



Regional Board Report

Request for Decision

To: Regional Board

From: Director of Community Services

Date: April 20, 2023

Subject: Agricultural Land Commission Application (A-22-05)
Anna Maria Shimizu and Alexander Klas Algard (owners)
James Kay (agent)

Voting Entitlement: All Directors – Unweighted Corporate Vote – Simple Majority (LGA s.208)

Purpose: To consider a Referral Application to obtain Agricultural Land Commission approval for a subdivision to divide the property into nine lots.

Executive Summary:

The applicant is proposing to subdivide the subject property into nine lots to facilitate the initial planting of 400 acres of cherries. The proposal includes three new roads to service the proposed 9 lots and serve as egress to adjacent hillside communities. Additionally, the application proposed the protection of several watercourses that run through the property and the consolidation of 5 adjacent parcels to the east of the subject property.

The application shows weak alignment with the Regional Growth Strategy, moderate alignment with the Agricultural Plan and Ellison Official Community Plan, is supported by the Regional Evacuation Planning Framework, and complies with the Zoning Bylaw. Concerns have been raised regarding environmental sensitivity of the Okanagan Wildlife Connectivity Corridor and agricultural concerns from the Ministry of Agricultural and Food however, staff support additional egress and connectivity. A recommendation of support with conditions is provided for the Board's consideration.

Recommendations:

THAT the Regional Board receive the report from the Director of Community Services, dated April 20, 2023, with respect to RDCO File: A-22-05 (ALC Application #66009) for the property located at 4121 Anderson Road legally described as Section 7, Township 24, ODYD, Except Plans 475 and 39857 ("the Subject Property");

AND THAT the Regional Board support application A-22-05, to allow the subdivision of the Subject Property provided that covenants which restrict the use of agricultural land for farm purposes only and protect the environmental values of the property are registered at time of subdivision;

AND FURTHER THAT the Regional Board direct staff to forward the application to the Agricultural Land Commission.

Respectfully submitted by: Michael Czarny, Senior Planner



Todd Cashin
Director of Community Services

Attachment(s):

1. Orthophoto
2. Subject Property Map
3. Site Plan
4. Regional Board Presentation

Strategic Plan Alignment:

Priorities: Sustainable Communities, Transportation and Mobility

Values: Resiliency

Background:

The property is adjacent to the Sunset Ranch residential development in the community of Ellison. The property is zoned Agricultural (A1), fully within the ALR and is currently used for grazing. The property currently contains a single-family dwelling, a mobile home, and several accessory structures. The 392-acre property is one of six properties collectively known as “the Old Kelowna Ranch” that consist of 1,833 acres owned by the same landowner. The applicant is proposing to consolidate the 5 easterly parcels of “Old Kelowna Ranch” into 1 lot. The consolidation of these parcels does not require a subdivision application to the ALC.

The applicant has submitted a Notice of Intent and a Transportation, Utility and Recreational Trail Use application, and a Soil or Fill Use application. These applications include the subject property and the property immediately to the east which is approximately 640 acres owned by the same landowners. The Notice of Intent and the Transportation and Utility and Recreational Trail Use application applications are sent to local government for information purposes only while the Soil or Fill Use application will come to the Regional Board for consideration at a later date. If the applicant receives approval for these applications, the applicant also plans to submit a proposal for temporary farm worker housing to support the proposed agricultural activities.

The subject property has class 4, 5, and 6 soils. Class 4 and 5 soils have severe limitations that restrict a range of crops and require significant improvement practices. Class 6 soils are only capable of producing perennial forage crops and improvement practices are not feasible.

Proposal:

The applicant has submitted a ALC application for a 9-lot subdivision for the subject property. The proposed subdivision will facilitate the construction of three roads which will provide additional egress and connections for the Sunset Ranch community as well as connection to Upper Booth Road North. The applicant indicates that farming operations require the construction of roads through the site for access and that watercourses onsite will be protected with the potential of being returned to Crown. The applicant indicates that the watercourses onsite provide a natural separation of the land that creates the proposed 9 lots. The 9 lots will also provide a mechanism to recuperate the cost associated with the subdivision. With the proposed consolidation of “Old Kelowna Ranch”, the applicant is proposing a net increase of 4 lots.

