



Regional Board Report

Request for Decision

To: Regional Board
From: Director of Development and Engineering Services
Date: June 27, 2024

Subject: Zoning Amendment Bylaw No. 871-281 (Application Z23/04)
Eldorado Ranch Ltd. c/o C. MacPherson (agent)
5932 Old Vernon Road, Central Okanagan East Electoral Area

Voting Entitlement: *Custom Vote – Electoral Area West & Kelowna Fringe Area - Electoral Areas & Kelowna–
1 Director, 1 Vote*

Purpose: To consider a site-specific text amendment to the A1 zone that will allow for the continuation of a *Petting Zoo* at Kangaroo Creek Farm.

Executive Summary:

Since the summer of 2020, Kangaroo Creek Farm has been operating in Ellison under an approved ALC Non-Farm Use permit and an RDCO Temporary Use Permit (TUP). The permits define the area that may be used for seasonal business operations and they set limits on structure types, however under provincial and local regulations the TUP will expire on April 25, 2025. Kangaroo Creek Farm has submitted a zoning bylaw text amendment application that will allow the petting zoo use to continue beyond the TUP expiry.

Because the proponent has met the previously identified conditions and established operations that have not conflicted with agricultural uses elsewhere in the Ellison community, staff recommend that the zoning amendment is granted first reading. However, to ensure that petting zoo activities remain consistent with the previously approved conditions, staff recommend that the applicant be required to register a covenant restricting the petting zoo use and operations in-line with its current scale and scope.

As condition of adoption of Zoning Amendment Bylaw 871-281, the applicant will be required to register a covenant on the title of the subject property restricting the petting zoo use and operations in accordance with the conditions of TUP-18-01.

Recommendations:

THAT Zoning Amendment Bylaw No. 871-281 for Lot 2, District Lot 120, ODYD, Plan 3497, 5932 Old Vernon Road be given first reading;

AND THAT the Regional Board schedule a Public Hearing to be held on July 25, 2024 at 8:30 a.m. prior to the Regular Board Meeting, for Zoning Amendment Bylaw 871-281.

Respectfully submitted by: Shaun O'Dea, Senior Planner

Report Approved by: Danielle Noble-Brandt, Director of Development and Engineering Services

Approved for Agenda: 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 |
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Background:

Kangaroo Creek Farm was established as a private hobby farm in the District of Lake Country in the late 1980's, and it was opened to the public in 2012. As the petting zoo began to outgrow the Lake Country location, the applicants identified 5932 Old Vernon Road in Ellison as their preferred new base of operations.

The subject property is a 22.3 ha (55 acre), A1 Agricultural lot within the Agricultural Land Reserve (ALR), directly adjacent to the Kelowna International Airport. Of the total area, approximately 3.8 ha (9.5 acres) were proposed for business operations. Because petting zoos are not a normal farm practice as defined by the *Agricultural Land Reserve Use Regulation*, the applicant sought and received ALC approval for a Non-Farm Use in 2019. Furthermore, because petting zoos are not a permitted use in the A1 zone the applicant applied for and subsequently received conditional approval for a TUP on May 27, 2019.

A portion of the TUP area is within the Ellison Official Community Plan Bylaw No. 1124, Aquatic Ecosystems Development Permit Area (DPA). A qualified environmental professional (QEP) was retained to complete an environmental assessment and recommend management, mitigation and restoration activities that would protect and enhance environmentally sensitive areas. These recommendations were used to define several of the conditions of the original TUP, which is included as attachment 4 of this report. The ALC's Non-Farm Use Application decision letter, with conditions, is included as attachment 5 of this report.

Under Part 14, Division 15 of the *Local Government Act* Temporary Use Permits may be issued for up to three years, and they may be renewed once. The applicants received approval to extend the TUP on April 25, 2022 and it is due to expire on April 25, 2025.

Current Operations:

Kangaroo Creek Farm currently employs around 52 staff during seasonal operations, with approximately 1,900 daily visitors in July and August and 200 visitors per day during the shoulder season. The petting zoo is closed over winter, with 5 full-time year-round staff. Site development, riparian protections and business activities appear to conform with the previously approved permit conditions.

