



REGIONAL DISTRICT OF CENTRAL KOOTENAY

DEVELOPMENT PERMIT REPORT

DATE OF REPORT: May 6, 2016
DATE & TYPE OF MEETING: 06/05/2016 Choose Meeting Type Here
AUTHOR: Meeri Durand, Planning Manager
SUBJECT: DEVELOPMENT PERMIT (COPLEY – 117 KOOTENAY LAKE RD.)
FILE: 4260-20-DP1601E-02256.101

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is to recommend the issuance of a Watercourse Development Permit as required under the Electoral Area E Official Community Plan Bylaw No. 2022 for a property located at 117 Kootenay Lake Road and legally described as Strata Lot 1 District Lot 309 Kootenay District Strata Plan NES3286 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V, PID 027-190-277 within the community of Procter.

SECTION 2: BACKGROUND / ANALYSIS

Owner: David Copley

Applicant: Oliver Berkeley (Agent)

Location: 117 Kootenay Lake Road, Procter

Electoral Area: E

Legal Description: Strata Lot 1 District Lot 309 Kootenay District Strata Plan NES3286 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V, PID 027-190-277

Property Size: 0.3 acres

Floodplain: Kootenay Lake, Setback 15 m, Flood Construction Level 536.3 metres GSC

Zoning: Not Applicable

OCP Designation: Suburban Residential (R1)

Development Permit: Environmentally Sensitive Development Permit (ESDP) under *Electoral Area E Official Community Plan Bylaw No. 2022*

Site Summary/Background:

The proposed use of the property is the construction of a single family dwelling partially within the 15.0 metre Watercourse Development Permit Area of *Electoral Area E Rural Official Community Plan Bylaw No. 2022, 2013*. A report has been prepared by Masse Environmental Consultants Ltd. dated March 2016 in support of the application.

The subject property is situated along the southeastern shoreline of the West Arm of Kootenay Lake, approximately 1.2 kilometres northeast of the community of Procter in Electoral Area E. The property is one of thirty-two waterfront lots created during the development of Kootenay Lake Village in 2007. At that time, the required setback from Kootenay Lake for the purposes of Floodplain Management was 7.5 metres from the natural boundary. The required setback was increased to 15.0 metres from the natural boundary during

an amendment to the RDCK Floodplain Management Bylaw in 2009. The proposed development is constrained by the requirement of establishing legal access outside of an existing C.P.R. right of way that is currently being utilized. The lower level of the property is relatively level with a slope less than 10% while the back of the property rises sharply to a 35% to 45% slope toward the access and C.P.R. right of way above.



The proposed development of a single family dwelling within the 7.5 metres from the natural boundary of Kootenay Lake has triggered the requirement of a Watercourse Development Permit under Electoral Area E Rural Official Community Plan Bylaw No. 2022. Aspects of the proposed development which fall within the authority of the Development Permit guidelines include:

- a. removal, alteration, disruption or destruction of vegetation;
- b. disturbance of soils;
- c. construction or erection of buildings and structures; and
- d. flood protection works

The proposed dwelling will have a gross floor area of approximately 161 square metres (1,730 square feet) and will meet the structural elevation requirements of RDCK Floodplain Management Bylaw No. 2080. It was determined by the supportive geotechnical engineering assessment, that the elevation of the home was more of a determinant factor of safety than that of a reduced setback along the West Arm of Kootenay Lake¹. An exemption to the setback was granted by the RDCK Board on February 18th, 2016. The proposed hardship to meeting the required 15.0 metre setback was the inability to obtain reasonable and legal access to the property without a setback reduction.

Kootenay Lake levels vary significantly throughout the year, with high elevations generally observed in April and in June, associated with freshet and high elevation snow melt. The proposed development has been determined to be safe for the use intended as determined by their geotechnical engineer's assessment. The subject property is served by a community water and waste water system and there are no concerns expressed by Interior Health provided that the systems continue to meet their standards.

¹ Perdue Geotechnical Services Report "Site Specific Floodplain Variance Kootenay Lake – Lot 1 Plan NES3286 District Lot 309 Kootenay District" dated November 2nd, 2015
Staff Report

Development Permit Area Guidelines

1. All development proposals subject to this permit will be assessed by a Qualified Environmental Practitioner (QEP) or Registered Professional Biologist (RP Bio) in accordance with the Riparian Areas Regulation established by the Provincial and/or Federal governments as used elsewhere in the Province;
2. An WDP shall not be issued prior to the RDCK ensuring that a QEP or RP Bio has submitted a report certifying that they are qualified to carry out the assessment, that the assessment methods have been followed, and provides in their professional opinion that a lesser setback will not negatively affect the functioning of a watercourse or riparian area and that the criteria listed in the Riparian Areas Regulation has been fulfilled, and;
3. The Riparian Areas Regulation implemented through the WDP does not supersede other Federal, Provincial and or local government requirements, including that of other development permit areas, building permits, flood covenants, Federal or Provincial authorization. Land subject to more than one development permit area designation must ensure consistency with the guidelines of each development permit area, to provide comprehensive stewardship of both fish and wildlife habitat.

