



Regional Board Report

Request for Decision

Approved for Board Consideration

A handwritten signature in black ink that reads "Brian Reardon".

Brian Reardon, CAO

To: Regional Board

From: Todd Cashin, Director of Community Services

Date: April 25, 2022

Subject: Temporary Use Permit Renewal (TUP-18-01)
Eldorado Ranch Ltd. c/o C. MacPherson (agent)
5932 Old Vernon Road
Central Okanagan East Electoral Area

Voting Entitlement: *Custom Vote – Electoral Areas and Kelowna Fringe Areas – 1 Director, 1 Vote*

Purpose: To renew the Temporary Use Permit for Kangaroo Creek Farm to operate an outdoor petting zoo business on a portion of the subject property.

Executive Summary:

A Temporary Use Permit has been requested to operate an outdoor petting zoo business. It is anticipated that up to 1,900 people per day may attend, operating over a five-hour period throughout the high season in July and August. Regarding land-use approvals, the use is not a permitted use under the A1 Agriculture zone; therefore, a Temporary Use Permit is required.

In accordance with the *Local Government Act*, the applicant is requesting renewal of a three-year permit. It is the intent of the applicant to obtain approval and continue the business at the proposed location under a temporary basis prior to a permanent remedy through submission of, and approval of an OCP amendment and rezoning application.

At time of writing this report, three letters of support have been received. The conditions listed in the recommendation are based on comments received to date, as well as previous approvals granted by the Regional Board for the operation of businesses under a Temporary Use Permit.

Recommendations:

THAT Temporary Use Permit TUP-18-01 for Eldorado Ranch Ltd. c/o C. MacPherson to operate an outdoor petting zoo business (Kangaroo Creek Farm) to take place on part of Lot 2, Plan 3497, District Lot 120, ODYD, be renewed for an additional three years subject to the following conditions:

- There be no changes to the proposed site plan or site footprint prepared by Ecoscape Environmental Consultants Ltd. dated January 26, 2022;
- Operate the business only between the month of March through October;
- Adherence to the evacuation plan approved by the RDCO Manager of Fire Services;

- The applicant to obtain a commercial access permit from the Ministry of Transportation and Infrastructure;
- Obtain an annual RDCO Business License;
- No permanent structures are to be constructed or situated on the site;
- Use of water from Mill Creek is unauthorized;
- Parking area to be converted and restored after non-farm use ceases (e.g. gravel removal);
- Should the temporary use cease on the property, all materials related to the business are to be removed from the property to the satisfaction of the RDCO;
- Existing on-site services (water and sewer) will not be used to support the operation of the business unless authorized by the Interior Health Authority and the Ministry of Forests, Lands, Natural Resource Operations and Rural Development;
- No impact to the operation and/or maintenance of Kelowna International Airport (YLW);
- The applicant is to apply for and receive building permits for all temporary buildings or structures over 10m² to the satisfaction of RDCO Inspection Services Staff;
- All parking to be contained on site in accordance with the parking plan prepared by Jade Bay Constructions Ltd. dated May 8, 2019;
- In accordance with RDCO Noxious Weed Control Bylaw No. 179, the owner or occupier of the land shall prevent the infestation of noxious weeds and cut down or otherwise destroy and mulch or remove all noxious weeds and plants with native grasses or other native vegetation;
- No further buildings, structures, land clearing, vegetation removal, or activity related to the outdoor petting zoo business is permitted within 30 metres of the High-Water Mark/Top of Bank of Mill Creek, other than that recognized and approved in this Permit;
- The landowner shall obtain the services of an Environmental Monitor to ensure the recommendations of the Temporary Use Permit are implemented; and
- In the event that greater disturbance occurs due to unforeseen circumstances, the Environmental Monitor will recommend further measures to protect/restore the natural integrity of the site and report on these measures to the RDCO.

AND FURTHER THAT the Temporary Use Permit shall expire on April 25, 2025, and all uses temporarily authorized by the Permit shall cease upon expiry of the Permit, unless otherwise authorized.

