



Committee Report

Date of Report: January 5, 2023
Date & Type of Meeting: January 18, 2022, Rural Affairs Committee
Author: Nelson Wight, Planning Manager
Subject: SITE SPECIFIC FLOODPLAIN EXEMPTION
File: F2204-06769.160-Doucette-FLD00065
Electoral Area/Municipality: Area 'F'

SECTION 1: EXECUTIVE SUMMARY

This report seeks the Board's consideration of a site-specific floodplain exemption application for the subject parcel in the Sitkum Creek area of Electoral Area 'F'.

The applicant is requesting a site-specific floodplain exemption to permit development of the property subject to less stringent requirements than those mandated under Schedule 'E' Non-Standard Flood and Erosion (NSFEA) Table of the RDCK's *Floodplain Management Bylaw*. Where the NSFEA rating requires a full engineer/geoscientist report for this "F-rated" fan, this application seeks to apply the lesser standard applied to those with a "1" rating, which require a minimum elevation of 0.6 m above natural ground surface, and the Scour/Erosion Protection as per S. 9.4 and 9.5 of that bylaw.

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 development is safe for the intended residential use.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION	
Property Owners:	0863803 B.C. LTD.
Property Location:	3876 Highway 3A, Nine Mile, Electoral Area 'E'
Legal Description:	LOT 3 DISTRICT LOT 4398 KOOTENAY DISTRICT PLAN EPP83471 (PID: 030-679-028)
Property Size:	0.4 hectares (ha)
OCP Designation:	Suburban Residential (SR)
Zoning:	Suburban Residential F (R1F)
SURROUNDING LAND USES	
NORTH:	Residential and accessory land uses – R1F Zone
EAST:	Residential and accessory land uses – R1F Zone
SOUTH:	Open Space – OS Zone (Kootenay Lake)
WEST:	Residential and accessory land uses – R1F Zone

Site Context

The subject property is currently vacant and is designated Suburban Residential (SR) in *Electoral Area 'F' Official Community Plan Bylaw No. 2214, 2011* and zoned Suburban Residential (R1F) in *RDCK Zoning Bylaw No. 1675, 2004*. The site is located in a rural area commonly referred to as "Sitkum Creek" or "Nine Mile" amongst other similarly designated parcels on the North Shore of the West Arm of Kootenay Lake (see Figure 1). The subject property is located within an NSFEA since it is within the alluvial fan of Sitkum Creek (see Figure 2). Kootenay Lake also lies adjacent to the southern property line. The proposed dwelling will be sited towards the south end of the parcel approximately 21 metres from the shoreline of Kootenay Lake (see Figure 3).



Figure 1 - Location Overview

3876 Highway 3A (F2204F) - Sitkum Creek NSFEA



REGIONAL DISTRICT OF CENTRAL KOOTENAY
 Box 590, 202 Lakeside Drive,
 Nelson, BC V1L 5R4
 Phone: 1-800-268-7325 www.rdck.bc.ca
 maps@rdck.bc.ca

Legend

- Non Standard Flooding Erosion Area
- Streams and Shorelines
- Electoral Areas
- RDCK Roads
- Cadastre

Map Scale:

1:10,000

Date: January 5, 2023



The mapping information shown are approximate representations and should only be used for reference purposes. The Regional District of Central Kootenay is not responsible for any errors or omissions on this map.

Figure 2 - Non-Standard Flooding and Erosion Area Overview

Development Proposal

This application is for a Site Specific Floodplain Exemption to permit the construction of a new residence with a minimum floor elevation above natural ground surface of 0.6 metres. Pursuant to the *RDCK Floodplain Management Bylaw No. 2080, 2009* the subject property is within a portion of the Sitkum Creek alluvial fan with a hazard rating of 'F' which indicates that a full Engineer/Geoscientist Report is required including a complete hazard assessment, siting of proposed buildings and site specific recommendations. Finally, the report must be registered on the title of the property as part of a restrictive covenant.

A hazard assessment was completed in 2017 in support of the subdivision application that created the subject property. A supplemental report was subsequently prepared by Skmana Creek Consulting Ltd. on December 8, 2022 to review the previous findings and conclude whether any amendments to the original report were required. The supplemental report concluded that the recommendations from the 2017 report were still valid.

