



Regional Board Report

Request for Decision

To: Regional Board

From: Director of Community Services

Date: March 30, 2023

Subject: Agricultural Land Commission Referral Application (A-22-04)
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 a Referral Application to obtain Agricultural Land Commission approval for a subdivision to divide the property into two lots.

Executive Summary:

On February 23, 2023, the Regional Board supported the discharge of a restrictive covenant for the subject property. Now the applicant is requesting support for an Agricultural Land Commission referral application to subdivide the subject property into two lots. 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.

Recommendations:

THAT the Regional Board receive the report from the Director of Community Services, dated March 30, 2023, with respect to RDCO File: A-22-04 (ALC Application #65674) 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 THAT the Regional Board **not support** application A-22-04, to allow the subdivision of the Subject Property;

AND FURTHER THAT the Regional Board direct staff to not forward the application to the Agricultural Land Commission.

Respectfully submitted by: Michael Czarny, Senior Planner

Approved by:



Todd Cashin
Director of Community Services

Attachment(s):

1. Orthophoto
2. Subject Property Map
3. ALR Map
4. [Regional Board Report \(MISC-23-08\) dated February 23, 2023](#)
5. Regional Board Presentation

Strategic Plan Alignment:

Priorities: Sustainable Communities, Transportation and Mobility

Values: Resiliency

Background:

The subject property is zoned Agricultural (A1), is fully within the Agricultural Land Reserve (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 KP44326 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.

On February 23, 2023, the Regional Board supported the discharge of KP44326. When this covenant is discharged from the land title, the applicant will be able to pursue development of the western portion of the property outside of other covenant areas and subdivision of the parcel in accordance with regulations of the Zoning Bylaw and Agricultural Land Commission (ALC) policies.

There is no record of historical or current 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 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). The applicant indicated that when Upper Booth Road was constructed, it divided the parcel into two making the smaller portion on the west unused. They

also indicate that they desire to keep the smaller portion of land to build a dwelling on, while causing as little disruption as possible to the environment.

Additionally, the applicant indicates that the property has never been farmed due to issues associated with elevation, topography, soil conditions and lack of a reliable water source to support agriculture.

To proceed with subdivision, the applicant has received support from the Regional Board to discharge the covenant restricting development on western portion of the parcel.

Agricultural Land Commission Act and Agricultural Land Reserve General Regulations:

The proposal does not meet the criteria under Section 3 of the Agricultural Land Reserve General Regulations for permitted subdivision on determination by an approving officer, therefore an application under Section 25 for subdivision is required to proceed with the proposal.

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) 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 proposed does not support any agricultural uses or the protection of agricultural land, the proposal does not align with the Agricultural Plan.

Agricultural Land Use Inventory Data (2014):

The Agricultural Land Use Inventory Data (ALUI) completed for the City of Kelowna found that one of the main challenges to agricultural success of farmers is land fragmentation, small lots and road corridors through agricultural land. The ALUI data also finds that the fragmentation of parcels decreases future agricultural potential.

Ellison Official Community Plan Bylaw No. 1124:

The subject property has a Rural 4 Hectare future land use designation supports a minimum lot size of 4 hectares which is not achieved by this proposal. Additionally, the following policies from the OCP do not support the proposal:

- Policy 2.22 Support a minimum lot size of 4 hectares in the Ellison hillside neighbourhood in keeping with the limited infrastructure, limited servicing, objectives of Ellison as a rural area, and the limited information and review in the area to date.
- Policy 2.23 Within the Ellison Hillside Neighbourhood Plan Area a minimum of 2 hectares may be supported subject to the completion of a Neighbourhood Plan that addresses;
 - Guidelines for rural residential subdivision including panhandles and access,

- The provision of a community water system with ensured adequate water supply in consideration of water availability and allocation commitments,
- The number of lots, approximate lot location, lot access, and adequate buildable sites on each lot,
- Major road locations including connections to existing major roads, drainage and flooding and stormwater issues, access to provincial Crown Lands Cuts and fills that may affect views due to any required site modifications such as (but not limited to) road construction and infrastructure construction,
- Major offsite potential road linkages south to Kelowna and north to the District of Lake Country to ensure support for long term future road needs on the east side of Lake Okanagan,
- Pedestrian and bicycle route evaluation and planning,
- An assessment of parks needs and the location of future parks, trails and linear corridors,
- An evaluation of the facilities and services required as a result of development including schools, fire protection, road upgrading, and an identification of how and when improvements would be provided,
- A full environmental review and assessment including consideration of the aquatic ecosystem and sensitive terrestrial ecosystem development permit requirements. This may include updating of the development permit areas based upon site specific information,
- Consideration of replacing the rural hillside development permit requirements with more development-oriented hillside development permit requirements such as those on the west side of Lake Okanagan,
- Septic soil capability mapping.

Zoning Bylaw No. 871:

The subject property is zoned A1 Agricultural. The A1 zone required a minimum parcel size of 0.5 hectares for parcel in the Agricultural Land Reserve however, the bylaw also refers to the Agricultural Land Commission Act for other applicable conditions. A1 zoning regulations permit the applicant to develop one accessory home on either the east or west portion of the property without the need of subdivision.

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 or subdivision of 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

RDCO TECHNICAL COMMENTS:

Engineering Services staff comment that the proposal does not adhere to the principles of agriculture being recognized as the priority use and non-agricultural uses being restricted on parcels within the ALR. The proposal will detract from the full agricultural productive potential of the parcel. Additionally, the proposed lot to the west of the road does not meet the Rural 4 ha designation of the Ellison Official Community Plan Bylaw No. 1124, 2006.

Unaffected RDCO Departments include Park Services, Fire Services, and Inspection Services.

AGENCY REFERRAL COMMENTS:

Ministry of Agriculture and Food staff understand that the applicant wishes to subdivide the property, which is bisected by Upper Booth Road, in order to build a small house on the proposed smaller parcel in which to retire. Ministry staff agree that the proposal does not support agriculture in the long or short term. Ministry staff note that the applicant may be able to build a second residence of 90 m² or less on the existing parcel and remain consistent with Section 34.3 of the Agricultural Land Reserve Use Regulation.

Shaw supports this application. Shaw will require a dedicated underground conduit that is installed in a common trench, along with the electrical utility at the time of Construction and shall reach out to us in advance so that we can determine the closest tie-in point.

Ministry of Transportation and Infrastructure staff comment that when the property owner concludes the ALC process, they may submit a subdivision application along with the resolution to the Ministry and Ministry staff will proceed with agency referrals.

Unaffected agencies include BC Hydro.

Considerations:

External:

RDCO Development Application Procedures Bylaw No. 944 does not apply to ALC referral application. Although notice requirements are defined in Section 36 of the ALCA, the application is not required to publicly notify this non-farm use application.

Financial:

As per the Agricultural Land Commission Fee Schedule, the Regional District of Central Okanagan has received the required application fees to process the ALC referral application.

Legal/Statutory Authority:

Section 34.1 (2) of the ALCA outlines the application procedure if a local government review is required. The Regional Board may:

- Forward the application to the commission with comments and recommendations, or,
- Notify the application that the application will not be forwarded to the commission if the application is refused

Section 25 of the Agricultural Land Commission Act (ALCA) outlines the application procedure. The ALCA, Agricultural Land Reserve Use Regulation and Agricultural Land Reserve General Regulation apply.

Alternate Recommendation:

Considerations not applicable:

- Organizational

Approved for Agenda



Brian Reardon, CAO