Respectfully Submitted:



Todd Cashin
Director of Community Services

Prepared by: Michael Czarny, Senior Planner

Attachments:

- Orthophoto map
- Site Plan
- Parking Plan
- Description of Temporary Use Permit
- ALC Decisions Letter February 1, 2019
- TUP-18-01 Regional Board Report – May 27, 2019

Strategic Plan Alignment:

Priorities: Economic Development

Values: Good Governance

Background:

Historically, Temporary Use Permit (TUP) applications have been applied for to consider various businesses in the Central Okanagan East Electoral Area that are not permitted in respective zoning regulations. At time of considering past TUP applications, the Regional Board has identified the temporary nature of these applications and the need for a subsequent permanent remedy upon expiry. The scope of operation associated with the current TUP application is a renewal application to continue the previously approved use for an additional three years.

This business originally operated in the District of Lake Country since the late 1980's as a private hobby farm and then opened to the general public. The selected subject property in the RDCO is within the Agricultural Land Reserve and is subject to regulations prescribed by the Agricultural Land Commission (ALC). The applicant submitted and received approval for a ALC Non-Farm Use in 2019. In 2018, the applicant applied for and subsequently received approval for a TUP on May 27, 2019, to operate the business in the RDCO. The TUP is set to expire on May 27, 2022, and therefore the applicant is seeking approval for a second TUP to continue operation of the business for an additional three years.

Proposal:

The applicant is requesting the issuance of a TUP in order to renew the operation of an outdoor petting zoo business named Kangaroo Creek Farm. Permitted by original TUP, the site contains an unpaved parking area, a public picnic/historical interest area, washroom facilities in temporary structures, two fenced pasture areas for animal grazing, and portable accessory buildings used for office and administrative purposes, and the storage of equipment and supplies. There are no permanent structures or foundations proposed as part of this application. In addition to the previously approved uses, the applicant is proposing the addition of a food truck as part of the operation to be located outside Development Permit Areas. No other additions to the original TUP are proposed.

The applicant states that the Kangaroo Creek Farm has consistently ranked as one of the highest top attractions in the Kelowna and Okanagan Region, the business received the 2021 TripAdvisor Travel Choice Award, and provides an educational, interactive, and safe experience.

Professional Reports:

Ecora Engineering & Resource Group Ltd. (Ecora) was retained by the applicant to complete an environmental assessment at the subject property. Recommendations from this assessment were used to craft several of the conditions of the original Temporary Use Permit. A completion report was provided by Ecoscape Environmental Consultants Ltd. that summarized the completed works including pasture fencing, debris removal, and restorative plantings, to show that the environmental conditions of the Temporary Use Permit and guidelines of the Aquatic Ecosystem Development Permit Area have been met.

Regional Growth Strategy Bylaw No. 1336:

Policies from the Regional Growth Strategy support the TUP renewal application:

- 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. 3.2.8.3 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:

Policies from the Ellison Official Community Plan support the TUP renewal application. The proposal aligns with policies regarding agricultural 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.

The Official Community Plan stipulates that Temporary Use Permits are permits to allow specific land uses to occur for a short period of time and may be considered by the Regional Board in any Ellison Official Community Plan designations. Conditions may be applied to the permit, such as the area of use, the hours of use, appearance, site rehabilitation and holding of security to ensure compliance. Consideration of this permit is based upon the following general conditions:

- The use must be clearly temporary or seasonal in nature,
- The use should not create an unacceptable level of negative impact on surrounding permanent uses, and
- An outline provided of when and how the temporary use in that location will be concluded.

The proposed use is temporary in nature as it is seasonal and for a period of a three-year renewal. The applicant has confirmed that a permanent solution is desired.

Site Context:

The site is located in the community of Ellison, within Central Okanagan East Electoral Area and is located within an area of active agriculture operations as well as being directly adjacent to the Kelowna International Airport (YLW). The subject property is +/- 22.3 ha (55 acres) in size; of this total, approximately +/- 3.8 ha (9.5 acres) are proposed for the operation of the business.

