



# Regional Board Report

## Request for Decision

*Approved for Board Consideration*

A handwritten signature in black ink, appearing to read "Brian Reardon".

*Brian Reardon, CAO*

**To:** Regional Board

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

**Date:** September 26, 2022

**Subject:** Agricultural Land Commission Referral Application (A-22-01)  
S. Kingsnorth (owner)  
K. Tasci (agent) and S. Ivanitz (agent)  
4995 Trepanier Road (Central Okanagan West Electoral Area)

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

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**Purpose:** To consider an Agricultural Land Commission referral application to permit a soil use to allow 50,000m<sup>3</sup> of fill removed and deposited from the subject property.

### **Executive Summary:**

The owner is proposing to remove 50,000 m<sup>3</sup> of gravel and place 50,000 m<sup>3</sup> of soil on the subject property for the purpose of planting a vineyard. The owner has submitted an Agricultural Capability Report and a Geotechnical Report that support the proposed fill placement and plantings. The application is supported by policies from the Regional Growth Strategy, Agricultural Plan and Brent Road & Trepanier Official Community Plan.

The subject property has a history of compliance issues with excavation, soil placement and commercial activity. Several concerns have been raised by agencies regarding the proposal including information missing from the application.

The proposed soil use aligns with the Regional Growth Strategy, Agricultural Plan, Brent Road & Trepanier Official Community Plan, and Zoning Bylaw, therefore a recommendation of support is provided for Board consideration.

### **Recommendations:**

**THAT** the Regional Board received the report from the Director of Community Services, dated September 26, 2022, with respect to RDCO file: A-22-01 for the property located at 4995 Trepanier Road, legally described as Part of Lot 1, District Lot 911, ODYD, Plan 1290 Shown on Plan B4244 Except Plan KAP52560.

**AND THAT** the Regional Board support Agricultural Land Commission A-22-01 for the applicant Steve Kingsnorth, to allow a soil use as outlined in the report dated September 26, 2022, subject to the following conditions:

- Approval of a Water License that reflects the proposed water usage.
- Fill placed on the subject property must be assessed and approved a Professional Agrologist.
- A Grading and Reclamation Plan that outlines:
  - Current and proposed grades; and
  - Treatment of excavated gravel.
- A Transportation Route Plan that outlines:
  - routes to be used by equipment; and
  - maintenance of roads used.
- A Construction Management Plan that outlines:
  - site access;
  - parking;
  - construction duration;
  - construction equipment staging;
  - dust control measures;
  - hours of operations;
  - general safety;
  - environmental concerns;
  - onsite vehicle and equipment cleaning;
  - proposed blasting;
  - hammering; and
  - onsite processing of materials.

**AND FURTHER THAT** the Regional Board direct staff to forward the application to the Agricultural Land Commission.

Respectfully Submitted:



Todd Cashin  
Director of Community Services

*Prepared by: Michael Czarny, Senior Planner*

Attachment(s):

- Orthophoto
- Subject Property Map
- Site Plan
- ALC Application
- Professional Reports
  - Agricultural Capability Report, prepared by Okanagan EHS LTD.
  - Geotechnical Report, prepared by SNT Geotechnical LTD.
- Regional Board Presentation

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**Strategic Plan Alignment:**

Priorities: Sustainable Communities

Values: Resiliency

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**Background:**

RDCO staff received multiple complaints between 2019 and 2021 regarding fill deposition, fill removal, excavation, and commercial activity on the property. In December 2019, Agricultural Land Commission (ALC) staff sent a letter to the property owner regarding the commercial activity on the property. The letter stated that the commercial activity must cease immediately and if the owner desired to continue the use they must submit and receive approval for a non-farm use application with the ALC.

In April 2021, the applicant submitted a ALC Non-farm use application which the Regional Board did not support on November 22, 2021. Subsequently, on January 21, 2022, the ALC sent another letter to the property owner to cease operations. Staff's understanding is that the commercial business is still operating on the subject property.

Regarding site context, the subject property is located at 4995 Trepanier Road is fully 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 remove 50,000 cubic metres of gravel and place 50,000 cubic metres of soil on a portion of the subject property. The applicant indicates that the soil will originate from Gorman Brothers Lumber Mill which is in West Kelowna approximately 10 km from the subject property. The applicant has indicated that the soil has been tested and assessed to verify its agricultural suitability. The purpose of the extraction and placement of fill is to increase the agricultural capability of the land for the future planting of a vineyard.

