



Committee Report

Date of Report: July 7, 2022
Date & Type of Meeting: July 20, 2022, Rural Affairs Committee
Author: Stephanie Johnson, Planner
Subject: SITE SPECIFIC FLOODPLAIN EXEMPTION
File: F2201E-02275.000-HEUSTON-FLD00062
Electoral Area/Municipality: Area 'E'

SECTION 1: EXECUTIVE SUMMARY

This report seeks the Board's consideration of a site-specific floodplain exemption application at 161 Heuston Road, lower Balfour, Electoral Area 'E'.

The applicant is requesting a site-specific floodplain exemption to permit the construction of a new residence with a habitable basement. Under Section 8.5 of the RDCK's *Floodplain Management Bylaw No. 2080, 2009* "basements shall be prohibited," unless for those areas within a Non-Standard Flooding and Erosion Area (NSFEA) "all applicable engineering requirements related to an NSFEA are deemed satisfied".

Staff recommends that the Board approve the site specific floodplain exemption subject to the registration of a Section 219 restrictive covenant, indemnifying the Regional District and confirming that the habitable basement is safe for the intended residential use.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION

Property Owners:	Scott William Heuston
Property Location:	161 Heuston Road, Balfour, Electoral Area 'E'
Legal Description:	PLAN NEP888 DISTRICT LOT 337 KOOTENAY LAND DISTRICT PARCEL A, (DD 133866I) (PID 015-996-824)
Property Size:	2.0 hectares (ha)
OCP Designation:	Agriculture (AG)
Zoning:	Not Applicable

SURROUNDING LAND USES

NORTH: Agricultural and accessory land uses within the ALR - unzoned
EAST: Agricultural and accessory land uses within the ALR - unzoned
SOUTH: Agricultural and accessory land uses within the ALR - unzoned
WEST: Agricultural and accessory land uses within the ALR - unzoned

Site Context

The subject property is designated Agriculture (AG), is unzoned and lies within the Agricultural Land Reserve (ALR). The site is located in an area of lower Balfour with similarly designated parcels. The subject property is

located within a (NFSEA) since it is within the alluvial fan of Laird Creek. Kootenay Lake also lies adjacent to the southern property line. The proposed new home site is in the same location as the original farmhouse constructed in the 1940s, which has now been demolished. An existing barn currently occupies the subject property.

