

2021: TECHNICAL PERMITS FOR THE GEORGE HAVE ALL EXPIRED

In August 2019, GABC president, Suzanne Senger, emailed the Town of Gibsons (the Town) asking for an update on the status of the development permits (DPs) for The George project:

- DP 2013-02 DPA 1 Geotechnically Hazardous Area (application submitted in 2013)
- DP 2013-03 DPA 2 Environmentally Sensitive Area (application submitted in 2013)
- DP 2017-18 DPA 9 Aquifer Protection Area (application submitted in 2017)

In response to the email, the Town explained that Development Permits (DPs) have a life span of 2 years. If development commences within that time, the permits are considered “active” and don’t expire until the work is complete. If substantial work doesn’t start within 24 months, the permits lapse. In its email, the Town said all of the permits in question “have been activated and will not expire.” and “If the scope of work changes, [the Town] will require an amendment to the permits.”

Initially, we took this statement at face value. However, upon further review, we realized that the DPA 1 – Geotechnical permit had not been activated and therefore expired in August 2019. Also, the scope of the work authorized under the DPA 2 - Environmental and DPA 9 - Aquifer Protection permits changed in 2019, which rendered the permits void unless/until they are amended.

As it stands, all three permits are defunct. Before anything more can happen at this site, new DPA 1, 2 and 9 development permit applications must be submitted, along with up to date technical and environmental information, peer reviews and a new contaminated site Remedial Plan. As well, Ministry of Environment approval of a new Remedial Plan must be gained before any permit may be issued on this site.

DP 2013-02-Geotechnical permit - issued August 8th, 2017

In its August 2019 email, the Town stated that the DP-2013-02-Geotechnical permit "is active and does not expire" because the “work commenced with the drilling for soil testing for remediation purposes... in the Spring this year [2019].”

However, the scope of the works permitted by the Geotechnical permit doesn’t include “drilling for soil testing”. Rather, the drilling which began in the spring of that year was authorized, and undertaken, under a different permit. (DP 2017-18 – Aquifer Protection)

The scope of the works permitted under the DP-2013-02-Geotechnical permit include:

- Remediation of contaminated soils (on land) and sediments (foreshore area);
- Construction of a walkway and berm along the shoreline; replacement of a sanitary sewer pipe; and shoreline habitat improvements;
- Excavation, shoring and deep mixing on the lands west of the natural boundary and construction of a parkade, hotel and residences

Conclusion

None of this Geotechnical work ever commenced. No remediation of contaminated soils or sediments, no habitat improvements, excavation, shoring or Deep Mixing, nor construction has taken place on this site. This permit was never activated, and so it expired in 2019.

[DP-2017-18-Aquifer Protection permit issued August 1, 2017](#)

In its August 2019 email, the Town stated that DP-2017-18-Aquifer Protection permit, “is active and also does not expire.” The Town said the work under this permit commenced with the “cone penetration tests and installation of piezometers.” I.e., drilling for soil testing. This is true.

This permit allows:

- Cone penetration tests
- Installations of piezometers
- Test trenching
- Field verification trial
- Removal of contaminated materials
- Deep mixing
- Replacement of existing sanitary sewer
- Construction of stormwater channel, north of the site.

This DPA 9 permit was originally issued in August 2017 specifically to address ground conditions on the landward side of the property. On May 15, 2019 the permit was amended to allow an additional subsurface Investigation Program (May 1, 2019) and Drilling Program (April 4, 2019) ([DP-2017-18-AM1](#), [DP-2017-18-AM2](#)).

The drilling was authorized to facilitate further site investigations to address issues raised by the GABC Society through its Appeal to the Environmental Appeal Board of BC (EAB) which charged that the proposed Remedial Plan for the site would perforate, blow out and contaminate Gibsons Aquifer and spread toxic contamination into the marine environment. Drilling for soil testing for remediation purposes was completed in the Spring of that year, under this permit.

This permit further specifies that the land shall be developed strictly in accordance with the terms and conditions and provisions of specific plans and reports appended to the permit. The plans and reports don't include remediation plans. However, they do include geotechnical reports. One such report specifies that the geotechnical engineers “have not addressed environmental protection or well head (aquifer) protection which are also integral to the permitting process.”

A further complication is that in 2020, the Town was forced to release damning expert [reports](#) which reveal that GABC was correct. Proposed works (deep mixing, excavation etc.) on this site would pose a potential risk of an uncontrollable breach of Gibsons Aquifer, result in contamination of the drinking water supply system and breach the BC Water Sustainability Act (WSA).

Going forward, a new DPA 9 Aquifer Protection permit must be achieved before any work commences on this high-risk contaminated site.

