



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: September 26, 2022

Subject: Agricultural Land Commission Application (A-22-02)
A. Stubbington (owner/applicant)
Lot A, Section 12, Township 23, ODYD, Plan 23162
3811 Old Vernon Rd (Ellison Official Community Plan Area)

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

Purpose: To consider an Agricultural Land Commission referral application to permit a non-farm use to utilise a portion of the property for a commercial business.

Executive Summary:

3811 Old Vernon Road is a 2.8-hectare A1 parcel on the Agricultural Land Reserve (ALR) in the Ellison community. The owner is seeking Agricultural Land Commission (ALC) approval for a non-farm use on 1.2 hectares of the property for the operation of a landscaping business (Royale Landscaping).

Regional District policies recognize the need to protect agricultural lands and encourage uses that promote agricultural viability. Within the ALR Use Regulation, home based businesses are classed as permitted non-farm uses, subject to limitations on the area used for business purposes. Zoning Bylaw No. 871 also constrains the scale of business operations and limits the number of vehicles and commercial equipment allowed on the property. Royale Landscaping's business activities appear to exceed these limits, therefore in addition to the non-farm use approval from the ALC, the property owners would require an RDCO application for a Development Variance Permit, a Temporary Use Permit, or a zoning text amendment.

As the application does not meet Provincial or Regional policy, staff are recommending non-support of this referral application as provided in the recommendation for Board consideration.

Recommendations:

THAT the Regional Board receives the report from the Director of Community Services, dated September 26, 2022, with respect to RDCO File: A-22-02 for the property located at 3811 Old Vernon Road and legally described as Lot A, Section 12, Township 23, ODYD, Plan 23162 ("the Subject Property").

AND THAT the Regional Board **NOT** support Agricultural Land Commission Application A-22-02 for applicant Albert Stubbington, to allow a non-farm use commercial operation as outlined in the report dated September 26, 2022;

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

Respectfully Submitted:



Todd Cashin
Director of Community Services

Prepared by: Shaun O'Dea, Planner

- Attachments:
1. Orthophoto Map
 2. ALR Map
 3. ALC Application
 4. Zoning Bylaw No. 871, Section 5.1 - Agricultural A1
 5. Zoning Bylaw No. 871, Section 3.22 - Home Based Business In An Agricultural Zone
 6. Zoning Bylaw No. 871, Section 3.14 - Prohibited Vehicles and Equipment
 7. Regional Board Presentation

Strategic Plan Alignment:

Priorities: N/A

Values: Regional Perspectives, Resiliency, Good Governance

Background:

The 2.8 hectare subject property is located in the Ellison Official Community Plan area and is currently developed with a single detached house and garage built in 1981, and one accessory building constructed in 2010 and permitted in 2018. Agricultural activities on the property include approximately 1.8 hectares of cherry orchard, primarily on the ALR (1.4 ha), with a portion on the non-ALR part of the site (0.4 ha). The Agricultural Capability Classification lists the site as having Class 4 soils, indicating limitations which may make the land suitable for relatively few crops, susceptible to reduced yields, or prone increased risk of crop failure and soil conditions which require special development and management practises.

A Regional District of Central Okanagan (RDCO) business license registered to the property was cancelled in 2014 and the business was subsequently registered to a City of Kelowna address. ALC Compliance personnel and RDCO Bylaw enforcement officers have attended the property and, noting the presence of landscaping equipment and business operations, have instructed the owner that a non-farm use application is required.

Site Context:

Approximately 2.4 hectares of the property are within the ALR and the remainder has a Residential land use designation. The property is not affected by Development Permit Areas.

Owner/Applicant:	Albert Leroy Stubbington
Legal Description:	Lot A, Section 12, Township 23 ODYD Plan 23162
Address:	3811 Old Vernon Road
Lot Size:	2.8 hectares (7.02 acres)
OCP Designation:	Agriculture / Residential
Zoning:	A1 Agricultural
Water Supply:	Black Mountain Irrigation District
Sewage Disposal:	Septic system
Existing Use:	Agricultural, Residential, Commercial
Surrounding Uses:	Agricultural / Residential
ALR:	Predominantly within the ALR
Fire Protection:	Within the Ellison Fire Protection Area

Proposal:

The owner is seeking approval to operate a landscaping business on 1.2 hectares of the subject property.

Applicable Regulations and Policy:**Agricultural Land Commission Act (ALCA):**

Permitted non-farm uses are activities that may or may not be linked directly to agriculture, have low impacts on the land base, and are considered compatible with farming activities. This includes home-based businesses, however, under the ALCA the home occupation use must be accessory to the residential or farm use of the property. The ALR Use Regulation limits the maximum area of home-based businesses to 100m² and allows local governments to further regulate the space allowances, hours of operation, number of employees and parking. To continue commercial activities exceeding 100m², an application for a non-farm use under Section 25 of the ALCA is required.

Regional Growth Strategy Bylaw No. 1336:

The following Regional Growth Strategy (RGS) goals and policies are applicable to the non-farm use application:

Our Land

- Policy 3.2.1.8 - Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural use.

Our Economy

- Policy 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.

Our Food

- Policy 3.2.5.2 - Preserve and support sustainable agricultural activities and land base that enhances local agriculture through the strengthening of best practices, support of local and regional food systems and the expansion of local food markets and agri-tourism;
- Policy 3.2.5.3 - Encourage cooperation with the Agricultural Land Commission and the Ministry of Agriculture to promote consistency among bylaws, policies, regulations, and decisions that will be made regarding agriculture;
- Policy 3.2.5.7 - Protect the supply of agricultural land and promote agricultural viability.