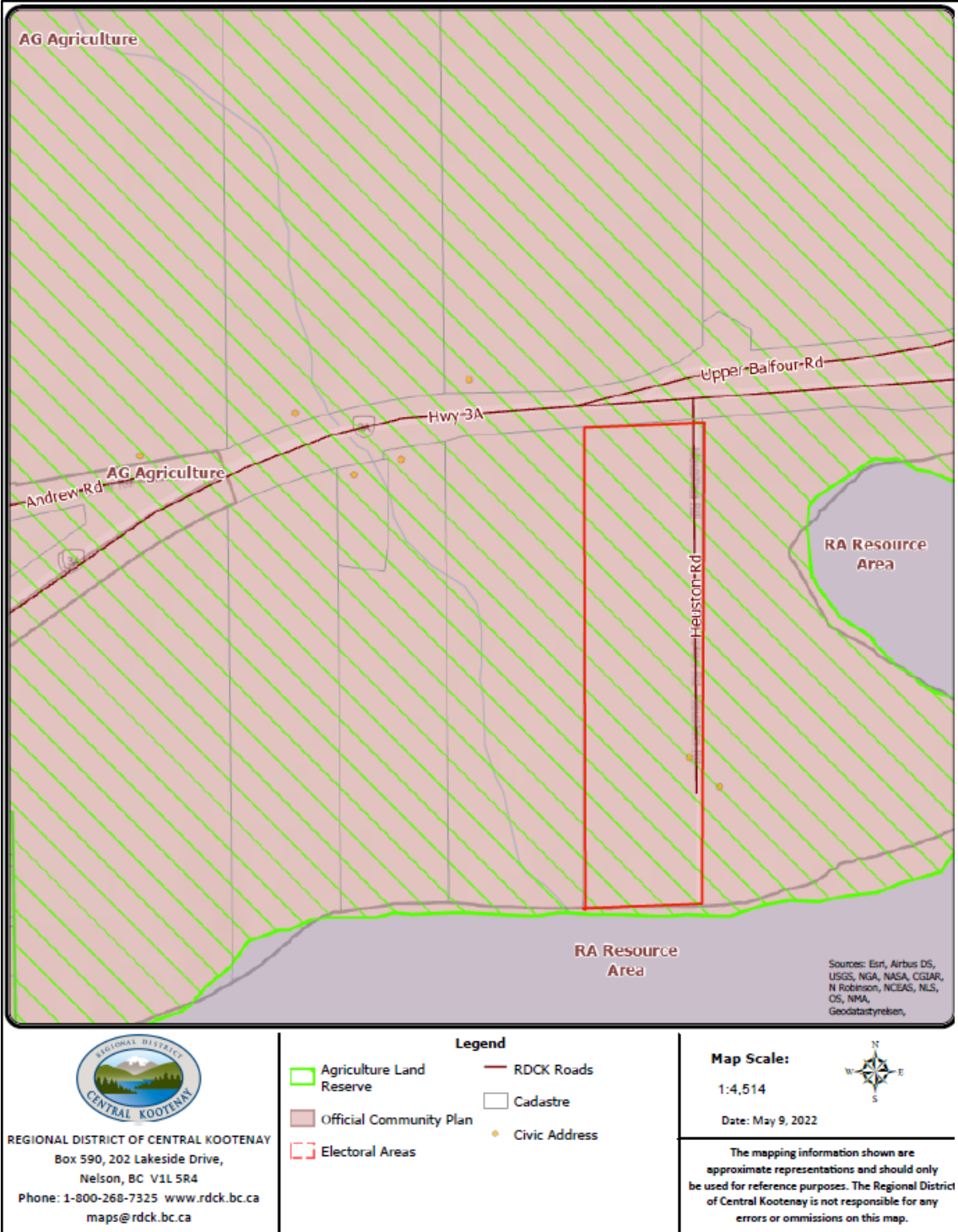


Figure 1: Location Overview and OCP/ALR Map

Legislative Framework and Applicable Policy

Under Section 524 of the *Local Government Act (LGA)*, a local government may exempt a person from the application of a floodplain bylaw in relation to a specific building if the local government considers it advisable and either:

- Considers that the exemption is consistent with the Provincial Guidelines; or
- Has received a report that the land may be used safely for the use intended where such a report is certified by a person who is a professional engineer or geoscientist and experienced in geotechnical engineering.

The Province's "Flood Hazard Land Use Management Guidelines" states that, "*setback requirements should not be reduced unless a serious hardship exists and no other reasonable option is available*". This site specific floodplain exemption, however, is requesting that the Board consider permitting the construction of a dwelling with a habitable basement that would meet/exceed the floodplain setback requirements for Kootenay Lake and Laird Creek.

The Board adopted 'Terms of Reference for Professional Engineers/Geoscientists undertaking Geotechnical Reports/Flood Hazard Assessment Reports' to outline basic information that should be included in such reports. The Flood Hazard Assessment Report prepared by Ground Up Geotechnical Ltd., dated September 16, 2019, was submitted in conjunction with the application for an exemption (please see Attachment A) and meets the requirements set out under the above Terms of Reference. The report verified that "*the land may be used safely for its intended use*".

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan: Yes No **Financial Plan Amendment:** Yes No
Debt Bylaw Required: Yes No **Public/Gov't Approvals Required:** Yes No

The \$500 fee for a Site Specific Floodplain Exemption application has been paid pursuant to the RDCK's *Planning Procedures and Fees Bylaw No. 2457, 2015*.

3.2 Legislative Considerations (Applicable Policies and/or Bylaws):

Under Section 524 of the *LGA*, the Board has the authority to exempt a development proposal from "requirements in relation to floodplain areas" provided a report prepared by a professional engineer or geoscientist is received stating that the land may be used safely for the use intended.

3.3 Environmental Considerations

No environmental impacts are anticipated on this developed site.

3.4 Social Considerations:

No negative social impacts are associated with site specific exemption application.

3.5 Economic Considerations:

No economic considerations are anticipated in response to this land use application.

