

**REGIONAL DISTRICT OF EAST KOOTENAY**

**BYLAW NO. 2418**

A bylaw to amend Bylaw No. 2061 cited as “Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2061, 2008.”

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WHEREAS the Board of the Regional District of East Kootenay has determined a need to proceed with the proposed amendment to said Bylaw;

AND WHEREAS the Board deems it desirable to make this amendment as aforementioned;

NOW THEREFORE, the Board of the Regional District of East Kootenay in open meeting assembled, enacts as follows:

1. This Bylaw may be cited as “Regional District of East Kootenay - Lake Windermere Official Community Plan Bylaw No. 2061, 2008 – Amendment Bylaw No. 13, 2012 (LWMP Implementation/RDEK)”.
2. Section 3 is amended by adding the following:
  - (t) Schedule M1 – Development Permit Area #3 - Lake Windermere (South)
  - (u) Schedule M2 – Development Permit Area #3 - Lake Windermere (Windermere)
  - (v) Schedule M3 – Development Permit Area #3 – Lake Windermere (North)

3. Schedule A Section 10.1 is amended by adding the following paragraph:

The Lake Windermere Management Plan (LWMP) was initiated by the Regional District in November 2008. The LWMP was prepared in partnership with the District of Invermere in recognition of the shared jurisdiction. The development of the LWMP facilitated the opportunity for discussion with the community about the future of Lake Windermere from the environmental, social, recreational and management perspectives. The recommendations contained within the LWMP were developed in consideration of the goals and objectives identified through the consultation process. Following the adoption of the LWMP in February 2011 the implementation of priority recommendations was undertaken by the RDEK. The priority recommendations that were implemented were the establishment of a Lake Windermere Management Committee and the drafting of a new Development Permit Area and surface water zoning regulations.

4. Schedule A Section 10.2 (2) is repealed and the following added:
  - (2) To establish criteria for considering future amendments to the surface water zoning regulations for Lake Windermere.

5. The following sections of Schedule A are repealed:

10.3 (1)	10.3 (2)	10.3(7)
10.3 (14)	10.3 (15)	

6. Schedule A Section 10.3 (13) is repealed and the following added:

(13) The water testing and monitoring program, stewardship initiatives and education activities by the Lake Windermere Ambassadors are supported.

7. Schedule A Section 10.3 is amended by adding the following:

(16) Applications to amend the surface water zoning for Lake Windermere will be considered in regard to the goals, objectives and recommendations of the Lake Windermere Management Plan (LWMP) (2011).

(17) Rezoning applications for the following shall be considered in relation to the LWMP:

- (a) new group moorage facilities, including commercial marinas;
- (b) new day use facilities managed by a community association or strata council;
- (c) additional moorage;
- (d) expansion of existing day use facilities managed by a community association.

Demonstration of how the proposed development assists in meeting the goals, objectives and recommendations of the LWMP must be integrated into all surface water rezoning applications.

(18) A rezoning application to accommodate a group moorage facility accessed from Highway Drive along Stoddard Boulevard may be supported subject to the following:

- (a) application is made by a community association;
- (b) written confirmation of support from the Ministry of Transportation and Infrastructure;
- (c) removal of the existing individual docks along Stoddard Boulevard; and
- (d) issuance of a Licence of Occupation or Lease by the Province.

Access to the group moorage facility for moorage or day use purposes for the entire Calberly Beach community is encouraged.

(19) In recognition of established individual moorage in the Rushmere area by Rushmere residents and property owners, a rezoning application to accommodate the existing individual moorage in the Rushmere area may be supported subject to the following:

- (a) application is made by a community association;
- (b) confirmation of legal access and authorization from Canadian Pacific Railway (CPR) for a designated rail crossing is provided;
- (c) written authorization to make application is provided by the upland land owner, either the province or CPR, as applicable;
- (d) the moorage being located within the area designated as yellow shoreline colour zone in the East Kootenay Integrated Lakes Management Partnership (EKILMP) Shoreline Management Guidelines for Fish and Wildlife Habitat (2009); and
- (e) issuance of a Licence of Occupation or Lease by the Province.

