



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: November 22, 2021

SUBJECT: Agricultural Land Commission Application (A-21-03)

Voting Entitlement: *All Directors – Unweighted Corporate Vote – Simple Majority – LGA 208*

Purpose: To obtain Agricultural Land Commission approval for a Non-Farm Use to use a portion of the property for a commercial business.

Executive Summary:

The owner of 4995 Trepanier Road is proposing to park commercial vehicles and utilize an existing building on the subject property for a commercial business. Staff have received several bylaw complaints regarding soil depositions, excavation and commercial uses on the property. Following a visit from ALC Compliance and Enforcement staff, a letter was issued requiring the property owner to cease commercial activity on the property. Subsequently, the owner submitted an application for a Non-Farm Use to continue use of their commercial operation.

Concerns raised by agencies regarding the proposal include not supporting the capacity for the local food system nor the community's food security, the use of District of Peachland roads for heavy machinery, equipment and vehicles, non-farm uses not creating any benefit to agriculture and raising expectations for similar non-farm uses on other properties.

Given the bylaw complaints, raised concerns from agencies, non-support from the RDCO Commissions and that the proposed non-farm use is not in line with the Agricultural Land Reserve Use Regulations, Agricultural Plan, Brent Road & Trepanier Official Community Plan, Zoning Bylaw, and Business Licensing Bylaw, Planning Services staff are not in support of the application.

RECOMMENDATION:

THAT the Regional Board **NOT** support Agricultural Land Commission Application A-21-03 for applicant S. Kingsnorth, to allow a non-farm use to allow a commercial operation as outlined in the report dated November 22, 2021;

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

Respectfully Submitted:



Todd Cashin
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

Prepared by: Michael Czarny

Attachment(s):

1. Orthophoto Map
 2. ALR Map
 3. ALC Application
 4. Site Plan
 5. Agricultural Capability Report
 6. Geotechnical Report
 7. ALC Letter
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Strategic Plan Alignment:

Strategic Priorities:	Non-support of the Agricultural Land Commission application for Non-Farm Use is supported by the Regional Board Strategic Priorities 2019-2022 with respect to "Transportation and Mobility" and "Environment".
Policy:	Non-support of the Agricultural Land Commission application for Non-Farm Use complies with: <ul style="list-style-type: none">• Agricultural Land Reserve Use Regulations• Agricultural Plan• Brent Road & Trepanier Road Official Community Plan Bylaw No. 1303• Zoning Bylaw No. 871• Business Licensing Bylaw
Legal/Statutory Authority:	Section 34.1 (2) of the Agricultural Land Commission Act (ALCA) outlines the application procedure if local government review is required. ALCA and Agricultural Land Reserve Use Regulations apply.

History:

The previous property owner operated Gil Barry Contracting LTD. on the subject property. The RDCO first issued a business license for Gil Barry Contracting LTD. in 1999 and issued consecutive renewals until 2018 with the exception of 2008 where the renewal was cancelled. In 2019, the subject property was purchased by the current owner who operates a similar commercial business, Civil-X Contracting BC LTD. Civil-X Contracting provides civil engineering

and geo-tech services which include trucking services, excavation, and civil contracting. The business' primary location is in the City of West Kelowna where it holds a business license with the city however, the business also operates from this site. Common operations that occur on the subject property include office uses, light mechanical repairs, vehicle washing, and vehicle maintenance. Civil-X Contracting was issued a business license by the RDCO in 2019 and started operation on the subject property. All business licenses, for both Gil Barry Contracting and Civil-X Contracting, were issued with conditions requiring the holders of the licences to comply with Zoning Bylaw No. 871.

After the change in ownership, staff received multiple complaints between 2019 and 2021 regarding fill deposition, fill removal, excavation and commercial activity on the property. It was brought to the attention of staff that the conditions on the business license were not met. In December 2019, ALC staff sent letter to property owner regarding the commercial activity on the property. The letter stated that the commercial activity needed to cease immediately and if the owner desired to continue the use they must submit and subsequently receive approval for a non-farm use application with the ALC. With continued noncompliance, the business license was cancelled in 2020 and not issued in 2021. After continuous communication with ALC and RDCO staff, the ALC non-farm use referral application was received on April 27, 2021.

Background:

The subject property is located at 4995 Trepanier Road in the West Electoral Area. The subject property is zoned A1 Agricultural as per Zoning Bylaw No. 871 and is within the Agricultural Land Reserve (ALR). The property is developed with three dwellings, and a multitude of accessory buildings. The three dwellings consist of the owner's residence and two workers' dwellings which were all constructed in the 1970s and 1980s. The accessory buildings include a workshop/office constructed in 2008, a covered horse training pen constructed in 1991, horse stables constructed in the 1970s, two storage buildings, and a detached double garage constructed in 2012. The subject property also contains an equestrian area (0.88 hectares).