3.6 Communication Considerations:

In accordance with the RDCK's *Planning Procedures and Fees Bylaw No. 2457, 2015* staff referred the

application to all relevant government agencies, internal RDCK departments and the Director for Electoral Area 'E' for review. The following comments were received:

Ministry of Forests, Lands, Natural Resource Operations and Rural Development (MFLNRORD)

“Habitat Management’s legislated and professional responsibilities include, but are not limited to: the provincial Water Sustainability Act, the Wildlife Act, the Forest and Range Practices Act (FRPA) and the Government Actions Regulation under FRPA, as well as having provincial responsibility for the federal Species at Risk Act.

These are comments based on the information provided by the proponent in the referral package. They do not represent a comprehensive evaluation, rather some advice on what to consider for mitigation of possible negative ecosystem impacts of the proposed works. They also do not remove the obligation of the proponent to comply with ALL applicable laws and statutes.

This project should not create significant adverse environmental impacts if the proponent hires a qualified professional to conduct and environmental assessment on site, follows Section 34 of the Wildlife Act as well as Sections 35 and 36 of the Fisheries Act along with the Standards and Best Practices for Instream Works.

The proponent should also consider implementing measures to prevent introduction and/or reduce the spread or establishment of invasive species, adequately secure wildlife attractants, and avoid fencing or use wildlife friendly fencing to allow for unimpeded wildlife movement.

Habitat Comments

Concern	Details
Aquatic Habitat	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: https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/water-licensing-rights/working-around-water/regional-terms-conditions-timing-windows and the Provincial Guidelines and Best Management Practises for working around water at: https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/working-around-water/wsa-cias-requirements-bmps.pdf to ensure that you can abide by these guidelines.
Human – wildlife conflicts	The BC <i>Wildlife Act</i> states that: (1) A person must not (a) intentionally feed or attempt to feed dangerous wildlife or, (b) provide, leave or place an attractant in, on or about any land or premises with the intent of attracting dangerous wildlife. The proposed building site lies within high Grizzly Bear habitat suitability and within designated Ungulate Winter Range, therefore it is recommended that the proponent ensures appropriate security measures for wildlife attractants (i.e. garbage, compost, gardens, pet food etc.) to avoid wildlife habituation. It is also recommended the proponent use minimal fencing or use wildlife friendly fencing in order to ensure the unimpeded movement of wildlife.

<p>Invasive Species</p>	<p>Practices should prevent introduction and reduce spread/establishment of invasive species in and surrounding the site. To control invasive species:</p> <ul style="list-style-type: none"> • Treat invasive plants prior to any activities (preferably using a qualified professional). • Ensure that equipment brought onto site is free of soil and plant material to reduce the possibility of invasive plant species spread/establishment. • Ensure watercrafts are properly cleaned prior to use on Kootenay Lake and after used on other water bodies. <p>Invasive species are typically introduced to British Columbia through human activities. These invasive species lack natural predators and pathogens that would otherwise keep their populations in check. Once established, invasive species have a tremendous capacity to invade adjacent, undisturbed natural communities, displace wildlife and disrupt natural ecosystem functions.</p> <p>Invasive plants often establish themselves in soils disturbed from development. If herbicides are used for invasive plant treatments, the proponent must ensure the herbicides are not applied within 10 m of the high water mark. The proponent should maintain records of herbicide treatments, and should report invasive plants using the Report-A-Weed program (https://www.reportaweedbc.ca/)</p>
<p>Migratory Bird Window</p>	<p>If works will occur within the breeding bird window (generally April 15 to August 15) the applicant should be aware of requirements under the Migratory Bird Convention Act for addressing incidental take. More information can be found at https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds.html</p>
<p>Tree Removal</p>	<p>See Section 34 of the <i>Wildlife Act</i> regarding tree removal. Remove trees outside of the sensitive nesting period (generally April to August), and check for existing or active nests prior to tree removal. Avoid the removal of large diameter trees (dbh > 30 cm: live and dead), especially deciduous, and that are actively used by wildlife (e.g. contains visible nests and tree cavities).</p>

FortisBC Inc.

“There are no FortisBC Inc (Electric) (“FBC(E)”) facilities affected by this application. As such FBC(E) has no concerns with this circulation.”

Agricultural Land Commission (ALC)

“The ALC has no issue with the floodplain exemption provided that the new residence is constructed in accordance with the ALCA and its regulations and its total floor area is not greater than 500 m². If any fill is required beyond the area and height that is permitted in s. 35(a) of the ALR Use Regulation, further authorizations of approvals from the ALC may be required”.

