



COUNCIL REPORT  
Development Services  
For the December 10, 2019 Council Meeting

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DATE: November 25, 2019 File: DVP 19-05 & A 19-01

TO: Paul Gipps, CAO

FROM: Chris Oliver, Planner

RE: Application: DVP 19-05 & A 19-01, Development Variance Permit / ALR Inclusion & Exclusion, 2010 Bartley Road  
Legal: District Lot 2685 ODYD Except Plan EPP79692 and EPP90055  
Owner: Thomas and Denise Cross  
Agent: Protech Consulting 2012

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**RECOMMENDED MOTION:**

**THAT** Council authorize the issuance of a Development Variance Permit for 2010 Bartley Road (DL 2685 ODYD Except Plan EPP79692 and EPP90055) to vary Section 3.1.1(a) of Works and Services Bylaw No. 0249 for the portion of Bartley Road fronting the ALR from a required paved road to a gravel road with ditch;

**THAT** Council support the request to exclude 1.02 acres from DL 2685 ODYD Except Plan EPP79692 and EPP90055 from the Agricultural Land Reserve;

**THAT** Council support the request to include 1.04 acres from DL 2685 ODYD Except Plan EPP79692 and EPP90055 within the Agricultural Land Reserve; and

**THAT** Council direct staff to forward a local government report to the Agricultural Land Commission for consideration.

**RATIONALE:**

The recommended motion is based on the following:

- An additional 6m of Road Right of Way (ROW) is proposed to bring Bartley Road from 12m ROW to the 18m ROW required for a Rural Reserve Local Road standard;
- Bartley Road is not a high volume roadway and the proposed subdivision would only facilitate three additional large agricultural parcels;
- Drainage works along Bartley Road will address known issues with uncontrolled water flows;
- The Agricultural Advisory Committee (AAC) supported the proposal upon the condition of no net loss of ALR land;
- The proposed ALR inclusion area will strengthen the agricultural capability of the subject property; and
- The proposed subdivision plan meets the Zoning Bylaw requirements for the Agricultural (A1) Zone.

## LEGISLATIVE REQUIREMENTS:

Section 498 of the *Local Government Act* gives Council the authority to issue a Development Variance Permit that varies, in respect of the land covered in the permit, the provisions of the Works & Services Bylaw.

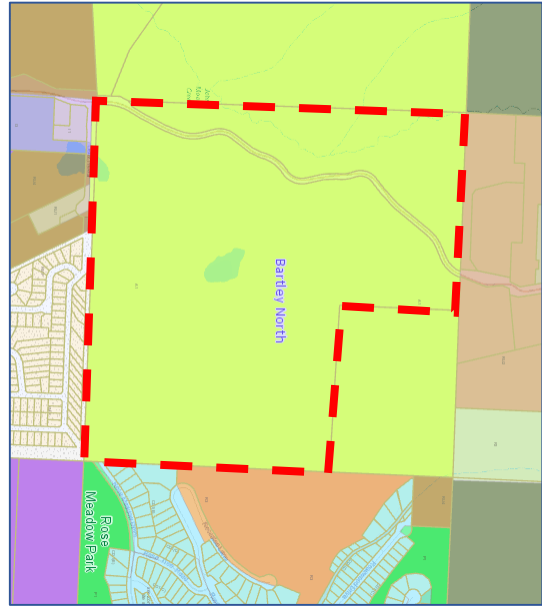
As part of the application process for exclusion from or inclusion within the Agricultural Land Reserve (ALR), it is required that the local government first review the application. The Agricultural Land Commission must receive support for the application through Council resolution prior to their consideration.

