

Agricultural Advisory Committee

AGENDA



Thursday, August 8, 2024

4:00 pm

Meeting Room 5 (Ground Floor)

1435 Water Street

Pages

1. Call to Order

THE CHAIR WILL CALL THE MEETING TO ORDER:

(a) The purpose of this Meeting is to consider certain Development Applications as noted on this meeting Agenda.

(b) The Reports to Committee concerning the subject development applications are available on the City's website at www.kelowna.ca.

(c) All representations to the Agricultural Advisory Committee form part of the public record.

(d) As an Advisory Committee of Council, the Agricultural Advisory Committee will make a recommendation of support or non-support for each application as part of the public process. City Council will consider the application at a future date and, depending on the nature of the file, will make a decision or a recommendation to the Agricultural Land Commission.

2. Minutes

3 - 5

Approve Minutes of the Meeting of June 13, 2024.

3. Applications for Consideration

3.1 KLO Rd 1629 - A24-0003 - Western Global Enterprises Inc., Inc.No. BC0679291

6 - 58

To consider an application to the Agricultural Land Commission (ALC) for a non-farm use to allow for the sale of landscaping and non-farm products.

4. ALC Decisions - Update

4.1 982 Old Vernon Rd, A19-0018 -Non-farm use application

59 - 97

5. Next Meeting

September 12, 2024

6. Termination of Meeting



Agricultural Advisory Committee Minutes

Date:	Thursday, June 13, 2024
Time:	4:00 pm
Location:	Meeting Room 5
Members Present	John Janmaat (Chair), Domenic Rampone (Vice Chair), Barbara Hall, Chris Zabek (non-voting)
Members Participating Remotely	Binny Boparai
Members Absent	Nick Ibuki, Harsh Khela
Staff Present	Celeste Barlow, Planner Specialist, Tyler Caswell, Planner II; Dean Strachan, Community Planning & Development Manager Clint McKenzie, Legislative Coordinator (Confidential)

* Denotes partial attendance

1. Call to Order

The Chair called the meeting to order at 4:03 p.m. and reviewed the criteria of the Committee from the terms of reference.

2. Minutes

Moved by Domenic Rampone/Seconded by Barbara Hall

THAT the Minutes of the May 9, 2024 Agricultural Advisory Committee meeting be adopted.

Carried

3. Applications for Consideration

3.1 KLO Rd 1758-1760 - A24-0006 - Various Owners

Staff displayed a PowerPoint presentation outlining the application and responded to questions from the Committee.

Sunny Bhangu, Applicant

– Confirmed the structure is a temporary ATCO trailer on cement blocks.

Moved by Domenic Rampone/Seconded by Nick Ibuki

THAT the Committee recommends that Council support an application to the Agricultural Land Commission (ALC) for a non-adhering residential use permit to allow for temporary farm help housing to accommodate four (4) seasonal farm workers on the subject property

Carried

Anecdotal Comments:

- The Committee encourages the City ensure the landscape buffer is planted by the applicant within a reasonable time frame. The permit was reactionary and done after the structure was installed.

3.2 Glenmore Rd 1875-2255 - A24-0007 - The City of Kelowna

Staff displayed a PowerPoint presentation outlining the application and responded to questions from the Committee.

Moved by Barbara Hall/Seconded by Domenic Rampone

THAT the Committee recommends that Council support an application to the Agricultural Land Commission (ALC) for a road closure, consolidation and subdivision at the City of Kelowna landfill.

Carried

Anecdotal Comments:

- Committee thanked the City for the ongoing environmental protection of adjacent agricultural land to the landfill.

3.3 4150 Swamp Rd - A23-0008 - Alexander Allan Rezansoff

Staff displayed a PowerPoint presentation outlining the application and responded to questions.

Leonard & Patricia Ritchie, Michael Cohen, Carl Withler Applicant and Applicant's Agent

- Confirmed the ALC has the ability to apply bonding for agricultural requirements. Described the 500 square metre home.
- Spoke to other festivals already being hosted on ALC land, such as the Salmon Arm Roots and Blues Festival and the Pemberton Music Festival.
- The festival would be in the shoulder season for crop production in late September/early October.
- Spoke to how surface damages are mitigated and provided examples of other productions they have hosted over seven years without issues. (Kings Stadium)
- Spoke to the local businesses that would be contracted for supplies and services, including local food and beverage.
- October is the dormant season for the crop and there would be minimal impact of any vegetation onsite.
- Spoke to the history of the site including the increased yield of the site agriculturally due to the importation of soil.
- Spoke to soil testing and two shovel pits tested with no concerns regarding compaction
- Responded to questions from the Committee.

Moved by Domenic Rampone/Seconded by Barbara Hall

THAT the Committee recommends Council NOT support an application to the Agricultural Land Commission (ALC) to consider a Non-Farm Use application to the Agricultural Land Commission (ALC) to allow for a 2-3 day music festival for up to 15,000 people.

Carried

Anecdotal Comments

- The Committee would like to express that there are no obvious benefits to agriculture and the application does not adhere to the criteria and scope of the Committee.

4. ALC Decisions - Update

There were no updates.

5. **Next Meeting**

The next Committee meeting is scheduled for July 11, 2024.

8. **Termination of Meeting**

The Chair declared the meeting terminated at 5:03 p.m.

Chair

DRAFT

COMMITTEE REPORT



Date: August 8th, 2024
To: Agricultural Advisory Committee
From: Development Planning
Address: 1629 - 1649 KLO Rd
File No.: A24-0003
Zone: A1 – Agriculture

1.0 Purpose

To consider an application to the Agricultural Land Commission (ALC) for a non-farm use to allow for the sale of landscaping and non-farm products.

2.0 Development Planning

The subject property is 4.9 ha (12.11 acre) in size and is located on KLO Rd. The applicant is seeking permission to allow for the sale of soil, soil amendments, and decorative rock in 179 m² concrete corrals located in the parking lot. Additionally, the applicant proposes to sell non-farm products in the retail sales area located inside of the nursery garden centre. A Non-Farm Use Application is required for the applicant to continue to sell products that are not produced by the farm operation and that exceed the 150 m² area allotted for the sale of these products identified in the Zoning Bylaw and Agricultural Land Reserve (ALR) Use Regulation.

The current nurse garden centre is a 1.4 ha area, and includes gutter connected polyhouses and outdoor irrigated growing beds. The area includes a gravel parking lot and retail sales building as part of their operation. The farming operation includes three properties (3350 Benvoulin Rd, 3400 Benvoulin Rd and 1629-1649 KLO), which consists of 7.1 ha of land. The active agriculture consists of 3.6 ha of hay production and 2.0 ha for cut flower growing.

To protect and enhance local agriculture, the policy direction provides support for non-farm use applications only where the proposed use meets the following criteria:

- i. Are consistent with the Zoning Bylaw and the 2040 OCP;
- ii. Provide significant benefits to local agriculture;
- iii. Do not require the extension of municipal services;
- iv. Will not utilize productive agricultural lands;
- v. Will not preclude future use of lands for agriculture; and
- vi. Will not harm adjacent farm operations.

If the application is endorsed by Council and approved by the Agricultural Land Commission (ALC), a site-specific Text Amendment Application is required for the operation to conform with the Zoning Bylaw. The Text Amendment Application would be for an increase in the size of the greenhouse and plant nursery sale area selling non-farm products, as the maximum permitted area is 150 m². This will include

all areas currently being used for sales including staff areas, indoor and outdoor planting growing areas, flower prep and coolers and bulk landscaping sales.

