

17 “Whose Shoreline is it, Anyway?”

A number of years after purchasing the resort, we hired surveyors to identify our boundaries. Part of their task was to find the lake’s ‘natural boundary’. We were surprised when they found that the lake was higher than indicated on the original lot plans, and we’d therefore “lost” some land. This affected setbacks for septic fields and future construction.

Where is our legal property line at the water’s edge? What are our rights as waterfront property owners? What are the regulations for building a dock, or accessing water in a creek for drinking? Can we put up a “No Trespassing” sign to stop people walking along the beach? In the past, these actions might all have occurred without much input from government agencies. Now, though, we live in an era of greater awareness.

As we found out when we had our survey carried out, shorelines are dynamic: their location and nature changes over time as they are eroded away, as water levels change, or as materials are carried and deposited by water. Rivers shift locations; bluffs erode; beaches change shape as the sands shift. These processes provide challenges to those who establish the boundaries of waterside land parcels.

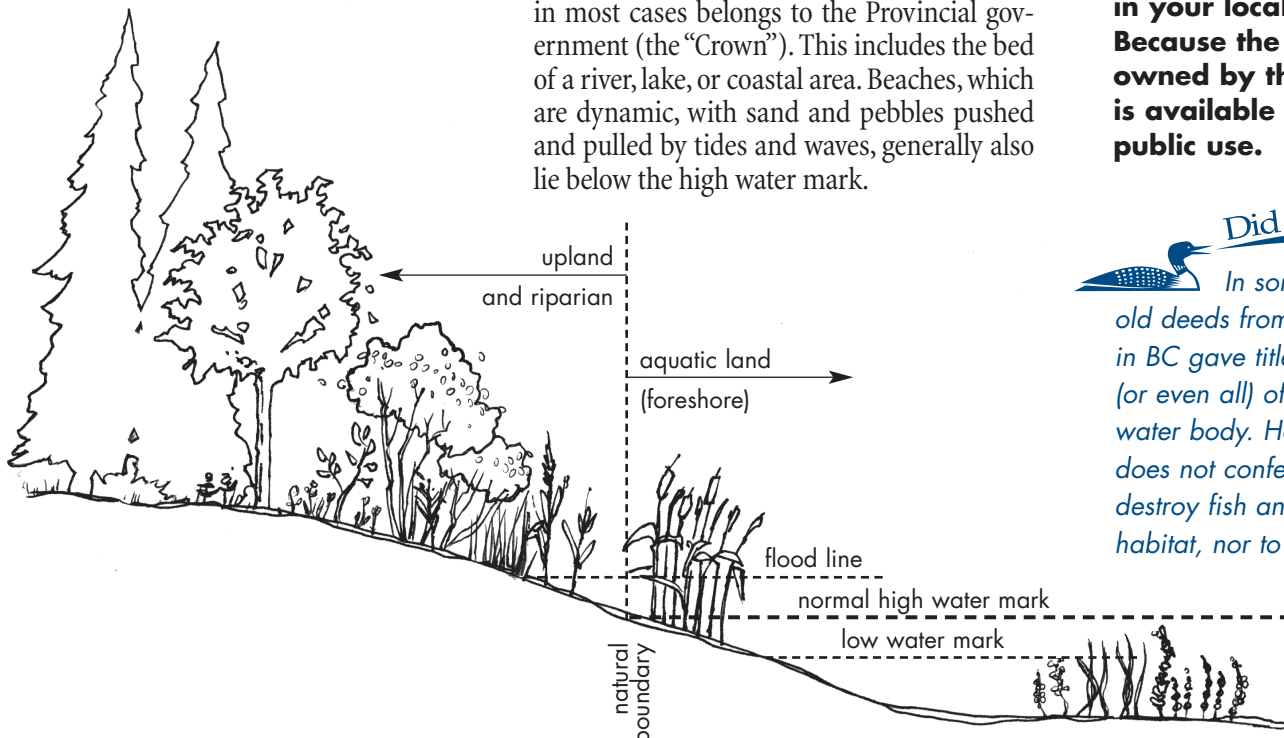
tip *If your property was last surveyed many years ago, consider hiring a professional surveyor to reassess the shoreline boundary, particularly if you think there has been change over time which may affect the safe setback of a septic field.*