The consolidation of the existing individual docks into a group moorage facility is preferred.

(20) In recognition of the established recreational uses by the residents of Timber Ridge, a rezoning application to accommodate the existing recreational uses along the property owned by the Timber Ridge Property Owners Association and Terridian Utilities may be supported subject to the following:

- (a) application is made by the Timber Ridge Property Owners Association;
- (b) issuance of the applicable Licence of Occupation or Lease by the Province; and
- (c) compliance of all proposed development with the Shoreline Development Permit guidelines.

(21) While not generally supported within the LWMP, the consideration of a rezoning application to accommodate a new group moorage facility in the Baltac / Pedley Heights area may be supported subject to the following:

- (a) issuance of the applicable Licence of Occupation or Lease by the Province;
- (b) compliance of all proposed development with the Shoreline Development Permit guidelines;
- (c) the new group moorage facility is restricted to a net increase of no more than 10 additional moorage spaces than identified in the August 2012 inventory in the bay adjacent to the Pedley Heights Community Association property;
- (d) bylaws or policies are in place to manage the allocation of moorage spaces amongst the members of the applicable community association(s);

- (e) management of moorage spaces must provide for the shared use or rotating occupancy of moorage spaces;
  - (f) identification of mitigation options to reduce impacts on legally non-conforming mooring buoys in the adjacent bay; and
  - (g) demonstration of pre-application consultation at the expense of the community association(s) making application with legally non-conforming mooring buoy owners. A reduction in the overall number and congestion of mooring buoys in the adjacent bay is supported. Additional consultation related to the legally non-conforming mooring buoys may be required.
- (22) Applications to vary the surface water zoning regulations for Lake Windermere shall be considered on a site specific basis in consideration of the following:
- (a) potential impact on neighbouring property owners or residents;
  - (b) site specific constraints that require the variance;
  - (c) confirmation of ability to meet provincial and federal requirements;
  - (d) if required, issuance of a special permission, lease or licence of occupation by the province.
- (23) The placement of structures in areas zoned LW-3, Lake Windermere (Institutional) Zone is not generally supported, except within Windermere Beach Regional Park for recreational purposes or to facilitate public access to the lake. The placement of all structures must be in accordance with a Licence of Occupation or Lease issued by the Province and authorized by the upland landowner.
- (24) The LW-2, Lake Windermere (Group Moorage) Zone within the Zoning Bylaw is intended for the purpose of accommodating communal moorage or day use docking under the direction of a community association, strata council or shared interest development. In recognition of the demand for on-water boat storage the responsible organization is expected to manage the community's moorage spaces amongst the applicable membership.
- (25) The LW-2(A), Lake Windermere (Group Moorage) Zone within the Zoning Bylaw has been developed to specifically recognize the current Lease held by the Windermere Community Association and Hidden Bay Marina Association. The Lease limits the maximum number of boats that can be accommodated within the Lease area. This zone is not appropriate for other areas of the lake. Future applications for rezoning to the W-2(A) zone will not be supported.
- (26) The LW-4, Lake Windermere (Commercial) Zone within the Zoning Bylaw has been developed to recognize the current commercial uses operated by Shadybrook Resort and Marina. Future rezoning applications to accommodate commercial marinas will generally not be supported.
8. The first sentence of Schedule A Section 21.2 is repealed and the following substituted:
- Development Permits are not required within Development Permit Areas #1 and #2 under the following conditions:
9. Schedule A Section 21 is amended by adding the following:

**21.5 Development Permit Area #3 – Protection of the Natural Environment (Lake Windermere Shoreline)**

**(1) Area**

Development Permit Area #3 applies to those portions of the shoreline of Lake Windermere designated as red and orange shoreline zones on **Schedules M1, M2 and M3** of the Lake Windermere Official Community Plan. Where the shoreline is designated as a red or orange shoreline zone the Development Permit Area extends 30 m into the lake and 15 m upland from the natural boundary.