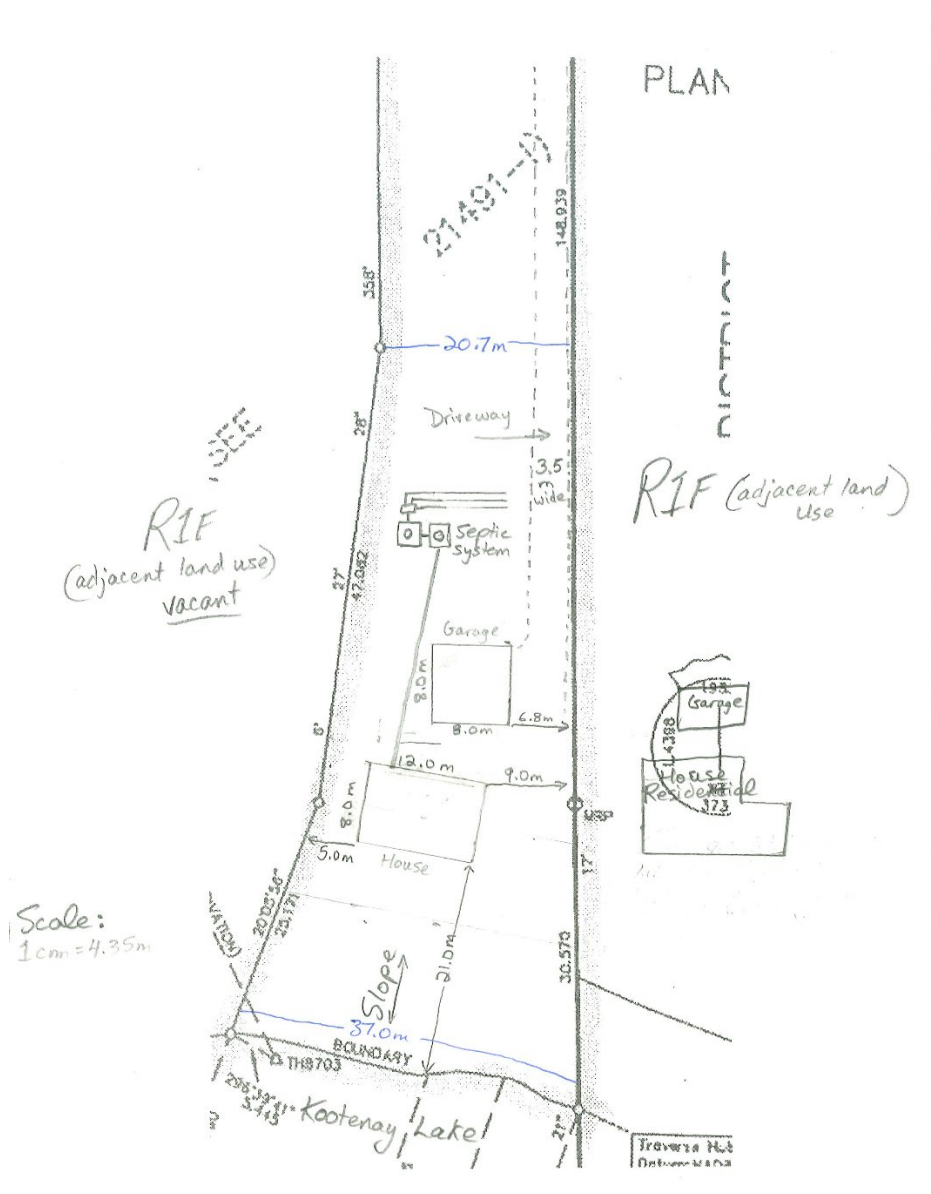


Figure 3 - Site Plan

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 RDCK provides qualified professionals with a Terms of Reference documents, Professional Engineers/Geoscientists undertaking Geotechnical Reports/Flood Hazard Assessment Reports, which outlines basic information that should be included in such reports.

The “Natural Hazard Assessment” prepared by Skmana Creek Consulting Ltd., dated September 2017 and the “Review of Natural Hazards Assessment Report” prepared by Skmana Creek Consulting Ltd., dated December 8, 2022, 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 property will be safe for the use intended*”.

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 ‘F’ for review. The following comments were received:

Ministry of Forests

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.

The proponent must be aware of, and comply with, obligations under the federal Fisheries Act, Species at Risk Act, BC Wildlife Act, BC Riparian Areas Protection Act, Water Act, Local Government Act or any other legislation related to the proposed works.

