



# Committee Report

**Date of Report:** March 6, 2024  
**Date & Type of Meeting:** March 20, 2024, Rural Affairs Committee  
**Author:** Stephanie Johnson, Planner  
**Subject:** SITE SPECIFIC FLOODPLAIN EXEMPTION  
**File:** F2304E-22199.160-CROTTEY-FLD00069  
**Electoral Area/Municipality** E

## SECTION 1: EXECUTIVE SUMMARY

This report seeks the Board's consideration of a site-specific floodplain exemption application at 1434 Highway 31, Queens Bay, Electoral Area 'E'.

This application seeks to reduce the floodplain setback from Kootenay Lake from 15 metres to 11.42 metres under the *RDCK's Floodplain Management Bylaw No. 2080, 2009* to allow for the construction of posts and footings in the floodplain to support a deck. The cantilevered deck would be attached to a proposed new residence (approximately 128.6 m<sup>2</sup>/1,384 ft<sup>2</sup> in size) located outside of the above floodplain setback.

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 post supports and footing for the proposed deck are safe for the intended residential use.

## SECTION 2: BACKGROUND/ANALYSIS

### GENERAL INFORMATION

<b>Property Owners:</b>	Ruth Elizabeth Pilla, Lisa Marie Crottey and Michael Raymond Crottey
<b>Property Location:</b>	1434 Highway 31, Queens Bay, Electoral Area 'E'
<b>Legal Description:</b>	LOT B, PLAN NEP78423, DISTRICT LOT 12075, KOOTENAY LAND DISTRICT (PID: 026-329-981)
<b>Property Size:</b>	376.4 m <sup>2</sup> (0.09 acres)
<b>OCP Designation:</b>	Country Residential (RC)
<b>Zoning:</b>	Not Applicable

### SURROUNDING LAND USES

<b>NORTH:</b> Residential land uses - unzoned
<b>EAST:</b> Queens Bay section of Kootenay Lake - unzoned
<b>SOUTH:</b> Residential land uses - unzoned
<b>WEST:</b> Highway 31 and residential land uses - unzoned

### Site Context

The 376.4 m<sup>2</sup> (0.09 acres) in size subject property has 13.6 metres of frontage on Kootenay Lake and is located approximately halfway between the communities of Balfour and Queens Bay. The site is designated Country

Residential (RC) under the *Electoral Area 'E' Rural Official Community Plan Bylaw No. 2260, 2013* and lies within the Watercourse Development Permit Area (WDPA).

The site is located in a residential area (north/south), with Kootenay Lake to the east and Highway 31 to the west. The lot slopes moderately from the Highway towards Kootenay Lake and an existing one storey cabin (approximately 40.9 m<sup>2</sup> / 440 ft<sup>2</sup>) in size with a large raised deck (approximately 35.2 m<sup>2</sup> / 378.4 ft<sup>2</sup> in size) constructed in the 1940's currently occupies the site. Accessory structures on site also include a shed and outhouse.

