

**CITY OF WEST KELOWNA
PLANNING DEPARTMENT**

ATTACHMENT: 5

FILE NO.: Z20-08



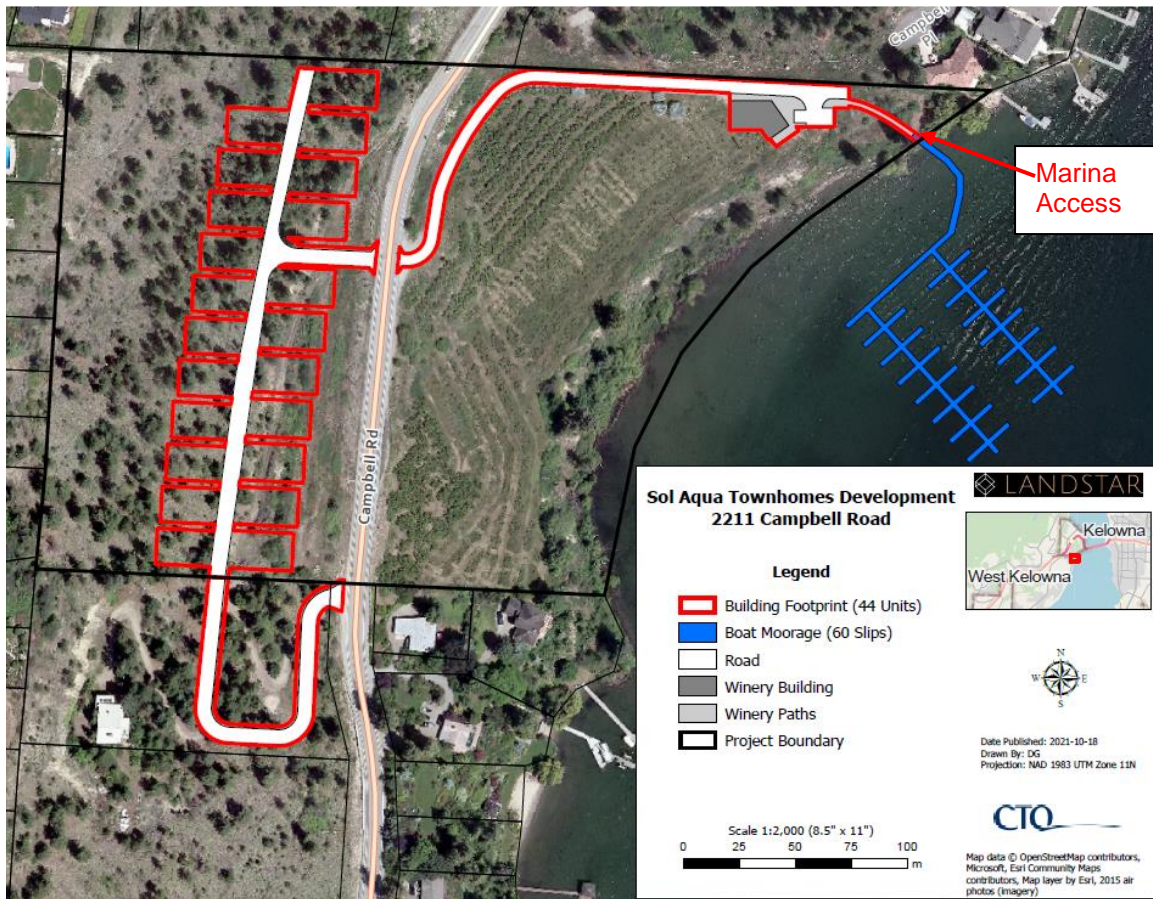
November 1, 2021

An Opinion on an Application for a Non Farm Use of Land within the Agricultural Land Reserve

1.0 Introduction

As part of the development plan for the ALR portion of the parcel, the developer requires a Non Farm Use Permit to access a marina from the farmland. The location of the access is shown in Figure 1.