## BACKGROUND:

### **Subject Property**

The subject property is zoned A1 – Agricultural, is located in the Bartley North neighbourhood, is partially within the Agricultural Land Reserve (ALR) and surrounding land uses include:

- North - Rural Residential Small Parcel (RU2) Zoned Parcels
- North East Corner - A1 Agricultural Zone Parcel (Future CWK Water Treatment Plant location)
- East - Low Density Multiple Residential (R3) Zoned Parcels (Kara Vista); Comprehensive Development CD1(E) Zoned Parcels (Westlake); and Parks and Open Space (P1) Zoned Parcel (Rose Meadow Park)
- South - Manufactured Home Park (RMP) Zoned Parcels (Pinewoods Villa); Residential Large Parcel (RU4) Zoned Parcels; Country Residential (RU1) Zoned Parcel; Timber Processing and Manufacturing (I3) Zoned Parcel; and Light Industrial (I1) Zoned Parcel
- West - Agricultural (A1) Zoned Parcels



**Figure 1 - Subject Property Zoning**

The subject property has development along either side of Bartley Road including multiple dwellings, garages, farm buildings, and accessory structures. The property is being actively farmed and there are a number of environmentally sensitive and undisturbed areas within the subject property including watercourses, hillsides, and forested areas.

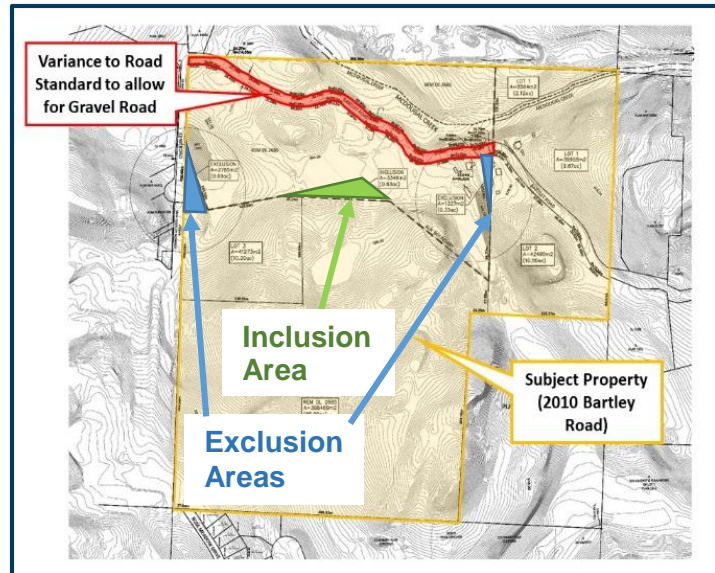
The subject property has approximately 13.5 acres (5.5 ha) in agricultural production for Mountain Valley Farm. Mountain Valley Farm specializes in growing organic heirloom and heritage vegetables. As well as organic vegetables, Mountain Valley Farm produces lavender, herbs, teas, crafts, gourmet sauces, and seasonings.

## History

The 12m Road Right of Way (ROW) of Bartley Road that bisects the subject property was dedicated through Section 42 of the *Transportation Act*. A portion of the subject property was recently sold off to the City of West Kelowna (CWK) for the location of the new Water Treatment Plant. This portion of the subject property was in the North-East corner of the property and was subdivided under a Section 99 provision in the *Land Title Act*.

## Proposal

The subject property is proposed to be subdivided to create three (3) additional parcels with Lots 1 & 2 fronting Bartley Road and Lot 3 fronting Lenz Road (Attachment 2). The proposed variance is to vary Section 3.1.1(a) of Works and Services Bylaw No. 0249 for the Rural Reserve Local Road – DWG 209 frontage requirement along the section of Bartley Road fronting the ALR portion of the subject property to allow a gravel road with ditching instead of a paved road (Figure 2). The applicant would be required to address drainage along this portion of the roadway as a condition of the Development Variance Permit (Attachment 3).



**Figure 2 - Proposed Road Standard Variance Area**

The current ROW is 12m through the subject property. The applicant is proposing an additional 6m road dedication along the full length of Bartley Road within the subject property to create the required 18m ROW for this Rural Reserve Local Road standard (Attachment 4).