Road access, parking overflow and traffic safety was identified as a potential concern during the original application review in 2019, however the Applicants employ a parking attendant to manage visitors, and directional signage is installed at the farm exit advising Kelowna-based visitors to turn right to avoid the highway 97 intersection. Recently the applicants have implemented a bookings system to manage the number of daily visitors, and a pricing model to encourage visitation during the shoulder season and reduce peak-season demand.

The applicant states that the Kangaroo Creek Farm has had no wildlife interface issues, and no animal escapes or other compliance issues. They are in good standing with the SPCA, and they are actively engaged with Tri Lake Animal Hospital, OK Veterinary Hospital, and the Rutland Veterinary Clinic to support animal welfare. Security is well managed, and the farm has had no significant workplace injuries.

They note that they are a significant local employer, a highly regarded tourist destination, and they make significant community contributions, supporting schools and non-profits with visitation opportunities.

Proposal:

Zoning Amendment Bylaw No. 871-281 proposes adding *Petting Zoo* as a permanently permitted use at the subject property, and adding the following definition to Zoning Bylaw No. 871;

PETTING ZOO means the use of land for animal husbandry and the exhibition of animals for tourism, commercial, or educational purposes.

Additional Information:

Proponents:	Owner: Eldorado Ranch Ltd., Applicant: C. MacPherson
Address:	5932 Old Vernon Road
Legal Description:	Lot 2, Plan 3497, District Lot 120, ODYD
Area:	Total lot size = ~22.3 ha (55 acres), Area of operations = ~3.8 ha (9.5 acres)
Land Use Regulations:	OCP Designation = Agriculture, Zoning = A1 Agricultural
Existing Use:	Kangaroo Creek Farm (TUP-18-01)
Surrounding Uses:	North: Old Vernon Road and Mill Creek / Agriculture South: Agriculture (orchards) and kennel service (Bark n' Fly) East: Small lot country residential (Country Rhodes Estates) West: Kelowna International Airport (YLW)
ALR:	Within the ALR
Fire Protection:	Ellison Fire Protection Area
Water Supply:	Well source for irrigation, water is brought in by truck for sanitary use and bottled water available for visitors
Wastewater Disposal:	Onsite wastewater system

Regional Growth Strategy Bylaw No. 1336:

The following Regional Growth Strategy objectives are applicable to this proposal;

- Policy No. 3.2.1.3 - Support the protection of the rural areas that offer a rural lifestyle choice.
- Policy No. 3.2.1.8 - Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural use.
- Policy No. 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 No. 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.
- Policy No. 3.2.8.3 - Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems.
- Policy No. 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.

Ellison Official Community Plan Bylaw No. 1124**Section 14 -Agriculture and Rural Lands**

- Policy No. 2.6 - Reduce the negative effects at the agriculture/urban interface. This will involve reviewing measures such as buffering requirements, reducing urban densities next to farms, developing setbacks, considering neighbouring farm practices when reviewing applications for land use, encouraging responsible farm practices, requiring a restrictive covenant for land adjacent to the ALR at the time of property development etc.
- Policy No. 2.10 - Support the Agricultural Land Commission in maintaining the integrity of suitable agricultural land.

- Policy No. 2.11 - Support the retention of large continuous blocks of agricultural land and discourage fragmentation.

Section 17 of the Ellison OCP addresses TUPs and provides objectives for their intended use, their area of application and guidance for imposing conditions on temporary uses.

The Ellison OCP indicates that the community will remain a largely rural area, and that surrounding municipalities will continue to be the major focus of commercial and industrial development. Because the proposed commercial land use is inconsistent with OCP policies, a public hearing is required. Therefore, public notification requirements for the amending bylaw will be undertaken if first reading is approved.

RDCO TECHNICAL COMMENTS:

RDCO Planning Services staff advise that the legislative framework and local bylaws that define TUP processes have allowed the RDCO to impose conditions on Kangaroo Creek Farm's operations, and to hold security that may be used for remediation if any of the conditions are not adhered to.