**Professional Reports:**

The Agricultural Capability Report, prepared by Okanagan EHS LTD., supports the proposed area for planting a vineyard and stipulates that irrigation and topsoil will be required to ensure the soil class is sufficient to support the proposed plantings.

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 property's downslope.

**Servicing:**

The subject property is not located within a 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 the buildings on the subject property are serviced by onsite septic systems.

**Agricultural Land Reserve Use Regulations (ALRUR) and Agricultural Land Commission Act (ALCA):**

The proposal does not meet the criteria under Section 35 of the ALRUR for soil or fill use and therefore an application under Section 25 for soil use to proceed with the proposal.

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

The Regional Growth Strategy aims to preserve agricultural land, local food systems and promote employment opportunities. This application aligns with the following policies of the RGS:

- Policy 3.2.1.8 Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural use;
- Policy 3.2.3.6 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; and
- Policy 3.2.3.7 Protect the supply of agricultural land and promote agricultural viability.

**Agricultural Plan:**

The purpose of the Regional District's Agricultural Plan (approved in 2005) to enhance the viability of the agricultural sector in the Regional District. The plan supports the protection of farmland and agricultural uses. The proposal aligns with objectives of the Agricultural Plan.

**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 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.

**Zoning Bylaw No. 871:**

The subject property is zoned A1 Agricultural which supports the proposed agricultural uses.

**Development Application Procedures Bylaw No. 994:**

The Development Application Procedures Bylaw defines procedures for application to the RDCO including Official Community Plan Amendments, Zoning Bylaw Amendments, Development Variance Permits, Development Permits among others. Staff do not have the authority to require additional deliverables for ALC referral applications as the Development Application Procedures Bylaw does not provide and regulations or procedures for ALC referral applications.

**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.

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. A Development Permit will not be required for this proposal.

#### Additional Information:

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

#### RDCO TECHNICAL COMMENTS:

**Agricultural Advisory Commission (AAC)** recommends support for the application with conditions that the fill to be placed on the subject property be assessed and approved by a Professional Agrologist, that the applicant submit a grading and reclamation plan, and that the applicant apply for a water license that meets the proposed water usage for the plantings.

**Inspection Services** 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.

#### AGENCY REFERRAL COMMENTS:

**Ministry of Agriculture, Food and Fisheries** staff comment that the agricultural capability can be improved by topsoil placement and irrigation. Additionally, the proposed extraction and placement area does not represent a large portion of the subject property and it appears that the application could proceed with developing other portions of the land without extraction of the gravel.

**District of Peachland** staff comment that the District would like to review a Transportation Route Plan to ensure no use of District of Peachland roads for transport of heavy machinery or materials. The District would like to review a Construction Management Plan that outlines the proposed site access, parking, construction duration, construction equipment staging, dust control measures, hours of operations, general safety, environmental concerns and onsite vehicle and equipment cleaning. The District is also requesting that the public roadway is kept clear of mud, dirt and debris has District staff have received complaints regarding this issue in the past, and confirmation whether this is proposed blasting, hammering, onsite processing of materials. District staff are concerned that the proposal is too extensive regarding scale, noise, dust and duration.

**Unaffected agencies** include the Parks Services, Engineering Services, Fire Services, Ministry of Transportation and Infrastructure, and Interior Health Authority.

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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 application that the application will not be forwarded to the commission if the application is refused

RDCO Development Application Procedures Bylaw No. 944 does not apply to ALC referral application. Although notice requirements are defined in Section 36 of the ALCA, the application 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 referral application.

#### Legal/Statutory Authority:

Section 25 of the Agricultural Land Commission Act (ALCA) outlines the application procedure. ALCA and Agricultural Land Reserve Use Regulations apply. Support of the Agricultural Land Commission application for Soil Use complies with:

- Regional Growth Strategy Bylaw No. 1336
- Agricultural Plan (2005)
- Brent Road & Trepanier Official Community Plan Bylaw No. 1303

#### Considerations not applicable:

- Organizational
  - Alternate Recommendation
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