



Regional Board Report

Request for Decision

Approved for Board Consideration

A handwritten signature in black ink that reads "Jodie Foster".

Jodie Foster, Acting CAO

To: Regional Board

From: Todd Cashin, Director of Community Services

Date: March 28, 2022

Subject: Agricultural Land Commission referral application (A-21-04)
S. Sundher Orchards Ltd. BC0639734 (applicant) c/o C. Lashuk (agent)
3510 Old Vernon Road, Central Okanagan East Electoral Area

Voting Entitlement:

- 1. All Directors – Unweighted Corporate Vote – Simple Majority – LGA 208*
 - 2. All Directors – Unweighted Corporate Vote – Simple Majority – LGA 208*
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Purpose: To consider a change to an Agricultural Land Commission referral application to permit a Non-Adhering Residential Use to use a portion of the property for temporary farm worker housing.

Executive Summary:

The subject property is a part of a large agricultural operation in the Okanagan which is supported by temporary farm workers (TFW) that are essential to the operation. The owner is proposing to develop temporary farm worker housing (TFWH) for an additional 120 TFWs on a portion of the subject property. The subject property forms part of an approximately 300-hectare agricultural operation specializing in cherry and apple production throughout the Okanagan. These properties collectively contain accommodation for approximately 310 TFWs who form a necessary part of the overall farm operation.

The Regional Board considered and supported this referral application (A-21-04) on January 13, 2022. The applicant is proposing a new location for the 120 TFWs site due to the cost of infrastructure, and as a result of the substantive change to the proposal from what was previously presented, this referral application is being returned to the Board for consideration.

Regional District policies recognize the need for TFWH, support the protection of ALR lands, and encourage uses that support food production and promote agricultural viability. Residential uses are regulated by the Agricultural Land Commission (ALC) and since TFWH is not permitted by the ALC, a non-adhering residential use application is required. Further, the proposal does not align with Zoning Bylaw No. 871 regulations as it relates to TFWH and, should this application be successful, a subsequent Zoning Bylaw amendment application will be required.

The Ministry of Agriculture, Food, and Fisheries provided comments in support of the application while Interior Health Authority provided several recommendations related to the health of the workers and

regulatory requirements. Approvals for water and wastewater servicing, BC Building Code, and BC Fire Code compliance will be addressed at building permit stage.

Staff have received letters and a petition of non-support from neighbouring property owners expressing concerns regarding safety and security, traffic impacts, visual impact, and impact on property values.

In order to accommodate the change to the original referral application, staff is recommending the Board rescind the resolution from January 13, 2022, and consider supporting this referral application as presented in this report, with the proposed change to the location of the temporary farm worker housing site.

Recommendation(s):

1. **THAT** the following resolution adopted by the Regional Board on January 13, 2022, be rescinded:

“**THAT** the Regional Board support Agricultural Land Commission referral application A-21-04 for applicant S. Sundher Orchards Ltd. located at 3782 Old Vernon Road, on the condition that the applicant seek approval of a Zoning Bylaw Amendment by the Regional Board to allow temporary farm worker housing as outlined in the report from the Director of Community Services dated January 13, 2021;

AND THAT the Regional Board directs staff to forward the application to the Agricultural Land Commission.”

2. **THAT** the Regional Board support the updated Agricultural Land Commission referral application A-21-04 for applicant S. Sundher Orchards Ltd. located at 3510 Old Vernon Road, on the condition that the applicant seek approval of a Zoning Bylaw Amendment by the Regional Board to allow temporary farm worker housing as outlined in the report from the Director of Community Services dated March 28, 2022;

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

Respectfully Submitted:



Todd Cashin
Director of Community Services

Prepared by: Michael Czarny

Attachment(s):

1. Orthophoto Map
2. ALR Map
3. Site Plan

4. Agrologist Report
 5. Regional Board Presentation
 6. Regional Board Report (A-21-04) January 13, 2022
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Strategic Plan Alignment:

Priorities: Sustainable Communities, Economic Development, Transportation and Mobility

Values: Resiliency

Background:

The subject property is developed with four small dwellings and a mobile home that are all used for farm worker housing. All buildings and structures on the subject property are currently accessed off Old Vernon Road. The remainder of the property and the property to the north which is owned and operated as part of the same farm operation, are planted as a cherry orchard. Both properties are located along a public transit route which has a transit stop along Old Vernon Road adjacent to the parcel.