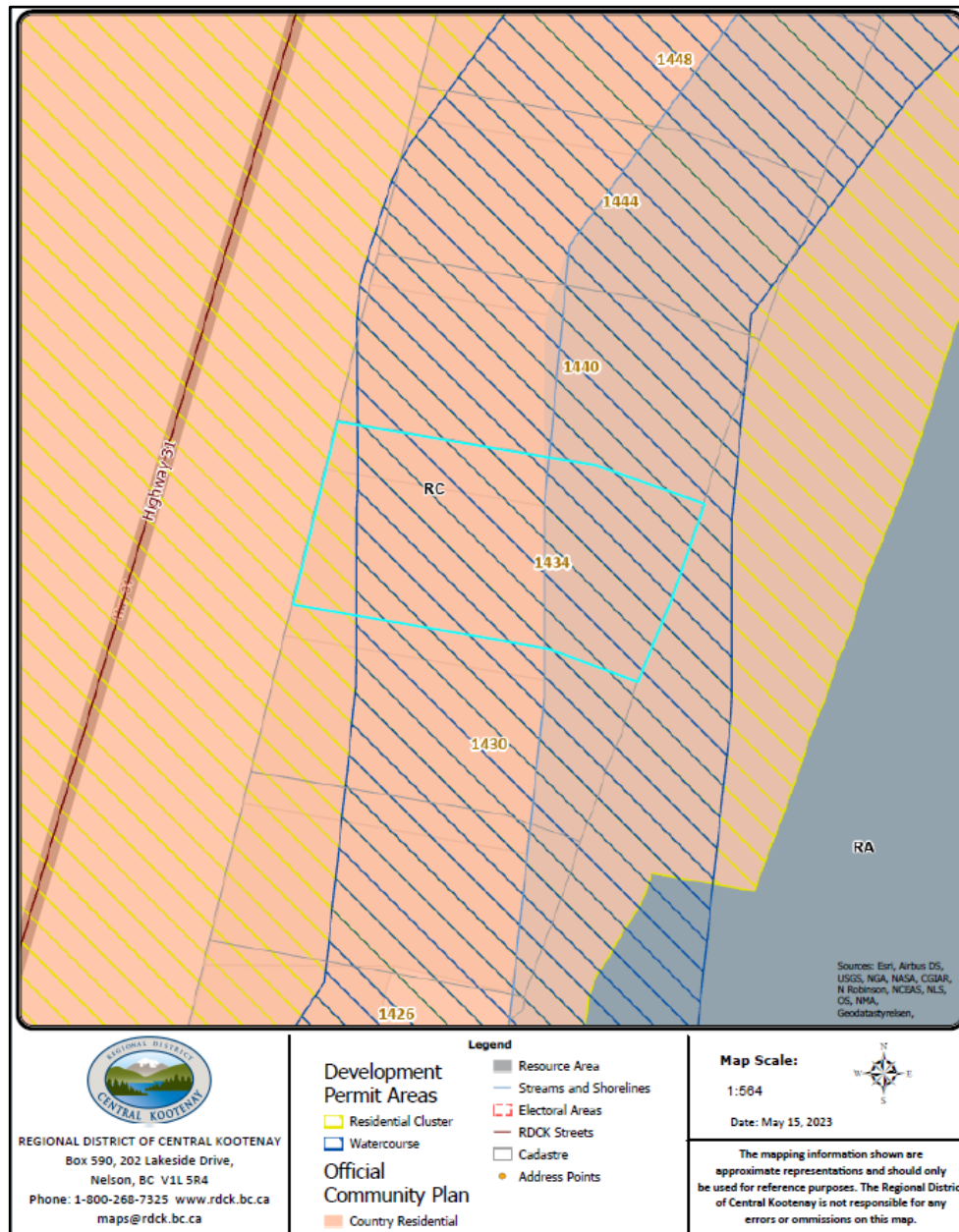


Figure 1: Location Overview and OCP Designations



*Figure 2: Air Photo provided by Crowsnest Engineering*

#### Development Proposal

The owners seek to develop a new residence with attached raised deck, a parking pad, retaining walls, and a sewerage system. This application seeks to reduce the floodplain setback from Kootenay Lake from 15 metres to 11.42 metres under the *RDCK's Floodplain Management Bylaw No. 2080, 2009* to allow for the construction of post supports and footings in the floodplain for a raised deck. The cantilevered deck would be attached to a proposed new residence located outside of the above floodplain setback.

Should the exemption be approved staff will undertake the processing of the concurrent Watercourse Development Permit (WDP) (RDCK file#DP2314E) application submitted to regulate the above proposed development activities adjacent to Kootenay Lake and its riparian areas to protect aquatic habitat.