[DP-2013-03-Environmental permit - issued August 1st, 2017.](#)

In its August 2019 email, the Town told GABC that DP-2013-03-Environmental "is active and does not expire" because permitted "work commenced with the demolition of existing structures on the project site". This permit was approved in July 2017 based on the belief that the Remediation Plan attached to the permit was sound and was approved by the BC Ministry of Environment (MoE).

The scope of the works permitted by the Environmental permit includes:

- Demolition of existing structures
- Excavation and removal of contaminated soils and sediments
- Construction of a walkway and berm along the shoreline, combined with re-placement of an existing sanitary sewer pipe and shoreline and storm water channel habitat improvements north of the building site
- Excavation, shoring and Deep Mixing on the lands west of the natural boundary and construction of a parkade, hotel and residences
- Dredging, Piledriving and Construction of a Pier (with Restaurant and Fuel Dock), Marina

Demolition of the Hyak Marine boat house, removal of existing fuel tanks and installation of a temporary mobile fuel storage was completed under permit [DP-2016-04](#), issued on May 20th 2016. An amended permit issued on July 7th, 2017 authorized a Detailed Site Investigation (DSI) regarding site contamination, which was actually completed in 2016.

It appears that work to remove existing homes on the site in 2018 may have activated this permit.

However, the DPA 2017-03 - Environmental permit specifies that the land "shall be developed strictly in accordance with the terms and conditions and provisions of The George Hotel Marine Residences Foreshore Remediation, Construction Environmental Management Plan" by Keystone Environmental, dated July 21, 2017 (2017 Remedial Plan).

However, the 2017 Remedial Plan was revoked by the applicant and no longer exists. A new Remedial Plan (created in 2019) has never been received, reviewed or approved by the Town or the BC MoE. The 2019 Remedial Plan is not included in the 2013-03 DPA 2 – Environmental permit.

Then, on February 1, 2021, the BC MoE enacted changes to the Environmental Management Act, Contaminated Sites Regulation and [Local Government Act](#) which clearly preclude the Town from issuing any permit for this site until a Remedial Plan has been received and an "Approval in Principle" or a "Certificate of Compliance" has been issued for this site by the MoE ☺

Conclusion

The conditions outlined in the 2013-03 DPA 2 - Environmental permit can no longer be met. Before any work could proceed a permit amendment application would have to be approved, and a new permit would have to be issued. However, a new permit cannot be issued without an approved Remedial Plan. If/when an approved Remedial Plan is received, along with a

permit amendment application, Gibsons Council would then have to review and approve the application. A new permit would have to be issued for work to commence. So, although the DPA 2017-03 permit *may* have been “activated” in 2018, this permit is no longer valid.

[LOCAL GOVERNMENT ACT Part 14 — Planning and Land Use Management](#)

The Local Government Act (LGA) is the provincial law which governs all BC municipality’s development approvals processes. Part 14, Division 7 of the LGA, speaks specifically to requirements for Development Permits. Division 10 of the LGA deals with other permit matters:

Part 14 - Division 10 - Other Permits and Permit Matters

Permit lapses if relevant construction not substantially started

504 (1) Subject to the terms of the permit, if the holder of a land use permit does not substantially start any construction with respect to which the permit was issued within 2 years after the date it is issued, the permit lapses.

Conclusion

The terms of the permits issued in 2017 can no longer be met. The holder of the permits has not substantially started any construction with respect to the permits three and a half years after the date the permits were issued. All of the permits have lapsed

[Recent Updates to Provincial Environmental Laws](#)

On February 1, 2021, changes to the Environmental Management Act, Contaminated Sites Legislation and Local Government Act came into effect which relate directly to these permits. Laws and policies were clarified and reinforced to ensure that local government approving officers must not approve subdivision, zoning, development permit or building permit application for contaminated sites until an MoE Director has issued a Certificate of Compliance (certifying that the site has been remediated and remediation approved by MoE), an Approval in Principle of a Remediation Plan or a “Release” of the freeze on approvals.

A Release refers to a written confirmation of the Release of a Freeze on Local Government Approvals. A “Freeze” on local government approvals occurs under the Local Government Act when a contaminated site development application process is initiated, and a Site Disclosure Statement (formerly a Site Profile) must be submitted to the BC MoE.

A Director must not provide a Release of the Freeze on local government approvals were
The lands present a significant threat or risk; or
The project entails a multi-phase, complex redevelopment of lands; or
The Director hasn’t received a Remediation Plan supporting independent remediation of the lands.

Conclusion

The George is a multi-phase project that presents a significant threat, and the Director has not received a valid Remediation Plan supporting independent remediation of the lands. Zoning and permitting on the George site is and will remain frozen until an Approval in Principle of Contaminated Site Remedial Plan has been approved by the BC MoE, or a Certificate of Compliance has been achieved. Only then may a new permitting process begin.