



# Regional Board Report

**TO:** Regional Board

**FROM:** Todd Cashin  
Director of Community Services

**DATE:** August 24, 2020

**SUBJECT:** Agricultural Land Commission Application (A-20-02)  
955867 BC Ltd. c/o D. Garcha (owner/applicant)  
4980 Trepanier Road, Central Okanagan West Electoral Area

**Voting Entitlement:** *All Directors – Unweighted Corporate Vote – Simple Majority - LGA 208.1*

---

**Purpose:** To obtain Agricultural Land Commission approval for the unauthorized placement of fill and proposed fill placement activities.

## **Executive Summary:**

The applicant is proposing a cherry orchard at the subject property on lands within the Agricultural Land Reserve. Under the current application, the applicant is requesting approval for the existing unauthorized placement of fill as well as additional proposed fill activities.

The Agricultural Land Commission has required that the owner submit a non-farm use application prior to any additional soil or fill placement activities. Concerns regarding the fill placement were initially raised by neighbouring residents within the community. Additional concerns have been raised regarding increased truck traffic, dust mitigation, agricultural runoff and drainage, and potential impacts to Trepanier Creek.

## **RECOMMENDATION:**

**THAT** the Regional Board conditionally support Agricultural Land Commission Application A-20-02, applicant D. Garcha, to allow a non-farm use to occur within the Agricultural Land Reserve pursuant to Section 20.3 of the *Agricultural Land Commission Act*, on part of the following property: Lot 1, District Lots 911 and 1311, ODYD, Plan KAP48672;

**AND THAT** the Regional Board recommends the Agricultural Land Commission ensure:

- A professional agrologist is retained to monitor the orchard development process;
- A detailed site drainage, erosion, and sediment control plan is required to protect the sensitive nature of the Trepanier Creek gully and associated riparian area;
- Submission of a detailed dust mitigation plan;

- Submission of a trucking route plan ensuring safe traffic movements onto Trepanier Road;
- Removal of all fill located outside of the ALR portion of the parcel;
- All future soil and fill materials are restricted to and contained within the ALR portion of the property;
- Fencing is located only along the ALR boundary of the parcel; and,
- Consideration is given early in the approval process regarding future farm worker housing needs, buildings, site coverage, and residential footprints.

**AND FURTHER THAT** staff be directed to forward the subject application to the Agricultural Land Commission for consideration.

Respectfully Submitted:



Todd Cashin  
Director of Community Services

Approved for Board's Consideration



M. Rilko, Deputy CAO

*Prepared by: Brittany Lange, Environmental Planner*

---

### Implications of Recommendation:

Policy:	Conditional Support of the Agricultural Land Reserve non-farm use application complies with: <ul style="list-style-type: none"> <li>• Regional Growth Strategy Bylaw No. 1336</li> <li>• Brent Road / Trepanier Official Community Plan Bylaw No. 1303</li> </ul>
Legal/Statutory Authority:	Conditional Support of the Agricultural Land Reserve non-farm use application complies with: <ul style="list-style-type: none"> <li>• Section 20.3 and 34.4 of the <i>Agricultural Land Commission Act</i></li> <li>• Section 35 of the Agricultural Land Reserve Use Regulation</li> </ul>

---

### History:

The subject property is located partially within the Agricultural Land Reserve (ALR) where land uses are regulated by the Provincial Agricultural Land Commission (ALC).

The parcel remains vacant following the 2012 Trepanier/Peachland wildfire, and is surrounded by ALR land and rural residential to the west, Crown land and Trepanier Creek to the south, and the District of Peachland jurisdictional boundaries directly to the east.

The Regional District has reviewed a previous application to the ALC regarding the subject property to exclude the parcel from the ALR (File: A-13-01). This application was not supported by the Regional Board and subsequently not approved by the ALC. Furthermore, the RDCO has received land use applications pertaining to rezoning in order to facilitate the subdivision of the non-ALR portion of the parcel (File: Z17/07).

The rezoning application was subsequently withdrawn and the applicant has since applied for a 2-lot subdivision, currently in process through the Ministry of Transportation and Infrastructure. It is RDCO staffs understanding that the preliminary subdivision layout was originally approved by the ALC in 1993.

As per the October 23, 2013 agrologist report submitted with the application, the last remnants of agriculture were grape vines that were removed sometime in the 1980's. A house and farm building existed on the subject property until they were destroyed in the Peachland wildfire in 2012.

While it is evident that the Trepanier wildfire of 2012 damaged a significant portion of the property, the agrologist report provided by the applicant appears to conclude that crops can be grown on the land under good management conditions.

### **Background:**

In October 2019, RDCO staff received complaints that several truckloads of fill were being placed on the subject property and causing disturbance within the community. As such, RDCO staff notified the Agricultural Land Commission (ALC) of the unauthorized placement of fill.