3.0 Subject Property & Background

3.1 Site Context

The subject property is located on KLO Rd near the intersection with Benvoulin Rd. The surrounding area is a mix of agricultural land, commercial, and residential.

Zoning and land use adjacent to the property are as follows:

Orientation	Zoning	Land Use
North	A1 – Agriculture	Park
East	A1 – Agriculture	Agriculture
South	RU1 – Large Lot Housing	Single-Detached Dwelling(s)
West	A1 – Agriculture	Rural Residential

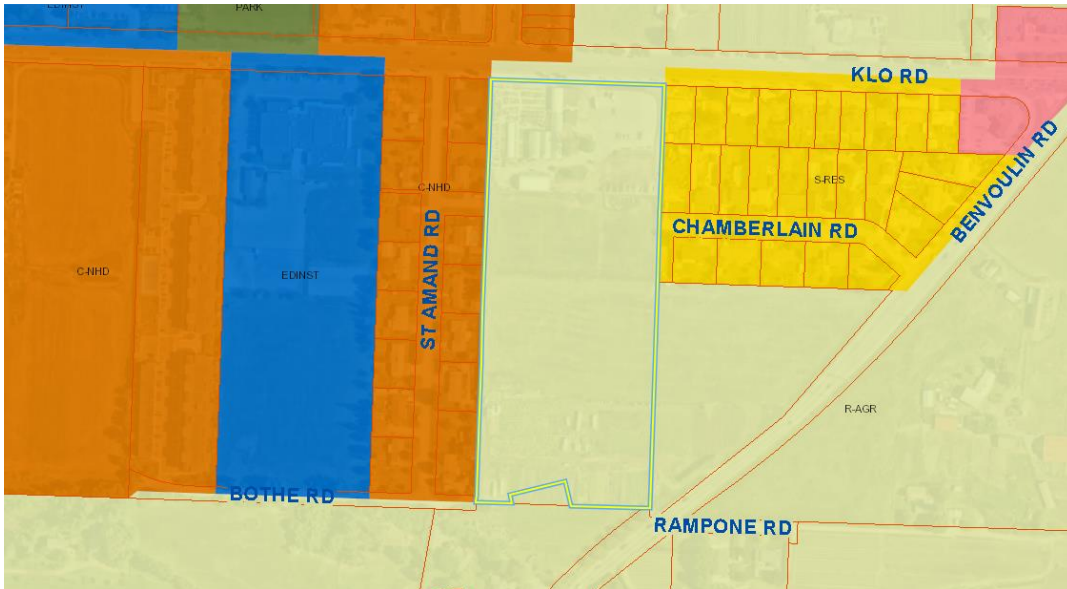
Subject Property Map



ALR Map



Future Land Use Map



4.0 Background

The subject property had a previous non-farm use application (A15-0006) that was forwarded to the ALC in 2015. The purpose of the original application was to bring the previous garden nursery business, Better Earth Garden Centre, into compliance with the City's bylaws and ALC legislation. The non-compliance uses of the land included retail sales of non-farm products in the garden centre and the sale of landscaping products in the outdoor concrete corrals. In February 2016, the ALC approved the non-farm use to the sole benefit of Better Earth Garden Centre for three-years. A Temporary Use Permit Application (TUP16-0001) was approved by Council in July 2016 and was issued for a three-year period. This permit lapsed in 2019, with no opportunity to extend.

In August of 2023, a new Business Licence application for farm retail sales was received by the City and staff assessed the subject property and farm operation for compliance with the Zoning Bylaw and ALC legislation. Based on conversations with the licensee (Bylands Garden Centre) and the farm use of the property, staff approved a new business licence for farm retail sales on the condition that only farm products produced on the farm can be sold on the property.

On April 30, 2024, the City issued a letter that Bylands Garden Centre was operating contrary to the Business Licence conditions and that the removal of all non-farm products was required. The letter stated that a site visit to the subject property showed soil corrals, bagged soil and compost, and a variety of gardening products available for sale. Subsequently, on May 5, 2024, ALC Compliance and Enforcement issued a Notice of Contravention letter identifying the unauthorized placement of fill for a parking lot and non-farm activity. The letter directed Bylands Garden Centre to remediate the subject property and remove the non-farm uses or submit ALC applications.

This application is to address the identified non-farm uses on the property. A follow-up ALC application may be submitted by the applicant to address the unauthorized placement of fill for the parking lot that has been identified by the applicant as approximately 3,000 m².

5.0 Current Development Policies

4.1 Kelowna Official Community Plan (OCP)

Objective 8.1. Protect and preserve agricultural land and its capability	
Policy 8.1.1. Protect Agricultural Land.	Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.
	<i>The application proposes bringing on landscaping materials including mulches and landscape rock, which isn't typically associated with agricultural activities.</i>
Policy 8.1.6. Non-farm Uses.	Restrict non-farm uses that do not directly benefit agriculture except where such non-farm uses are otherwise consistent with the goals, objects, and other policies of this OCP. Support non-farm use applications only where approved by the ALC and where the proposed uses: <ul style="list-style-type: none"> i. Are consistent with the Zoning Bylaw and the 2040 OCP; ii. Provide significant benefits to local agriculture; iii. Do not require the extension of municipal services; iv. Will not utilize productive agricultural lands; v. Will not preclude future use of lands for agriculture; and vi. Will not harm adjacent farm operations.
	<i>Most of the property and operation conform with the OCP and Zoning Bylaw, the inclusion of landscape products brought from off-site does not conform with either.</i>

Report prepared by: Tyler Caswell, Planner II
Reviewed by: Dean Strachan, Community Planning and Development Manager
Approved for Inclusion: Nola Kilmartin, Development Planning Department Manager

Attachments:

Attachment A – ALC Application File No: 70204

Attachment B – Site Plan

Attachment C – Agrologist Report



ATTACHMENT A

This forms part of application
A24-0003

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Provincial Agricultural Land Commission - Applicant Submission

Application ID: 70204

Application Type: Non-Farm Uses within the ALR

Status: Under Review by L/FNG

Applicant: Bylands Garden Centre/Bylands Nursery

Local/First Nation Government: City of Kelowna

1. Parcel(s) Under Application

Parcel #1

Parcel Type Fee Simple

Legal Description PARCEL A (DD 146178F AND PLAN B6796) OF BLOCK 58 DISTRICT LOT 131 OSOYOOS DIVISION YALE DISTRICT PLAN 186

Approx. Map Area 2.1 ha

PID 012-637-882

Purchase Date Nov 14, 2018

Farm Classification Yes

Civic Address 1649 KLO Rd

Certificate Of Title STC - SunX - 012-637-882.pdf

Land Owner(s)	Organization	Phone	Email	Corporate Summary
null	Bylands Garden Centre/Bylands Nursery	(647) 215-1003	melanieb@bylands.com	Not Applicable

Parcel #2

Parcel Type Fee Simple
Legal Description BLOCK 57 DISTRICT LOT 131 OSOYOOS DIVISION YALE DISTRICT PLAN 186 EXCEPT PARCELS C AND D PLAN B1813 AND PLAN KAP78678
Approx. Map Area 4.9 ha
PID 012-637-858
Purchase Date Jun 23, 2020
Farm Classification Yes
Civic Address 1629/1649 K.L.O. Rd
Certificate Of Title STC - Western Global - 012-637-858.pdf