The applicant intends to plant 400 acres of cherries which will require irrigation, augmenting topsoil and grading the land. Plantings are proposed to occur in 2024 and 2025 with preparation work starting in 2023. The proposed orchards will be on lands ranging in elevation from 2100 feet to 3200 feet, with the mean elevation in the range of 2500 feet. The applicant indicates that they are working to complete their study of the lands, taking into consideration climate studies presently underway, RDCO development permit areas, seasonal streams, and allowance for wildlife corridors. These studies will determine finalized proposed planting areas for cherries in higher elevations.

The applicant has indicated that they have begun conversations with Black Mountain Irrigation District and Glenmore-Ellison Improvement District regarding water connection.

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. The following policies of the RGS and applicable to this proposal:

- Policy 3.2.1.1 Support logical and sequential growth patterns that minimize urban encroachment into rural areas;
- Policy 3.2.1.8 Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural use;
- Policy 3.2.2.9 Support effectively managing and protecting the integrity of the Region’s critical assets such as the lakes, natural environment and agricultural lands that promote attraction of employment and investment;
- Policy 3.2.3.1 Consider water resources in land use planning decisions;
- 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.
- Policy 3.2.8.1 Encourage cooperation for the management of regional biodiversity practices as outlined in the Okanagan Biodiversity Strategy;

- Policy 3.2.8.4 Encourage collaboration with regional partners on enhancing wildlife corridor linkages to improve habitat connectivity that avoids fragmentation and isolation of important habitats;
- Policy 3.2.8.7 Protect natural environments, parks and water systems, as these systems are essential to the quality of life in the Okanagan that support active and healthy lifestyles;

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 while discouraging the fragmentation of agricultural land. The Agricultural Plan recommends that new residential subdivisions incorporate ALR buffering specifications to promote rural-urban compatibility and recommends increased buffers between residential and farming areas. The existing Sunset Ranch residential development follows the recommendation of the Agricultural Plan regarding buffering requirements.

The Agricultural Plan recognizes that with additional regional growth there will also be plans for additional road networks, including routes through agricultural areas. Roads through agricultural lands may be an issue for the farm community in terms of the loss of agricultural land and the fragmentation of farms. Benefits include the opportunity to plan roads that will adequately buffer farmland and support farming (functional shoulders, farm signage, farm vehicle crossings and pedestrian and bicycle corridors). The following recommendations from the Agricultural Plan are applicable to the proposal:

- Policy 3.2.4.c Encourage MOTI (Ministry of Transportation and Infrastructure) to involve the farm community in the consultation process when long-term transportation planning involves agricultural areas.
- Policy 3.2.4.d Where future roads are planned to border ALR areas, standard road rights-of-way may not be sufficient to buffer agricultural lands. MOTI and the Regional District should partner to develop strategies to provide adequate buffering. ALC buffer recommendations should be followed, and greenway/pedestrian corridor opportunities should be considered (policy 7.1.4.g).
- Policy 7.1.4.g Develop a greenway corridor plan to connect development nodes to other urban development areas (e.g. Smith Creek development to Westbank, or Ellison to Kelowna). Corridor plans should address potential impacts and mitigative measures for agricultural lands. Planning considerations should include:
 - ability to skirt rather than bisect large blocks of ALR land.
 - requires a minimum amount of land.
 - includes a buffer between ALR and non-ALR uses.
 - provides strategy for the long-term ownership and maintenance of the corridor.
 - includes an opportunity to incorporate pedestrian activities and environmental objectives (e.g. protected sensitive stream corridor with pedestrian access).
 - connects existing community focal points (waterfront, commercial areas) to new development areas (Smith Creek and Shannon Lake).