Your Property

Boundaries

As an owner of waterfront property, your property line generally extends to the **natural boundary** of a lake, river, stream, or coastal water. This natural boundary is usually repre-

sented by the **normal high water mark** (in freshwater areas) or by the **high tide mark** (in coastal locations). The land below the natural boundary is defined as the foreshore and in most cases belongs to the Provincial government (the “Crown”). This includes the bed of a river, lake, or coastal area. Beaches, which are dynamic, with sand and pebbles pushed and pulled by tides and waves, generally also lie below the high water mark.



CAUTION

Erecting a “Private Property” sign below the High Water Mark on a beach is like putting it up in your local park. Because the foreshore is owned by the Crown, it is available for casual public use.

Did you know...



In some rare cases, old deeds from the early days in BC gave title to a portion (or even all) of the bed of a water body. However, this does not confer the right to destroy fish and other wildlife habitat, nor to pollute water.



Did you know . . .

All improvements which may affect the public right of navigation have to be approved under the Navigable Waters Protection Act, which is administered by the Canadian Coast Guard.



If you lease land (for example, from a First Nations group or from the Crown), check your lease for any special clauses or terms affecting your shoreline area.



Did you know . . .

Property lost from erosion or increased water levels becomes part of the water body and ownership reverts back to the province.

A copy of the survey plan showing the legal boundary of your property can usually be obtained from the Land Title Office. Bear in mind, though, that the actual location of a line designating the “high water mark” on a legal plan can be different in reality – and reality will govern.

To find the natural boundary, surveyors and other field workers look at things such as changes in soil characteristics (soils above the normal high water mark frequently differ from soils below it). Other indicators are changes in the colour of rock where water has made a mark, and vegetation differences (saltwater vegetation limits, for instance, or the limits of vegetation along a lake’s beach).

Use of surface water

If you live on a creek, or have one running through your property with a visible natural boundary, in all likelihood it is considered public property. There are only a few rare instances where a property owner also owns the bed of a creek that goes through his or her property.

Use of surface water (from creeks, rivers and lakes) is regulated by the Water Management Branch, Land and Water BC (LWBC). Even though you own the property bordering a creek, river or lake, if you wish to draw water from it, you must apply for a permit. See Chapter 6.

Public access

Because the foreshore is owned by the province, it is public land, and is therefore available for casual public use. As a waterfront owner, you must permit access across publicly owned land. Placing fences or other obstructions to keep the public away from the shoreline fronting your property is contrary to this and constitutes a trespass on your part.

Waterfront owners’ rights

As an owner of waterfront property, you also have “riparian rights”. These rights include:

Right of access

You have the right of access, to and from the property to deep water for the purpose of navigation, every point along your waterfront property. This means that no one can prevent you from accessing your land from the water. This right does not include the construction of any moorage, wharf or docking facilities. It also means that you have the right to obtain access – to ask the Crown for permission for any development. The Crown must have good reason to withhold approval.

The right to protect your property from erosion

You may build erosion control structures on your own land – that is, above the natural boundary of the lake or river or ocean (the high water mark, or high tide mark). However, approval of various agencies, including local government, is usually required to do this. You should also check for any leaseholder regulations, or covenants or easements held by a third party which might limit activity. You definitely will need agency approvals if construction below the natural boundary of the water body is necessary for erosion control, and to operate machinery below the high water mark.

The right to acquire land

Sometimes land may build up slowly in front of your property through natural processes of deposition over time. If it is considered to be an “accretion” by the Surveyor-General, you may apply to have it registered as part of your land title. However, the costs of doing so may not make this worth the effort, since the high water mark could change again over time.