Figure 1: Site Layout



The commission before me is to determine what impact, if any, will the access allowed by a Non Farm Use permit have on farming on the site.

2.0 Qualifications

I am a licensed Agrologist and have been a full member of the B.C. Institute of Agrologists since 1971 (except 2001-2002). I am a graduate from the University of British Columbia with a Bachelor of Science degree in 1967, specializing in Agriculture Economics, and a Master of Science degree in 1972, specializing in Farm Management. My thesis for my Master's degree was entitled *Resource Allocation for the Median Peace River Farm in British Columbia*

I have been involved in the work of the Agricultural Land Commission since 1974 when the reserve boundaries were proclaimed. At that time, I was District Agriculturist for the British Columbia Ministry of Agriculture in Prince George. In October 1978 I entered private practice and have provided professional opinions for clients who have sought amendments to the Agricultural Land Reserve boundaries, subdivision within the ALR, or who have needed assistance in compliance with requests or orders from the Commission.

During my years in both public and private practice, Courts and Review Boards have accepted me as an expert regarding farming practices in British Columbia. Consequently, I feel qualified to provide an assessment of a proposal under the *Agricultural Land Commission Act*. My qualifications and experience allow me to comment on the value of agricultural land and the practices of farming on that land.

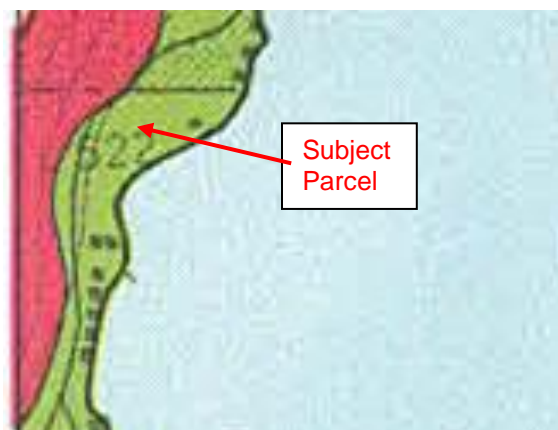
Consequently, I believe I am qualified to comment on the two main purposes of the Agricultural Land Commission. That is: to preserve the agricultural land reserve; and to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest.

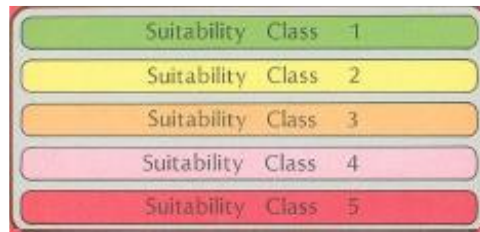
I have been a member of the Environmental Appeal Board and the Forest Appeals Commission. Following these appointments, I have received training in Administrative Law and the Rules of Natural Justice.

3.0 Farming Capability of the Subject Parcel

The Canada Land Inventory rates soils according to their capacity to grow grain crops. When commenting on the capacity for orchard or vineyard crops, other classification criteria should be used. In this case, the Grape Atlas provides a valuable resource.

Figure 2: Grape Atlas Classification of Subject Property





Class 1 areas are defined as:¹

Land areas in this class are the most desirable and are the least restrictive for grape production. Class 1 areas have the highest number of heat units, a long frost free season, high solar radiation and desirable soil characteristics. Land in Class 1 is therefore capable of producing the widest range of grape varieties.

There are only about 7 acres or 2.9 hectares in or capable of production. Therefore, a strategy must be implemented to maximize the production from those acres.

4.0 Farming Strategy

Historically, the farm has produced peaches and some apricots. These trees are well past maturity and in need of replacement either to other soft fruits or to grapes. Both crops have proven viability on this site. As is shown in Section 3, the land is capable of intensive fruit or grape production despite its size limitations. The farmland, as either an orchard or vineyard will provide an aesthetic, as well as a productive asset to the property. I believe it can be a “show place” for farming in the area.