During a site visit in November 2019, RDCO and ALC staff met with the property owner to discuss possible solutions. Subsequently, the ALC advised the property owner of three options to remedy the situation (see attached ALC letter dated December 10, 2019).

In March of 2020, the applicant submitted a Notice of Intent (NOI) to place fill on land (ALC File No. 60681). This application was subsequently refused by the ALC on June 23, 2020 due to the substantial amount of fill already placed on the property. The ALC advised that NOI approval could not be given retroactively, as such, the owner was advised to submit a non-farm use application for soil or fill placement (see attached ALC letter dated June 23, 2020).

### **Proposal:**

The property owner rationalizes that approximately 50,000m<sup>3</sup> of fill is needed to improve the agricultural capability of the land. Fill is proposed to a maximum depth of 5 metres and will be placed over a one and a half year time period. Furthermore, the applicant has purchased and intends to plant approximately 7,000 cherry trees at the subject property.

### **ALR Use Regulation:**

The *Agricultural Land Commission Act (ALCA)* and its regulations govern fill placement or soil or aggregate removal within the ALR. Though many concepts contained in the ALCA and its regulations are unchanged from the past, there have been significant changes in relation to fill placement, soil removal, and aggregate removal as of February 22, 2019.

Anyone who intends to place fill on land in the ALR or to remove soil or aggregate from land in the ALR must comply with the ALCA and its regulations.

It is RDCO staffs understanding that the proposal does not meet the ALCA, as such authorization from the Province is required for the proposed soil or fill placement activities.

### **Brent Road / Trepanier Official Community Plan Bylaw No. 1303:**

- Objective No. 2: Support the development, improvement, and expansion of agricultural activities.

- Objective No. 3: Support the preservation of the agricultural land base.
- Policy No. 7: Support the Agricultural Land Commission in maintaining the integrity of suitable agricultural land.

### Regional Growth Strategy Bylaw No. 1336:

The Central Okanagan has strong agricultural roots and this sector has been important in defining the region and its growth pattern. With changes in population, pressures of development, increased climate impacts, water pressures, and more focus on local food production for sustainability, these changes have raised more awareness on food systems from cultivating and planting to consumption to the compost heap, and back again.

Today, food policies appear on the agenda of dozens of municipal governments across North America and beyond. Future planning can help ensure food systems are adequately addressed in growth management decisions. The RGS goal of 'Our Food' is to support a regional food system that is healthy, resilient and sustainable. Further, the following policies are applicable:

- Policy No. 3.2.5.7: Protect the supply of agricultural land and promote agricultural viability.

### Site Context:

It is noted that the lower approximate one-third portion of the property in proximity to Trepanier Creek is not within the ALR. The property is located within the Brent Road / Trepanier Official Community Plan and is affected by Sensitive Terrestrial, Wildfire, and Hillside Development Permit (DP) Areas.

### Additional Information:

<b>Owners/Applicants:</b>	955867 BC Ltd. (Devinder Garcha, Harpreet Nagara, and Iqbal Saran) c/o D. Garcha
<b>Legal Description:</b>	Lot 1, District Lots 911 and 1311, ODYD, Plan KAP48672
<b>Address:</b>	4980 Trepanier Road
<b>Lot Size:</b>	+/- 12.8 ha (31.7 acres)
<b>Zoning:</b>	A1 Agricultural
<b>OCP Designation:</b>	Agriculture
<b>Water Purveyor:</b>	Trepanier Ditch Water Users Community
<b>Existing Use:</b>	Vacant
<b>Surrounding Uses:</b>	<b>North:</b> Trepanier Road / Rural Residential <b>South:</b> Crown land / Trepanier Creek <b>East:</b> District of Peachland / Rural Residential <b>West:</b> Crown land / Rural Residential / Star Place Park
<b>A.L.R.:</b>	Partially within the A.L.R. (approx. 22 acres)
<b>Fire Protection:</b>	Not within a fire protection area

### RDCO TECHNICAL COMMENTS:

**Agricultural Advisory Commission** recommends support for the application as presented with the condition that an agrologist monitors the fill placement process.

**Advisory Planning Commission** recommends support for the application as presented.

**Environmental Advisory Commission** recommends conditional support for the application with the following conditions:

- Requirement of an erosion and sediment control plan to prevent agricultural runoff and potential impacts to Trepanier Creek;
- Requirement of a detailed drainage plan that includes surface water flows and proposed catchments;
- Clarification on the amount of fill required to level the property and what the proposed final grades will be; and,
- All soil or fill materials must be approved by a professional agrologist prior to the materials being placed on the property.

