



Regional Board Report

Request for Decision

To: Regional Board
From: Director of Community Services
Date: November 16, 2023

Subject: Agricultural Land Commission Referral Application (A-23-01, ALC Application ID 67805)
Howard Kettner (Owner/Applicant)
2900 Schram Road (Central Okanagan East Electoral Area)

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

Purpose: To consider an Agricultural Land Commission referral application for a two-lot subdivision.

Executive Summary:

The owners of 2900 Schram Road wish to subdivide their 8.04-hectare property into two parcels. Their rationale is that water constraints currently limit their agricultural productivity, and two smaller lots will not reduce the overall agricultural outcomes. Although each lot meets the minimum size requirement for parcels designated as Rural Acreage, the proposal shows minimal alignment with RDCO policies, which aim to limit the fragmentation of agricultural land, and enhance agriculture within the region.

The RDCO Agricultural Advisory Committee (AAC) does not recommend supporting the proposal.

Recommendations:

THAT the Regional Board does not support application A-23-01 for the property located at 2900 Schram Road legally described as Lot A, District Lot 4182, ODYD, Plan KAP92004 (“the Subject Property”);

AND THAT the Regional Board non-support of the application be forwarded to the Agricultural Land Commission with the following comments:

1. The Regional Board does not support Application A-23-01 at 2900 Schram Road based on RDCO policies which aim to:
 - Minimize urban encroachments into rural areas; and,
 - Protect the supply of agricultural land and promote agricultural viability.
2. The Regional Board acknowledges that the Subject Property’s restricted access to licensed water sources limits the agricultural capability of the land.

Respectfully submitted by: Shaun O’Dea, Senior Planner

Report Approved by:

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

Todd Cashin, Director of Community Services

Approved for Agenda:

A handwritten signature in black ink, appearing to read "Sally Ginter".

Sally Ginter, Chief Administrative Officer

Strategic Plan Alignment:

- | | |
|--|---|
| <input 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 |

Background:

The Ministry of Transportation and Infrastructure's (MoTI) Provincial Approving Officer (PAO) is the approval authority for subdivisions within the RDCO electoral areas. The PAO cannot approve subdivisions within the Agricultural Land Reserve (ALR) unless it is permissible under section 18 and 25 of the Agricultural Land Commission Act. The Act requires that local governments review proposals prior to consideration by the Commission, therefore subdivision within the ALR is under the concurrent authority of the RDCO, ALC and MoTI.

Approximately 97% of 2900 Schram Road is within the ALR, therefore the two-lot subdivision proposal must be reviewed by the Regional Board before being considered by the ALC. The Board may choose to refuse the subdivision referral application or forward the proposal to the ALC with comments and recommendations.

Subdivision proposals for the Subject Property were previously considered by the Regional District of Central Okanagan Board in 1990 and 2001;

- Application A-90-09 (ALC Application ID #21-G-24475) to subdivide the parcel into one 2 hectare and lot one 6.1 lots was presented to the RDCO Board on April 9, 1990. The Board resolved to support the proposal and forward it to the Commission, however the ALC refused the application on the basis that it did not align with their mandate to preserve and protect agricultural lands and farm communities in the long-term.
- Application A-00-8 (ALC Application ID 19720) to subdivide the parcel into two equal size lots was presented to the RDCO Board on January 15, 2001. The Board supported the proposal and forward it to the Commission, however the ALC refused the application on the basis that it would contribute to the further parcelization of the area, which could have a negative impact on farming.

Site Context:

The Subject Property has a Rural Acreage land use designation, and it contains a single detached house and accessory home, each with independent private service connections. The property is also developed with accessory buildings and amenities for hobby farm operations. Access is from the southern end of Schram Road and an easement is registered on the lot's eastern boundary to provide access to neighbouring properties to the south. The parcel is bisected by Joe Rich Creek and parts of the property are within Aquatic Ecosystem, Slope Stability, and Wildfire Interface Development Permit Areas.

According to the Province's BC Soils Information Finder Tool, low-lying areas of 2900 Schram Rd have Class 5 soils which are generally limited to perennial crop production, or for cultivation with intensive management. Western parts of the property have Class 6 soils which are not typically suitable for cultivation or other improvement practices.