The plan is to lease out the buildings and land to an existing vineyard or orchard. That lease would extend for a minimum of 15 years to enable the lessee to amortize the replanting. If the land is leased to an existing vineyard it will increase the wine production capacity and extend the utility of a proposed tasting room and winery.

The lease agreement should have a “neat and tidy” provision to ensure that the farming area is well maintained and provides an asset to the housing development on the west side of Campbell Road.

A long-term lease cannot be negotiated until the ALC has provided approval for the Non Farm Use.

5.0 Farm vs Non Farm Use

Farm Use vs Non-Farm Use is defined by legislation. The *Act* defines Farm Use as:²

- (a) means an occupation or use of agricultural land for
 - (i) farming land, plants, mushrooms, truffles or animals,
 - (ii) a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*, or
 - (iii) a purpose designated as a farm use by regulation, and

¹ The Grape Atlas, Chapter 4, Suitability Classification for Grape Production in the Okanagan and Similkameen Valleys, page 1

² Section 1, Definitions, *Agricultural Land Commission Act*

(b) does not include a residential use or a soil or fill use;
Non-Farm Use³ means “a use of agricultural land other than a farm use, a residential use or a soil or fill use.”

The regulations are more specific:⁴

(1) Subject to any limits and conditions set out in this Part, the use of agricultural land to construct, maintain or operate any of the following is designated as a farm use and may not be prohibited as described in section 4:

(a) a structure, other than a residential structure, that is necessary for a farm use;

(b) a driveway or utility that is necessary for a farm use.

The driveway, as sketched in white in Figure 1, is a clear Farm Use and may not be prohibited.

A driveway is essential in the farming operation to provide access to the crop rows from the main road. It also provides a headland to allow machinery to turn at the end of the rows. It is used to bring in inputs to the farm such as fertilizer and fuel and to take out the crops. Consequently, it must be constructed to a standard which allows use by heavy trucks. This driveway would exist whether part of the access or not.

The applicants propose in the plan that the driveway be used for access to the boat moorage. The Non Farm Use occurs between the end of the driveway above the escarpment to the edge of the property line. Consequently, it would use no farmland. That distance is shown at the end of the arrow in Figure 1 and is estimated to be about 5 meters long. The escarpment is shown in Photograph 1.



Photograph 1: Escarpment from the Farmland to the Lake

³ *Ibid.*

⁴ Section 5, *Agricultural Land Reserve Use Regulation*

6.0 Summary and Conclusion

The purpose of the Agricultural Land Commission is stated in Section 6 of the *Act*:

- 6 (1) The following are the purposes of the commission:
- (a) to preserve the agricultural land reserve;
 - (b) to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest;
 - (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of land within the agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.
- (2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this *Act*:
- (a) the size, integrity and continuity of the land base of the agricultural land reserve;
 - (b) the use of the agricultural land reserve for farm use.

As noted above, the proposal allows a use of a driveway for access to a marina. It is common for driveways to be used for public access, particularly in vineyards as part of the farm experience for visitors. Not approving this application would set a wide-ranging precedent that would impact the industry in West Kelowna.

There will be no loss of farmland nor farming capacity on the parcel.

Without support from the residential and marina development, this small vineyard or orchard faces great obstacles to being viable given its small size and isolation from other farming activities. Combining the farming activities with housing and non farm activities increases the prospects for viability without losing any farm land.

In addition to preserving land within the Agricultural Land Reserve, the proposal encourages “farming of land within the agricultural land reserve in collaboration with other communities of interest.”

In my opinion, the proposal for a Non Farm Use in conjunction with Farm Uses allows the Commission to adhere to all aspects of its mandate under the *Act*.

I remain available to discuss my findings and conclusions.

Respectfully,



R.G. (Bob) Holtby, P.Ag.

November 1, 2021