



Regional Board Report

Request for Decision

To: Regional Board
From: Director of Community Services
Date: January 25, 2023

Subject: Floodplain Exemption Application (FEX-23-02)
B. Young c/o Bercum Builders Inc. (Agent)
9651 Kilkenny Place (Central Okanagan West Electoral Area)

Voting Entitlement: *Custom Vote - Electoral Area West Unfringed Area - Electoral Area Directors Only - 1 Director, 1 Vote*

Purpose: To consider an exemption to the RDCO Zoning Bylaw floodplain setback, to allow an existing seasonal residence to be refurbished and renovated within 15m of Okanagan Lake.

Executive Summary:

This development proposal is to maintain and renovate an existing cabin, including flood protection measures to support structural foundations within the Okanagan Lake floodplain setback area. Although the cabin was legally constructed before the RDCO adopted regulations to limit development near watercourses, portions of the deck appear to have been built more recently. Following site inspections and input from the RDCO's Environment and Climate Advisory Committee, staff recommend that the Board approves a floodplain exemption to allow the minimum setback to be reduced from 15m to 5.5m, on the condition that other portions of the development which were not legally constructed are removed and that the applicant receives a Development Permit to ensure that impacted areas of the foreshore are returned to a more natural state.

Recommendation:

THAT the Regional Board approves Floodplain Exemption application FEX-23-02 for Lot 11, District Lot 3330, ODYD, Plan 11749, reducing the floodplain setback defined under Section 3.28.2.1.1 of Zoning Bylaw No. 871 from 15m to 5.5m to allow the placement of fill necessary to reinforce and protect structural foundations, subject to the following conditions:

- The applicant must apply for a Development Permit for works associated with the removal of all existing structures within the prohibited development area depicted in Attachment 5 of Regional Board Report FEX-23-02 and the restoration of the affected area.
 - The applicant must apply for a Demolition Permit to remove all existing structures within the prohibited development area depicted in Attachment 5 of Regional Board Report FEX-23-02.
 - Aside from the reinforcement and protection of structural foundations, no increase to the existing building footprint or change to the siting of the structure within the floodplain setback is permitted.
 - The applicant shall register a restrictive covenant under Section 219 of the *Land Title Act* identifying that there may be flood concern relating to the development of the lands.
 - Shoreline modification and works in and around a water course is subject to Provincial regulations and requirements under the *Water Sustainability Act*.
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Respectfully submitted by: Shaun O'Dea, Senior Planner

Report Approved by:



Brittany Nichols, Manager of Development Services

Approved for Agenda:



Sally Ginter, Chief Administrative Officer

Strategic Plan Alignment:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Emergency preparedness | <input type="checkbox"/> Truth and reconciliation |
| <input type="checkbox"/> Health and wellness | <input type="checkbox"/> Environment and climate – Regional priority only |
| <input type="checkbox"/> Regional transportation | <input checked="" type="checkbox"/> Growth and development – Electoral Area priority only |
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Background:

The subject property is a lakefront lot created in 1961 in the Killiney Beach neighbourhood of the Central Okanagan West Electoral Area. It contains a seasonal cabin situated near the foreshore of the lake built in 1967 and accessed via an easement that is shared with neighbouring property owners. Because the cabin was legally constructed before the adoption of regulations which limit development near watercourses, the *Local Government Act* allows it to be maintained, extended, or altered provided that proposed works do not create further contraventions of the established bylaws.