Proposal:

The applicant is proposing to utilize an existing 306.5 m² workshop/office building on the subject property for a commercial business and to have a maximum of four (4) commercial vehicles parked onsite. In addition to the non-farm use application, the applicant is also proposing to expand the agricultural uses on the property by leasing a portion of their property to plant a vineyard (approximately 4.07 hectares).

The Agricultural Capability Report, prepared by Okanagan EHS LTD., supports the proposed area for planting a vineyard however, the report stipulated that irrigation and additional topsoil will be required to ensure the soil class is sufficient to support the proposed plantings. A Notice of Intent for soil deposition will be submitted to ALC with possible subsequent applications.

The Geotechnical Report, prepared by SNT Geotechnical LTD., concludes that the site is suitable for agricultural uses and that the soil observed on site will provide significant surficial drainage capability and additional drainage through irrigation imposed by the development will not cause adverse impact to the properties downslope.

Servicing:

The subject property is not located within an established fire protection area. The subject property is serviced by the Trepanier Ditch Water Users Community. The owner's Conditional Water License authorizes the use of water for domestic purposes for one dwelling and for the irrigation of 1.934 hectares (4.78 acres). As the proposed plantings will cover 4.07 hectares of the subject property, approval of a new Water License through the Province will be required to accommodate the increase in water usage.

Staff's understanding is that all dwellings and the workshop/office on the subject property are serviced by onsite septic systems. Septic information has not been provided at this stage however, a report from a registered professional wastewater practitioner will be required at building permit stage.

Agricultural Land Commission Act (ALCA):

Under the ALCA, commercial businesses are not permitted on land within the ALR. To pursue the respective activity, an ALC application for a Non-Farm Use under Section 25 of the ALCA is required.

Agricultural Land Reserve Use Regulation (ALRUR):

Under the ALRUR, home occupation use is a permitted use that may be prohibited by local government. Section 24 of the ALRUR provides that the structure that contains home occupation use is accessory to the residence and does not exceed an area greater than the limit specified by the local government. The RDCO limits home occupation use to 150m². The application does not comply with the ALRUR.

Agricultural Plan:

The Regional District's Agricultural Plan (approved in 2005) recognizes the need for protecting farmland for agricultural uses and includes recommendations that discourage the intrusion of non-farm uses in rural areas while promoting the separation of agricultural and urban uses. The Agricultural Plan does not support the application.

Brent Road & Trepanier Official Community Plan No. 1303:

Under the Brent Road & Trepanier Official Community Plan, the subject property has an Agricultural land use designation. The objectives of the Agricultural land use designation within the Brent Road & Trepanier Road Official Community Plan do not support this application:

- 4.2.2 P10: Lands within this designation are intended for agricultural use and will support crop growing, food processing, agri-tourism and other industries in support of the agricultural sector.
- 4.2.2 P13: Future development of these lands should be consistent with the Regional District's Agricultural Plan.
- 4.2.2 P14: Home based businesses are supported within this designation as an important employment opportunity, provided the use does not conflict with the predominant agricultural or rural land uses.

The subject property is within the Sensitive Terrestrial Ecosystem, Hillside and Wildfire Development Permit Areas. Typically, a Development Permit is not required where land is located within the Agricultural Land Reserve of the Province of BC and the activities are responsible, normal agricultural practices in accordance with the Farm Practice in BC Reference Guide and in accordance with the Farm Practices Protection Act or other applicable legislation.

Interpretation or disagreements will be resolved through the provisions of the Act. Activities not covered by the Act or Guide such as the proposed commercial business will require a Development Permit.

The commercial business is proposed outside of the Terrestrial Ecosystem and Hillside Development Permit and within the Wildfire Development Permit Areas. The applicant will be exempt from the Wildfire Development Permit if construction plans are submitted for a building permit and the plans show compliance with the Wildfire Development Permit Design Guidelines and, a restrictive covenant is registered in the title of the property in order to ensure that future property owners are aware of and obligated to the wildfire risk and fuel hazard reduction measures. If the exemption criteria are met, a Development Permit will not be required.

Zoning Bylaw No. 871:

The subject property is zoned A1 Agricultural. The regulations from Zoning Bylaw No. 871 that specifically pertain to this application include Section 3.14.4 Prohibited Vehicles and Equipment, Section 3.22 Home Based Business in an Agricultural Zone, and Section 5.1 A1 Agricultural Zone.

Section 3.14.4 Prohibited Vehicles and Equipment:

The number of logging, industrial, commercial or construction vehicles must not exceed the maximum 4 vehicles permitted onsite. The total area of logging, industrial, commercial or construction vehicles and equipment is limited to 300m². The commercial business has previously not complied with these regulations.

Section 3.22 Home Based Business in an Agricultural Zone:

A home based business in an agricultural zone must be accessory to the principal use and must not occupy an area greater than 150m². The application does not comply with these regulations.

Section 5.1 A1 Agricultural Zone:

Commercial uses are not permitted in the A1 Agricultural zone. The application does not align with these regulations.

The proposal does not meet the regulations of the Zoning Bylaw. If the Regional Board and the ALC support the application, a subsequent Zoning Bylaw Amendment application will be required to permit the commercial use.