Land Owner(s)	Organization	Phone	Email	Corporate Summary
null	Bylands Garden Centre/Bylands Nursery	(647) 215-1003	melanieb@bylands.com	Not Applicable

Parcel #3

Parcel Type Fee Simple
Legal Description PARCEL A (PLAN B1813) OF LOT 68 DISTRICT LOT 131 OSOYOOS DIVISION YALE DISTRICT PLAN 186
Approx. Map Area 0.1 ha
PID 012-637-874
Purchase Date Jun 23, 2020
Farm Classification Yes
Civic Address City of Kelowna
Certificate Of Title STC - Western Global - 012-637-874.pdf

Land Owner(s)	Organization	Phone	Email	Corporate Summary
null	Bylands Garden Centre/Bylands Nursery	(647) 215-1003	melanieb@bylands.com	Not Applicable

ATTACHMENT A

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2. Other Owned Parcels

Do any of the land owners added previously own or lease other parcels that might inform this application process? Yes

Describe the other parcels including their location, who owns or leases them, and their use. Not migrated from OATS

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3. Primary Contact

Type Third-Party Agent

First Name No Data

Last Name No Data

Organization (If Applicable) McTavish Resource & Management Consultants Ltd. Bruce McTavish

Phone (604) 240-2481

Email bruce@mctavishconsultants.ca

4. Government

Local or First Nation Government: City of Kelowna

5. Land Use

Land Use of Parcel(s) under Application

Describe all agriculture that currently takes place on the parcel(s). Hay production on 3.6 ha
Field grown cut flower 2 ha
Nursery Garden Centre 1.4 ha

Describe all agricultural improvements made to the parcel(s). Nursery Garden Centre has gutter connect polyhouses and outdoor irrigated growing beds. Gravel parking lot and retail sales building
See accompanying report for details.

Describe all other uses that At present all uses are agriculture.

currently take place on the parcel(s).

Appication wishes to have a small 179m2 area for selling soil, soil ammendments and landscape rock

Land Use of Adjacent Parcels

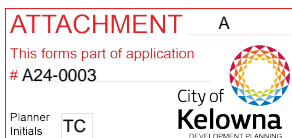
	Main Land Use Type	Specific Activity
North	Agricultural / Farm	Residential and agriculture
East	Agricultural / Farm	Residential
South	Agricultural / Farm	Agriculture
West	Agricultural / Farm	Residential

6. Proposal

How many hectares are proposed for non-farm use?	0.0179 ha
What is the purpose of the proposal?	Applicant wishes to sell soil, soil ammendments and decorative rock to support their sale of nursery products to customers
Could this proposal be accommodated on lands outside of the ALR?	No because the customers want to pick up soil or decorative rock where they purchase their plants
Does the proposal support agriculture in the short or long term?	It supports agriculture by encouraging retail customers and landscapers to purchase grown in BC products. All the nursery and greenhouse products are grown by Bylands
Proposal Map / Site Plan	1629 KLO Rd Bylands Site Plan for ALC.pdf
Do you need to import any fill to construct or conduct the proposed Non-farm use?	No

7. Optional Documents

Type	Description	File Name
Professional Report	Bylands Nusery Non Farm Use	Byland Nursery Non Farm Use 1162024 IFU.pdf





Nursery and Greenhouse Operations

1629 K.L.O. Rd.

Site Plan - Indoors & Outdoors

Prepared for the Agricultural Land Commission

January 10, 2024

Entire Property
1629 K.L.O Rd & 3400 Benvoulin Rd.
Total of 18 acres
(72,800 m²)