A portion of the subject area, specifically Mill Creek and the adjacent riparian areas, is affected by the Ellison Official Community Plan Aquatic Ecosystems Development Permit Area. The parcel is in the ALR, zoned A1 Agriculture, and has a Future Land Use of Agriculture.

Additional Information:

Owner:	Eldorado Ranch Ltd.
Agent:	C. MacPherson
Legal Description:	Lot 2, District Lot 120, ODYD, Plan 3497

Address:	5932 Old Vernon Road
Lot Size:	+/- 22.3 hectares (55 acres)
Area of Land Affected:	+/- 3.8 hectares (9.5 acres)
OCP Designation:	Agriculture
Zoning:	A1 Agricultural
Water Supply:	Private water source
Sewage Disposal:	Septic system
Existing Use:	Kangaroo Creek Farm
Surrounding Uses:	North: Old Vernon Road and Mill Creek / Agriculture (City of Kelowna) South: Agriculture (orchards) and kennel service (Bark n' Fly) East: Small lot country residential, local commercial (City of Kelowna) West: Kelowna International Airport (YLW) (City of Kelowna)
ALR:	Within the ALR
Fire Protection:	Within the Ellison Fire Protection Area

RDCO TECHNICAL COMMENTS:

Fire Services staff comment that an evacuation plan was approved for the operation, and staff will require that all original fire services requirements must remain.

Building Services staff comment that temporary washroom facilities were permitted on the site under building permits in 2021 and staff advise that any future proposed buildings or structures (temporary or permanent) over 10 m² will require Building Permits.

Unaffected RDCO Departments include Engineering Services, and Parks Services.

AGENCY REFERRAL COMMENTS:

Agricultural Advisory Commission supports the application as presented. The AAC also commented concerns regarding the increase in traffic due to the operation of the Kangaroo Creek Farm.

Agricultural Land Commission staff have no concerns with the proposal provided the use remains in compliance with ALC resolution for the applicant's ALC Non-Farm Use application.

Ministry of Agriculture, Food and Fisheries staff note that traffic impact on neighbouring agricultural properties may become an issue and that the applicant should engage with neighbours to minimize traffic concerns. Ministry staff also comment that the parking area should be removed and rehabilitated once the use ceases, and that a financial security should be provided to ensure rehabilitation once the use ceases.

Ministry of Transportation and Infrastructure staff have no concerns with the proposal and have not received any public complaints regarding the operation. Ministry staff are working with the applicant to issue an access permit to reflect the issuance dates of the Temporary Use Permit.

Kelowna International Airport staff have no concern with the proposal. YLW staff note that aircraft noise will continue near Kangaroo Creek Farm.

Unaffected agencies include BC Hydro, District of Lake Country, Interior Health Authority, and Ministry of Forest, Lands, Natural Resource Operations and Rural Development.

Considerations:

External: In accordance with provisions of the *Local Government Act*, notice of the application was published in the local newspaper. Furthermore, Notice of Application signs were posted, and notification forwarded to all property owners located within 100 metres of the subject property in accordance with the Development Applications Procedures Bylaw No 944.

At time of writing this report, staff have received three letters of support and one letter of comment.

Financial: In accordance with Section 496 of the *Local Government Act*, a security was provided to the RDCO in the amount of \$13,375.00 to ensure development is carried out in accordance with the original TUP conditions and that decommissioning of the use and reclamation of the site occurs if the operation ceases.

Legal/Statutory Authority: Part 14, Division 8 of the *Local Government Act* states that a local government may issue a temporary use permit which may allow a use not permitted by a zoning bylaw, specify conditions under which the temporary use may be carried on, and/or allow and regulate the construction of buildings or structures in respect of the use for which the permit is issued. The permit may be issued for up to three years with the option of one renewal for an additional three years. Furthermore, a local government may require security to guarantee the performance of the terms of the permit.

Considerations not applicable:

- Organizational
 - Alternate Recommendation
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