**(2) Purpose**

The purpose of Development Permit Area #3 is for the protection of the natural environment, its ecosystems and biological diversity under Section 919.1(1)(a) of the *Local Government Act*.

**(3) Requirements**

- (a) For land located within Development Permit Area #3, an owner shall obtain a Development Permit prior to proceeding with any of the following:
- (i) Construction, addition or alteration of a building or other structure; or
  - (ii) Alteration of land, including the removal of riparian or aquatic vegetation, site grading, deposition of fill, beach creation, or dredging.

**(4) Exemptions**

- (a) A Development Permit is not required within Development Permit Area #3 under the following conditions:
- (i) The proposed activity is limited to internal alterations to buildings or structures.
  - (ii) The proposed activity is limited to the reconstruction of, renovation of, repair of, existing buildings or structures upland of the natural boundary, or addition to existing buildings or structures which increase the development footprint by an amount less than 25% of the area existing at the time this DPA was implemented.
  - (iii) The proposed activity is limited to the installation, repair or placement of utilities infrastructure within the highway right of way.
  - (iv) The proposed activity is limited to general road or railway construction or maintenance within the right of way.
  - (v) The proposed activity is limited to the removal or pruning of hazardous trees as identified by a qualified hazard tree assessor, ecosystem restoration project approved by a Qualified Environmental Professional (QEP), supplementing native vegetation, or maintaining existing vegetation above the natural boundary.
  - (vi) The proposed activity is considered to be normal agricultural practice as defined in the Farm Practices Protection (Right to Farm) Act or designated as farm use within the Agricultural Land Commission Regulation.
  - (vii) The proposed activity is conducted under the direction of the Provincial Emergency Program, and is intended to resolve emergency situations that present an immediate danger to life or property including procedures related to flooding or erosion.
  - (viii) The proposed activity is limited to emergency repairs to buildings or structures where there is a demonstrable and immediate risk to public safety and property.
  - (ix) Routine maintenance of existing beach areas, including the periodic deposition of new sand and removal of encroaching upland vegetation on the existing beach areas managed by the following:
    - (A) Regional District of East Kootenay (RDEK);
    - (B) Trethewey Beach Society;

- (C) Timber Ridge Property Owners Association;
- (D) Lakeview Meadows Community Association;
- (E) Pedley Heights Community Association; and
- (F) Cardiff Cove Recreation Society;

prior to the adoption of this Development Permit Area.

## (5) Justification

- (a) The Lake Windermere Official Community Plan area includes natural ecosystems that are unique to the Lake Windermere foreshore. The East Kootenay Integrated Lake Management Partnership (EKILMP) undertook a Sensitive Habitat Inventory Mapping (SHIM) project for Lake Windermere to identify these natural ecosystems and explore the alteration of the shoreline. The SHIM process has been developed in British Columbia as a tool to assist in conserving and protecting sensitive ecosystems and critical habitats. The SHIM methodology was originally utilized for mapping fish and wildlife habitat associated with watercourses and has been developed and refined for application on lake shorelines. The revised methodology for lake shorelines is now being used throughout British Columbia and on Lake Winnipeg. During the SHIM process the importance of balancing environmental considerations with the community's social, economic and development needs was identified (McPherson and Hlushak, 2008).

Within the SHIM process the shoreline of the lake was assessed to determine a current ecological value and an ecological potential value utilizing a Habitat Index. The Habitat Index considered the physical and biological elements of an area as well as human induced disturbances, such as in-water structures, and assigned a rating ranging from very high to low for each segment of the lake. Generally, with increasing disturbances the current ecological value of a segment went down. The Habitat Index calculation was repeated for each segment in consideration of the removal of in-water structures to determine the ecological potential values (McPherson and Hlushak, 2008). If in-water structures were removed, each segment of the lake would have a higher ecological potential value, which highlights the importance of managing in-water structures to maintain or enhance the habitat along the shoreline.

