



Regional Board Report

Request for Decision

To: Regional Board

From: Director of Community Services

Date: February 23, 2023

Subject: Covenant Discharge (MISC-23-08)
Elizabeth Kutschera and Christian Kutschera (Owners)
5705 Upper Booth Road North (Central Okanagan East Electoral Area)

Voting Entitlement: Custom Vote – Electoral Area East & Kelowna Fringe Area – Electoral Area Directors, Kelowna - 1 Director, 1 Vote

Purpose: To consider discharge of a restrictive covenant that affects a portion of the subject property.

Executive Summary:

The owners are proposing to discharge a covenant that prohibits the development of any buildings and structures on a portion of the subject property. The applicant has provided a geotechnical report to support their proposal. Given that proposal does not align with the objectives and policies of the Regional Growth Strategy, Agricultural Plan, and Ellison Official Community Plan, staff are providing a recommendation of non-support for the Board's consideration.

Recommendation(s):

THAT the Regional Board receive the report from the Director of Community Services, dated February 23, 2023, with respect to RDCO File: MISC-23-08 for the property located at 5705 Upper Booth Road legally described as Lot 1, Section 18, Township 24, ODYD, Plan KAP66788 ("the Subject Property");

AND FURTHER THAT the Regional Board not support the discharge of covenant KP44326, from the Subject Property.

Respectfully submitted by: Michael Czarny, Senior Planner

Approved by:

A handwritten signature in black ink, appearing to read "Todd Cashin".

Todd Cashin
Director of Community Services

Attachment(s):

1. Orthophoto
 2. Subject Property Map
 3. ALR Map
 4. Geotechnical Report prepared by Interior Testing Services LTD.
 5. Section 5.1 - Agricultural A1 - Zoning Bylaw No. 871
 6. Covenant KP44326
 7. KAP66792
 8. Regional Board Presentation
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Strategic Plan Alignment:

Priorities: Sustainable Communities, Environment

Values: Transparency, Good Governance

Background:

The subject property is zoned Agricultural (A1), is fully within the ALR and contains a single detached house constructed in 1990, a barn and a home-based business. The property is bisected by Upper Booth Road and Whelan Creek runs through the western portion of the property. The parcel also has several restrictive covenants registered on title including a geotechnical covenant which restricts development on the entire western portion of the site and a second covenant that restricts development within 15 metres of Whelan Creek. Both covenants were originally registered on title during the subdivision process and were registered in 2000.

The applicant has submitted an ALC referral application to subdivide the property along Upper Booth Road into two parcels, one east of the road (4.32 ha) and one west of the road (1.86 ha). There is no record of agricultural activities onsite. Much of the property has a land capability class 5 for mineral soils with smaller sections of class 4 which have severe limitations that restrict the range of crops and require improvement practices.

Proposal:

The applicant is proposing to discharge a geotechnical covenant that affects the western portion of the parcel. This covenant prohibits the development of any buildings and structures on this portion of the property. Unless the covenant is discharged, the portion of the subject property west of Upper Booth Road North will not have a viable location for a building envelope. The applicant has provided an update to the geotechnical report that was prepared in 1997 to support the discharge of this covenant.

Geotechnical Report

In 1997, Interior Testing Services Ltd. completed a geotechnical report that indicated that the subject property had an existing dwelling with no anticipated further development. Therefore, the west portion of the property was indicated as a “conditional” building area, or a “no-build” area which became the basis for the registration of the covenant in 2000.

The updated geotechnical report (2022) concludes that there does not appear to be any significant geotechnical hazards related to the proposed subdivision. Based on the understanding that the proposed

building footprint will be within the upper northeast corner of the proposed lot, the geotechnical report indicates that subdivision (to allow for construction of a second residence) appears feasible for this site with no net decrease in overall slope stability.

Regional Growth Strategy Bylaw No. 1336:

The Regional Growth Strategy aims to preserve agricultural land, local food systems and promote employment opportunities. This application does not align with the following policies of the RGS:

- Policy 3.2.1.8 Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural use;
- Policy 3.2.5.2 Preserve and support sustainable agricultural activities and land base that enhances local agriculture through the strengthening of best practices, support of local and regional food systems and the expansion of local food markets and agri-tourism;
- Policy 3.2.5.6 Promote the use of agriculture and ALR lands for food production and ancillary agriculture processing and retailing consistent with uses outlined in the Agricultural Land Commission Act and Regulation; and
- Policy 3.2.5.7 Protect the supply of agricultural land and promote agricultural viability.

Agricultural Plan:

The purpose of the Regional District's Agricultural Plan (approved in 2005) is to enhance the viability of the agricultural sector in the Regional District. The Agricultural Plan supports the protection of farmland and agricultural uses. As the proposal does not support any agricultural uses or the protection of agricultural land, the proposal does not align with the Agricultural Plan.

Ellison Official Community Plan Bylaw No. 1124:

The subject property has a Rural 4 Hectare future land use designation which supports a minimum lot size of 4 hectares. The objectives of agricultural and rural lands in the Ellison community are to preserve the agricultural land base and to support the development, improvement, and expansion of agricultural activities. The proposal shows weak alignment with the Ellison Official Community Plan.

Zoning Bylaw No. 871:

The subject property is zoned A1 Agricultural. The A1 zone permits a variety of agricultural and residential uses. Discharge of the covenant would permit the applicant to develop the western portion of the property in accordance with A1 zoning regulations. The A1 zone permits uses such as an accessory home, accessory buildings, greenhouse, among others.

Site Context:

The property is located within three Development Permit Areas as per the Ellison Official Community Plan including Aquatic Ecosystem, Rural Hillside, and Sensitive Terrestrial Ecosystem. A Development Permit may be required prior to development on the subject property.

Owner/Applicant:	Elizabeth Kutschera and Christian Kutschera
Legal Description:	Lot 1, Section 18, Township 24, ODYD, Plan KAP66788
Address:	5705 Upper Booth Road
Lot Size:	+/- 6.17 hectares (15.27 acres)
OCP Designation:	Rural 4 Ha
Zoning:	A1 Agricultural
Water Supply:	Private source
Sewage Disposal:	Septic system
Existing Use:	Rural Residential

Surrounding Uses:	North: Rural Residential South: Rural Residential East: Rural Residential West: Rural Residential
ALR:	Within the ALR
Fire Protection:	Within the Ellison Fire Protection Area

Considerations:

External: RDCO Development Application Procedures Bylaw No. 944 does not apply to covenant discharges.

Legal/Statutory Authority: Section 219 of the Land Title Act allows a covenant registered under Section 219 to be discharged by the holder of the charge.

Considerations not applicable:

- Organizational
- Financial
- Alternate Recommendation

Approved for Agenda



Brian Reardon, CAO