Ellison Official Community Plan Bylaw No. 1124:

The subject property has two future land use designations Agricultural and Rural 30-hectare. The Rural 30-hectare future land use designation does not support the application as the proposed lots are less than 30 hectares in size. The Agricultural future land use designation supports agricultural operations

and does not support further subdivision on land within the Agricultural Land Reserve unless other policies of the Official Community Plan are met. The following objectives and policies from Section 14 - Agricultural are applicable to this application:

- Policy 2.1 Support the “Agricultural Plan” contained in Appendix C-1. The purpose of a regional agricultural plan is to identify regional, provincial and federal management tools; outline management options; address farm viability issues arising from unrealized resource (land and industry) potential; diversification opportunities; urbanization conflicts; and competition for agricultural land. The intention of the plan is to determine actions and policies within the mandate of a Regional District that are supportive of agriculture.
- Policy 2.3 Support minimum lot sizes in the ALR as determined by the Agricultural Land Commission;
- Policy 2.10 Support the Agricultural Land Commission in maintaining the integrity of suitable agricultural land;
- Policy 2.11 Support the retention of large continuous blocks of agricultural land and discourage fragmentation
- Policy 2.13 Consider support for applications to subdivide within the ALR (subject to the approval of the Agricultural Land Commission) where the subdivision enhances or does not diminish agricultural viability.
- Policy 2.17 Support some land for exclusion from the ALR and some development north of Sunset Ranch (buffered from land remaining in the ALR) in order to allow for the connection of Upper Booth Road to the Ellison hillsides to provide a second access constructed to good road standards that improve access. Exclusion of land from the ALR will be limited only to that necessary to facilitate construction. Provision of good quality access may be explored through other alternative opportunities if possible.

Roads in the Regional District are under the jurisdiction of the Province of British Columbia. Although there is a working relationship with the Regional District, the provincial Ministry of Transportation is responsible for road planning and maintenance in the Ellison area. The Ellison Official Community Plan indicates that citizens of the community value good road connections and good road quality among other priorities. Some of the roads in the Ellison area have been sequentially added to over time resulting in very long cul-de-sacs. Sierra Drive and Farmers Drive, for example, are each cul-de-sacs over 2 kilometres in length. Providing alternative options is important for safety and for emergency access. The Official Community Plan indicates a possibility of extending Anderson Road north and east of Sunset Ranch to facilitate additional access onto the Ellison hillsides.

Schedule C – Major Road Networks of the Official Community Plan identifies a proposed future road location through this property connecting Upper Booth Road South with Upper Booth Road North. Additional policies from Section 7 – Natural Environment, Section 10 - Protective Services, Education and Health, and Section 12 – Transportation of the OCP contains policies that are applicable the proposal:

Section 7 – Natural Environment of the OCP contains policies that are applicable the proposal:

- Policy 2.1.4 Investigate ways to incorporate a road extension from the end of Anderson Road up to the Ellison hillsides (as indicated in policies elsewhere in the OCP). The community need for a good quality second hillside access will need to be balanced with the environmental qualities of the ravine.
- Policy 2.2.7 Map and evaluate riparian areas, ravines and steep slopes in Ellison as a whole in order to avoid the creation of isolated ecosystems due to subdivision or development. Explore

alternatives to ensure interconnectedness between ecosystems. Road and utility corridors should be designed to minimize crossings of aquatic and sensitive ecosystems.

Section 10 – Protective Services, Education and Health of the OCP contains policies that are applicable the proposal:

- Policy 2.6 Ensure that any future subdivision in the Ellison hillsides lies within a fire protection boundary and has adequate road access requirements and emergency vehicle response times.

Section 12 – Transportation of the OCP contains policies that are applicable the proposal:

- Policy 2.1.1 Support the protection of future road rights-of-way identified and endorsed by the Ministry of Transportation as set out in the Major Road Network (Schedule C) including Old Vernon Road as a major street network connection.
- Policy 2.1.3 Support two additional areas of residential development in the Ellison area in order to provide for additional road connections for the purpose of safety and access. Support the extension of Upper Booth Road to the Ellison hillsides to provide for a good quality second access to those hillsides. Support the extension of Bulman Road to the Scotty Creek subdivision from Old Vernon Road. The Bulman Road extension is an important additional access to a large residential area and is considered important in the community and in Ministry of Transportation road network plans. In both cases residential development should only be that necessary to facilitate road construction.
- Policy 2.1.4 Plan for connecting roads as new neighbourhoods are designed. Creek crossings for public roads on the fish habitat streams Mill Creek, Whelan Creek and Scotty Creek and their tributaries should be by bridge rather than culvert and fill, particularly when situated upstream of drinking water intakes or when crossing these streams where part of a future linear or regional park.
- Policy 2.1.5 Plan for alternative transportation routes (or publicly maintained emergency access) for existing long cul-de-sac roads, or roads that feed back to a single point of access. Prior to the consideration of additional subdivision in the Ellison hillsides ensure that cul de sac lengths, or distances to single points of access are shortened such that there are optional paths to safety. Increase the safety of the community through road layout.
- Policy 2.1.9 Consider the effect of additional traffic on Old Vernon Road in terms of the functioning of existing major intersections such as Anderson, Scotty Creek and Spencer Roads. Encourage neighbouring municipalities and the Ministry of Transportation to require a review of the impact of additional traffic load on Old Vernon Road intersections resulting from proposed developments.
- Policy 2.1.16 Encourage new roadways designed to avoid disruption and fragmentation of agricultural land when considering rezoning, subdivision, or land reserve applications. Where new transportation routes necessarily affect lands designated Agricultural Land Reserve, the Regional District in consultation with Ministry of Transportation and the Agricultural Land Commission will consider alignments or other actions to mitigate impact on agricultural operations.

