



**REGIONAL DISTRICT OF CENTRAL KOOTENAY**

**Memo to General Manager of  
Development and Community  
Sustainability Services**

**Date of Memo:** December 13, 2021  
**Author:** Eileen Senyk, Planner  
**Subject:** Environmentally Sensitive Development Permit  
**File:** DP2116A-05497.170-Kehler-DP000121

<b>Owner</b>	David and Rhonda Kehler
<b>Civic Address</b>	12523 Lewis Bay Road, Boswell
<b>Legal Description</b>	STRATA LOT 17, PLAN NES75, DISTRICT LOT 5027, KOOTENAY LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V
<b>PID</b>	029-641-608
<b>Lot Size</b>	0.15 hectares

**PROPOSAL:**

The proposed development within the 15 m Environmentally Sensitive Development Permit (ESDP) area consists of a water line to service the new residence, and a 1 m wide elevated ramp, stairway and/or pervious pathway (15 m<sup>2</sup>) to access the foreshore of Kootenay Lake. Total disturbance is estimated at ~17 m<sup>2</sup> within the ESDP area. The proposed residence is sited approximately 16 m from the natural boundary of Kootenay Lake at its closest point.

<b>Electoral Area</b>	A
<b>Development Permit Area</b>	Environmentally Sensitive Development Permit

<b>Guidelines</b>	<b>Meets?</b>	<b>Comments</b>
All development proposals subject to this permit will be assessed by a Qualified Environmental Practitioner (QEP) in accordance with the Riparian Areas Regulation established by the	Yes	Section 3.1 of the report the QEP notes that a detailed assessment of the subject property was conducted to calculate the SPEA for Kootenay Lake pursuant to the Riparian Areas Regulation Methods (Section 3).

<p>Provincial and/or Federal governments as used elsewhere in the Province</p>		
<p>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.</p>	<p>Yes</p>	<p>Section 1 of the report titled ‘Riparian Assessment 12523 Lewis Bay Road’ and dated August 26, 2021 (hereafter referred to as ‘the report’) notes the following:</p> <ul style="list-style-type: none"> <li>• The report was prepared by Jennifer Ross, M.Sc., P.Chem. and reviewed by Fiona Lau B. Tech, A. Sc. T.</li> </ul> <p>The following statement is provided:                  ‘I, Fiona Lau, hereby certify that:                  a) I am a Qualified Environmental Professional (QEP), as defined in Section 21 of the Riparian Areas Protection Regulation made under the Riparian Areas Protection Act ;                  b) I am qualified to carry out the assessment of the proposal made by the owner (Dave Kehler), which is described in Section 2.3 of this Assessment Report (the “development proposal”);                  c) I have carried out an assessment of the development proposal, and my assessment is set out in this Assessment Report; and                  d) In carrying out my assessment of the development proposal, I have followed the specifications of the Riparian Areas Protection Regulation and assessment methodology set out in the Minister’s manual.</p> <p>Section 9 of the report concluded that:                  ‘(i) if the development is implemented as proposed, or                  (ii) if the streamside protection and enhancement areas identified in the report are protected from the development, and                  (iii) if the developer implements the measures identified in the report to protect the integrity of</p>

		those areas from the effects of the development, then there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area.
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.	Yes	Construction of the home is situated outside of the ESDPA and there are no other Development Permits required for building permit issuance. There is a restrictive covenant registered on the property's title. The existing covenant on title prohibits the construction of buildings, structures, or improvements of any kind on the portion of land outlined in black on the property survey. It is the Owner's intent to have the covenant either removed or revised to meet the riparian assessment findings and recommendations.  Any works within or adjacent to a stream are subject to the Provincial Water Sustainability Act. This includes Water Licences for domestic use or Changes in and About a Stream.

