



# Regional Board Report

## Request for Decision

*Approved for Board Consideration*

A handwritten signature in black ink, appearing to read "Corie Griffiths".

*Corie Griffiths, Deputy CAO*

**To:** Regional Board

**From:** Todd Cashin, Director of Community Services

**Date:** July 25, 2022

**Subject:** Agricultural Land Commission Referral Application (A-22-03)  
J. Nurkowski (owner/applicant)  
2624 Lakha Road (Central Okanagan East Electoral Area)

***Voting Entitlement:*** *All Directors – Unweighted Corporate Vote – Simple Majority (LGA s.208)*

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**Purpose:** To consider an Agricultural Land Commission referral application to permit a Non-Adhering Residential Use to allow a secondary residence on the subject property.

### **Executive Summary:**

The applicant is requesting an increase to the Agricultural Land Reserve Use Regulations (ALRUR) additional residence total floor area regulation from 90m<sup>2</sup> to 98m<sup>2</sup> to accommodate an existing manufactured home. As the approving authority, the Agriculture Land Commission (ALC) approval of this application would permit the applicant to construct a new single detached house on the property while maintaining the existing manufactured home.

The subject property does not meet the parcel area requirement for accessory homes as per the RDCO's Zoning Bylaw. If the ALC application is successful, a subsequent Zoning Bylaw Amendment application with the RDCO will be required.

The application aligns with policies from the Regional Growth Strategy, Agricultural Plan, and Ellison Official Community Plan. No concerns from RDCO departments or external agencies have been received.

### **Recommendation(s):**

**THAT** the Regional Board receives the report from the Director of Community Services, dated July 25, 2022, with respect to RDCO file: A-22-03 for the property located at 2624 Lakha Road, legally described as Lot 4, Section 1, Township 23, ODYD, Plan 3896, Except Plans 25721 and Plan 38410 ("the subject property");

**AND THAT** the Regional Board support Agricultural Land Commission Application A-22-03 for applicant John Nurkowski, to allow a Non-Adhering Residential Use as outlined in the report dated July 25, 2022;

**AND FURTHER 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, Senior Planner*

Attachments:

- Orthophoto
- Subject Property Map
- Site Plan
- ALC application
- Zoning Bylaw No. 871, Section 5.1 - Agricultural A1
- Zoning Bylaw No. 871, Section 3.18 – Accessory Home
- Regional Board Presentation

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**Strategic Plan Alignment:**

Priorities: Sustainable Communities

Values: Resiliency

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**Background:**

The subject property is within the Agricultural Land Reserve (ALR) and contains one manufactured home which was placed on the property under a building permit in 1987, a workshop and double garage constructed under a building permit in 2011, a shed originally constructed without a permit and then finalized under a building permit in 2013, and a greenhouse constructed under a building permit in 2015.

From 2008 to 2021 the property was primarily a vegetable farm with fruit trees and vines. In 2021, a Notice of Intent was submitted to fill in a dry ravine on the subject property with 4,471m<sup>3</sup> of fill. This work was completed in 2021 and a Agrologist Closure Report was submitted indicating substantial compliance with the original Agrologist Report. In 2022, the owners replanted the farm with cherries and grapes.

**Proposal:**

The applicant has submitted an application to the Agricultural Land Commission (ALC) for a Non-Adhering Residential Use to request a change to the residence total floor area requirement from 90m<sup>2</sup> to 98m<sup>2</sup> to accommodate an existing manufactured home. The applicant intends to construct a new single detached house (356m<sup>2</sup>) in close proximity to the other buildings and structures on the property. To proceed with construction, the existing residence must meet the additional residence total floor area requirement otherwise construction of a new residence over 90m<sup>2</sup> would not be permitted or would

require the existing manufactured home to be decommissioned. The applicant has indicated that if the application is successful, they intend to use the existing manufactured home for farm worker housing and as a rental property.

Additionally, the subject property does not meet the parcel area requirement for accessory homes as per the RDCO's Zoning Bylaw. If the ALC application is successful, a subsequent Zoning Bylaw Amendment application with the RDCO will be required to permit this use.

**Agricultural Land Commission Act (ALCA) & Agricultural Land Reserve Use Regulation (ALRUR):**

The ALCA and its regulations govern residential uses within the ALR. As per Section 20.1 of the ALCA, the agricultural land may have no more than one residence per parcel. Anyone who intends to place an additional residence land in the ALR must comply with the ALRUR and its regulations. The ALRUR permits additional residences if one residence has a total floor area of 500m<sup>2</sup> or less and the additional residence has a total floor area of 90m<sup>2</sup> or less. It is RDCO staff's understanding that the proposal does not meet the ALCA or ALRUR, as such authorization from the ALC is required for the proposed Non-Adhering Residential Use.

**Regional Growth Strategy Bylaw No. 1336:**

The following Regional Growth Strategy policies from "Our Land", "Our Food", and "Our Housing" support the proposal:

- Policy 3.2.1.8 Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural use.
- Policy 3.2.5.7 Protect the supply of agricultural land and promote agricultural viability.
- Policy 3.2.6.1 Preserve and enhance existing neighbourhoods through encouragement of a variety of housing types, densities, choices and affordability.