During the SHIM process several habitat types were identified as being highly important to fish and wildlife and with the potential to be negatively impacted by development. These habitats were designated as Zones of Sensitivity (ZOS). The habitats determined to be ZOS for the Lake Windermere area included: wetlands, creek mouths, native grasslands, wildlife habitat and corridors, gravel/cobble habitat, biologically productive areas, and unimpacted/natural areas. Areas of overlapping ZOS were determined to be Key Habitat areas. The intent of the ZOS identification is to enable a trigger for investigation if development is proposed in these areas (McPherson & Hlushak, 2008).

In consideration of the current ecological values, as determined by the Habitat Index for the shoreline and the overlapping presence of ZOS or Key Habitat areas, the shoreline of Lake Windermere was assigned a shoreline colour zone that is reflective of the level of sensitivity to development and presence of environmentally sensitive areas and natural ecosystems. The shoreline colour zone categorization recognizes that, despite the cumulative impact of alteration of the foreshore, natural ecosystems remain around Lake Windermere that warrant special consideration prior to development.

- (b) Development Permit Area #3 is applicable to the red and orange shoreline colour zones. These zones have been identified as being sensitive to development pressure and essential to the long term maintenance of key habitat and fish and wildlife values.

**Red Shoreline Zone** – is defined by portions of the shoreline that were identified to have 'very high' or 'high' existing ecological

values that overlap with Key Habitat areas. The SHIM process identified these areas as being essential for the long term maintenance of fish and/or wildlife values. The zone includes creek mouths (unless substantially degraded) for 250 m along the lake, on both sides of the creek (or a topographic or ecological break); contiguous wetlands; natural grasslands; cliffs/bluffs; gravel/cobble areas; areas of high productivity; and remnant natural areas (EKILMP 2009). Red shoreline zones are recommended for conservation use.

**Orange Shoreline Zone** – is defined by portions of the shoreline that have been identified as Key Habitat areas for fish and/or wildlife. The SHIM process identified that these areas are sensitive to development and continue to provide important habitat functions, but may be at risk from adjacent development pressures. Restoration opportunities within the orange shoreline zone were identified to potentially exist, which could increase the ecological value of the shoreline.

- (c) The objective of Development Permit Area #3 is the protection, preservation, restoration and enhancement of the natural ecosystem along the shoreline of Lake Windermere. Activities within and along the shoreline must be undertaken in a manner that minimizes the disruption or alteration of the natural ecosystems that create fish and wildlife habitat and maximizes the opportunity for restoration and enhancement. The intent is not to preclude all development in these areas, but to provide notice that these portions of the shoreline provide unique characteristics that warrant special review and consideration, and to ensure appropriate mitigation or protection measures are prescribed where identified by a Qualified Environmental Professional (QEP).

## (6) Guidelines

Proposed development must comply with the Guidelines. Development Permits issued shall be in accordance with the following:

### (a) General

The following guidelines apply to all areas identified as red and orange shoreline zones on **Schedules M1, M2 and M3** of the Lake Windermere Official Community Plan:

- (i) All development proposals are subject to the applicable requirements and approval processes under the federal *Fisheries Act*, *Navigable Waters Protection Act* and *Canadian Environmental Assessment Act* and the provincial *Land Act*, *Water Act*, *Health Act* and *Environmental Management Act*. The identification of the permits and approvals required must be submitted with the development permit application. The submission of proof of acquiring all required permits and approvals from the responsible jurisdictions may be a condition of the issuance of the Development Permit.
- (ii) The Regional District may require an Environmental Impact Assessment report prepared by a Qualified Environmental Professional in accordance with “Regional District of East Kootenay – Development Approval Information Bylaw No. 2122, 2008”.
- (iii) For development proposals that are located in an area identified as cobble/gravel habitat on **Schedules M1, M2 and M3** an assessment report from a Qualified Environmental Professional (QEP) must identify the extent of the cobble/gravel habitat and the areas of greatest importance for fish habitat in the area under application. Recommendations to protect the fish habitat and mitigate the impact of the proposed development on the fish habitat must be included in the assessment report.
- (iv) Proposals that offer to register a conservation covenant on the title of the lands in order to permanently protect shoreline ecosystems