Business Licensing Bylaw No. 689:

The Business Licensing Bylaw requires that every person who carries on business from more than one premises in the Regional District shall obtain a separate license for each premises. The applicant does not currently hold a business license with the RDCO. A business license will be required for the proposed commercial operation.

Local Government Act (LGA):

Staff would like to clarify that despite previous use of the property for commercial purposes, the commercial use does not have legal nonconforming status. The respective sections of the LGA regarding legal nonconforming status do not apply.

Site Context:

The subject property is within the West Electoral Area, outside of a fire protection area, and within the ALR. In accordance with the Brent Road & Trepanier Official Community Plan No. 1303, a number of Development Permit Areas affect the property. The subject property contains sensitive ecosystems such as coniferous woodlands and mature forests. These ecosystems have scattered ponderosa pine and interior Douglas-fir trees, and saskatoon growing in rock fractures with patches of grasses and forbs in shallow soil pockets. Mature forests are a high priority for conservation and preservation. These sensitive ecosystems and land within the Development Permit Areas have been disturbed for grading and preparation of the land for the proposed plantings.

Additional Information:

Owner:	Steve Kingsnorth
Agent:	Kris Tasci
Legal Description:	Part of Lot 1, District Lot 911, ODYD, District Plan 1290 Shown on Plan B4244 Except Plan KAP52560
Address:	4995 Trepanier Road
Lot Size:	+/- 8.25 ha (20.39 acres)
OCP Designation:	Agriculture
Zoning:	A1 Agricultural
Water Supply:	Trepanier Ditch Water Users Community
Sewage Disposal:	Onsite septic
Existing Use:	Agricultural, Residential, Commercial
Surrounding Uses:	North: Agricultural and Residential South: Agricultural and Residential East: Agricultural and Rural Residential (District of Peachland boundary) West: Agricultural and Residential
A.L.R.:	Within the A.L.R.
Fire Protection:	Not within a Fire Protection Area

RDCO TECHNICAL COMMENTS:

Agricultural Advisory Commission (AAC) recommends non-support for the application. The AAC expressed concerns about setting precedent for other similar non-farm use applications to be permitted on ALR land.

Advisory Planning Commission (APC) recommends non-support for the application. The APC expressed concerns about continued operation without a business license and ongoing non-compliance.

Environmental Advisory Commission (EAC) recommends non-support for the application. The EAC expressed concerns about the disturbance of the sensitive ecosystem on the hillside, continued operation without a business license, ongoing non-compliance and complaints.

Inspection Services staff notes that the applicant will be required to apply for a Building Permit for a change of class of occupancy (use) to permit the commercial business for the workshop/office if the application is supported by the Regional Board. Additionally, staff note that a Bylaw Contravention Notice is registered on Title. A covered horse training pen, built under Building Permit 0226/91 was not approved for use. The Notice on Title was registered in January 1996. Staff recommend this Notice be resolved.

Fire Services staff advise that should a commercial business occur in a structure not built for the intended purpose there are concerns of a fire risk. Therefore, it is recommended that the building be renovated to an appropriate standard. The subject property is located outside of a Fire Protection Area, staff advise that a Fire Protection Plan should be developed for the proposal.

AGENCY REFERRAL COMMENTS:

Ministry of Agriculture, Food and Fisheries staff comment that commercial activities including office use, light mechanical repairs, and commercial vehicle parking on ALR properties do not appear to constitute a net benefit to agriculture. Additionally, an approved non-farm use for this purpose may raise expectations for similar non-farm uses on other properties.

Ministry of Forest, Lands, Natural Resource Operations and Rural Development staff states that the applicant is required to apply for a new Water License for the increase of usage. Currently the applicant holds a conditional water license that authorizes water usage for one dwelling and irrigation of 4.78 acres. To increase the water usage to be consistent with the proposal, a new water license application is necessary.

District of Peachland staff comment that any approvals for contractor services or other commercial uses of the subject property must be made conditional upon there be no use of District of Peachland roads for the transport of heavy equipment or machinery or materials. Staff have also received complaints in the past about the appearance of the subject property and site grading works including cutting into the bank. Additionally, staff ask that the property owner should ensure the public roadway is kept clear of mud, dirt and other debris.

Interior Health Authority (IHA) staff comments that this application for non-farm use does not support the capacity for the local food system nor the community's food security. Agricultural land use decisions, such as permitting use of the land for non-agricultural purposes can impact local food systems. Preservation of community ALR land for farming and food production uses contributes to equitable access to healthy food choices and helps promote healthy eating habits which reduce the risk of chronic disease. IHA staff recommend land use decisions that protect agricultural and farming land to help maintain the stability of local food systems in the long term.

Financial Considerations:

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

External Implications:

Development Application 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:

Based on staff's analysis of the application and agency referral comments received, staff does not propose an alternative recommendation.

Considerations not applicable to this report:

- *Organizational Issues*