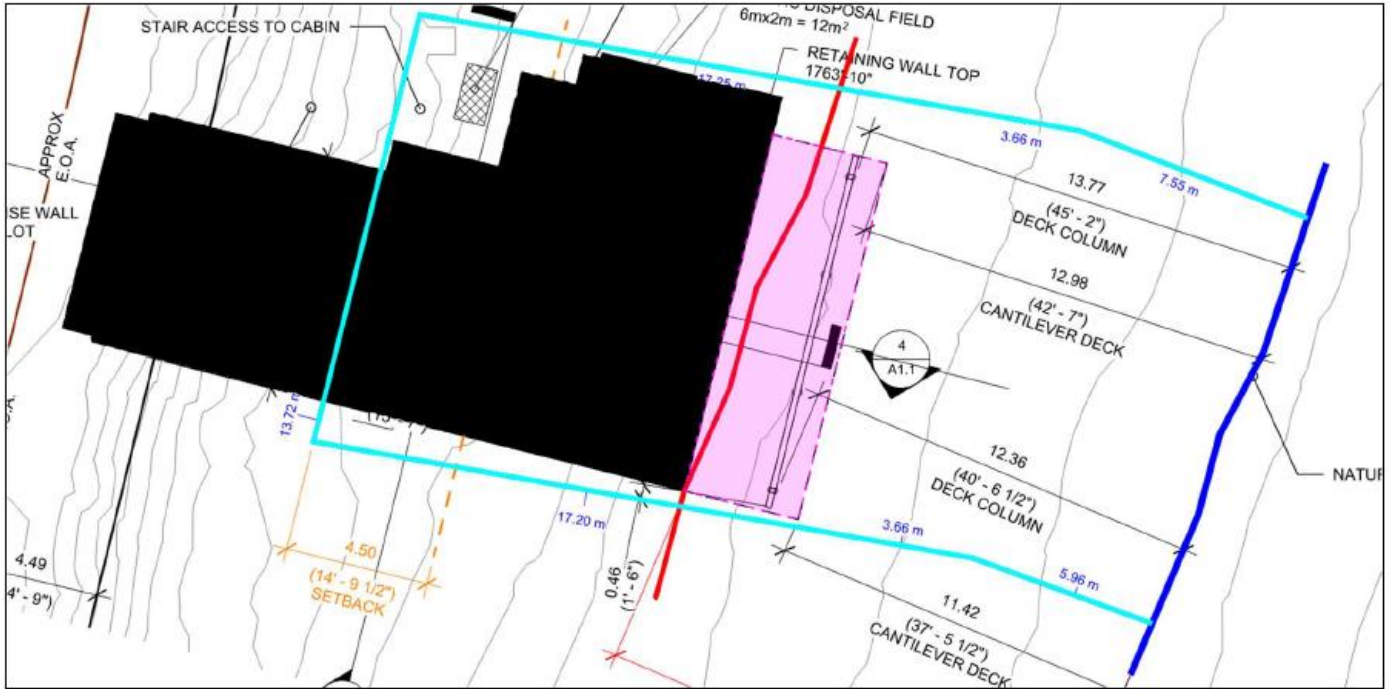


Figure 3: Site Plan

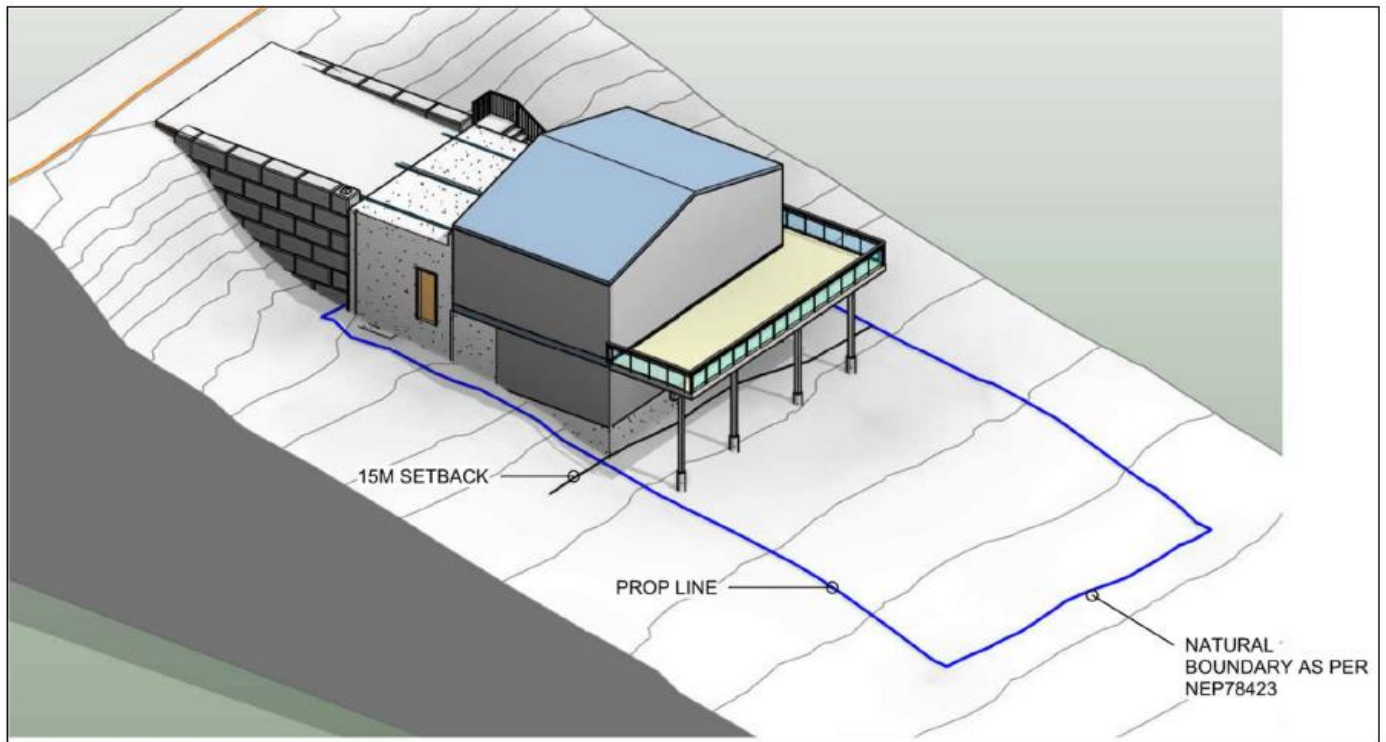


Figure 4: Sketch of Proposed Development

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 post supports and footings in the floodplain for a raised deck. The cantilevered deck would be attached to a proposed new residence located outside of the above floodplain setback for Kootenay Lake.

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 Crowsnest0 Engineering dated January 12, 2024, 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 proposed land [may] be safely used for the purpose intended*”.

Setback requirements should not be reduced unless a serious hardship exists and no other reasonable option is available. A valid hardship should only be recognized where the physical characteristics of the lot (e.g., exposed bedrock, steep slope, the presence of a watercourse, etc.) and size of the lot are such that building development proposals, consistent with land use zoning bylaws, cannot occur unless the requirements are reduced. In order to avoid setting difficult precedents these site characteristics should be unique to the subject property and environment. The economic circumstances or design and siting preferences of the owner should not be considered as grounds for hardship. Before agreeing to a modification, consideration should be given to other options such as the use of alternate building sites, construction techniques and designs (e.g., constructing an additional storey and thereby reducing the size of the ‘building footprint’).

### 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

A riparian assessment has been provided by Masse Environmental Ltd. as required in conjunction with the concurrent processing of the WDP application for the overall subject site.

### 3.4 Social Considerations:

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

### 3.5 Economic Considerations:

Should this site specific floodplain setback exemption application be approved and flooding/flood damage occur, there would be costs associated with the restoration works.

### 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:

#### Provincial Archaeology Branch

*"According to Provincial records, there are no known archaeological sites recorded on the subject property. However, given the property's waterfront location, there is high potential for previously unidentified archaeological sites to exist on the property.*

*If land-altering activities (e.g., home renovations, property redevelopment, landscaping, service installation) are planned on the subject property, a Provincial heritage permit is not required prior to commencement of those activities.*

*However, a Provincial heritage permit will be required if archaeological materials are exposed and/or impacted during land-altering activities. Unpermitted damage or alteration of a protected archaeological site is a contravention of the Heritage Conservation Act and requires that land-altering activities be halted until the contravention has been investigated and permit requirements have been established. This can result in significant project delays.*

*Therefore, the Archaeology Branch strongly recommends engaging an eligible consulting archaeologist prior to any land-altering activities. The archaeologist will review the proposed activities, verify archaeological records, and possibly conduct a walk-over and/or an archaeological impact assessment (AIA) of the project area to determine whether the proposed activities are likely to damage or alter any previously unidentified archaeological sites.*

