



## REGIONAL DISTRICT OF CENTRAL KOOTENAY

# Memo to General Manger of Development Services

**Date of Memo:** May 25, 2022  
**Author:** Eileen Senyk, Planner  
**Subject:** DEVELOPMENT PERMIT Waters/Ryder/Campeau  
**File:** DP2013A

<b>Owner</b>	Steven & Elizabeth Ryder, Christopher & Elizabeth Waters, Leo Campeau.
<b>Civic Address</b>	15361 Highway 3A
<b>Legal Description</b>	Lot A District Lot 4595 Kootenay District Plan EPP90349
<b>PID</b>	031-252-818
<b>Lot Size</b>	0.26 hectares

### PROPOSAL:

The applicants propose to remediate works completed in the absence of an Environmentally Sensitive Development Permit. These works included placement of structures in the 15m setback area and Streamside Protection and Enhancement Area, de-vegetation, construction of a retaining wall and placement of fill.

The proposal is to remove the structures within the riparian zone, re-contour the fill based on natural site topography, plant native vegetation and monitor to ensure that remediation goals are achieved over the next five growing seasons.

The cost estimate for works proposed in Schedule 4 of the permit (Keefer Report) is \$30 376.05. Keefer et al. also recommended an offset cost (donation to the Nature Conservancy of Canada) of \$6435.00. The RDCK does not currently have a mechanism in place to accept off set costs unless under very specific circumstances. According to legal opinion, this type of compensation is only possible where the two properties are in the same Development Permit Area and where they have made a joint application. This is not the case in this situation. As an alternative, the RDCK will send a letter recommending that the applicants voluntarily make this contribution to the nature conservancy.

The recommended amount of security to complete the works is therefore **\$37 970.06** (125% of itemized quote).

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

Guidelines	Meets?	Comments
<p>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 Provincial and/or Federal governments as used elsewhere in the Province</p>	<p>Yes</p>	<p>Keefe report dated April 28, 2022 notes that a detailed report was provided by Masse Environmental Consultants Ltd. which showed that the SPEA aligns with the 15m ESDPA zone. The Keefe report uses the Masse report as the Environmental Assessment and makes recommendations for mitigation based on that assessment.</p> <p>The Keefe report dated has been revised to include the following:</p> <p><i>'As a Qualified Environmental Professional (QEP), I hereby provide my professional opinion that if the remediation is implemented as proposed by this plan, 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 in which the remediation is proposed. The report has been prepared for and at the expense of the assessed property owner in accordance with the Riparian Areas Regulation. I, the authoring QEP, am qualified to assess this property and confirm that appropriate assessment methods have been followed. I have not acted for or as an agent of the RDCK.'</i></p> <p>And signed by Mike Keefe</p>
<p>A ESDP 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</p>	<p>Yes</p>	<p>The Keefe report does not provide assurance that the recommended mitigation options with amount to no net loss of riparian habitat, but rather recommends financial compensation that would be directed to a different project on</p>

<p>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>Kootenay Lake and undertaken by the Nature Conservancy.</p> <p>A letter will be sent by the RDCK to the applicants which notes that according to the Kootenay Lake Shoreline Guidance Document there should be 'no net loss' to habitat, and that therefore they are strongly encouraged to make a donation to the Nature Conservancy to offset the damage done to the riparian function on the subject property.</p>
<p>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.</p>	<p>Yes</p>	<p>Moving structures out of the riparian zone would also ensure compliance with floodplain setback distances in the Floodplain Management Bylaw.</p> <p>The QEP has provided assurance that all works will be done above the Mean High Water Mark and therefore further approvals (from the Provincial or Federal Governments) will not be required.</p>

<b>Zoning</b>	N/A
<b>OCP</b>	Country Residential
<b>ALR</b>	N/A
<b>Floodplain</b>	Kootenay Lake: 536.5 GSC Datum, 15m setback Wilmot Creek: 1.5m above natural boundary FCL and 15m setback.
<b>NSFEA</b>	N/A
<b>Geohazard</b>	N/A
<b>Archeology Sites</b>	
<b>Within RDCK Water System</b>	N/A
<b>Relevant Covenants and Reports</b>	Two riparian assessments have been provided for this property:

	<ol style="list-style-type: none"> <li>1. 1531 Highway 3A Gray Creek, BC by Masse Environmental Consultants Ltd. Dated March 2, 2021</li> <li>2. Remediation &amp; Offsetting Plan 15361 Highway 3A, Gray Creek BC dated April 28m 2022.</li> </ol> <p>A Record of Sewerage System was received by David Hough ROWP dated August 6<sup>th</sup>, 2020.</p>
<b>Review Title for Miscellaneous Charges</b>	Complete – no charges of concern.