are encouraged. The covenant should be registered before any development occurs. The covenant should be registered in favour of the RDEK, and may include another public agency, including the province.

- (v) All structures must be constructed with materials that do not have the potential to negatively impact water quality, fish, aquatic organisms or aquatic vegetation. Applicants are encouraged to utilize western red cedar, redwood, cypress, eastern white cedar, or plastic lumber. Use of real wood for the in-water portion of the dock is encouraged. Appropriate materials should be selected in consideration of Fisheries and Oceans Canada's (DFO) *The Dock Primer*.
- (vi) In order to facilitate implementation of a recommendation contained within a report by a Qualified Environmental Professional, the applicable zoning regulations may be varied as part of the Development Permit approval.
- (vii) To soften the shoreline and create fish habitat, bioengineered features are required to be Integrated into the design of new or replacement of existing retaining walls. A report by a Qualified Environmental Professional (QEP) must be provided to identify the appropriate bioengineered features for the proposed development site.

Applicants will be exempt from this guideline when it can be demonstrated that a vertical retaining wall structure is required for stabilization of the shoreline for the protection of upland structures. The need for a vertical structure or retaining wall must be documented in a report by a Qualified Geotechnical Professional or Engineer.

- (viii) When stabilization of the shoreline is required due to natural erosion processes, the use of rock or rip-rap above the ordinary high water mark for shoreline stabilization is encouraged. The placement of the rock should be done in such a manner as to not require the placement of fill, where feasible. The planting of deeply rooted native vegetation above and immediately behind the rock is encouraged to increase the life span of the wall.
- (ix) All approved development should follow the applicable best management practices (BMP) of the province and the Regional Operating Statement (ROS) of Fisheries and Oceans Canada (DFO), unless a letter of advice or *Fisheries Act* authorization under section 35(2) has been issued.
- (x) Riparian and emergent vegetation should be maintained where intact, and restored where disturbed or invasive weeds have intruded. Habitat restoration, including the removal of invasive weeds, should be completed under the direction of a Qualified Environmental Professional (QEP) and in accordance with the required federal and provincial approvals under the *Fisheries Act* and *Environmental Management Act*.

(b) Red Shoreline Zone Guidelines

The following guidelines apply to portions of shoreline identified as red shoreline zone on **Schedules M1, M2 and M3** of the Lake Windermere Official Community Plan:

- (i) In consideration of the impact resulting from the alteration of land; removal of vegetation; placement or construction of in-water structures on aquatic organisms, fish, fish habitat, aquatic vegetation and emergent vegetation; the area **below** the natural boundary must remain free from development, unless an assessment report from a Qualified Environmental Professional (QEP) concludes that the site under application no longer possesses the characteristics that would warrant the red colour zone designation due to previously **approved** development.

- (ii) All applications for development **above** the natural boundary within the red shoreline zone must be accompanied by a report from a Qualified Environmental Professional (QEP). The assessment report must identify the extent of the proposed development, any constraints on the timing of the development to minimize impacts on riparian vegetation, upland vegetation and wildlife habitat and demonstrate that the proposed development has been designed to mitigate impact on the adjacent fish and riparian habitat.

Opportunities to restore or enhance habitat should also be identified, where appropriate. All approved development must be completed in accordance with the recommendations of the report.

- (iii) Despite section 21.5 (6)(b)(i) activities that include the following are permissible in the red shoreline zone:
  - (A) habitat restoration or removal of aquatic invasive species as identified within a report by a Qualified Environmental Professional (QEP) and completed under the direction of trained persons; and
  - (B) traditional First Nation uses.