Proposed Mitigation

The applicant has submitted an Environmental Assessment in alignment with WDP Guidelines and as prepared by Masse Environmental Consultants Ltd., dated March 2016. During the assessment it was concluded that the applicant may be able to accommodate a greater setback of 10.0 metres from the natural boundary of Kootenay Lake to enable greater retention of riparian habitat features². The approved floodplain setback reduction was to 7.5 metres from natural boundary of Kootenay Lake. The actual setback achieved will largely be determined by the access developed.

The proposed dwelling will sit on concrete footings and foundation walls which will be backfilled to below the main floor slab to reach the required flood construction level of 536.5 metres G.S.C. It is likely that during extreme high water levels, that lake levels may reach the base of the footings. It is important to note that all foundations fronting Kootenay Lake are required to be engineered to withstand inundation.



The foreshore fronting the property consists of cobbles and gravel with some sand. Groundwater

² Masse Environmental Consultants Ltd. 'Copley Residence, Kootenay Lake – Environmental Assessment' – dated March 2016
Staff Report

seepage observed on the property indicates that there may be potential for kokanee spawning habitat, though such spawning activity has not been confirmed. The area is protected by a *Section 16 Reserve* by the Province.

The riparian area associated with the property has been disturbed by previous subdivision activity and further removal of vegetation for the purposes of establishing a building envelope. It is assumed that riparian vegetation in the area may be regularly inundated during high water events. The back of the property contains a strip of conifers which provides a privacy screen and bank stabilization along the steep slope toward the C.P.R. right of way. It is expected that the proposed development will result in additional clearing of trees and shrubs and a mitigation plan is proposed which includes the replacement of removed trees at a 3:1 ratio for a total replacement of 30 trees. Two trees that have been proposed for removal are danger trees along the north-eastern property boundary that sustained damage from a high velocity wind storm that occurred in the summer of 2015.



Aquatic impacts are expected to be minimal as long as best management practices are used during construction. Mitigation efforts include the timing of construction activity, protection of existing vegetation, erosion and sediment control and management of equipment fuels and lubricants and site restoration.

There was estimated to be a net loss of 63 square metres of riparian habitat by proposed development activities which will be compensated for through riparian habitat enhancement of 175 square metres within the 15.0 WDP Area. This will require the creation of an area of fill fronting the proposed dwelling consisting of boulders and boulder clusters to create substrate for riparian vegetation and the planting of flood tolerant native plants not exceeding 0.5 metres in height. A list of appropriate native species was provided.

Referral Comments

This application was sent on a 30 day referral period in accordance with the RDCK Planning Procedures and Fees Bylaw No. 2457, 2015. The following responses were received:

Agency	Referral Comments	Planning Staff Response
<p>Ministry of Forests, Lands and Natural Resource Operations</p> <p>Kristen Murphy, Habitat Biologist</p> <p>April 25th, 2016</p>	<p>As long as the applicant abides by the recommendations and mitigation plan set forth by their environmental consultants report, titled 'Copley Residence Kootenay Lake Environmental Assessment' dated March 2016, the Habitat Division has no further comments or concerns regarding issuance of the Development Permit.</p>	<p>The requirements of submitted mitigation plan has been outlined within the content of the Development Permit as drafted.</p>
<p>Interior Health Authority</p> <p>John Beaupre, Environmental Health Officer</p> <p>April 27th, 2016</p>	<p>Thank you for the opportunity to comment on this development application. The dwelling proposed to be built on the subject property will be serviced by a community sanitary sewer system and subsequently this office has no objection to issuance of the Development Permit as our interests are essentially unaffected.</p>	<p>The subject property is located within a strata development with community servicing provided.</p>
<p>Ministry of Transportation and Infrastructure</p> <p>Catherine Littlewood, District Development Technician</p> <p>May 4th, 2016</p>	<p>The Ministry of Transportation and Infrastructure has no concerns about this Watercourse Development Permit application.</p>	<p>No Comment.</p>
<p>Adjacent Property Owner, 109 Kootenay Lake Road</p> <p>Andy Cohen, Verbal Communications</p> <p>May 6th, 2016</p>	<p>As an adjacent property owner there are concerns with regard to the need to trespass over private property to currently access the subject property due to the sharp turn. There is an expressed interest that access be accommodated from the eastern side of the property.</p> <p>Additional Comments Received by Email: Thanks Meeri for taking my comments. Our strata, owned by Mr. Ted Funston (113 Kootenay Lake Road) and myself would strongly prefer Mr. Copley's driveway be redirected to enter from the east side of the lot vs. the current west side unusable u-turn. The current driveway causes Mr. Copley to enter our property and commence a 3-point turn to enter his current driveway. It is basically unusable in the winter in this current configuration. Thanks again.</p>	<p>This preference will be communicated to the property owner for consideration when designing the access.</p>