Proposal:

The applicant is proposing temporary farm worker housing (TFWH) for 120 temporary farm workers (TFW) through the Canadian Seasonal Agricultural Worker Program. The proposed TFWH will have a floor area of 2,640m² which includes 120 sleeping units, washrooms, kitchens, laundry facilities and recreation areas with an additional 1,695m² area for outdoor private amenity space. The proposal also includes 8 parking spaces. The accommodation will be contained within temporary structures with non-permanent foundations by placing 30 "ATCO" trailers on the property.

The applicant has indicated that TFWs staying in the proposed accommodation will primarily work on site and on the adjacent property to the south. Combined, these two parcels contain approximately 40 hectares of sweet cherries which were planted in 2019.

The applicant has provided rationale for the proposed location of the TFWH, and the number of workers requested, including:

- Proximity to public transportation routes;
- Proximity to work locations;
- Conservation of agricultural land by minimizing the footprint of structures, efficient use of land for parking, recreation and access to a single site; and,
- 120 TFWs for 40 hectares of cherries are reasonable when considering total production per hectare, picking rates, picking hours, and harvest windows.

The updated Agrologist Report submitted with the application concludes that the need for 120 TFWs is reasonable and that the selected location at the subject property is an efficient use of farmland.

Seasonal Agricultural Worker Program (SAWP):

The Seasonal Agricultural Worker Program (SAWP) is a federal program that allows employers to hire TFWs which is jointly administered by Employment and Social Development Canada and Citizen and Immigration Canada. The SAWP permits employers to hire TFWs from participating countries for a maximum period of 8 months, between January 1 and December 15. The SAWP requires employers in British Columbia to have a housing inspection conducted by a British Columbia Agriculture Council

(BCAC) sanctioned inspector, authorized to conduct housing inspections. BCAC, through a subsidiary company, Western Agriculture Labour Initiative (WALI). WALI works with employers and governments to enable employers to find adequate domestic workers and improve working conditions for TFWs. Through the federal approval process, these organizations help provide safe working and living conditions for all workers.

Agricultural Land Commission Act (ALCA):

Under the ALR Use Regulations, TFWH is not outright permitted on land within the ALR. To pursue the respective activity, an ALC application for a Non-Adhering Residential Use under Section 25 of the ALCA is required. All proposals for TFWH within the ALR are required to go through this process.

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, there is a greater focus on local food production for sustainability. Future planning can help ensure food systems are adequately addressed in growth management decisions. The following policies from the issue areas of “Our Land”, “Our Economy”, and “Our Food” identified in the RGS support the proposal:

- 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. 3.2.5.2: Preserve and support sustainable agricultural activities and land base that enhances local agriculture through strengthening of best practices, support of local and regional food systems and the extension of local food markets and agri-tourism.
- 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. 3.2.5.7: Protect the supply of agricultural land and promote agricultural viability.

Agricultural Plan:

The Regional District’s Agricultural Plan (approved in 2005) recognizes the need for seasonal farm worker housing in the region and includes recommendations to explore options for providing a regulatory context to permit this use.

Ellison Official Community Plan Bylaw No. 1124:

Under the Ellison Official Community Plan (OCP), the subject property has an agricultural land use designation which contains objectives that support this application:

- Policy No. 14.2.4: Support secondary activities that contribute to farming income.
- Policy No. 14.2.11: Support the retention of large continuous blocks of agricultural land and discourage fragmentation.

Additionally, sections of the Ellison OCP also contain policies that do not support the application:

- Policy No. 16.2.6: Land in the Noise Exposure Forecast 25 zone of the Kelowna Airport shall not be considered for additional residential development.
- Policy No. 16.2.7: Require a restrictive covenant for residential construction located within the Noise Exposure Forecast 25 zone of the Kelowna Airport indicating potential for aircraft noise impact and requiring soundproofing measures be incorporated in construction.

Zoning Bylaw:

The subject property is zoned A1 Agricultural which permits temporary agricultural worker dwellings. The proposal does not achieve Section 3.25 Temporary Agricultural Worker Dwelling and Accommodation regulations of the Zoning Bylaw, including:

- The maximum building gross floor area is greater than 250 m²;
- The amount of parking spaces provides is less than one parking space for every 30.0 m² of gross floor area.