Owner/Applicant:	Howard Kettner
Legal Description:	Lot A, District Lot 4182, ODYD, Plan KAP92004
Address:	2900 Schram Road, Kelowna, BC, V1P 1K2
Lot Size:	8.1 ha / 19.87 ac
Land Use Designation:	Rural Acreage
Water Source:	Private

Wastewater Treatment:	Onsite
Existing Use:	Residential / Grazing
Surrounding Uses:	North - Residential / Grazing East – Cattle grazing South – Residential West – Crown Land / Forestry
ALR:	Yes
Fire Protection:	Joe Rich

Proposal:

The applicant has submitted an ALC referral application to subdivide the property into one 4-hectare parcel (lot A) and one 4.03-hectare parcel (lot B) as shown in Attachment 2. Both parcels would meet the Rural Acreage minimum parcel area requirements.

Applicant Rationale:

The applicant purchased the property and invested in equipment to manage the land in 2021. Upon moving to the Okanagan and beginning farming operations they were advised by Ministry of Forests, Water Authorizations staff that the Subject Property does not have a licensed water source suitable for agricultural irrigation. Upon applying for a license, they were informed that the proposed sources (wells near Joe Rich Creek) are associated with tributaries of Mission Creek. Surface waters for Mission Creek were fully recorded in 1964 and all unrecorded waters, including tributaries and aquifers likely to be hydraulically connected to the creek system, are reserved under a 1968 Order in Council. Ministry of Forests staff advised the owners that there was nominal chance of receiving a suitable license and the owners withdrew their application.

The property contains two unlicensed wells that the owners can utilise for domestic purposes. Under the Water Sustainability Act, domestic purposes are limited to household use, fire prevention, household animals, and irrigation of a garden not exceeding 1,000 square metres. Because the water constraints will not allow for crop production or livestock farming, the owners intent is to subdivide the property and sell one of the lots. Their rationale is that the two 4-hectare lots will not result in reduced agricultural production, as the potential is already constrained by the limited water rights.

POLICY ANALYSIS

Land Title Act

Section 75 of the Land Title Act requires that subdivision proposals are configured to provide necessary and reasonable highway access to all new parcels. Proposed lot A, as depicted in Attachment 2, does not include any direct highway access to Schram Road. To provide legitimate access, the roadway would need to be extended at least 10.7m to adjoin lot A, or extended further along the entire eastern boundary of 2900 Schram Road to also provide highway access to 3110 Schram Road and 2825 Schram Road. Any proposed road dedication would need to be approved under an ALR exclusion application. As of September 30, 2020, as a result of amendments made to the ALCA, private landowners are no longer able to make an application for ALR exclusion, they must be initiated by the Local Government.

Local Government Act

Section 512 of the Local Government Act requires that parcels being created by subdivision have a highway frontage that is either at least 10% of the perimeter of the lot, or that the frontage meets the minimum width specified in a local authority land use bylaw. The Joe Rich Rural Land Use Bylaw (JRRLUB) does not regulate the minimum lot frontage for Rural Acreage properties therefore the 10%

rule will apply. The proposed lots currently have less than 1% of the lot perimeter adjoining the highway, therefore the applicant would need to seek RDCO Board approval for an exemption to LGA s.512 before the subdivision plan could be registered.

Joe Rich Rural Land Use Bylaw No. 1195

Section 2 – Regulations

- Subsection 3.2 - Panhandle Lots: The JRRLUB requires that panhandle widths are at least 20 metres wide. The panhandle width of proposed lot B is 10.7 metres wide, therefore the RDCO Board would need to grant a Development Variance Permit for the panhandle configuration if the subdivision received a Preliminary Layout Review from the PAO.
- Subsection 3.13 - Additional Dwelling Units: The two proposed may each have one single family dwelling (with a maximum total floor area of 500m²). They would not be eligible for an additional dwelling unit as they do not meet the lot area requirement defined in section 5.3.6 of the JRRLUB.
- Subsection 3.16 – Secondary Suites: Owners of the proposed lots could apply to amend the land use designation of their property to RA-S which would permit the inclusion of a secondary suite within the single family dwelling.
- Subsection 6.19 - Development Permits: Where there are Development Permit Areas designated for the protection of the natural environment or the protection of development from hazardous conditions, the issuance of a Development Permit may be required prior to subdivision approval. Parts of 2900 Schram Road are impacted by Rural Hillside, Wildfire, and Aquatic Ecosystem Development Permit Areas.