Due to risks of sedimentation, invasives establishment or spread, disruption to wildlife movement, and potential tree removal, it is recommended that the proponent provide an environmental assessment conducted by a qualified professional, ideally between April and August. Development activities within a 30 m setback of a riparian area should be avoided.

This project should not create significant adverse environmental impacts if the proponent adopts mitigation strategies identified in the previously recommended environmental assessment, follows all of the applicable regulatory acts, implements measures to prevent introduction and/or reduce the spread or establishment of invasive plants on site, and adequately secures wildlife attractants.

If the proponent chooses to ignore the floodplain setback of 0.6 m elevation above either natural ground surface, or above any obstruction that could cause ponding, they should accept all liability associated with any damage that could occur in the case of flooding. This liability should include all damage to their property and to public and private property that may be impacted as a result of this development and any cleanup associated with its impacts.

Habitat Comments

Concern	Details
Tree Removal	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).
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 to ensure that you can abide by these guidelines.

Migratory Bird Window	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
Invasive Species	<p>Practices should prevent introduction and reduce spread/establishment of invasive plants on site. To control invasive plants:</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. <p>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>Invasive plants are typically introduced to British Columbia through human activities. These invasive plants lack natural predators and pathogens that would otherwise keep their populations in check. Invasive plants often establish themselves in soils disturbed from development of roads, utility lines, trails, commercial recreation sites, agriculture, etc. Once established, invasive plants have a tremendous capacity to invade adjacent, undisturbed natural plant communities displace wildlife and disrupt natural ecosystem functions.</p>
Species at Risk	The site proposed for a flood exemption lies on the shores of Kootenay Lake where White Sturgeon, a species at risk, resides.
Human-wildlife conflicts	<p>The proponent should ensure appropriate security measures for wildlife attractants (ie. garbage, compost, gardens, pet food etc.) to avoid wildlife habituation.</p> <p>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.</p>

Ministry of Transportation and Infrastructure (MoTI)

The ministry has no objections.

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. However, be advised that this lot is required to be independent for sewerage

servicing and will require on onsite disposal system. As such, development will require the services of an Authorized Person (AP) under the regulation.

Building Department

No comments provided.

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 dwelling.

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 exemption requested, the proposal is consistent with the relevant objectives and policies under *Electoral Area 'F' Official Community Plan*.

Planning staff support the requested floodplain exemption, since:

- The applicants have engaged a professional geotechnical engineer, who have submitted a report confirming that the proposed development, as designed, is safe for the use intended; 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 minimum floor elevation above natural ground surface of 0.6 metres in accordance with the Engineering Report prepared by Skmana Engineering Ltd. for property located at 3876 Highway 3A, Nine Mile, Electoral Area 'F' and legally described as LOT 3 DISTRICT LOT 4398 KOOTENAY DISTRICT PLAN EPP83471 (PID: 030-679-028), SUBJECT to preparation by 0863803 B.C. LTD. 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 minimum floor elevation above natural ground surface of 0.6 metres in accordance with the Engineering Report prepared by Skmana Engineering Ltd. for property located at 3876 Highway 3A, Nine Mile, Electoral Area 'F' and legally described as LOT 3 DISTRICT LOT 4398 KOOTENAY DISTRICT PLAN EPP83471 (PID: 030-679-028), SUBJECT to preparation by 0863803 B.C. LTD. 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.

SECTION 5: RECOMMENDATION

That the Board APPROVE a Site Specific Floodplain Exemption to permit the construction of a new residence with a minimum floor elevation above natural ground surface of 0.6 metres in accordance with the Engineering Report prepared by Skmana Engineering Ltd. for property located at 3876 Highway 3A, Nine Mile, Electoral Area 'F' and legally described as LOT 3 DISTRICT LOT 4398 KOOTENAY DISTRICT PLAN EPP83471 (PID: 030-679-028), SUBJECT to preparation by 0863803 B.C. LTD. 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"

Nelson Wight

CONCURRENCE

Planning Manager – Nelson Wight

General Manager of Development Services – Sangita Sudan

Chief Administrative Officer – Stuart Horn

ATTACHMENT:

Attachment A – Review of Natural Hazards Assessment Report prepared by Skmana Creek Consulting Ltd.