*Please notify all individuals involved in land-altering activities (e.g., owners, developers, equipment operators) that if archaeological material is encountered during development, they **must stop all activities immediately** and contact the Archaeology Branch for direction at 250-953-3334.*

*If there are no plans for land-altering activities on the property, no action needs to be taken at this time.*

#### **Rationale and Supplemental Information**

- *There is high potential for previously unidentified archaeological deposits to exist on the property.*

- *Archaeological sites are protected under the Heritage Conservation Act and must not be damaged or altered without a Provincial heritage permit issued by the Archaeology Branch. This protection applies even when archaeological sites are previously unidentified or disturbed.*
- *If a permit is required, be advised that the permit application and issuance process takes approximately 15 to 35 weeks; the permit application process includes referral to First Nations and subsequent engagement.*
- *The Archaeology Branch must consider numerous factors (e.g., proposed activities and potential impacts to the archaeological site[s]) when determining whether to issue a permit and under what terms and conditions.*
- *The Archaeology Branch has the authority to require a person to obtain an archaeological impact assessment, at the person's expense, in certain circumstances, as set out in the Heritage Conservation Act.*
- *Occupying an existing dwelling or building without any land alteration does not require a Provincial heritage permit."*

#### Ministry of Water, Land and Resource Stewardship

*"Please advise the proponent that they are not permitted to construct on crown land; this includes the retaining wall, deck, and any overhanging structures. While it is not directly related to this referral, I would like to note that it is lakeside property, and the proponent may be interested in constructing a dock as well. The proponent should contact FrontCounter BC prior to any construction of docks or other improvements on the foreshore".*

#### 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".*

#### Ministry of Transportation and Infrastructure

*"With regards to the above noted referral, the Ministry has no concerns with the proposed construction of a deck within the 15.0 metre floodplain setback area. We do however have legislative requirements for permits that should be obtained from the Ministry prior to issuance of a building permit.*

*The permits required for the property include:*

- *A residential access permit as they are located off a numbered Highway.*
- *A structure encroachment permit for the proposed retaining wall.*
- *A structure variance permit for the proposed storage area with parking pad.*

*The applicant will need to hire a BC Land Surveyor to provide an accurate site plan showing the proposed structures in relation to the existing property lines, to ensure the storage area is not encroaching within the right of way. Due to the location of the property, and the steep topography, the applicant will also need to obtain a Geotechnical Engineer and a Structural Engineer to provide necessary documentation for the Ministry to be comfortable issuing the above noted permits".*

#### Interior Health (IH)

*"This existing property is very confined and constrained due to a number of factors including but not limited to, property size, natural geography (slope of the land), an existing watercourse, and the proposed development. Recognizing these factors, and based on the information provided with this referral that an onsite sewerage disposal is being proposed, it does not leave a lot of unencumbered space (useable area) available for this purpose. To ensure the long term sustainability of the lot, we recommend the Regional District of Central Kootenay require a protected area (under restrictive land use covenant for perpetuity) suitable for both a primary and back up sewerage disposal area prior to approving this application".*

## Building Department

*“The spatial separation / limiting distance (distance between buildings and property lines) are set out in 9.10.15. The distance between the new proposed dwelling and property lines will be based on, and restricted by, the type of construction and unprotected openings on the elevations that face the property lines. With that, the new dwelling will be required to have a width restricted by the side yard setbacks (under the BCBC and reduced fire response time / doubling the set back). For example, the proposed house would have to meet restricted side lot lines (2.4m is the basis, if there are 7% window openings on the elevation facing the side property line). The Survey shows that the site is only 13m (42ft) wide, It should be noted at the planning stage of the design that the dwelling could fit on the lot but may have restrictions to the cladding /construction types, having a small footprint and having limited (7% or less) or no windows. This is something that should be considered during the design stage of the new proposed dwelling, if the variance is approved.*