A site-specific zoning amendment for the subject property will apply to the entire parcel in perpetuity, and it will not limit the area of operations, seasonal use, and structural characteristics that have previously been defined by the TUP. Although the ALC Non-Farm Use conditions will continue to apply, and features like riparian areas to be protected under Development Permit Area requirements, some previously identified conditions cannot be enforced and there is no mechanism to retain financial security in perpetuity. Therefore, if the zoning amendment application was to be approved, staff recommend that a covenant is registered on title to define conditions of use and spatial limits, similar to those that are currently in place under the TUP.

No comments or concerns were received from other RDCO departments. RDCO Fire Services has previously approved an evacuation plan, and Inspection Services must approve annual business licenses and permits for temporary or permanent buildings (over 10 m²).

AGENCY REFERRAL COMMENTS:

Agricultural Land Commission staff understand that there are no proposed changes to the petting zoo use at this time. Should there be any future modification to the non-farm use on the property, a new application to the Commission may be required. ALC Staff do not have concerns with the proposed site-specific zoning amendment.

Interior Health has not expressed concerns with the proposed text amendment, however they note that potable water is only available to visitors who purchase bottled water. As not everyone has the means to purchase drinking water, this may be an equity issue and they have asked the applicant and RDCO staff to consider options for access to low-to-no-cost drinking water. In response, the applicant has advised that bottled water is made available for \$2, and they are willing to support guests who indicate that they don't have the means to purchase water. Staff believe that as the site does not have access to a community water system, this solution meets Interior Health's recommendation for access to low-to-no-cost drinking water.

Kelowna International Airport has not provided feedback in response to the current proposal, but they have previously noted the likelihood of noise exposure given the proximity to runways. The area is within the 30-35 Noise Exposure Forecast Area where Transport Canada estimates that there may be repeated individual complaints in response to airport noise and they recommend that no new residential construction is approved in these areas. The applicant advises that animal welfare at Kangaroo Creek Farm is supported by three veterinary clinics, and there have been no identified concerns to date.

Under the Airport Master Plan, the area is flagged for potential land acquisition between 2036 and 2045.

No comments or concerns were received from the Ministry of Transportation, Ministry of Agriculture, Glenmore Ellison Improvement District, the District of Lake Country, or utility providers.

RDCO COMMITTEE RECOMMENDATIONS:

The RDCO Planning Advisory Committee recommends support for the zoning bylaw amendments.

The RDCO Agriculture Advisory Committee recommends support for the zoning bylaw amendments.

Considerations:

External: Notification signs advertising the proposed zoning amendment were installed at the property boundary on June 15, 2024. Additional public notification requirements will be fulfilled prior to a public hearing for the proposed zoning bylaw amendment.

Local Government Act section 464 – a local government must not amend or adopt a zoning bylaw without holding a public hearing, unless the bylaw is consistent with the official community plan for the area. Because tourist-commercial activities are not identified within the intended future land uses for the Ellison community, a public hearing must be held between 1st and 2nd reading of this amendment bylaw.

Statutory Authority: *Local Government Act* section 479 – grants local governments the power to enact bylaws that define zones and regulate the use of land, buildings, and other structures within each zone.

Transportation Act section 52(3)(a) / *Community Charter* section 135(4) – As the proposal is within 800 metres of a controlled access highway, Ministry of Transportation and Infrastructure approval is required prior to adoption of the zoning amendment bylaw.

Land Title Act section 219 – a covenant of a negative or positive nature may be registered on a property title in respect of the use of land or and the placement and use of buildings.

Considerations not applicable:

- Organizational
 - Financial
 - Legal
 - Alternate Recommendation
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Attachments:

1. Zoning Amendment Bylaw No. 871-281
2. Location Map
3. Site Plan
4. TUP-18-01 (Renewal)
5. ALC Non-Farm Use Application Decision - Feb 1, 2019
6. Presentation Slides