Ellison Official Community Plan Bylaw No. 1124:

The following OCP goals and policies are applicable to the non-farm use application;

- Objective 14.1.2 - Support the preservation of the agricultural land base.
- Objective 14.1.5 - Support the development, improvement, and expansion of agricultural activities.
- Policy 14.2.10 - Support the Agricultural Land Commission in maintaining the integrity of suitable agricultural land.
- Policy 14.2.16 - Discourage the proliferation of non-farm residential development or use...

Agricultural Plan:

The purpose of the Agricultural Plan is “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...”. The objectives and recommendations of the Plan identify what the Regional District can do to encourage agricultural activity within the ALR and to help agriculture compete with other uses on the limited land base.

Zoning Bylaw No. 871:

The subject property is zoned A1 Agricultural. The regulations from Zoning Bylaw No. 871 that pertain to this application include:

Section 5.1 A1 Agricultural Zone:

A Home-Based Business in an Agricultural Zone is permitted on lots greater than 1 hectare.

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 100m², with an additional 50m² allowed for indoor storage. A maximum of 50m² of exterior storage, enclosed by a solid screen, may also be used on parcels greater than 2 hectares. Currently at the subject property there is approximately 300m² of indoor business space (including shipping containers) and 2,400m² of exterior storage space which is not visually screened.

No more than two persons (excluding the property’s residents) may work at the property at any time and there are prohibitions on generating excessive noise, light, and dust. Home based businesses must hold a business license under the RDCO’s Business Licensing and Regulations Bylaw No. 689.

Section 3.14 Prohibited Vehicles and Equipment:

Properties greater than 5,000m² may have a maximum of 2 pieces of logging, industrial, commercial or construction equipment onsite. The total area that vehicles and equipment may occupy is limited to 150m², and they must be stored at least 15m from the side or rear property line. Approximately 15-20 pieces of commercial equipment are present at the subject property, occupying more than 1,500m² of space. Several pieces of equipment are stored immediately adjacent to the property line

The current use does not conform with section 3.22 or section 3.14 of Zoning Bylaw No. 871. If the Regional Board and the ALC support the non-farm use application, the applicant would need to operate the business in conformance with the zoning regulations, or seek approval through an additional:

- Development Variance Permit, or
- Temporary Use Permit, or
- Site specific text amendment to the A1 Zone.

RDCO TECHNICAL COMMENTS:

Engineering Services

The ALC Applicant Submission identifies the following:

- 5 acres of cherry orchard on the parcel, whereas the current air photos show only 4 acres.
- That the proposed area for non-farm use is 1.2 hectares (3 ac), which represents approximately 42% of the parcel area.

The proposal does not adhere to the principles of agriculture being recognized as the priority use and non-agricultural uses being restricted on parcels within the ALR. The proposed non-farm use area will detract from the full agricultural productive potential of the parcel.

Statutory Right of Way (SROW) agreement KT039133 registered on the property title states that the Owner shall not place any building, structures, material, soil cover, or other obstruction of any kind on the SROW so as to block access to the Works. The vehicles and shipping containers within the sanitary sewer SROW on the northern property boundary is a concern as access to the manholes must be maintained. Additionally, the shipping containers over the sewer main would be a problem should there be a failure and the main needed to be excavated for emergency repairs.

Unaffected RDCO Departments include Inspection Services, Fire Services and Parks Services.

AGENCY REFERRAL COMMENTS:

The RDCO Agricultural Advisory Commission (AAC) does not support the application. At the AAC meeting on July 11, 2022 committee members noted concerns that non-farm use approval may result in the property's agricultural productivity being permanently reduced. The applicant indicated that the area of non-farm use could be reduced to 0.5 acres (2023m²), however staff have not received details of this amended proposal. Furthermore, staff note that even at this reduced scale the area would exceed the ALR Use Regulation limits, and the RDCO's Home Based Business in an Agricultural Zone regulations.

The Ministry of Agriculture, Food and Fisheries notes:

- Despite the cherry plantings, the proposed non-farm use does not represent a benefit to agriculture, and
- Approval may raise expectations among other ALR landowners in the region for similar consideration of non-farm uses.

Shaw Cable supports this application with the condition that the owner provides a conduit system, designed and located to Shaw's standards that will allow them to service the new business.

Black Mountain Irrigation District interests are unaffected by the proposal, provided there is no new domestic water use or changes to the agricultural water use.

Unaffected Agencies include the Ministry of Transportation and Infrastructure, Interior Health Authority, Fortis BC, Telus and the City of Kelowna.

Considerations:

- External: The notice requirements of RDCO Development Applications Procedures Bylaw No. 944 do not apply to ALC referral applications and public notification is not required under the ALCA.
- 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 ALCA outlines the application procedure if local government review is required.
- Section 479 of the Local Government Act grants local governments the power to enact bylaws that define zones and regulate the use of land, buildings and other structures within each zone.
- 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
- Alternate Recommendation: **THAT** the Regional Board receives the report from the Director of Community Services, dated September 26, 2022, with respect to RDCO File: A-22-02 for the property located at 3811 Old Vernon Road and legally described as Lot A, Section 12, Township 23, ODYD, Plan 23162 (“the Subject Property”);
- AND THAT** the Regional Board support Agricultural Land Commission Application A-22-02 for applicant Albert Stubbington, to allow a non-farm use to allow a commercial operation as outlined in the report dated September 26, 2022;
- AND FURTHER THAT** the Regional Board directs staff to forward the application to the Agricultural Land Commission.
- Considerations not applicable:
- Organizational
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