Section 4 - Future Objectives and Policies, Part 4 - Agriculture

- Policy 4.2.1: Protect and preserve lands of good quality for agriculture and support those uses.
- Policy 4.2.5: Support the Agricultural Land Commission in maintaining the integrity of suitable agricultural land.
- Policy 4.2.8: Consider support for applications for exemption or exclusion from the ALR where the land is of very poor agricultural quality.

Regional Growth Strategy Bylaw No. 1336:

The Regional Growth Strategy (RGS) aims to preserve agricultural land, local food systems and promote employment opportunities. The following policies of the RGS are 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.

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 while discouraging the fragmentation of agricultural land.

RDCO TECHNICAL COMMENTS:

Engineering Services staff do not support the subdivision as the proposal lacks appropriate road frontage and does not represent a benefit to agriculture.

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

AGENCY REFERRAL COMMENTS:

Fortis BC had no specific concerns but will require land use rights associated with their distribution infrastructure.

The Ministry of Agriculture is currently not providing specific responses to proposals but advises that historically, by their assessment, 80% of subdivision are not beneficial to agriculture. Despite this, local governments consistently forward proposals to the ALC who, upon review, makes decisions in alignment with the Ministry's original recommendation 92% of the time. Ministry data shows that ALR subdivisions frequently result in lower agricultural productivity and higher land costs, and that smaller parcels created through subdivision can often no longer retain farm class status.

ADVISORY COMMITTEE COMMENTS:

The RDCO Agricultural Advisory Committee considered the application on September 26, 2023 and resolved not to support it. Members felt that the proposal did not align with the Committee's mandate to support the protection and enhancement of agricultural lands, and they noted that the subdivided parcels are unlikely to enhance agricultural outcomes. They acknowledged that the water constraints are a major limiting factor for the agricultural capability of 2900 Schram Road and many other farms in the Regional District.

Considerations:

External: RDCO Development Application Procedures Bylaw No. 1527 does not apply to ALC referral applications. Although notice requirements are defined in Section 36 of the ALCA, this application is not subject to public notice requirements.

Financial: As per the Agricultural Land Commission Fee Schedule, the Regional District of Central Okanagan has received the \$750 application fee required to process the referral application.

Legal/Statutory Authority: *Land Title Act* section 75 – Requirements for subdivisions
Land Title Act section 77.2 – Provincial approving officers
Local Government Act section 457 – Rural land use bylaws

Local Government Act section 488 – Designation of development permit areas

Local Government Act section 512 – Minimum parcel frontage on highway

Agricultural Land Commission Act section 18 – Restrictions on approving land uses and subdivision

Agricultural Land Commission Act section 25 – Applications by owner

Agricultural Land Commission Act section 34.1 – Application procedure if local government or first nation government review required

Agricultural Land Reserve General Regulation par 2 – Permitted Subdivisions

Alternate Recommendation: **THAT** the Regional Board conditionally supports application A-23-01 for the property located at 2900 Schram Road legally described as Lot A, District Lot 4182, ODYD, Plan KAP92004 (“the Subject Property”);

AND THAT the Regional Board recommends that the Agricultural Land Commission require that the applicant submits a report prepared by Professional Agrologist to;

- Determine the agricultural capability of the subject property; and,
- Confirm the extent to which water access limits the farming potential of the subject property; and,
- Explore opportunities and alternatives for agricultural activities that can be undertaken given the subject property’s water access.

AND FURTHER THAT the Regional Board directs staff to forward the application to the Agricultural Land Commission for consideration.

Considerations not applicable:

- Organizational

Attachments:

1. Location Map
2. Subdivision Plan
3. Joe Rich Rural Land Use Bylaw No. 1195
Section 2, Part 5.6 - Rural Acreage Designation
4. Joe Rich Rural Land Use Bylaw No. 1195
Section 4, Part 4 - Agricultural Objectives and Policies
5. Regional Board Presentation Slides