A portion of the subject property is within the ALR and in order to facilitate the subdivision, an application has been made to ALC for the exclusion of two small sections in order to establish road frontage for Lot 3 and to allow for the existing structures on Lot 2 to be included fully in the new lot. As part of this application, an inclusion area has also been proposed that is slightly larger than the combined exclusion areas. The exclusion/ inclusion areas shown on Attachment 2 are as follows:

**Table 1 - ALR Exclusion/Inclusion Areas**

Exclusion Areas	Inclusion Areas	Difference
Fronting Lenz Road – 0.69 acres (2,785m <sup>2</sup> )	Remaining Parcel – 1.04 acres (4,193m <sup>2</sup> )	<i>Difference = + 0.2 acres (81m<sup>2</sup>) in the ALR</i>
Fronting Bartley Road – 0.33 acres (1,327m <sup>2</sup> )	<i>Total Inclusion Area = 1.04 acres (4,193m<sup>2</sup>)</i>	
<i>Total Exclusion Area = 1.02 acres (4,112m<sup>2</sup>)</i>		

## POLICY & BYLAW REVIEW:

### ***Agricultural Land Commission Act***

As part of the application process for exclusion from or inclusion within the Agricultural Land Reserve (ALR), it is required that the local government first review the application. Should Council support the application for additional consideration, a copy of this report including the recommended motion will be forwarded to the ALC.

### **Official Community Plan (OCP) No. 0100**

The subject property has two Land Use Designations: Agricultural for the parcel portion within the ALR and Rural Reserve for the parcel portion outside of the ALR.

The OCP's Agricultural Policies in Section 3.3.8 do not support subdivision or the exclusion of ALR lands except in extraordinary circumstances where the exclusion would be consistent with other goals, objectives, and policies in the OCP. Subdivision of resource lands is not supported by the OCP except when Zoning Bylaw amendments are not required and the minimum parcel sizes can be met. As outlined below, the proposed subdivision does not require any Zoning Bylaw amendments.

The subject property is within a number of Development Permit Areas including Wildfire (whole parcel); Hillside and Terrestrial (the majority of parcel); and Aquatic (some areas of parcel). A Development Permit (DP) will be required prior to any development to address the Development Permit Guidelines that apply to the proposed lots. The registration of a wildfire covenant at time of subdivision would exempt future development from a Wildfire DP.

### **Zoning Bylaw No. 0154**

The subject property is zoned A1 – Agricultural. The A1 zone requires a minimum 4.0 ha (9.9 ac) parcel area and 30m (98.4ft) of parcel frontage (or 10% of the perimeter of the parcel, whichever is less) to be eligible for subdivision. The proposed new and remaining lots meet the current A1 zoning regulations for subdivision:

- Lot 1 – 11.99 acres
- Lot 2 – 10.50 acres
- Lot 3 – 10.20 acres
- Remaining Lot – 95.99 acres

### **Works and Services Bylaw No. 0249**

Works and services are required with the subdivision of land under Section 3.1.1(a) of the Works and Services Bylaw in accordance with the standards and specifications provided. The subject property has road frontage along Bartley Road, Lenz Road, and Rose Meadow Drive. Frontage improvements would only be required for the parcel frontage along Bartley Road. The applicant is requesting a variance to vary Section 3.1.1(a) of the Works and Services Bylaw for the Rural Reserve Local Road frontage requirement along the section of Bartley Road fronting the ALR portion of the subject property to allow a gravel road as opposed to the required paved surface (Attachment 4). The City would not be requiring additional improvements for Rose Meadow Drive and Lenz Road.

### **Agricultural Plan**

The City's Agricultural Plan has policies in order to protect agricultural land for agricultural purposes such as ensuring an agricultural impact assessment is provided for applications for the

exclusion of land from the ALR, ensuring no net loss of agricultural land within the City and limiting the amount of land used by residences and buildings on agricultural land.

An agricultural impact assessment has also deemed that the land swap would not only result in a net gain (+0.02ac) to the ALR but would allow for the higher value agricultural land to be consolidated into the ALR and the unproductive land to be excluded.

## REFERRAL RESPONSES:

### **Agricultural Advisory Committee (AAC)**

The proposal was presented to the AAC at the June 6, 2019 meeting where the AAC passed the following motion:

***THAT** the AAC support the application provided that there would be no net loss of farmland.*

### **BC Ministry of Agriculture**

The Ministry of Agriculture provided comments supporting the proposed inclusion area as this would strengthen the agricultural capability of the parcel. In addition to this comment, concerns were raised with the proposed proximity of the primary residence on the ALR parcel and the structures on the proposed Lot 2 as there could be potential conflicts between agricultural and residential uses.