<b>Zoning</b>	Country Residential (R2)
<b>OCP</b>	Country Residential (CR)
<b>ALR</b>	Not applicable
<b>Floodplain</b>	Floodplain Setback: 15m from Kootenay Lake
<b>NSFEA</b>	Not applicable
<b>Geohazard</b>	Not applicable
<b>Archeology Sites</b>	Site DiQe-3 is located over 100m to the south. This is a post contact rail and transportation site.
<b>Within RDCK Water System</b>	Not applicable
<b>Relevant Covenants and Reports</b>	No build no disturb covenant within 15m of Kootenay Lake registered at the time of subdivision. Line indicated on reference plan EPP16547 does not align with SPEA identified in the Riparian Assessment. Recommend discharging covenant when the Development Permit is issued.
<b>Review Title for Miscellaneous Charges</b>	There is a building scheme registered on the title.

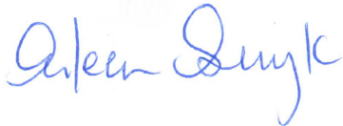
KOOTENAY LAKE SHORELINE INVENTORY:	
Aquatic Habitat Index Rating	Low
Erosion	Moderate
Vegetation	Not identified in KLP report
Site Sensitivity	Environment (E)
Enhanced Engagement	Yes
Critical White Sturgeon Habitat	No
Archeological Values	Yellow Zone (Y)

REFERRAL COMMENTS:									
<p>MFLNRORD Habitat Biologist</p>	<ul style="list-style-type: none"> <li>- The Ministry of Forests, Lands, Natural Resource Operations &amp; Rural Development – Terrestrial Resource Management Division - reviewed this Environmentally Sensitive Development Permit application on October 27, 2021. FLNRORD has determined that as long as the mitigation and compensation outlined in Masse Environmental Consultants Ltd’s 12523 LEWIS BAY RD BOSWELL, BC Riparian Assessment, dated August 26, 2021, are adhered to, this project should not impact the Resource Management Division’s legislated responsibilities.</li> <li>- Vegetation clearing should adhere to the least risk timing windows for nesting birds (i.e. construction activities should occur only during least risk period). Nesting birds and some nests are protected by the Provincial <i>Wildlife Act</i> Sec.34 and Federal Migratory Bird Act. Nesting periods can be identified by a qualified professional. General least risk windows for bird species are designed to avoid the nesting period. If nests are present at this site or adjacent to it and will be impacted by the works, the following work windows apply:</li> </ul> <table border="1" style="margin-left: 40px; margin-top: 10px;"> <thead> <tr> <th style="background-color: #cccccc;">Species</th> <th style="background-color: #cccccc;">Least Risk Window</th> </tr> </thead> <tbody> <tr> <td>Raptors (eagles, hawks, falcons, &amp; owls)</td> <td style="background-color: #ffffcc;">Aug 15 – Jan 30</td> </tr> <tr> <td>Hérons</td> <td style="background-color: #ffffcc;">Aug 15 – Jan 30</td> </tr> <tr> <td>Other Birds</td> <td style="background-color: #ffffcc;">Aug 1 – March 31</td> </tr> </tbody> </table>	Species	Least Risk Window	Raptors (eagles, hawks, falcons, & owls)	Aug 15 – Jan 30	Hérons	Aug 15 – Jan 30	Other Birds	Aug 1 – March 31
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<p>Ministry of Transportation and Infrastructure</p>	<p>MOTI does not have any concerns with the proposed development. It was noted on site inspection that the existing driveway surfacing created for the property was causing tracking of materials onto Lewis Bay Rd. It looked as if some large sized gravels were placed to try to prevent this, however there was still mud on the road. Possibly this was from before the gravels were placed. We do not require access permits for side roads such as this, but</p>								

	<p>offer the attached guidelines for property owners to consider when constructing driveways for creating a safe and sustainable access. Issues caused by inferior driveway installation are the responsibility of the property owner to remedy. Thanks for the opportunity to review.</p>
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Respectfully submitted,

Signature



Name

Eileen Senyk, Planner

**CONCURRENCE**

**Initials:**

Planning Manager

General Manager of Development Services

**ATTACHMENTS:**

Attachment A – Development Permit