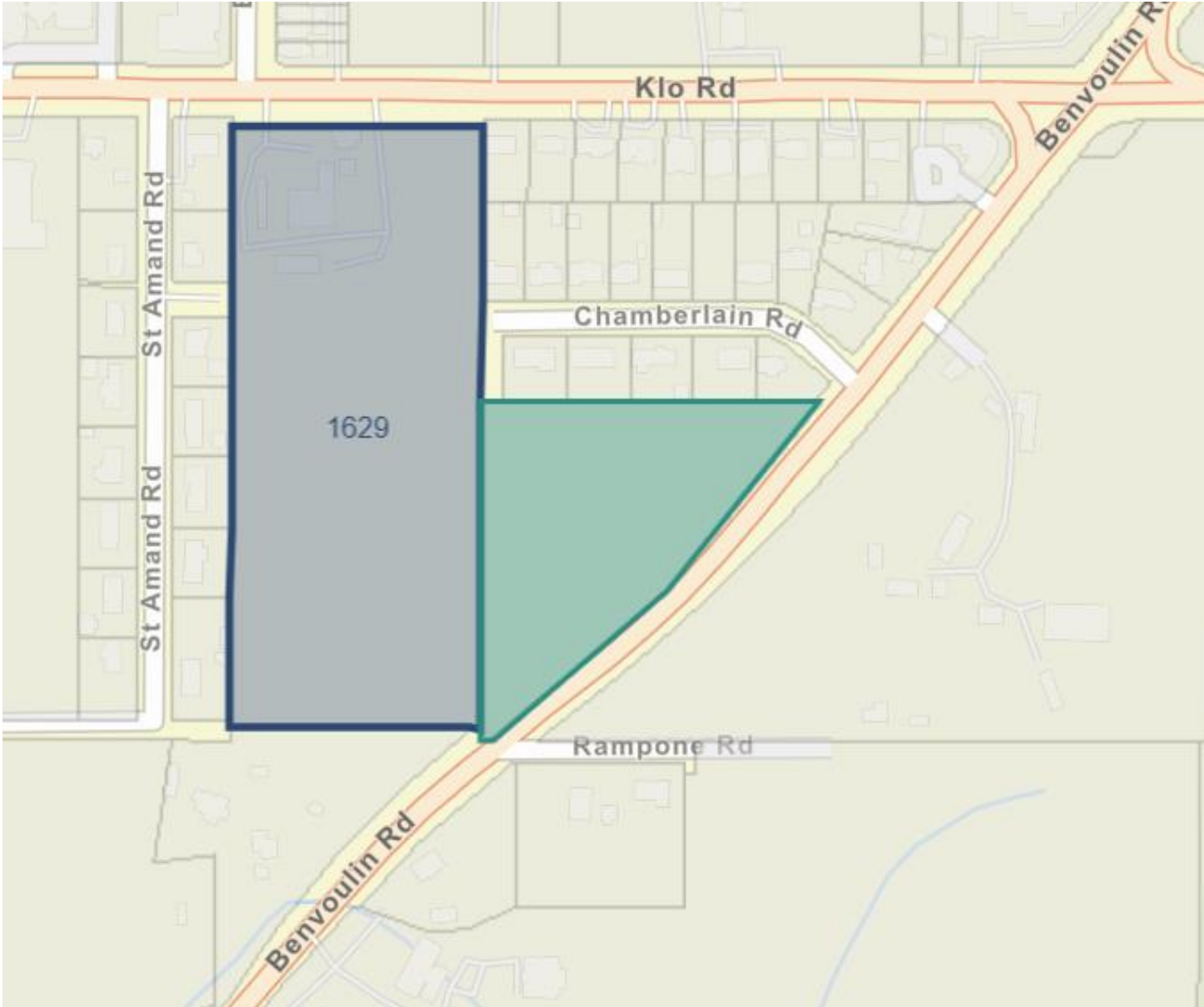
ATTACHMENT B

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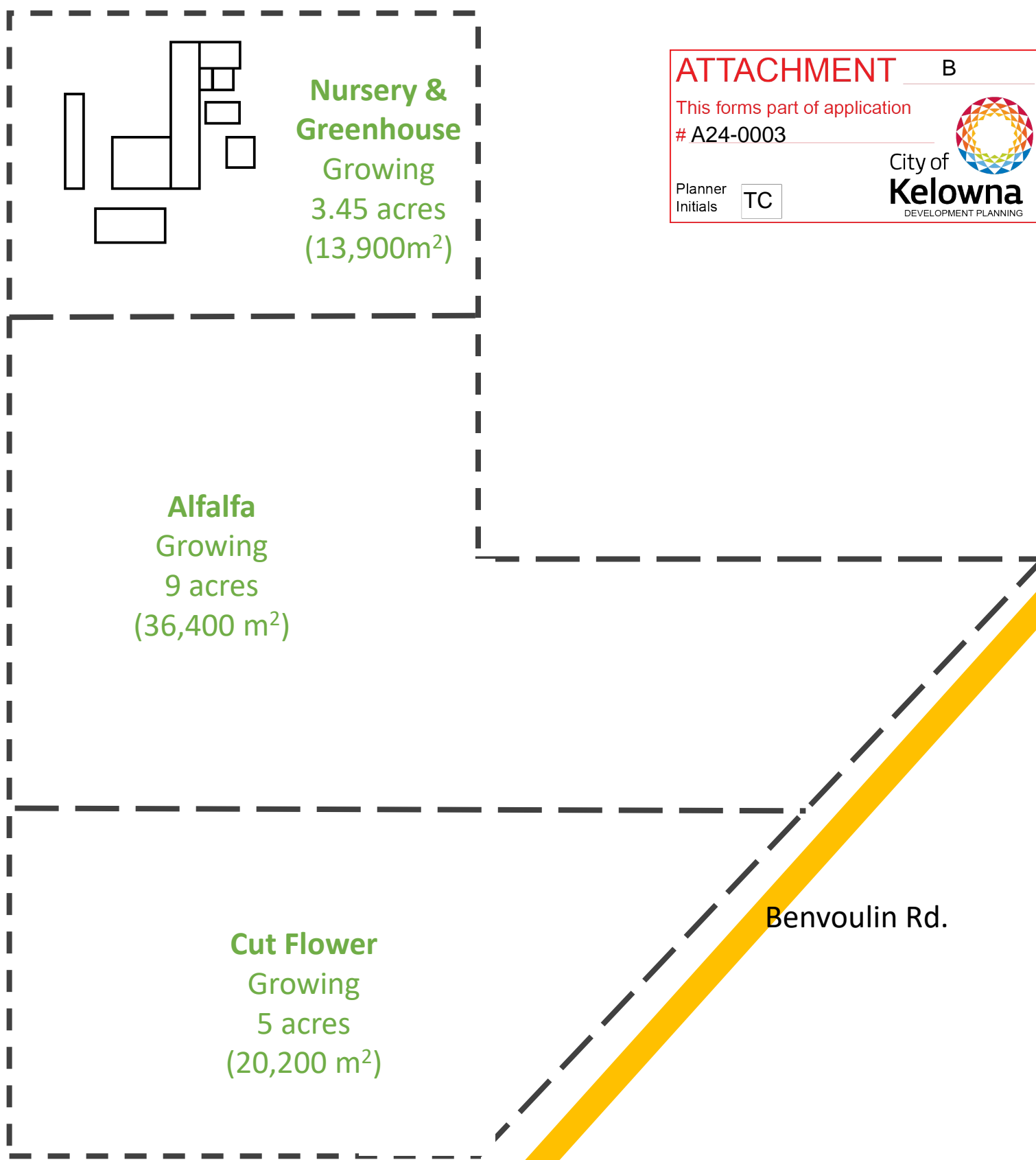
Entire Property

1629 K.L.O Rd & 3400 Benvoulin Rd.

Total of 18 acres

(72,800 m²)

K.L.O. Rd.



Nursery & Greenhouse
Growing
3.45 acres
(13,900m²)

Alfalfa
Growing
9 acres
(36,400 m²)

Cut Flower
Growing
5 acres
(20,200 m²)

ATTACHMENT B

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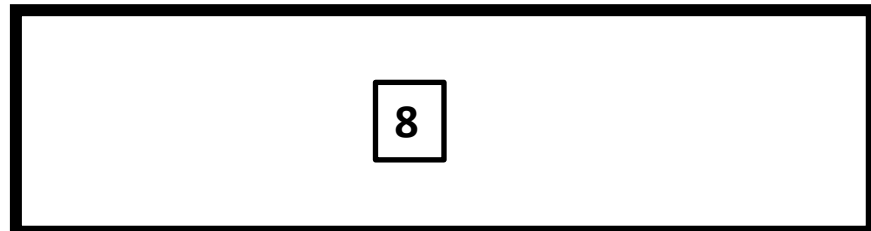
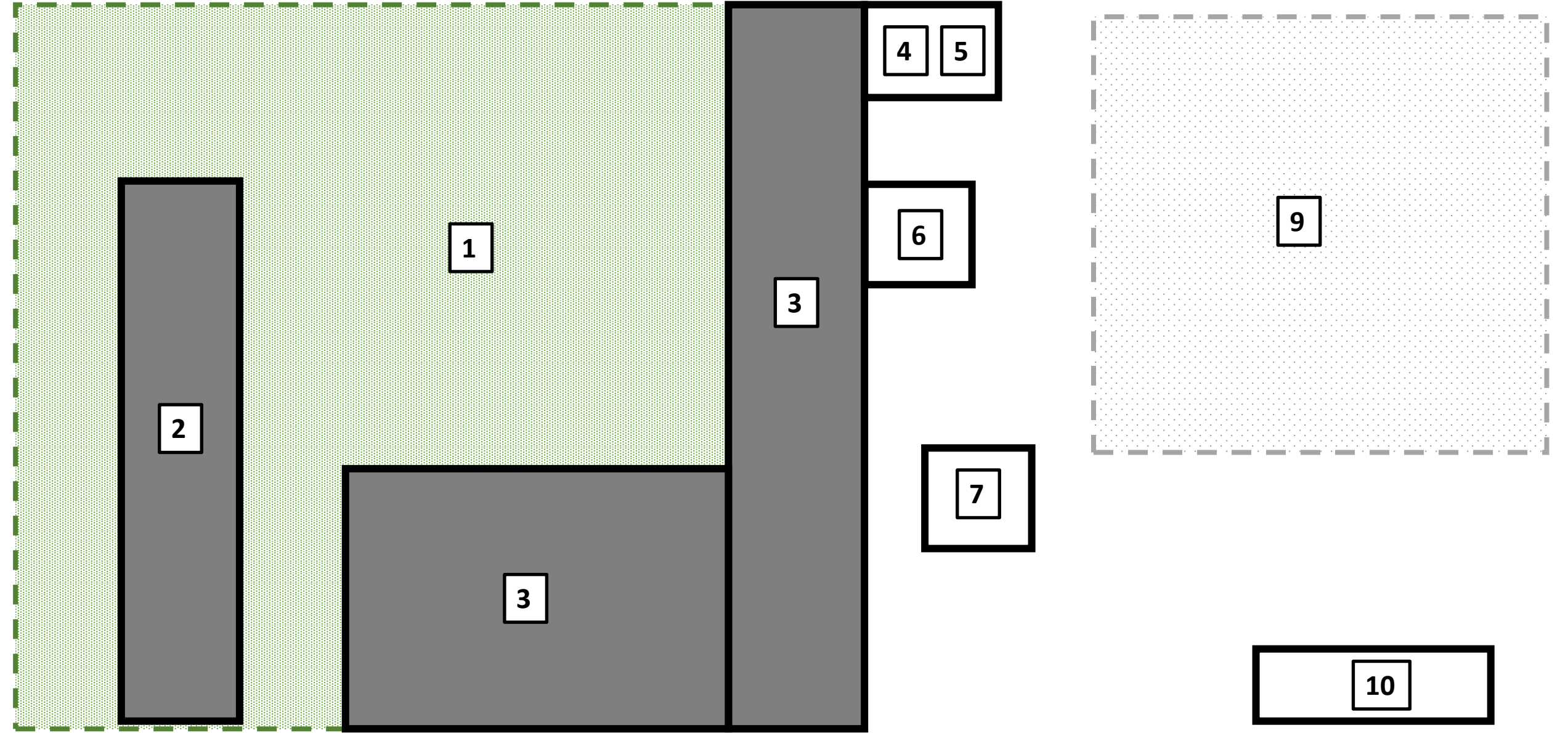