Interior Health (IH)

“An initial review has been completed and no health impacts associated with this proposal have been identified. As such, our interests are unaffected by this proposal.

Please note that this response does not automatically confer Interior Health support for onsite services (e.g. sewerage disposal) if applicable”.

Building Department

“If this exemption is to be accepted, Ground Up Geotechnical firm is required to be retained for design and field reviewing of the waterproofing/floodproofing aspects of the basement walls set out in section 5.0 & 6.0 of the Basement Feasibility study and Flood Hazard Assessment report dated September 16 2019, by providing a schedule B included in the Building Permit Application. The proposed dwelling may be subject to structural engineering, determined at time of building permit plan review.”

3.7 Staffing/Departmental Workplace Considerations:

Should the Board support the requested site specific floodplain exemption to reduce the proposed floodplain, including registration of a restrictive covenant on title, a Building Permit would then be required for the construction of the new residence with habitable basement.

3.8 Board Strategic Plan/Priorities Considerations:

This application falls under the operational role of Planning Services.

SECTION 4: OPTIONS & PROS / CONS

Planning Discussion

Staff have reviewed this site specific floodplain exemption application, and conducted a site visit. Other than the site specific floodplain setback exemption requested to allow for a habitable basement in an NFSEA, the proposal is consistent with the relevant Agricultural objectives and policies under the *Electoral Area ‘E’ Rural Official Community Plan Bylaw No. 2260, 2013*.

Planning staff support the requested floodplain exemption, since:

- The applicants have engaged a professional geotechnical engineer, Ground Up Geotechnical Ltd., who have submitted a report confirming that the proposed siting of the addition, as designed, is safe for the use intended;
- The proposed siting of this residence is outside of the 15 metre Watercourse Development Permit area under *Electoral Area ‘E’ Rural Official Community Plan Bylaw No’s. 2260, 2013*; and,
- The flood hazard assessment geotechnical report submitted has been reviewed by Regional District staff and meets the necessary assurance requirements and is consistent with the Provincial flood hazard land use management guidelines.

OPTIONS

Option 1: That the Board APPROVE a Site Specific Floodplain Exemption to permit the construction of a new residence with a habitable basement in accordance with the Engineering Report prepared by Ground Up

Geotechnical Ltd. for property located at 161 Heuston Road, lower Balfour, Electoral Area 'E' and legally described as PLAN NEP888 DISTRICT LOT 337 KOOTENAY LAND DISTRICT PARCEL A, (DD 133866I) (PID 015-996-824) SUBJECT to preparation by Scott Heuston of a restrictive covenant under Section 219 of the Land Title Act and Section 56 of the Community Charter in favour of the Regional District of Central Kootenay.

Option 2: That the Board NOT APPROVE a Site Specific Floodplain Exemption to permit the construction of a new residence with a habitable basement in accordance with the Engineering Report prepared by Ground Up Geotechnical Ltd. for property located at 161 Heuston Road, lower Balfour, Electoral Area 'E' and legally described as PLAN NEP888 DISTRICT LOT 337 KOOTENAY LAND DISTRICT PARCEL A, (DD 133866I) (PID 015-996-824).

SECTION 5: RECOMMENDATION

That the Board APPROVE a Site Specific Floodplain Exemption to permit the construction of a new residence with a habitable basement in accordance with the Engineering Report prepared by Ground Up Geotechnical Ltd. for property located at 161 Heuston Road, lower Balfour, Electoral Area 'E' and legally described as PLAN NEP888 DISTRICT LOT 337 KOOTENAY LAND DISTRICT PARCEL A, (DD 133866I) (PID 015-996-824) SUBJECT to preparation by Scott Heuston of a restrictive covenant under Section 219 of the Land Title Act and Section 56 of the Community Charter in favour of the Regional District of Central Kootenay.

Respectfully submitted,

"Submitted electronically"

Stephanie Johnson

CONCURRENCE

Planning Manager – Nelson Wight

General Manager of Development Services – Sangita Sudan

Chief Administrative Officer – Stuart Horn

ATTACHMENT:

Attachment A – Geotechnical Report prepared by Ground Up Geotechnical Ltd.