Owner/Applicant:	H. Hollands & A. Brox (owners), B. Young c/o Bercum Builders Inc. (agent)
Legal Description:	Lot 11, District Lot 3330, ODYD, Plan 11749 (PID: 009-494-669)
Address:	9651 Kilkenny Place (Central Okanagan West Electoral Area).
Lot Size:	1,776m ² (0.45 ac)
Zone:	RU5 – Small Lot Country Residential
Land Use Designation:	Rural Residential
Water Source:	Private
Wastewater Treatment:	Onsite disposal
Existing Use:	Seasonal dwelling
Surrounding Uses:	North – Seasonal dwelling East – Okanagan Lake South – Single family dwelling West – Road corridor (Kilkenny Place)
ALR:	No
Fire Protection:	North Westside Fire Protection Area

Proposal:

The proposal is to repair and renovate the existing cabin in its current location, upgrading its siding and roof with non-combustible materials, increasing the bearing of its footings, and reestablishing its foundations. The applicant considered removing the existing cabin and building a new structure further from the lake, but given the location of the access easement, steep slopes, and geotechnical conditions, maintaining it in its current location is considered to be more feasible and less impactful on the natural environment. The applicant has indicated that no tracked vehicles or machinery are anticipated to be used to renovate the cabin in its current location.

The proposal also includes upgrades to the deck on the lakeward side of the cabin, adding geotextile material and coarse rock to protect the foundations from flood induced erosion and wave scour.

- The eastern wall of the cabin is approximately 9.2m from the lake's natural boundary,
- The eastern extent of the upper deck is approximately 6m from the lake's natural boundary, and
- The eastern extent of the lower deck is approximately 4.5m from the lake's natural boundary.

The original proposal indicated that the scour protection would extend 0.6m beyond the deck area, therefore groundworks around the footings of the lower deck would result in some fill being placed approximately 3.9m from the lake's present natural boundary in some areas.

Technical Considerations:

Zoning Bylaw No. 871 – Floodplain regulations

On May 9, 2005, the Regional Board adopted an amendment to Zoning Bylaw No. 871, increasing the floodplain setback from 7.5m to 15.0m from the natural boundary of Okanagan Lake in accordance with Provincial regulations established for the safety of people and property. The RDCO's zoning bylaw also stipulates that the minimum flood construction levels for the underside of floor systems adjacent to Okanagan Lake is 343.66 metres above sea level.

Pursuant to section 524 of the *Local Government Act*, a regional district may exempt a building or other structure from floodplain regulations if they consider it advisable, if the decision is consistent with Provincial guidelines, and if a report from a certified person is received indicating that the land may safely used for the intended purpose. The report provided by the applicant indicates that proposal meets the flood construction *level* requirements, as the underside of the residence's floor system will be approximately 346 metres above sea level. The submitted assessment concludes that although portions of the development are within the floodplain setback and flood risk is present, the property can be safely developed for its intended use, provided the recommendations of the report are followed.

In granting an exemption for floodplain regulations, a regional district may impose terms and conditions on an applicant, including requirements for a person to register a covenant under Section 219 of the *Land Title Act*.

Local Government Act – Legal non-conforming use and other continuations

Under Division 14, Part 14 of the *Local Government Act*, structures that were legally built but that do not conform with current bylaws may be maintained, extended, or altered provided that proposed works create no further contraventions of the established bylaws. Under these provisions, the siting, size, and dimensions of the cabin are permissible, and furthermore development activities within the existing building footprint area are exempt from Development Permit requirements. However, because the project will require the placement of additional fill to support a floor system within a floodplain area, it must conform with section 3.28 of the RDCO Zoning Bylaw, or it must be granted a floodplain exemption.

RDCO staff have reviewed the application to determine whether the existing development was legally constructed and whether it can be considered legal non-conforming. RDCO Building Inspectors conducted a site visit on November 10, 2023 and noted that portions of the decks attached to the eastern side of the cabin do not appear to have been built at the same time as the dwelling and are therefore *not* legal non-conforming. On this basis, staff do not recommend support for a floodplain exemption to allow scour and erosion protection around the footings of the lower deck.

Staff recommend that the floodplain exemption is approved for the structural improvement and flood protection of the cabin and upper deck foundations, on the condition that the lower deck is removed, and that the surrounding area is returned to a more naturalized state. This removal and remediation must be completed under the direction of a Qualified Environmental Professional in accordance with the RDCO's Aquatic Ecosystem Development Permit Guidelines.