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Benvoulin Rd.

Nursery & Greenhouse Growing Floor Plan

KLO Rd - 493.5 ft



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Nursery & Greenhouse Growing

Floor Plan Legend

	Description	ft ²	m ²
1	Outdoor Plant Growing - Trees, Shrubs, Perennials	19800	1839
2	Indoor Plant Growing - Perennials	1920	178
3	Indoor Plant Growing - Annuals, Succulents, House Plants	9900	920
4	Cashier Area, Staff Area & Washroom	1330	123
5	Fresh Flower Prep & Cooler	110	10
6	Equipment Shop	900	83
7	Cottage	576	54
8	Tarp Shed	3200	297
9	Parking (approx.)	32000	3000
10	Bulk - Rock, Mulch, Soil	1920	178



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The City of Kelowna logo is a circular emblem made of many small, overlapping triangles in various colors (red, yellow, green, blue, purple) that form a larger, multi-colored circle.

Application by Bylands Garden Centre for a Non Farm Use in the Agricultural Land Reserve

**Prepared for Bylands Garden Centre Ltd and Bylands Nursery Ltd.
Prepared by Bruce McTavish PAg**

January 13, 2024

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ATTACHMENT <u> </u> C	
This forms part of application # <u> </u> A24-0003 <u> </u>	
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1.0 Introduction

Bylands Garden Centre (Bylands) is applying to the Agricultural Land Commission (ALC) for a Non-farm Use. The application is for Bylands Garden Centre located at 1629 – 1649 KLO Road Kelowna BC (**Figure 1**) to sell soil, soil amendments and landscape rock.

PIDs associated with the address include: 012 637 858, 012 637 882, and 012 637 874.

Bylands leased the properties at 1629 - 1649 KLO Road Kelowna (**Figure 1**) that are owned by 0978221 BC Ltd and had been doing business as Better Earth Garden Centre. Copies of the leases are provided in **Appendix I**. Bylands submitted a nursery/greenhouse production plan to the City of Kelowna and received a business licence to operate a nursery/greenhouse and carry out farm gate sales to landscapers and the general public. **Appendix II** provides a copy of the 2023 business licence, and the 2024 business licence has been paid but not received yet.



Figure 1 Site Location

The site is in the Agricultural Land Reserve (ALR) and has been a garden centre since 2012. The site had a temporary non-farm use approval to sell soil, soil amendments and landscape rock on a 700 m² area (ALC File: 54508; Decision February 24, 2016). This permit was not transferrable and has lapsed.

Bylands are applying for a non-farm use on a small 179 m² outside area to sell soil amendments, topsoil and landscape rock to their customers (see photographs of the area provided in **Appendix III** and Site



Layout in **Appendix IV**). All materials will be brought from off site and there will be no composting taking place on the site. To be competitive with other garden centres in the area (that are also located within the ALR) it is important for Bylands to be able to sell decorative rock, soil and soil amendments to their customers. The 179 m² area that is proposed for the storage and selling of these products is in the same location that the previous owners used but with a much smaller footprint.

2.0 Adjacent Land Uses

The land surrounding the garden centre is a mix of residential and agriculture. The adjacent land uses are provided in **Table 1** and can be seen in **Figure 2**. Bylands leases the land directly south of the garden centre site which is being used for forage (alfalfa hay) and cut flower production.

Table 1 Adjacent Land Uses

Orientation	Zoning	ALR	Land use
North	RU3	No	Townhouses
	A1	Yes	Home and unused pasture
East	RU1	No	Residential
West	RU1	No	Residential
South	A1	Yes	Agriculture

2.1 Impacts on Surrounding Land

The proposed non-farm use of 179 m² will have no impact on surrounding agricultural production. The agricultural land directly south of the proposed non-farm use is leased by Bylands and will continue to be used for forage and cut flower production. The agricultural land to the north is separated from the Site by KLO road and there is a residential development and agriculture north of KLO Road. The land to the east and west is residential.



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Figure 2 Surrounding Land Uses

The site has been a garden centre since 2012 so there will be no significant increase in historical traffic.

To ensure that the residential properties are buffered from any visual or dust impacts of the soil bins, Bylands will install a vegetative buffer (red line indicating a hedge) along the east side of the property (**Figure 3**).



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This area has been cleaned up and all storage bins have been removed as can be seen in the photographs provided in Appendix III.

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Figure 3 Location of Vegetative Buffer (shown by red line)

3.0 Land Capability for Agriculture

In assessing the agricultural capability, McTavish used the BC Soil Information Finder Tool. The agricultural capability (before anthropogenic changes) is unimproved 7:4W~3:5WF and improved 7:2~3:3WF as seen in the Agricultural Capability Map provided in **Appendix V**.

Class 2 refers to land that is capable of production a wide range of crops. Minor restriction of soil or climate may reduce capability but pose no major difficulties in management.

Class 3 refers to land that is capable of production for a fairly wide range of crops under good management practices. Soil and/or climate limitation are somewhat restrictive.

Bruce McTavish, PAg visited the site and although detailed soil investigations were not carried out, based on visual observations, he agrees with the agricultural capability classification. The property south of the nursery site continues to be used for production of alfalfa forage (3.6 ha) and cut flowers (2 ha).



The structures, outdoor growing beds, sales area and parking that are part of the nursery/garden centre comprise approximately 1.4 hectares that have been previously modified and are at the northern end of the property as can be seen in **Figure 3** and the map provided in **Appendix V**. The proposed soil/rock storage and area is on the existing parking area adjacent to KLO Road as seen in the photograph provided in **Appendix III** and the site layout provided in **Appendix IV**.