- 1. The other item to consider regarding the building design is the flood construction level as per the RDCK Floodplain Bylaw.*
- 2. Since the new building will be located on or partially on an area where the existing building has been demolished, a geotechnical engineer will be required to be engaged for the project.*
- 3. Depending on the design of the home (if proposed on piers for example), a Structural Engineer may also be required.*
- 4. All other standard requirements for an application include (but may not be limited to):*
  - Approved septic system;*
  - Digital building drawings (pdf format);*
  - Proof of BC Housing New Home Registration and Warranty program;*
  - Completed application; and,*
  - BC Step Code pre-construction Compliance Checklist.*

*Additional documentation or clarification may be requested at the time of the full application review”.*

## Advisory Planning and Heritage Commission (APHC)

*“...the Area E Advisory Planning Commission **SUPPORT** the Site Specific Floodplain Exemption Application to Weiland Construction for the property located 1434 Highway 31, Queens Bay and legally described as LOT B, PLAN NEP78423, DISTRICT LOT 12075, KOOTENAY LAND DISTRICT due to hardship but suggest that the applicant consider building outside of the 15m setback”.*

### **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, the Watercourse Development Permit application will be processed by Planning Services. A Building Permit would then be required for the construction of the new residence and attached deck.

### **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.



Planning staff support the requested floodplain exemption, since:

- The applicants have engaged a professional geotechnical engineer, Crowsnest Engineering, who have submitted a report confirming that the proposed siting of the attached deck, as designed, is safe for the use intended.
- The site is quite small, at 376.4 m<sup>2</sup>, and there are constraints to moving the house closer to the Hwy in an effort to satisfy the 15.0 m floodplain setback including: (a) the existing easement adjacent to the Highway frontage prohibits development of structures, and (b) this easement area is also the only viable area to locate the private wastewater disposal system adjacent to the Highway.
- Given the lack of usable space, and to ensure the long term sustainability of the lot the staff recommendation includes a condition of approval be subject to the registration of a Section 219 restrictive covenant, which identifies on the subject property a primary and back up area of land for sewerage systems by an Authorized Person.
- 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.

It is for the above reasons that staff recommend that the Board approve this site specific floodplain setback exemption.

## OPTIONS

**Option 1:** That the Board APPROVE a Site Specific Floodplain Exemption to reduce the required setback from Kootenay Lake from 15 metres from the natural boundary to 11.42 metres from the natural boundary in accordance with the Engineering Report prepared by Crowsnest Engineering (dated January 12, 2024) for property located at 1434 Highway 31, Queens Bay, Electoral Area 'E' and legally described as LOT B, PLAN NEP78423, DISTRICT LOT 12075, KOOTENAY LAND DISTRICT (PID: 026-329-981) as follows:

1. SUBJECT to preparation by Ruth Elizabeth Pilla, Lisa Marie Crottey and Michael Raymond Crottey 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; and,
2. SUBJECT TO the registration of a Section 219 restrictive covenant, which identifies on the subject property a primary and back up area of land for sewerage systems by an Authorized Person.

**Option 2:** That the Board NOT APPROVE a Site Specific Floodplain Exemption to reduce the required setback from Kootenay Lake from 15 metres from the natural boundary to 11.42 metres from the natural boundary in accordance with the Engineering Report prepared by Crowsnest Engineering (dated January 12, 2024) for property located at 1434 Highway 31, Queens Bay, Electoral Area 'E' and legally described as LOT B, PLAN NEP78423, DISTRICT LOT 12075, KOOTENAY LAND DISTRICT (PID: 026-329-981) SUBJECT to preparation by Ruth Elizabeth Pilla, Lisa Marie Crottey and Michael Raymond Crottey 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 reduce the required setback from Kootenay Lake from 15 metres from the natural boundary to 11.42 metres from the natural boundary in accordance with the Engineering Report prepared by Crowsnest Engineering (dated January 12, 2024) for property located at 1434 Highway 31, Queens Bay, Electoral Area 'E' and legally described as LOT B, PLAN NEP78423, DISTRICT LOT 12075, KOOTENAY LAND DISTRICT (PID: 026-329-981) as follows:

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2. SUBJECT TO the registration of a Section 219 restrictive covenant, which identifies on the subject property a primary and back up area of land for sewerage systems by an Authorized Person.

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 Crowsnest Engineering