As the proposed new lots will remain under the Agricultural (A1) Zone, agricultural buffers are not required by the Zoning Bylaw and the close proximity is less of a concern. The clustering of development to preserve farmland and sensitive terrestrial ecosystems is supported by the OCP.

### **Fire Department**

The City's Fire Department has received fire hazard complaints regarding the subject property in the past. The subject property is within our interface area and contains densely forested areas with heavy accumulations of ground fuels. A professional Wildfire assessment of the interface property was requested to be completed and the recommendations in the report actioned over a reasonable time. The applicants have provided a Wildfire Assessment which will be registered on title as a Wildfire Covenant at the time of subdivision and will apply to the remainder and proposed lots.

### **Public Works**

The City's Roads and Drainage Supervisor has identified drainage concerns along Bartley Road as there is no drainage conveyance north of this property, resulting in unmanaged flows entering the portion of Bartley Road within the subject property from upstream. Future drainage design will ensure flows are captured and conveyed appropriately.

### **Parks**

The City's Recreation Trails Master Plan (2013) envisions that a pedestrian connection be made between Lenz Road and Rose Meadow Drive. A 3m wide pedestrian Statutory Right of Way (SRW) is recommended along the southern parcel boundary of the proposed Lot 3 (Attachment 2). At the time of future development of the remainder lot, an additional SRW can be secured to connect through the remainder lot to Rose Meadow Drive.

## PUBLIC NOTIFICATION:

A Notice of Application sign has been posted on site as per the Development Applications Procedures Bylaw No. 0260. Additionally, variance notification letters were sent to all property owners and their tenants within 100 meters of the subject property (185 notices). At the time of writing this report, no public correspondence has been received regarding this application.

The applicant has given notice of their ALC Exclusion application as per Section 16, Part 7 of the ALR General Regulation. The applicant has:

- Installed signage on the subject property notifying the public of the ALC Exclusion Application;
- Provided confirmation of advertising in the April 10 and April 19, 2019 issues of the West Kelowna Weekly newspaper for the ALC Exclusion Application, and;
- Provided confirmation of notice served to one adjacent ALR property owner at 2210 Bartley Road.

Letters were provided from the adjacent property owners at 2210 Bartley Road in support of the proposed ALR exclusion and inclusion areas.

## ALTERNATE MOTION:

### **Deny Road Variance and Support ALR Exclusion/Inclusion**

**THAT** Council deny the issuance of a Development Variance Permit for 2010 Bartley Road (DL 2685 ODYD Except Plan EPP79692 and EPP90055) to vary Section 3.1.1(a) of Works and Services Bylaw No. 0249 for the portion of Bartley Road fronting the ALR from a required paved road to a gravel road with ditch;

**THAT** Council support the request to exclude 1.02 acres from DL 2685 ODYD Except Plan EPP79692 and EPP90055 from the Agricultural Land Reserve;

**THAT** Council support request to include 1.04 acres from DL 2685 ODYD Except Plan EPP79692 and EPP90055 within the Agricultural Land Reserve; and

**THAT** Council direct staff to forward a local government report to the Agricultural Land Commission for consideration.

Should Council deny the proposed variance, the file (DVP 19-05) will be closed. As per the City's Procedures Bylaw, the applicant could re-apply for a similar proposal 6 months after initial Council consideration. The applicants will be required to provide the full road standard frontage improvements for Bartley Road.

REVIEWED AND APPROVED BY:

Brent Magnan, Planning Manager  
Tracey Batten, Deputy CAO/Corporate Officer  
Paul Gipps, CAO

Powerpoint: Yes ☒ No ☐

Attachments:

1. Subject Property Map
2. ALR Exclusion/Inclusion and Subdivision Plan
3. Development Variance Permit (DVP 19-05)
4. Bartley Road Plan
5. Public Notification Map