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.

Regional Evacuation Planning Framework:

The Regional Evacuation Planning Framework was received by the Regional Board on April 14, 2022. The Framework provides an overview of the main hazards throughout the region and identifies neighbourhoods with the highest level of risk completed on this date. The Framework identifies the Ellison community as an area of interest as it is adjacent to a wildfire interface area and contains limited egress out of the community.

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 that indicate a different minimum parcel area. The proposed subdivision complies with the regulations of the A1 zone.

The A1 zoning regulations permit agricultural related uses and residential related used including single detached dwellings and accessory homes. Current A1 zoning regulations allow up to 6 single detached houses and 12 accessory homes to be constructed on the Old Kelowna Ranch properties. The lot consolidation and approval of the proposed subdivision would allow 10 single detached dwellings and 17 additional accessory homes under the A1 zoning regulations.

Site Context:

The property is located within the Ellison Fire Protection Area. A portion of the property is within the Glenmore-Ellison Improvement District (GEID) Service Area however, approximately 117 hectares are outside both the GEID and Black Mountain Irrigation District Area.

The property is affected the Aquatic Ecosystem and Sensitive Terrestrial Ecosystem Development Permit Areas as per the Ellison Official Community Plan. A Development Permit will be required prior to subdivision.

Owner/Applicant:	Albert Leroy Stubbington
Legal Description:	Lot A, Section 12, Township 23 ODYD Plan 23162
Address:	3811 Old Vernon Road
Lot Size:	+/- 2.8 hectares (7.02 acres)
OCP Designation:	Agriculture / Residential
Zoning:	A1 Agricultural
Water Supply:	Glenmore Ellison Improvement District
Sewage Disposal:	N/A
Existing Use:	Agricultural, Residential, Commercial
Surrounding Uses:	North: Agricultural South: Agricultural / Residential East: Residential West: Agricultural
ALR:	Within the ALR
Fire Protection:	Within the Ellison Fire Protection Area

RDCO TECHNICAL COMMENTS:

Fire Services staff comment that these connections may be advantageous for access to the property for firefighting purposes. Additionally, staff comment that any proposed buildings and structures associated with the proposal must meet or exceed the BC Fire Code. Proposes roads must meet or exceed the

requirement for highways by the province of British Columbia which will ensure it meets the needs for emergency vehicles and egress in the case of an emergency.

Engineering Services staff indicate that The Ellison OCP Bylaw # 1124, Schedule C - Major Road Network identifies the road connection from Upper Booth Road South to Upper Booth Road North which aligns with the proposed Road C. At time of proposed subdivision, the subdivision servicing requirements must be met in accordance with the RDCO Subdivision Servicing Bylaw No. 1397.

Environmental Planning staff indicate that there are five aquatic stream systems within the property, and the Sensitive Ecosystem Inventory identifies significant areas of valuable grassland and riparian habitat, as well as some broadleaf woodlands and mature forest within the property boundaries. The Okanagan Wildlife Connectivity Corridor is also a key feature that traverses North-South across most of the property. It is estimated that the majority of the property is within Aquatic and Sensitive Terrestrial Development Permit areas.

An environmental Development Permit application, review and approval is required prior to subdivision support. A Development Permit Application would need to be supported by a comprehensive Environmental Impact Assessment prepared by a qualified environmental professional. The outcomes of the Development Permit may provide further guidance, adjustments, and/or requirements to the proposed subdivision.

