



REGIONAL DISTRICT OF CENTRAL KOOTENAY

Memo to General Manger of Development Services

Date of Memo: March 23, 2022
Author: Stephanie Johnson, Planner
Subject: DEVELOPMENT PERMIT (DP2113A – Rose/Fraser)
File: DP2113A-02256.134-Rose/Fraser-DP000111

Owners	Kristin Fraser & Jonathan Rose
Civic Address	13745 Highway 3A, north of Boswell
Legal Description	LOT A, PLAN NEP77016, DISTRICT LOT 4595, KOOTENAY LAND DISTRICT
PID	026-134-381
Lot Size	0.33 hectares

PROPOSAL:
<p>The subject property was originally developed prior to any Environmentally Sensitive Development Permit (ESDP) area being established. Pre-existing development included a residence, terraced gardens, a fire pit and an access road down to the foreshore. The existing structures and landscaping were removed when unauthorized regrading works were undertaken in 2020-2021. To address the above unauthorized works, this development proposal includes foreshore restoration including removal of placed fill below the high water mark, removal of stockpiled rock above the high water mark and revegetation of disturbed areas on adjacent Crown lands and within the riparian area of Kootenay Lake on the subject property, in addition to the proposed construction of a cantilevered deck and gravel access path to the waterfront with the ESDP area.</p> <p>Under the <i>Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013</i>, the ESDP area extends 15 metres upland from the high water mark of a watercourse (i.e. Kootenay Lake). The purpose of the ESDP area is to regulate development activities in watercourses and their riparian areas to protect aquatic habitat; and to conserve, enhance and, where necessary, restore watercourses and their riparian areas.</p>

Electoral Area	A
Development Permit Area	Environmentally Sensitive Development Permit

Guidelines	Meets?	Comments
All development proposals subject to this permit will be assessed by a Qualified Environmental	Yes	A comprehensive Riparian Assessment report has been received from Masse Environmental Ltd., dated January 31, 2022.

Practitioner (QEP) in accordance with the Riparian Areas Regulation established by the Provincial and/or Federal governments as used elsewhere in the Province		
A WDP shall not be issued prior to the RDCK ensuring that a QEP 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.	Yes	The QEP has identified a SPEA of 15 m for Kootenay Lake. The Environmental Assessment provided by Masse Environmental meets all of the requirements of this guideline.
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.	No	The proposed cantilevered deck attached to the house extends into the 15 metre floodplain setback from Kootenay Lake, however, the footings for the deck attached to the house are outside of the 15 metre floodplain setback, exempting the deck from the floodplain setback requirement.

Zoning	N/A
OCP	<i>Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013</i>
ALR	N/A
Floodplain	Within 15 m of the natural boundary of Kootenay Lake
NSFEA	N/A
Geohazard	N/A
Archeology Sites	Assessed as having low potential for archaeological sites
Within RDCK Water System	N/A
Relevant Covenants and Reports	The proposed development will have no impact on any existing charges on title(s).

Review Title for Miscellaneous Charges	Complete
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KOOTENAY LAKE SHORELINE INVENTORY:	
Aquatic Habitat Index Rating	Moderate
Erosion	Moderate
Vegetation	Emergent Vegetation (EV)
Site Sensitivity	Aquatic (A)
Enhanced Engagement	No
Critical White Sturgeon Habitat	No
Archeological Values	Yellow Zone (Y)