(c) Orange Shoreline Guidelines

The following guidelines apply to portions of shoreline identified as orange shoreline zone on **Schedules M1, M2, and M3** of the Lake Windermere Official Community Plan:

- (i) In consideration of the impact resulting from the alteration of land, removal of vegetation and placement or construction of in-water structures on aquatic organisms; fish; fish habitat; riparian, aquatic and emergent vegetation the following types of activities or structures are generally not permitted:
  - (A) beach creation (above or below the natural boundary);
  - (B) boathouses;
  - (C) dredging, in areas not previously authorized by the province or Fisheries and Oceans Canada (DFO); and
  - (D) deposition of fill;
    - (i) unless an assessment report from a Qualified Environmental Professional (QEP) concludes that the site under application no longer possesses the characteristics that would warrant the orange colour zone designation due to previously **approved** development.
    - (ii) All applications for development must be accompanied by a report from a Qualified Environmental Professional (QEP). The assessment report must identify the extent of the proposed development, any constraints on the timing of the development to minimize impacts on riparian vegetation, upland vegetation, and wildlife habitat, and demonstrate that the proposed development has been designed to mitigate impact on the adjacent fish and riparian habitat. Opportunities to restore or enhance habitat should also be identified, where appropriate. All approved development must be completed in accordance with the recommendations of the report.
    - (iii) Maintenance dredging for docks or marinas that have prior approval under the federal *Fisheries Act* or provincial *Water Act* or *Environmental Management Act* must be done in accordance with the



recommendations made by a Qualified Environmental Professional and any requirements of the province or Fisheries and Oceans Canada (DFO).

**(7) Applicable Definitions**

Within Development Permit Area #3:

**BIOENGINEERED** means the incorporation of natural materials and native plants into the shoreline stabilization design of retaining walls or structures.

**GROYNE** means a protective structure that is used to stop sediment from shifting along the shoreline. Groynes are generally constructed perpendicular to the shoreline.

**HABITAT INDEX** means a ranking system based upon the biophysical attributes of the shoreline. The index is comprised of parameters, such as shore type, substrate type, presence of retaining walls, docks or other structures to determine the relative habitat value based on a mathematical relationship between the parameters.

**FISH HABITAT** means the spawning grounds and nursery, rearing, food supply and migration areas on which fish rely directly or indirectly to carry out their life cycle.

**IN-WATER STRUCTURE** means any structure that is or extends below the high water mark of the lake.

**NATURAL BOUNDARY** means the visible high water mark where the presence and action of water are so common and usual and continued in all ordinary years as to mark upon the soil of the bed of a lake, river or stream or other body of water a character distinct from that of the banks thereof, in respect to vegetation as well as in respect to the nature of the soil itself.

**RETAINING WALL** means any structure that is used to retain fill material. Retaining walls are commonly used for erosion protection along the shoreline. Retaining walls may include vertical concrete or wood structures or bioengineered structures.

**QUALIFIED ENVIRONMENTAL PROFESSIONAL** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- (b) the individual's area of expertise is recognized as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and
- (c) the individual is acting within that individual's area of expertise.

**Citation:**

McPherson, S. and D. Hlushak. 2008. Windermere Lake Fisheries and Wildlife Habitat Assessment. Consultant report prepared for the East Kootenay Integrated Lake Management Partnership. Prepared by Interior Reforestation Co. Ltd., Cranbrook BC.

10. Schedule A Section 22.4 (2) (iii) is repealed and the following substituted:

(ii) *Natural Environment*

Criteria: Applications for amendments to the zoning bylaw, temporary use permits or development permits under section 21.4, Development Permit Areas #2 – Protection of the Natural Environment or section 21.5, Development Permit Area #3 – Protection of the Natural Environment (Lake Windermere Shoreline), of this plan.