4.0 Closing

We trust this is the information that you require at this time. Should you have any questions regarding this report please contact the undersigned.

Sincerely,



Bruce McTavish, MSc MBA PAg
Senior Agrologist
McTAVISH RESOURCE & MANAGEMENT CONSULTANTS LTD.
bruce@mctavishconsultants.ca

ATTACHMENT	C
This forms part of application # A24-0003	
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Appendix I. Copies of Bylands Property Lease

ATTACHMENT		C
This forms part of application		
# A24-0003		
Planner Initials	TC	City of Kelowna DEVELOPMENT PLANNING



**ASSIGNMENT, ASSUMPTION, and AMENDMENT OF LEASE
and LANDLORD'S CONSENT**

THIS AGREEMENT dated for reference March 10, 2023.

AMONG:

489299 ALBERTA LTD. (Access No. 20489299)
having a registered and records office located at
10012-101 Street
Peace River, Alberta T8S 1S2

(the "Assignor")

AND:

BYLANDS GARDEN CENTER LTD. (Inc. No. BC0221511)
having a registered and records office located at
221-3011 Louie Drive
Westbank, BC V4T 3E3

(the "Assignee")

AND:

WESTERN GLOBAL ENTERPRISES INC. (Inc. No. BC0679291)
having a registered and records office located at
Unit 1, 4205 27th Street
Vernon, BC V1T 4Y3

("Western")

SUNX-II ENTERPRISES INC. (Inc. No. BC1168527)
having a registered and records office located at
203-10190-152A Street
Surrey, BC V3R 1J7

("Sunx")

(Western and Sunx collectively the "Landlord")


ALAN WALISSER and CARMEN WALISSER, both of
1610 Marina Way
Kelowna, BC V1Z 4E1

(the "Covenantors")

WHEREAS:

- A. By a lease dated for reference July 1, 2016 (the "Lease") between Western as landlord, the Assignor as tenant, and the Covenantors as co-Covenantors, Western leased to the Assignor certain premises (the "Premises") legally described as follows and more particularly described in the Lease:
- BLOCK 57 DISTRICT LOT 131 OSOYOOS DIVISION YALE DISTRICT PLAN 186 EXCEPT PARCELS C AND D PLAN B1813 AND PLAN KAP78678

V5 – Nov 16, 2022

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- PARCEL A (DD 146178F AND PLAN B6796) OF BLOCK 58 DISTRICT LOT 131 OSOYOOS DIVISION YALE DISTRICT PLAN 186
("Parcel A")
 - PARCEL A (PLAN B1813) OF LOT 68 DISTRICT LOT 131 OSOYOOS DIVISION YALE DISTRICT PLAN 186
- B. Subsequent to the date of the Lease Parcel A was transferred to Sunx.
- C. Pursuant to an asset purchase agreement , the Assignor has agreed to sell and the Assignee has agreed to purchase all or substantially all of the assets of the Assignor in connection with the Assignor’s business of a garden center located at the Premises (the "Purchase Transaction").
- D. In connection with the Purchase Transaction, the Assignor wishes to assign the Assignor’s interest in the Lease and the Premises to the Assignee for the remainder of the Term.
- E. Clause 8.1 of the Lease contains a prohibition against assignment of the Lease or subletting of the Premises by the tenant without the tenant first obtaining the written consent of the Landlord, which consent the Assignor, the Covenantors, and the Assignee hereby request.
- F. The Assignee has requested that Western grant to the Assignor the right to extend the Term for an additional two 5-year periods (the "Extension Terms").

NOW THEREFORE in consideration of the covenants and consent contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agree as follows:

1. Defined Terms

Except as otherwise defined in this Agreement, capitalized terms used in this Agreement have the meanings ascribed to those terms in the Lease.

2. Tenant’s Covenants

In this Agreement, the expression "Tenant’s Covenants" means all obligations of a tenant of the Premises under the Lease or as may be established by law and, without limiting the generality of the foregoing, includes the obligation to pay Basic Rent, Additional Rent, and all other payments owing to the Landlord under the Lease, whether characterized as Rent or not, and all other obligations of a tenant under the Lease, whether expressed as conditions, covenants, provisos, representations, undertakings, or warranties.

3. Effective Date

In this Agreement, the expression "Effective Date" means August 1, 2023 or such later date of closing of the Purchase Transaction as agreed between the Assignor and Assignee.

ATTACHMENT		C
This forms part of application		
# A24-0003		
Planner Initials	TC	 City of Kelowna <small>DEVELOPMENT PLANNING</small>

4. Subject Condition

This assignment, assumption, and amendment of lease and landlord’s consent (this “**Agreement**”) shall be subject to the successful closing of the Purchase Transaction. If, for whatever reason, the Purchase Transaction does not close on or prior to December 31, 2023, this Agreement shall be of no force or effect.

5. Assignment

Effective on the Effective Date, the Assignor assigns to the Assignee all of the Assignor’s right, title, and interest in and to the Lease and the Premises, subject to payment by the Assignee of Rent reserved in the Lease and the observance and performance of the other Tenant’s Covenants.

6. Assignor’s Representations and Warranties

The Assignor represents and warrants to the Assignee that:

- (a) the Lease is good, valid, and subsisting and that the Tenant’s Covenants have been and will to the Effective Date be duly observed and performed by the Assignor;
- (b) the Assignor now has absolute authority to assign the Lease and the interest of the Assignor in the Premises in the manner aforesaid according to the true intent and meaning of this Agreement;
- (c) subject to payment of the Rent reserved in the Lease and observance and performance of the other Tenant’s Covenants by the Assignee, the Assignee may enter the Premises for the balance of the Term for its own use and benefit, without any interruption by the Assignor or any person, firm, or corporation claiming under it;
- (d) the Assignor’s interest in the Premises and the Lease is free and clear of all liens, charges, encumbrances and judgments of any nature or kind; and
- (e) the Lease has not previously been amended or assigned other than set out in this Agreement.

The Assignor further represents and warrants to the Assignee that the above representations and warranties shall be true and correct as of the Effective Date.

7. Assignor’s Indemnity

The Assignor indemnifies and will save harmless the Assignee from all actions, suits, costs, losses, damages, charges, and expenses for or in respect of the performance of the Tenant’s Covenants for the period up to the Effective Date.

8. Assignee’s Covenants

During the balance of the Term and the Extension Terms, the Assignee will:

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- (a) pay the Rent reserved at the times and in the manner provided in the Lease;
- (b) not assign the Lease or sublet or part with possession of the Premises or any part thereof without the prior written consent of the Landlord, requested and granted in accordance with the Lease;
- (c) perform all of the other Tenant's Covenants as if the Assignee was the tenant originally named in the Lease; and
- (d) indemnify and save harmless the Assignor and the Covenantors from all actions, suits, costs, losses, damages, charges, and expenses for or in respect of any breach by the Assignee of the Tenant's Covenants arising on and after the Effective Date.

9. Condition of the Premises

The Assignee has inspected the Premises and accepts the Premises as is and confirms that no representation has been made by any party that is not set out in this Agreement as to the terms of the Lease or the condition of the Premises or the suitability of the Premises for any purpose. In particular, neither the Landlord nor the Assignor has any responsibility in respect of any renovations, alterations, or improvements that the Assignee may require or desire in respect of the Premises.

10. Consent

The Landlord hereby consents to the assignment contained in this Agreement.