REFERRAL COMMENTS:	
Ministry of Forests Lands Natural Resource Operations and Rural Development (MFLNRORD)	<ul style="list-style-type: none"> • The Ministry's Crown Land Authorization's division has reviewed this proposal and provided the following comments. <i>"Our interests are mostly unaffected since the proposal is on private land, but I do have a few comments regarding the fill that encroached Crown land and foreshore. Lands has no objection to the project subject to the following conditions:</i> <ul style="list-style-type: none"> • <i>Fill is removed from Crown land and foreshore and the land is restored to its original condition. A Section 11 WSA approval must be obtained prior to commencement of this work.</i> • <i>No improvements are to be made on the land below the high water mark (i.e. grooming of the beach) or on adjacent Crown land to the north.</i> • <i>Retaining walls and other land protection improvements must be placed on the proponent's upland property".</i> • The Ministry's Water division has commented that <i>"any work related to this application, which is to take place within the stream channel, both above and below the natural boundary, is subject to the jurisdiction of the Water Sustainability Act, and would likely require an approval to make changes in and about a stream".</i> • The Ministry's Terrestrial Resource Management division reviewed this ESDP request and determined that <i>"any works within or adjacent to a stream are subject to the Provincial Water Sustainability Act. Please review the Kootenay Region's Terms and Conditions for Instream works and timing windows available through the Kootenay Boundary Region drop down menu at:</i> <p style="margin-left: 20px;">https://www2.gov.bc.ca/gov/content/environment/air-</p>

	<p>land-water/water/water-licensing-rights/working-around-water/regional-terms-conditions-timing-windows to ensure that you can abide by these guidelines. Unauthorized fill should be pulled back beyond the natural boundary.</p> <ul style="list-style-type: none"> • A Water Sustainability Act Section 11 application must be received and approved, prior to any foreshore installation/construction activities associated with this project. • All mitigation and restoration recommendations outlined in the Riparian Assessments should be required as part of the permits. Additionally, it is recommended that a 3-year monitoring and replacement program is built into the permit to ensure riparian restoration success at and below the natural boundary”.
<p>Building Department</p>	<p>“Requirement for a BCBC compliant drainage disposal system.</p> <p>There is also currently no concern with the site to request a geotechnical report since the field assessments that have been done for the other areas under construction on the property have been detailed and comprehensive providing a level of assurance that the geotechnical engineer of record is addressing any potential issues both permanently and temporarily on the site,” for construction purposes.</p>
<p>Interior Health</p>	<p>“The proposed system complies with the Sewerage System Regulation (SSR). As such, it is unlikely to cause immediate human health impacts during its operating life. The SSR is designed to mitigate immediate risk to human health in the immediate to nearer future (i.e. not cause disease from bacteria and viruses). However, there is no provision in the SSR or Sewerage System Standard Practice Manual to consider long term sustainability of onsite servicing of a parcel. The proposed system has an expected lifespan of 25+ years. It is reasonable to expect the house to be on the parcel 75+ years. As such, it is very important at the design stage of developing a property, especially small properties with site constraints such as proximity to lake, to know there is another space(s) on the land suitable for sewerage dispersal field for future use. And if there is only one place then to protect it so that current and future owners know not to use that land for anything else. Solving sewage malfunctions on parcels that do not have enough suitable land for sewage can be very difficult and very expensive. I recognize considering additional land is outside the</p>

	<i>requirements of the SSR. However, I raise this healthy housing planning principle in an attempt to protect the interests of future homeowners and future neighbours through powers of persuasion”.</i>
Ministry of Transportation and Infrastructure (MOTI)	The <i>”MOTI does not have any concerns with it at this time”.</i>
FortisBC	<i>”There are no FortisBC Inc (Electric) (”FBC(E)”) facilities affected by this application. As such FBC(E) has no concerns with this circulation”.</i>
<p>Summary: All potential geotechnical concerns related to the proposed removal of the rock stack retaining walls et al. being connected to the structural integrity of the proposed building site for the new residence have been alleviated. The rock walls are not connected to any structures or building site and would not trigger any regulations under the RDCK’s <i>Floodplain Management Bylaw No. 2080, 2009</i>. Furthermore, there are no plans to disturb the DPA for any reason associated with the construction of the home, such as a water line, drainage line, etc.</p> <p>A landscape security deposit, including environmental monitoring by a QEP of \$24, 678.75 would be submitted once consideration and approval is satisfied, and prior to DP issuance.</p>	

Respectfully submitted,

”Submitted electronically”

Name: Stephanie Johnson

CONCURRENCE

Initials:

General Manager of Development Services

ATTACHMENT:

Attachment A – Development Permit