Parks Services staff comment that dedication requirements under Section 510 of the Local Government Act does not apply to the proposed 9-lot subdivision. However, Parks Services has had on-going interests in the Ellison – Scotty Creek area for future linear parks and trails connectivity between existing community parks such as Scotty Creek Park, Sunset Ranch Park, the Ellison Heritage Community Center and future trails such as the Ellison Estates Trail.

The applicant's proposed subdivision Road 'C' through the subject property would provide road access and trail connectivity between Booth Road/Upper Booth Road N to Upper Booth Road S and the Sunset Ranch Golf & Country Club's strata road, Sunset Ranch Drive. This road would also provide a future pedestrian trail and bicycle route connection between the undeveloped Ellison Estates Trail to Sunset Ranch Park and beyond. The future road location linking Upper Booth Rd N and Upper Booth Rd S is supported by the Ellison Official Community Plan, Bylaw #1124 – Schedule 'C'. The proposed road would also provide a future trail and bicycle connection through the subject property, as indicated in the Ellison Parks Preplan Figure 10 – Scotty Creek Existing and Proposed Parks, Trails, Walkways and Bicycle Routes.

Unaffected RDCO Departments include Inspection Services.

AGENCY REFERRAL COMMENTS:

Ministry of Agriculture and Food understand that the applicant wants to build roads to provide access to relevant areas of the property and plant 400 acres of cherries. The applicant wants to avoid creating hooked parcels due to the planned roads as well as watercourses which dissect the property. Subdivision will not improve the agricultural capability of the lands and will create smaller lots which could result in an increase in residential structures on the ALR. The application may make logistical sense for the farm business given the distribution of watercourses and planned roads on the property, but ministry staff have not been on site to evaluate this. If registration of covenants which restrict or prohibit the use of agricultural land for farm purposes is contemplated, we recommend consultation with Agricultural Land Commission (ALC) staff. Ministry staff have no objection to the application proceeding to the Agricultural Land Commission for decision.

Ministry of Transportation and Infrastructure staff will provide comments via a future subdivision application. When the applicant is ready to apply, they may submit an application along with the required documents include a resolution from the ALC.

Fortis BC staff do not have any immediate concerns regarding the proposal however, FortisBC staff have several comments regarding land rights and operational and design comments. Based on the proposed subdivision and road dedication shown on the plans and nature of the FortisBC Electric approval process for releasing existing rights across the transmission right of way. There are FortisBC Electric primary distribution facilities along Anderson Road. There are FortisBC Electric transmission facilities bisecting the proposed Lots 1 & 2. Prior to FortisBC relinquishing its SRW and consenting to road dedication, the applicant will be required to provide FortisBC Electric with a legal posting plan showing the proposed road dedication area within the FortisBC Electric right of way boundaries, proposed elevation levels and location of facilities. Further information may be required. All requests for road dedication that results in a request to release a FortisBC Electric SRW will be reviewed individually through a formal internal review process. After such review, FortisBC Electric will determine if it will consent to the road dedication and release, in addition to what conditions apply.

Proposals for any construction within the right of way, including, but not limited to, water, sewer and other utilities must be reviewed and approved by FortisBC Electric prior to installation for safety and operational purposes. No elevation changes are permitted within all right of way areas without review and approval by FortisBC Electric. Typically, only crossings will be permitted subject to appropriate conditions. Parallel construction within the right of way will not likely be approved. The applicant is responsible for costs related to the detailed review of their proposal in addition to any other costs which may arise or be required related to this development's potential or actual impact on the transmission corridor. All costs and land right requirements associated with changes to the existing servicing are the responsibility of the applicant. The applicant and property owner are responsible for maintaining safe limits of approach around all existing electrical facilities within and outside the property boundaries.

Shaw supports this application. Please note, that the Shaw has an underground structure and network on 4121 Anderson Rd. Also, if telecommunication service is required, please advise the applicant that Shaw would 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 discuss our closest tie-in point.

Unaffected agencies include: Interior Health Authority

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. Despite this, staff have received 5 letters of non-support for the proposal.
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.

Considerations not applicable:

- Organizational
- Alternate Recommendation

Approved for Agenda



Brian Reardon, CAO