**Agricultural Plan:**

The purpose of the RDCO's Agricultural Plan to enhance the viability of the agricultural sector in the Regional District by addressing farm viability issues arising from resource potential, diversification opportunities, urbanization conflicts and competition for agricultural land. Regarding the rural-urban fringe, the Agricultural Plan's objective is to minimize the impacts of new estate residences in the ALR on lands and farming potential. The proposal aligns with this objective.

**Ellison Official Community Plan Bylaw No. 1124:**

The subject property has an Agricultural future land use designation. Section 14 of the OCP identifies that agricultural land is a major influence on the physical layout of the community and the rural character it creates is important to residents in Ellison. The following policies support the proposal:

- Section 14 Policy 2.11: Support the retention of large continuous blocks of agricultural land and discourage fragmentation.
- Section 14 Policy 2.16: Discourage the proliferation of non-farm residential development or use. Accessory homes shall be limited to legitimate uses by caretaker or farm help.
- Section 16, Policy No. 2.8 is applicable to the proposal, which supports a range of residential types and densities in order to accommodate different socio-economic groups, age groups and lifestyles.

**Zoning Bylaw No. 871:**

The subject property is zoned A1 Agricultural. The A1 zone permits accessory homes however, accessory homes are only permitted on parcels that are a minimum of 9.4 acres. The subject property is 9.26 acres and therefore, does not comply with accessory home zoning regulations. If this proposal receives support from the Regional Board and approval from the ALC, the applicant will be required to

submit a Zoning Bylaw Amendment application to comply with RDCO regulations. Alternatively, the applicant will be required to decommission the existing manufactured home.

#### Site Context:

The property is located in the Ellison community and is within the ALR. In accordance with the Ellison Official Community Plan, the property is not affected by any Development Permit Areas.

Owner/Applicant:	John Nurkowski
Legal Description:	Lot 4, Section 1, Township 23, ODYD, Plan 3896, Except Plans 25721 and Plan 38410
Address:	2624 Lakha Road
Lot Size:	+/- 3.75 hectares (9.26 acres)
OCP Designation:	Agriculture
Zoning:	A1 Agricultural
Water Supply:	Black Mountain Irrigation District
Sewage Disposal:	Septic system
Existing Use:	Agricultural, Residential
Surrounding Uses:	North: Agricultural and Rural Residential South: Agricultural and Rural Residential East: Residential and Rural Residential West: Agricultural and Rural Residential
ALR:	Within the ALR
Fire Protection:	Within the Ellison Fire Protection Area

#### RDCO TECHNICAL COMMENTS:

**Inspection Services** comment that a Building Permit has been issued for the new dwelling with the condition that the existing manufactured home be decommissioned or removed from the property. If this application is unsuccessful, the manufactured home must be decommissioned or removed.

**Unaffected RDCO Departments** include Engineering Services, Fire Services, and Park Services.

**Agricultural Advisory Committee (AAC)** supports the application as presented.

#### AGENCY REFERRAL COMMENTS:

**Interior Health Authority** staff comment that any building that is not connected to a community sewer system needs a method for getting rid of human waste. All buildings with indoor plumbing must have a sewerage system in compliance with the BC Sewerage System Regulation. If the applicant is intending to connect the new home under construction to an existing sewerage disposal system, prior to approving the application, IHA staff recommend the applicant provide proof of an Authorized Person (AP) as defined in the BC Sewerage System Regulation having performed a Performance Inspection on the existing sewerage dispersal system to confirm adequate performance, condition, size and location for the intended.

**Ministry of Agriculture, Food and Fisheries** comments that retaining the existing manufactured home as a second residence would be less disruptive and more cost-effective than modifying it or removing it and constructing a new second residence of 90 m<sup>2</sup>. As the existing manufactured home size is only 8 m<sup>2</sup> larger than the maximum specified in the ALR Use Regulation and is situated close to both the new house

and Lakha Road, Ministry staff have no objection to the application proceeding to the Agricultural Land Commission for decision.

**Black Mountain Irrigation District** has no concerns for the proposal.

**Ministry of Transportation and Infrastructure** staff have no concerns with the proposal.

**Shaw** supports this application with the condition that the owner/developer provide Shaw with a conduit system that will allow Shaw to service the new dwelling. As well as that the owner/developer will contact Shaw at the design stage to make sure Shaw design and structure placement are completed to Shaw standards and requirements.

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### Considerations:

External: Section 34.1 (2) of the ALCA outlines the application procedure if a local government review is required. The Regional Board may:

- forward the application to the commission with comments and recommendations, or,
- notify the applicant that the application will not be forwarded to the commission if the application is refused.

RDCO Development Applications Procedures Bylaw No. 944 does not apply to ALC referral applications. Although notice requirements are defined in section 36 of the ALCA, the applicant is not required to publicly notify this non-farm use application.

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:

- Organizational
- Alternate Recommendation

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