Policy Considerations:Regional Growth Strategy (RGS) Bylaw No. 1336

The following policies of the RGS are applicable to the proposal:

- Policy No. 3.2.3.1 - Consider water resources in land use planning decisions;
- Policy No. 3.2.3.3 - Work with local governments, provincial agencies to assess and mitigate the risks in floodplains;
- Policy No. 3.2.7.8 - Encourage land use and transportation infrastructure that improves the ability to withstand climate change impacts and natural hazard risks; and,
- Policy No. 3.2.8.3 - Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems.

Okanagan Climate Projections Report

The Regional Districts of the Okanagan Valley partnered with the Pacific Climate Impacts Consortium to develop a Climate Projections report for the Okanagan in 2020. This report provides the scientific foundation to make informed decisions that support community action and to better prepare for climate variations over the next 30 and 60 years. Wildfire, flooding, and drought have already tested local infrastructure, caused economic losses, and posed health risks to communities.

Based on these changes, there is a need to plan for a greater likelihood of more intense and hotter fires, increasing water shortages, and spring flooding. Findings indicate that the Okanagan can expect significant changes including:

- Warmer temperatures year-round;
- Summers will be considerably hotter;
- Increased duration of growing season;
- Warmer winter temperatures;
- Increased precipitation; and,
- Summer is expected to remain the driest season, and become drier.

The report indicates precipitation increases can be expected across all seasons, except summer. The largest increases in precipitation will take place during the spring and autumn months. This can lead to more frequent flooding and stress to ecosystems and infrastructure.

Regional Floodplain Management Plan

Flooding is a serious concern within the Central Okanagan and risks may become exacerbated with the effects of climate change. In response to this risk, the three-phase Regional Floodplain Management Plan has been initiated with the purpose of reducing flood risk, improving emergency response, and increasing resiliency to climate change.

RDCO TECHNICAL COMMENTS:

Inspection Services staff conducted a site visit at 9651 Kilkenny Place on November 10, 2023, and raised concerns about the legality of the lower deck structure.

Inspection Services staff advise that due to the presence of the RDCO's wildfire interface development permit area, as part of the building permit process, a covenant under Section 219 of the *Land Title Act* must be registered on the property title identifying that the area is subject to wildfire risks.

Unaffected RDCO Departments include Fire Services, Engineering Services and Parks Services.

AGENCY REFERRAL COMMENTS:

Ministry of Water, Land, Resource Stewardship staff have advised that any proposed works in and about a watercourse may be subject to Provincial regulations and requirements under the *Water Sustainability Act*. Furthermore, there shall be no alteration of the Okanagan Lake shoreline and no works undertaken on Crown Land.

ENVIRONMENT AND CLIMATE ADVISORY COMMITTEE COMMENTS:

The Committee reviewed the application at their meeting held on November 15, 2023 and recommended that the floodplain exemption is granted only for the erosion protection works that are associated with pre-existing legal non-conforming structures.

Considerations:

External: In accordance with the *Local Government Act* and the Development Applications Procedures Bylaw No. 1527, a Notice of Application sign was posted at the property boundary and written notices were mailed to all registered property owners of land situated within 150 metres of the subject property. A total of 17 letters were mailed to neighbouring residents.

At time of writing this report, no letters of support or opposition have been received regarding this application.

Statutory Authority: *Local Government Act* section 524 – Requirements in relation to flood plain areas.
Local Government Act section 529 – Non-conforming structures: restrictions on maintenance, extension and alteration

Considerations not applicable:

- Legal
- Organizational
- Financial
- Alternate Recommendation

Attachments:

1. Location Map
2. Site Plan
3. Geotechnical Report
4. Regional District of Central Okanagan Zoning Bylaw #871
Section 3.28 – Floodplain Regulations
5. Prohibited Development Area
6. Regional Board Presentation Slides