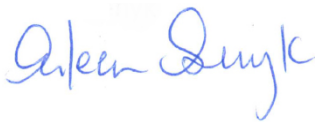
<b>KOOTENAY LAKE SHORELINE INVENTORY:</b>	
<b>Aquatic Habitat Index Rating</b>	Very High
<b>Erosion</b>	Low
<b>Vegetation</b>	Emergent Vegetation (EV)
<b>Site Sensitivity</b>	Aquatic/Environmental (A/E)
<b>Enhanced Engagement</b>	No
<b>Critical White Sturgeon Habitat</b>	Yes
<b>Archeological Values</b>	Yellow Zone (Y)

<b>REFERRAL COMMENTS:</b>	
<p><b>Interior Health Authority</b>                      Environmental Health Officer</p>	<p><i>Thank you for the opportunity to provide comments for Regional Board and staff consideration regarding the above referenced application. It is our understanding that the application is for a Waterfront Development Permit for unauthorized development of a portion of the property within the Environmentally Sensitive Development Permit area. It is our understanding this property is serviced by Wilmot Creek and an onsite sewerage system.</i></p> <p><i>A file review has been conducted and we do not recommend issuing a development permit for this property due to the following land constraints: horizontal distance to surface water (Kootenay Lake), small parcel size (0.26 hectares), very porous soil (sand and gravel) and not enough time for effluent to be treated in the soil before reaching water, and shallow relative vertical depth to ground water. The main concerns with these constraints pertain to potential health hazards (i.e. biological pathogens) in addition to potential ecological impacts from Nitrogen/Phosphorous being introduced into Kootenay Lake. Further, we do have concerns about the long term sustainability for sewage disposal for this lot and of lots similar in size.</i></p> <p><i>However if the RDCK wants to consider this further, we strongly recommend that a back up area of land for a future replacement sewerage system be identified by an</i></p>

	<p><i>Authorized Person, under the BC Sewerage System Regulation [B.C. Reg. 326/2004], and protected with a covenant. All onsite sewerage systems have a limited lifespan and this will better ensure the long term sustainability of the property for sewage disposal. Interior Health is committed to working collaboratively with the Regional District of Central Kootenay to support healthy, sustainable land use planning and policy creation. Please feel free to contact me directly if you have any further questions or comments.</i></p>
<p><b>Ministry of Forests, Lands Natural Resource Operations and Rural Development.</b> Habitat Biologist</p>	<p><i>After reviewing your referral our habitat biologist, Kristen Murphy, has the following comments:</i></p> <ul style="list-style-type: none"><li>- <i>A Water Sustainability Act Section 11 application must be received and approved prior to any foreshore installation/construction activities associated with this project, if below the mean annual high water mark.</i></li><li>- <i>The Ministry of Forests, Lands, Natural Resource Operations &amp; Rural Development – Resource Management Terrestrial Division - reviewed this Environmentally Sensitive Development Permit on May 12, 2021. FLNRORD has determined that this project should not further impact the Resource Management Division’s legislated responsibilities as long as all mitigation, rehabilitation and recommendations outlined in Masse Environmental Consultants Ltd’s 15361 HWY 3A GRAY CREEK, BC Riparian Assessment, dated March 2, 2021 and prepared for the Regional District of Central Kootenay, are implemented.</i></li><li>- <i>It is further recommended that monitoring by a qualified professional, at the expense of the property owner, is completed at year 3 and year 5 post planting to ensure plants have been successfully established and further encroachment or development has not occurred.</i></li><li>- <i>Any Vegetation clearing associated with movement of the bunkhouses 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 Wildlife Act Sec.34 and Federal Migratory Bird Act. Nesting periods can be</i></li></ul>

	<i>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:</i>								
	-								
	<table border="1"><thead><tr><th>Species</th><th>Least Risk Window</th></tr></thead><tbody><tr><td>Raptors (eagles, hawks, falcons, &amp; owls)</td><td>Aug 15 – Jan 30</td></tr><tr><td>Herons</td><td>Aug 15 – Jan 30</td></tr><tr><td>Other Birds</td><td>Aug 1 – March 31</td></tr></tbody></table>	Species	Least Risk Window	Raptors (eagles, hawks, falcons, & owls)	Aug 15 – Jan 30	Herons	Aug 15 – Jan 30	Other Birds	Aug 1 – March 31
	Species	Least Risk Window							
Raptors (eagles, hawks, falcons, & owls)	Aug 15 – Jan 30								
Herons	Aug 15 – Jan 30								
Other Birds	Aug 1 – March 31								

Respectfully submitted,



Eileen Senyk

**CONCURRENCE** **Initials:**

Planning Manager  
General Manager of Development Services

**ATTACHMENTS:**

- Attachment A – Development Permit
- Attachment B – Record of Sewerage System