Should the ALC application be successful, a Zoning Bylaw Amendment application would be necessary to permit the proposed use. A restrictive covenant for residential construction located within the Noise Exposure Forecast 25 contour may be required through the future zoning amendment application process.

Regional Temporary Farm Worker Housing Regulation Review:

Temporary Agricultural Worker Dwellings and Accommodation regulations in the Zoning Bylaw were last amended in 2012 and do not reflect current best practices or demonstrate regional consistency. Regional District staff has worked collaboratively with Provincial agencies and member municipalities to review the Central Okanagan region's TFWH regulations with the intent of developing a consistent approach. Subsequent to the regional initiative commencing, the City of Kelowna adopted new TFWH regulations in 2017. RDCO, District of Lake Country, City of West Kelowna, and City of Kelowna jointly hosted an industry stakeholder workshop regarding farm worker housing April 2018; after which the City of West Kelowna adopted their new TFWH regulations.

It was anticipated that the Regional Board would consider bylaw revisions to Zoning Bylaw No. 871 by the end of 2018; however, the Province's Bill 52 – 2018: Agricultural Land Commission Amendment Act received Royal Assent on November 27, 2018. Bill 52 and the corresponding Agricultural Land Reserve General Regulation and Agricultural Land Reserve Use Regulation (approved February 22, 2019) brought about changes to residential uses occurring within the Agricultural Land Reserve, which affect TFWH. In recognition that the Agricultural Land Commission changes affect TFWH, further review is required prior to staff recommending Zoning Bylaw No. 871 changes.

Airport Regulations:

The subject property is within the airport zoning regulations under the Aeronautics Act regulated by Transport Canada. However, these regulations are not enforced by Transport Canada, and it is up to local governments to voluntarily enforce. The RDCO does not require a letter of no objection from Kelowna International Airport (YLW) or receive land use approval from Transport Canada as part of a development application approval process.

As identified in YLW's Master Plan 2045, the Noise Exposure Forecast (NEF) is the generally accepted and recognized industry standard for aircraft noise measurement at Canadian airports. NEFs produce noise contours that are typically used to encourage compatible land use planning in the vicinity of airports in Canada through Transport Canada guidelines. Transport Canada recommends no new residential construction in areas situated within the NEF 30 contour or higher at existing airports. Further, through previous development applications YLW staff have advised RDCO that development in the 25 NEF contour is suitable in relation to contour zones closer to the airport.

Future noise exposure areas are expected to be smaller than those previously identified in Kelowna International Airport Master Plan 2025. While the contours depict smaller noise exposure areas, future traffic growth beyond the Master Plan period could result in future expansion of these areas to the previous wider coverage area. The Master Plan 2045 recommends that the City of Kelowna retain the existing land use and zoning regulations prohibiting residential development within the NEF 25 contour

and recommends that the Regional District of Central Okanagan adopt a similar policy in its Ellison Official Community Plan.

While the current proposal is located outside of the 2045 Master Plan's Noise Exposure Forecast 25 contour for the most demanding expansion scenario, the proposal is currently located within the 2025 Master Plan Noise Exposure Forecast 25 contour.

Site Context:

The property is located in the community of Ellison and is within the ALR. In accordance with the Ellison OCP, the property is not affected by Development Permit Areas.

Owner:	Sukhdev Sandher
Agent:	Cheryl Lynn Lashuk
Legal Description:	Lot 1, Section 11 and 12, Township 23, ODYD, Plan 10418 Except Plan 13387
Address:	3510 Old Vernon Road
Lot Size:	+/- 21.25 hectares (52.62 acres)
OCP Designation:	Agriculture
Zoning:	A1 Agricultural
Water Supply:	Black Mountain Irrigation District
Sewage Disposal:	Septic system
Existing Use:	Agricultural
Surrounding Uses:	North: Agricultural South: Agricultural East: Residential West: Agricultural (City of Kelowna)
ALR:	Within the ALR
Fire Protection:	Within the Ellison Fire Protection Area

RDCO TECHNICAL COMMENTS:

Inspection Services staff note that the applicant will be required to apply for a Building Permit for the proposed development. Technical requirements must be addressed through the building permit process such as approval from the Interior Health Authority and a registered wastewater practitioner for on-site sewerage disposal system, Fire Code compliance review by the Fire Services Manager, confirmation from Black Mountain Irrigation District regarding water servicing to the proposal, and architect approval for BC Building Code approval, among others. Final occupancy will not be issued until such time that all building permit requirements are resolved to the satisfaction of Inspection Services staff.