**Parks Services** staff advise that Star Park, an RDCO Central Okanagan West Community park, is located directly west of the subject property. Furthermore, the Trepanier Creek Greenway Regional Park is located on the west bank of Trepanier Creek, approximately 90 metres southwest of the subject property.

Parks Services staff further note that existing drainage on the property follows the natural topography heading over the top of bank and down towards Trepanier Creek. Given this, the natural drainage channel should be left undisturbed by the placement of fill materials and future irrigation of the cherry orchard.

**Environmental Services** staff advise that there is a current subdivision application in process for the subject property (MOTI File: 2018-02515 / RDCO File: 18/5569). The Regional District requires an Environmental Impact Assessment and Development Permit approval before the subdivision application can move forward.

#### **AGENCY REFERRAL COMMENTS:**

**District of Peachland** Council responded to the RDCO ALC referral application with the following recommendations:

- That the ALC require the applicant to submit a trucking route plan that specifies all truck traffic be directed entirely and strictly outside the District of Peachland;
- That the ALC require a detailed dust mitigation plan as a condition prior to any additional soil deposition; and,
- That a sediment and erosion control plan be required to prevent potential environmental impacts on Trepanier Creek.

**Westbank First Nation** has requested a 45-day extension to provide comments to the Agricultural Land Commission for their consideration. Furthermore, Westbank First Nation staff advised that the referral would be submitted to Chief and Council for review on August 24, 2020.

**Ministry of Agriculture** staff provides the following comments for consideration:

- The parcel is located within the Agricultural Land Reserve (ALR), a provincial zone in which agriculture is recognized as a priority use; where farming is encouraged, and non-agricultural uses are restricted.
- The Agrology Report indicated that the level of stoniness makes the land difficult to work and that, while stone removal has taken place in the past to improve the site for agriculture, further stone removal needs to take place to make the farm more workable.
- The addition of organic matter would enhance water holding capacity and soil fertility.
- The placement of large amounts of fill as a method of addressing stoniness issues, soil fertility or water holding capacity is not a common management practice in developing cherry orchards.

**Ministry of Transportation and Infrastructure** staff received a 2-lot subdivision application for the subject property in May 2018 and preliminary approval was granted December 2018. An extension request was received in December 2019 and the current expiry date is December 2020.

**Ministry of Forests, Lands, Natural Resources, and Rural Development – Archaeology Branch** advises that modelling for the area indicates a high potential for previously unidentified archaeological sites to exist on the property. As such, Provincial Archaeology Branch staff strongly recommend the applicant engage an eligible consulting archaeologist prior to any land-altering activities

**Ministry of Forests, Lands, Natural Resources, and Rural Development – Ecosystems Branch** advises that according to records for the area, critical habitat exists for Great Basin Gophersnake and Western Rattlesnake at the subject property. As such, the property has high conservation ranking and Ecosystems staff are recommending the application for soil placement not be approved.

**Ministry of Forests, Lands, Natural Resources, and Rural Development – Okanagan / Shuswap Lands Branch** advises that any fill placement on or beyond the present natural boundary of Trepanier Creek requires a *Water Sustainability Act* application to remove the fill.

**Interior Health Authority** advises noted that without information on the composition of the fill material, it is difficult to do a thorough risk assessment for potential human health impacts through water, soil, or air. A search through available databases did not show drinking water wells, recreation, or other public uses nearby that would indicate a direct impact to public health.

**BC Hydro** advises that there are overhead works in this area which may be affected by the proposed development as well as the provision of appropriate land rights were required. The applicant is requested to contact BC Hydro to make arrangements for this.

**Unaffected Agencies** include District of Lake Country, City of West Kelowna, Shaw Cable, Telus, and FortisBC.

**Unaffected RDCO Departments** include Fire Services and Inspection Services.

### **Financial Considerations:**

As per the Agricultural Land Commission Fee Schedule, the Regional District of Central Okanagan has received \$300.00 in application fees to process this referral.

### **External Implications:**

Development Applications Procedures Bylaw No. 944 does not apply. The applicant is subject to meeting the notification requirements of the ALC; however, public notification is not required.

### **Alternative Recommendation:**

**THAT** the Regional Board NOT support application A-20-02, applicant D. Garcha, to allow a non-farm use to occur within the Agricultural Land Reserve;

**AND THAT** the Regional Board directs staff to NOT forward the subject application to the Agricultural Land Commission.

***Considerations not applicable to this report:***

- *Strategic Plan*
- *General*
- *Organizational*

Attachment(s):

- RDCO Maps: Orthophoto, ALR
- ALC Application
- Applicant Rational for Non-Farm Use Application
- Site Plan, Cross Sectional Drawings, and Topographic Survey
- October 23, 2013 Agrology Report
- ALC Letter dated December 10, 2019
- ALC Letter dated June 23, 2020