title.

3. EROSION

Erosion is a change in the natural boundary over time, resulting in encroachment of water over the property.

- a. Land eroded by natural processes may be claimed by the Crown.
- b. Where accretion or erosion has occurred, the title to the upland may not reflect the actual extent of ownership.

3. RETAINING WALLS

- a. BC Lands recognizes that retaining walls may be necessary along some sections of the foreshore to protect private property from erosion.

- b. As new retaining walls are built or old ones replaced they will be placed in such a way as to form a continuous line, the placement to be determined in relation to existing permanent structures.
- c. Where filling is suggested in order to construct and maintain the retaining wall, the new fill will be considered as Crown land, and subject to provisions as detailed above ("Fills").

Note: The above Policies are as presented by BC Lands as of November, 1993 and are subject to up-dates and changes. Verification of these policies can be obtained by contacting the personal as listed in Appendix B.

APPENDIX C

RIPARIAN RIGHTS AND PUBLIC FORESHORE USE

AUTHORITY AND RIGHTS

The Land Act and Land Title Act provide the authority under which BC Lands administer aquatic Crown Land.

The Crown recognized the importance of providing for public use of aquatic Crown Lands and public access to and along the foreshore, but these are not public rights, and they cannot be guaranteed in all cases.

The public does enjoy a privilege or bare licence to use the foreshore and other aquatic lands held by the Crown. The only rights that exist, however, are the right to land boats and to embark from the foreshore in cases of emergency, and the rights of navigation, anchoring, mooring and fishing over those lands covered by water.

Riparian rights involve the relationship between the water and the land beside which or over which it rests or flows. In common law, rights generally include the following:

PROTECTION OF LAND

British Columbia recognizes the right of shoreland property owners to protect their land from erosion and flooding, by building embankments, dykes and other protective improvements. This right extends only to the natural boundary of the property. Owners therefore have the right to install protective structures on their own land; but they require the consent of the Crown to extend such structures below the natural boundary.

NATURAL ACCRETION AND EROSION

Land abutting any body of water is subject to certain forces of erosion and deposition (accretion). The ownership of accreted land has long been a subject of legal debate.

According to the generally accepted principle in British Columbia, the waterfront property owner does not own land created by a sudden deposit of material by flood or an artificial interference in natural processes, or by an addition to the upland that occurs as a result of a natural uplifting of a lake or stream bed. However, the waterfront property owner does own land that accretes to the upland through gradual and imperceptible natural deposition. This rule applies, in some cases, where material has gradually and imperceptibly accreted as a result of a structure placed on another property by another party.

This situation can also operate in reverse. When the upland is eroded, the property lost becomes part of the foreshore or bed of the adjacent water body. The Crown then owns the land below the natural boundary.

ACCESS: INGRESS AND EGRESS

The final major riparian right associated with waterfront property is the right to unimpeded access to and from that property to deep water for the purposes of navigation. This right exists separate and apart from the public right of navigation, and the right of access applies to non-navigable bodies of water as well.

This right of access to and from the water applies to every point along the water frontage, including every part of the foreshore in front of the upland property. As a result, improvements cannot be constructed on a waterfront property if they interfere with access.

CONSTRUCTION OF FACILITIES FOR ACCESS

Waterfront property has always had strategic importance for the conduct of marine commerce. As a consequence, the traditional right of access to deep water for navigation has often been interpreted to include the right to construct facilities on the foreshore to provide such access.

Case law suggests that riparian owners have a limited right to construct floating wharves or docks that do not interfere with the public right of navigation and that are only affixed to their own upland property. In fact, however, this right does not extend to facilities that are anchored or in any way affixed to the foreshore or bed of the adjacent water body.

Because title to most of the foreshore and beds of water bodies in British Columbia is vested in the Crown, in practical terms, owners require the express consent of the Crown to construct most facilities.

LAND ACT TENURE

In almost all cases, tenures granted by the Ministry over foreshore or nearshore areas are separate and distinct from the ownership of the upland property. The fact that a waterfront property owner has obtained tenures over the adjacent foreshore does not mean that those tenures are automatically assigned to future purchasers.

Confusion sometimes arises when prospective buyers of waterfront

property are mistakenly led to believe that Ministry tenure held by the owner "go with the property". The Ministry must give its permission to transfer tenure from one party to another. This permission is not withheld unreasonably, however.

Prospective buyers should check with the Ministry to ensure that any development on the foreshore or nearshore adjacent to the property is legitimate. Also, such purchasers should not assume that any tenures in front of that property will be automatically assigned to them. Assignment may be possible, and it will be considered upon application to the Ministry.

THE NATURE AND GENERAL PROVISION OF TENURE ISSUED UNDER THE LAND ACT

Temporary Permit

A temporary permit to occupy aquatic Crown land may be issued to allow investigation or to authorize temporary short term use.

This type of permit does not necessarily include the right to construct facilities or improvements on the land.

Licence of Occupation

A licence of occupation authorizes the holder to occupy Crown land for a given purpose for a period usually not exceeding ten years. The licence is contractual and non-exclusive. It conveys a mere "right to occupy", and not an "interest" in the land.

Because it does not convey an interest in the land, a licence of occupation does not give the holder a right to restrict public access across the licence area.

Lease

Lease tenure conveys a limited interest in the land. Often the applicant will have to provide a management or development plan to ensure appropriate and efficient use of a lease. The standard term for foreshore leases is thirty years.

As with other forms of tenure, a lease may be issued for a particular upland area, for a part of the foreshore, or for submerged land.

the Ministry uses leases where the land is to be developed or improved over time and/or where the applicant requires a measure of security of tenure to obtain financing or liability insurance before undertaking development.

Since leaseholders have an interest in the land, they technically acquire a right to restrict public access to and across the

tenure area by posting or other notice. Ministry staff will often encourage leaseholders to provide public access where it is clearly not detrimental to the interests of the leaseholder.

SOURCE

Ministry of Environment, Lands and Parks, Riparian Rights and Public Foreshore Use in the Administration of Aquatic Crown Land, March 1990.

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This Foreshore Guideline Plan was adopted by the Council of the Corporation of the Village of Silverton on April 6, 1995.