AGENCY REFERRAL COMMENTS:

Agricultural Advisory Commission (AAC) recommends support for the application as presented. The AAC commented the new location in the southeast corner of the property is better suited for development as it is not in the middle of the parcel as the previous proposal. The committee recognized that labour and workers are essential to farming practices.

Ministry of Agriculture, Food and Fisheries staff comment that based on the information provided, the proposal appears reasonable given the type of crop, scale of the operation and location. Cherries are a labour-intensive crop, and the applicant also has tree fruit production on other agricultural properties in the region. A large TFW accommodation suitably located offers economic, logistical and land use efficiencies compared to multiple smaller TFW accommodations.

The proposed camp-style accommodation consisting of manufactured homes, communal kitchen and laundry space minimizes impact to the agricultural land base with the option of removal should the structures not be required in the future. The proposed area per worker is more than double the 10 m² useable floor area per worker recommended by the Minister's Bylaw Standard for TFWH in the Guide for Bylaw Development in Farming Areas; however, the TFWH Standard was published in 2009 and is due for a review. COVID-19 has posed significant challenges with regard to housing of SAWP workers in such a way as to achieve good public health outcomes. Providing more space for each worker may help address public health issues.

Ministry of Transportation and Infrastructure has issued permits for commercial access and the installation of a privacy fence within 4.5 metres of the highway. Ministry staff comment that there are no concerns regarding the proposal and access off Old Vernon Road.

Interior Health Authority staff notes that the subject property is a distance from any services and amenities which may negatively impact the health of workers. Being connected to community and having easy access to amenities, services and social opportunities is important for health and wellbeing. The quality of the housing structure is also important to support the health of workers while sharing the space together. To support the health of the workers while living on the farm IHA staff recommend:

- Ensuring housing is built to provide safe and sanitary housing conditions factoring in the number of people that will be sharing the space.
- The housing provides adequate kitchen/cooking space and equipment in good working order including fridge(s), freezer space, working stove/oven(s), cooking and eating utensils. This is essential to support workers with preparing healthy meals and safely storing food.
- Adequate areas for eating and social interaction (indoors and outdoors).
- Laundry facilities are easily accessible in the worker housing or on the farm site.
- Workers are informed of and connected with local agencies and services that they can access for support if needed.
- Safe and reliable transportation is provided for workers to access amenities, services and to connect socially with the community. It appears that this property is in close proximity to public transit.

IHA staff further notes that over the years, has received and investigated complaints of poor farm worker housing conditions. As such, IHA staff are interested in continuing to work with the Regional District to ensure safe and sanitary housing conditions for farm workers. Therefore, it is recommended prior to Building Permit issuance, that the Interior Health - Environmental Public Health program confirm all regulatory requirements have been met with respect to the Sewerage System Regulation, Industrial Camps Regulation, and Food Premises Regulation.

Black Mountain Irrigation District staff are impartial to the location of the proposal however, BMID staff realize that the amount of water infrastructure to provide domestic water should be minimized. An additional water hydrant will be required to service the proposal. To obtain a Water Service Certificate (Water Letter) for this development, the owner or authorized agent is to complete an application for work order for installation of the services on Old Vernon Road and an application for building form and pay the deposit for service crossing and identified charges. A Water Service Certificate (Water Letter) can then be issued for the application to the RDCO.

FortisBC staff comment that all costs and land right requirements associated with changes to the existing services are the responsibility of the applicant. FortisBC has no concerns with this application.

Considerations:

- Organizational/External: 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. Public notification is not a requirement for this application however, staff have received letters and a petition in opposition of 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 application.
- Legal/Statutory Authority: Section 25 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. Conditional support of the Agricultural Land Commission application for Non-Adhering Residential Use complies with:
- Regional Growth Strategy Bylaw No. 1336
 - Agricultural Plan
 - Ellison Official Community Plan Bylaw No. 1124

Considerations not applicable:

- Alternate Recommendation