11. Limitation of Consent

The consent of the Landlord contained in this Agreement is restricted to the assignment provided in this Agreement, and the prohibition against the assignment of the Lease and further subletting or parting with possession of the Premises by the tenant under the Lease will otherwise remain in full force and effect; and the Landlord's consent in this Agreement will not be deemed to be a consent to or waiver of the requirement for the Landlord's consent to any further or other assignment of the Lease or subletting or parting with possession of the Premises or any part of the Premises.

12. No Waiver or Modification

Neither this consent, nor the assignment of the Lease by the Assignor, nor the payment of any money or the performance of any of the Tenant's Covenants by the Assignee will waive or modify in any respect any of the rights of the Landlord under the Lease. From and after the Effective Date all obligations of the Assignor and the Covenantors in respect of Tenant's Covenants that have not accrued or arisen before the Effective Date will be at an end, and thereafter only the Assignee will be responsible for performance of the Tenant's Covenants.

13. Landlord's Acknowledgments

The Landlord warrants and represents that:

ATTACHMENT C

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- (a) the Lease constitutes the entire agreement between the Landlord and the Assignor;
- (b) the Landlord currently holds \$4,000.00 as a security deposit for the performance of the Tenant's Covenants under the Lease; and
- (c) to the best of the Landlord's knowledge, the Lease is in good standing as of the date of this Agreement.

14. Rent Adjustment

Additional Rent under the Lease has been paid on the basis of the Landlord's estimate of the amounts that will actually be payable over the course of the Lease Year. The Assignee will be responsible for any Additional Rent that may be payable by the tenant under the Lease upon the Landlord making its annual adjustment for Additional Rent as provided for in the Lease, and the Assignee will be entitled to receive any overpayment of Additional Rent, whether made by the Assignor or the Assignee, in light of such annual adjustment. The Assignor and the Assignee agree to readjust as between themselves within 15 days of the Assignee making or receiving any amount on account of Additional Rent for the period preceding the Effective Date.

15. Sublease

Section 8.1 of the Lease shall be amended by deleting the reference to "Barry Kuipers". Barry Kuipers is no longer a subtenant and the Assignor indemnifies the Assignee from all matters in that respect. The Landlord acknowledges and expressly consents to the existing sublease of a portion of the Premises to Norval Holdings Ltd. (DBA Casa Verde Landscapes, Casa Verde Flower Farm and Casa Verde Farms) (the "Subtenant") pursuant to a sublease agreement dated October 31, 2017 and effective November 1, 2017 between the Assignor and the Subtenant (the "Sublease"), which Sublease has or will be assigned by the Assignor to the Assignee. The Assignor represents that the Sublease is, and will upon assignment be, unmodified, current and in good standing.

16. Notices

Any notice given in connection with this Agreement will be delivered to the respective addresses set out above or to such other address as any of the parties may designate in writing, and such notice will be delivered in accordance with Article 15 of the Lease.

17. Survival of Provisions

The provisions of the Lease will survive the execution and delivery of this Agreement and will not merge in this Agreement.

18. Further Assurances

Each party will, at all times hereafter at the request and cost of any other party, execute such further and other documents as such other party may reasonably require in order to evidence or give effect to the terms of this Agreement.

19. Extension Terms

Western hereby grants to the Assignee the right to extend the Term for the Extension Terms provided that the Assignee first gives Western written notice of its exercise of such right in accordance with, and otherwise on the provisions set out in, section 19 of the Lease.

There will be no further rights to renew the Lease or extend the Term with respect to Sunx and Parcel A.

20. Amendment of Lease

The Lease will be deemed to be amended with all necessary changes being made to incorporate and give effect to the provisions of this Agreement. Except as amended by this Agreement, the parties acknowledge that the Lease is unamended, and that, as amended by this Agreement, the Lease is in full force and effect, in accordance with its terms.

21. Enurement

This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, administrators, personal representatives, successors, and assigns.


22. Governing Law

This Agreement will be governed in accordance with laws applicable in the province of British Columbia, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of British Columbia.

23. Counterparts


This Agreement may be signed by original, electronically or by facsimile and executed in any number of counterparts, and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement.

[EXECUTION PAGE TO FOLLOW]

ATTACHMENT		C
This forms part of application		
# A24-0003		
Planner Initials	TC	 City of Kelowna <small>DEVELOPMENT PLANNING</small>

IN WITNESS WHEREOF the parties executed this Agreement as of the date first above written.

489299 ALBERTA LTD.
by its authorized signatory:


Alan Walisser (Mar 15, 2023 15:34 PDT)
Name: Alan Walisser
Title: Director

BYLANDS GARDEN CENTER LTD.
by its authorized signatory:

Maria Byland, Director

WESTERN GLOBAL ENTERPRISES INC.
by its authorized signatory:

Name:
Title:

SUNX-II ENTERPRISES INC. (Inc. No. BC1168527)
by its authorized signatory:

Name:
Title:


SIGNED, SEALED & DELIVERED
in the presence of:


Witness Signature (as to both signatures)

Print Name

Address

Occupation

} 
Carmen Walisser (Mar 15, 2023 13:54 PDT)
CARMEN WALISSER


Alan Walisser (Mar 15, 2023 15:34 PDT)
ALAN WALISSER

ATTACHMENT C
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A24-0003
Planner Initials **TC**

City of **Kelowna**
DEVELOPMENT PLANNING

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489299 ALBERTA LTD.
by its authorized signatory:

Name:
Title:

BYLANDS GARDEN CENTER LTD.
by its authorized signatory:

Mafia Byland
Mafia Byland, Director

WESTERN GLOBAL ENTERPRISES INC.
by its authorized signatory:

Name:
Title:

SUNX-II ENTERPRISES INC. (Inc. No. BC1168527)
by its authorized signatory:

Name:
Title:

SIGNED, SEALED & DELIVERED
in the presence of:

Witness Signature (as to both signatures)

Print Name

Address

Occupation

} _____
CARMEN WALISSER

ALAN WALISSER

ATTACHMENT <u> C </u>	
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by its authorized signatory:

Name:
Title:

BYLANDS GARDEN CENTER LTD.
by its authorized signatory:

Maria Byland, Director

WESTERN GLOBAL ENTERPRISES INC.
by its authorized signatory:

Name: **SASSAN FILSOOF**
Title: **PRESIDENT**

SUNX-II ENTERPRISES INC. (Inc. No. BC1168527)
by its authorized signatory:

Name:
Title:

SIGNED, SEALED & DELIVERED
in the presence of:

Witness Signature (as to both signatures)

Print Name

Address

Occupation

CARMEN WALISSER

ALAN WALISSER

ATTACHMENT C

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City of **Kelowna**
DEVELOPMENT PLANNING

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by its authorized signatory:

Name:
Title:

BYLANDS GARDEN CENTER LTD.
by its authorized signatory:

Maria Byland, Director

WESTERN GLOBAL ENTERPRISES INC.
by its authorized signatory:

Name:
Title:

SUNX-II ENTERPRISES INC. (Inc. No. BC1168527)
by its authorized signatory:



Name:
Title: Babak Filsoof, Director

SIGNED, SEALED & DELIVERED
in the presence of:

Witness Signature (as to both signatures)

Print Name

Address

Occupation

} _____
CARMEN WALISSER

ALAN WALISSER

ATTACHMENT C
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A24-0003
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Appendix II. City of Kelowna Business Licence