A local BC land surveyor will have to confirm that the accretion is due to natural, rather than human causes, and there will be other costs such as legal fees associated with the process of registration.

Foreshore Development

Most of the foreshore in BC is jointly managed by Land and Water BC, BC Ministry of Water, Land and Air Protection (WLAP) and Fisheries and Oceans Canada (DFO). To develop or alter the foreshore, or place structures on it, you require the authorization of the province and DFO. This includes projects such as pilings, docks, and retaining walls. Improvements or fill placed on the foreshore without approval are considered to be in **trespass** and may be subject to penalties.

Land Act tenures

LWBC will grant Land Act **tenures** – licences, leases, easements or permits – to individuals, corporations, societies, and local governments who wish to carry out foreshore projects. To receive permission, you (as applicant) must either own the property **upland** of the foreshore area in question, or receive the upland owner's consent. Projects for which you may require a tenure include private wharves, docks or boathouses; marinas; floating structures (such as rafts); pipelines, powerlines; anchorages; aquaculture, including shellfish harvesting; log storage and handling; and, community and private recreational uses.

LWBC will contact other government agencies in the review process to obtain their comments on the implications of your proposal. Because foreshore areas are so significant – for protecting water quality, and for fish and other wildlife habitat, recreation and industry – there is a lot of interest in development that occurs in these areas. Government takes the view that foreshore development must be managed carefully.

Rules on building certain structures may be different among regional offices of LWBC. Contact the nearest office for detailed information and application forms before investing too much time in your project design.

The Land Management staff at LWBC will advise and assist you if an application is required, or you can visit their website at www.lwbc.bc.ca. Their mandate is to coordinate the input of other agencies to ensure that what you propose is compatible with the environment and adjacent land uses.

Obtaining approvals

LWBC is the first point of contact for most waterfront residents wishing to carry out alterations on the shoreline. They will provide you with the information required for provincial and federal approvals. They will also advise you on contacting the appropriate federal agencies and your local municipality, regional district or First Nations, who will provide comments on land use suitability and compliance with zoning and building bylaws.

In a few areas, agencies such as the Vancouver Port Authority coordinate the approval process and you'll need to contact them.

As well as addressing the question of working on Crown land, provincial and federal agencies will be reviewing your application from the point of view of environmental impact, particularly the impact on fish habitat.

The Federal Fisheries Act is one of the strongest pieces of legislation that will influence you as a shoreline resident. It legally requires fisheries officers in both DFO and WLAP to take action to protect fish habitat – both below and above the high water mark.

If you propose activities on the foreshore that might harmfully alter, damage or destroy fish habitat, you are at risk of contravening the Fisheries Act. To prevent this (and any resulting fines and difficulties), you will need to receive a written letter of advice from DFO and/or WLAP. This letter will indicate that if you follow the terms and conditions outlined, you will be unlikely to damage fish habitat.

Should damage to fish habitat be unavoidable, then a much more detailed, complicated procedure will follow. Environmental screening will be required, referrals made to other agencies, and a formula worked out to identify how you can compensate by creating fish habitat elsewhere. Only DFO can actually authorize habitat destruction, and you will require their authorization before proceeding.



Did you know...

Many municipalities are helping protect fish habitat by establishing setback and leave strip bylaws to protect shoreline buffers. Check with your local office.

“ I was planning to move a fallen tree from the water off my beach, when a neighbour mentioned that I might need a permit because it's fish habitat. I contacted the local habitat officer in Water, Land and Air Protection who gave me permission to shift it enough so it wouldn't interfere with swimming and boating. ”

Tom, Gardom Lake



Did you know...

Penalties of \$60,000 can be levied by Land and Water BC for modifying or placing improvements on Crown land without proper authorization.

Resources

Riparian Rights and Public Foreshore Use in the Administration of Aquatic Crown Land. British Columbia Ministry of Environment, Lands and Parks, 1995.

Land and Water BC website:
www.lwbc.bc.ca

See Appendix 1 for complete Resources.