Staff Analysis

The applicant has retained a qualified professional (QP) to assess the impact to riparian values along the foreshore of Kootenay Lake. Recommendations made within the report provide guidance for mitigation of assessed impacts. The Environmental Assessment meets the required guidelines for the Watercourse Development Permit Area.

Section 502 of the *Local Government Act* enables the RDCK to require an applicant to provide securities for the purpose of ensuring the terms of the Development Permit are met. The amount must be stated in the permit, and the applicant may choose either to provide an irrevocable letter of credit or a deposit of securities in a form satisfactory to the local government. The landscaping cost was estimated at \$3000.00. This estimated cost was based on the replacement of thirty (30) trees and associated native plantings. Two years should be provided to enable the proponent to ensure the successful replanting scheme.

RDCK staff is supportive of the issuance of a permit to allow for development to proceed. A 'Section 56' covenant has already been drafted to address requirements under RDCK Floodplain Management Bylaw No. 2080, 2009 which will be registered in conjunction with a notice of permit.

SECTION 3: DETAILED ANALYSIS**a. Financial Considerations – Cost and Resource Allocations:**

The \$500 fee for the Development Permit application has been received. A security deposit is recommended to guarantee the performance of the terms of the proposed permit.

b. Legislative Considerations (Applicable Policies and/or Bylaws):

Local Government Act Section 490 and 491 provides that *“An official community plan may designate development permit areas for...protection of the natural environment, its ecosystems and biological diversity”* prior to issuance of a building permit.

The DP application has been submitted in accordance with the requirements and guidelines found under the Watercourse Development Permit Area under Electoral Area E Rural Official Community Plan Bylaw No. 2022.

This application was reviewed in accordance with the Planning Procedures and Fees Bylaw No. 2457, 2015. The bylaw delegates the authority for consideration of DPs to the General Manager of Development Services (GMDS).

c. Environmental Considerations:

The Development Permit provides detailed recommendations as to mitigation and compensation to address the potential impacts of the development proposal.

d. Social Considerations:

The proposed development is one of several properties within Kootenay Lake Village that are unable to meet the required 15.0 metre from natural boundary setback established in a 2009 amendment to the RDCK Floodplain Management Bylaw No. 2080. Each property will be evaluated on a site specific basis as to the appropriate setback for floodplain and riparian habitat conservation.

e. Economic Considerations:

None anticipated.

f. Communication Considerations:

Should the GMDS approve the permit, staff would proceed with subsequent procedures under the bylaw, including informing the applicant of the 14-day 'Appeal Period' and option to waive the appeal.

g. Staffing/Departmental Work plan Considerations:

Should the GMDS approve the permit, staff would issue the permit upon receipt of security, and register notice on title. Building Department staff may then proceed with processing the Building Permit. Planning staff would follow up on the terms of the landscaping security and finalize approximately two years after the construction phase is completed.

SECTION 4: OPTIONS & PROS / CONS

Option 1: Approve the Development Permit as proposed.

Option 2: Deny the Development Permit as proposed. Staff has not identified any authority for the GMDS to deny the proposed permit.

SECTION 5: RECOMMENDATION(S) TO THE GENERAL MANAGER OF DEVELOPMENT SERVICES

That the General Manager of Development Services APPROVE the issuance of Development Permit 4360-20-DP1601E-02256.101 for the property located at 117 Kootenay Lake Village Road and legally described as Strata Lot 1 District Lot 309 Kootenay District Strata Plan NES3286 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V, PID 027-190-277

Respectfully submitted,

Signature:



Name:

Meeri Durand, Planning Manager

CONCURRENCE

Initials:

General Manager of Development Services

ATTACHMENTS:

Attachment A – DRAFT Development Permit (Copley)