2023 BUSINESS LICENCE

THIS LICENCE MUST BE POSTED IN A PROMINENT LOCATION AT THE BUSINESS PREMISES.
THE FOLLOWING BUSINESS IS HEREBY LICENCED IN ACCORDANCE WITH
BUSINESS LICENCE AND REGULATION BYLAW NO. 7878

DESCRIPTION: **GARDEN CENTRE**

BUSINESS & MAILING ADDRESS:
**BYLANDS GARDEN CENTRE
1629 KLO RD
KELOWNA BC
V1W 3P6**

ACCOUNT NO: **4078679**

BUSINESS LOCATION:
1629 K.L.O. RD

ISSUED DATE: **Nov 27, 2023**
COVERS FROM: **Jan 01, 2023**
COVERS TO: **Dec 31, 2023**

LICENCEE:
**BYLAND, MARIA
BYLAND, MELANIE**


CONDITIONS:
**Only farm products produced on the farm can be sold (See
Section 11(3)(a) of the ALR Use Regulation)**

A Licence is not a representation or warranty that the licenced business or the business premises comply with the bylaws of the City or with any regulations or standards.

Please notify the Licence Department of any change of business, address or ownership, or discontinuation of business. Business Licences are non-refundable.

BYLANDS GARDEN CENTRE
1629 KLO RD
KELOWNA BC
V1W 3P6

Note: This has been renewed for 2024.

ATTACHMENT	C
This forms part of application # A24-0003	
Planner Initials	TC
 City of Kelowna DEVELOPMENT PLANNING	



Appendix III. Photographs of the Proposed Soil and Decorative Rock Storage and Sales Area




Photograph showing original soil storage area cleaned up and approximate location of proposed new storage area.

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Photograph showing the original soil and rock storage area cleaned up.





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 City of Kelowna DEVELOPMENT PLANNING	

Agricultural Land Capability Classification

1629 & 1649 K.L.O. Rd
Kelowna, BC V1W 3P3

(PID: 012637858; 012637882; 012637874)

LEGEND

-  Agricultural Capability
-  Property Boundary

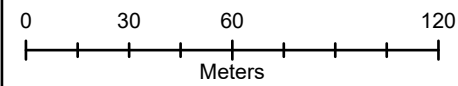
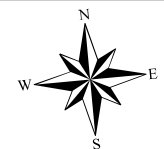
ATTACHMENT C
This forms part of application
A24-0003

Planner Initials TC



City of Kelowna
DEVELOPMENT PLANNING

LOCATION OVERVIEW



Scale: 1:2,200
Projection: NAD 1983 BC Environment Albers



Project ID: -
Project Description: KLO Rd Ag Capability
Created By: Carolina Costa-Giomi, P.Ag, GIT
Date Exported: 1/12/2024

Esri Canada, Esri, TomTom, Garmin, SafeGraph, METI/NASA, USGS, EPA, USDA, NRCan, Parks Canada, Esri, NASA, NGA, USGS, Kelowna McElhanney, RDCO, Maxar

**Unimproved Capability Classification:
7:4W~3:5W**

**Improved Capability Classification:
7:2~3:3WF**



City of
Kelowna

A24-0003

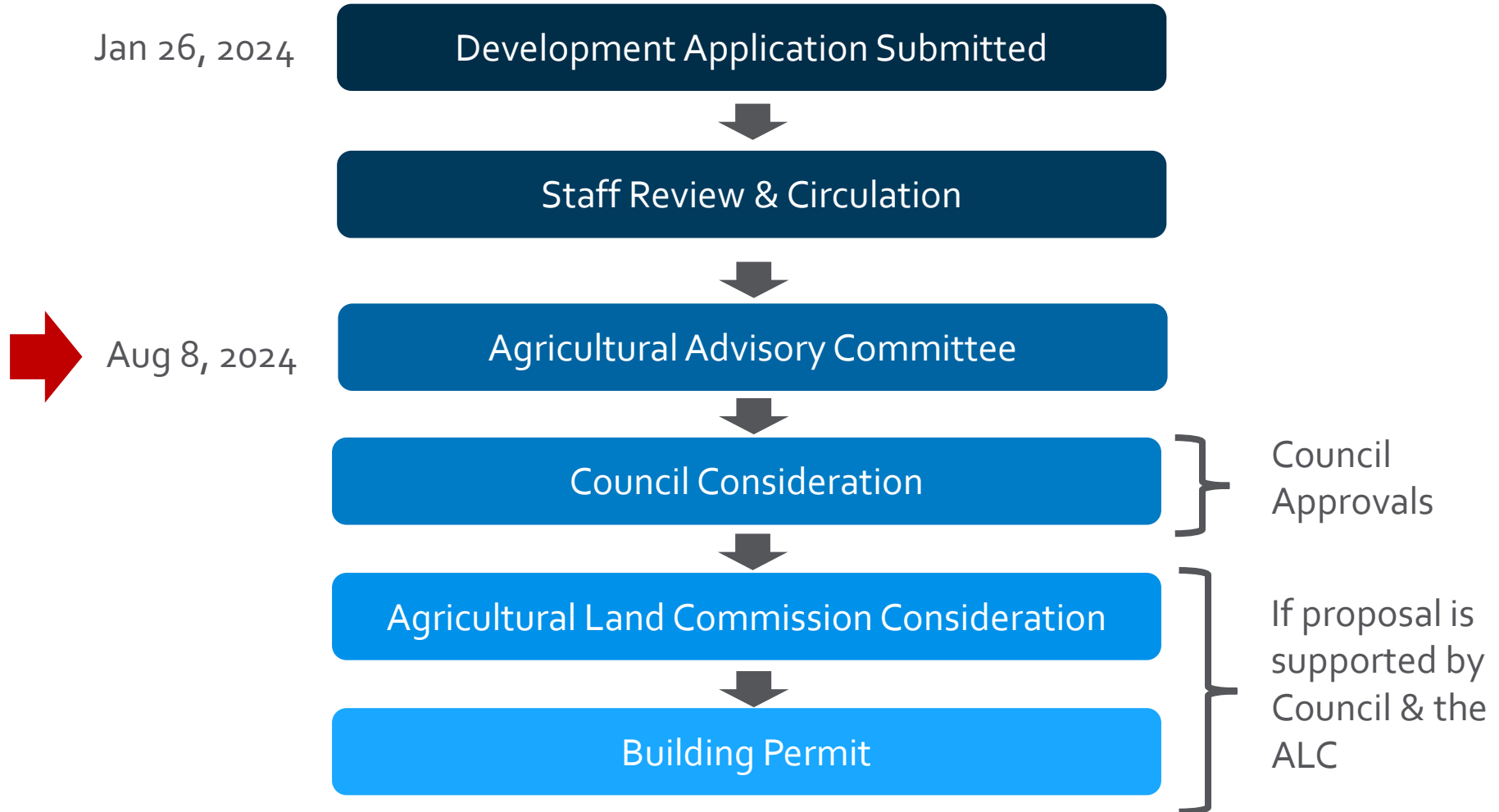
1629 KLO Rd

ALR Application for a Non-Farm Use Application

Proposal

- ▶ To consider an application to the Agricultural Land Commission (ALC) for a non-farm use to allow for the sale of landscaping and non-farm products.

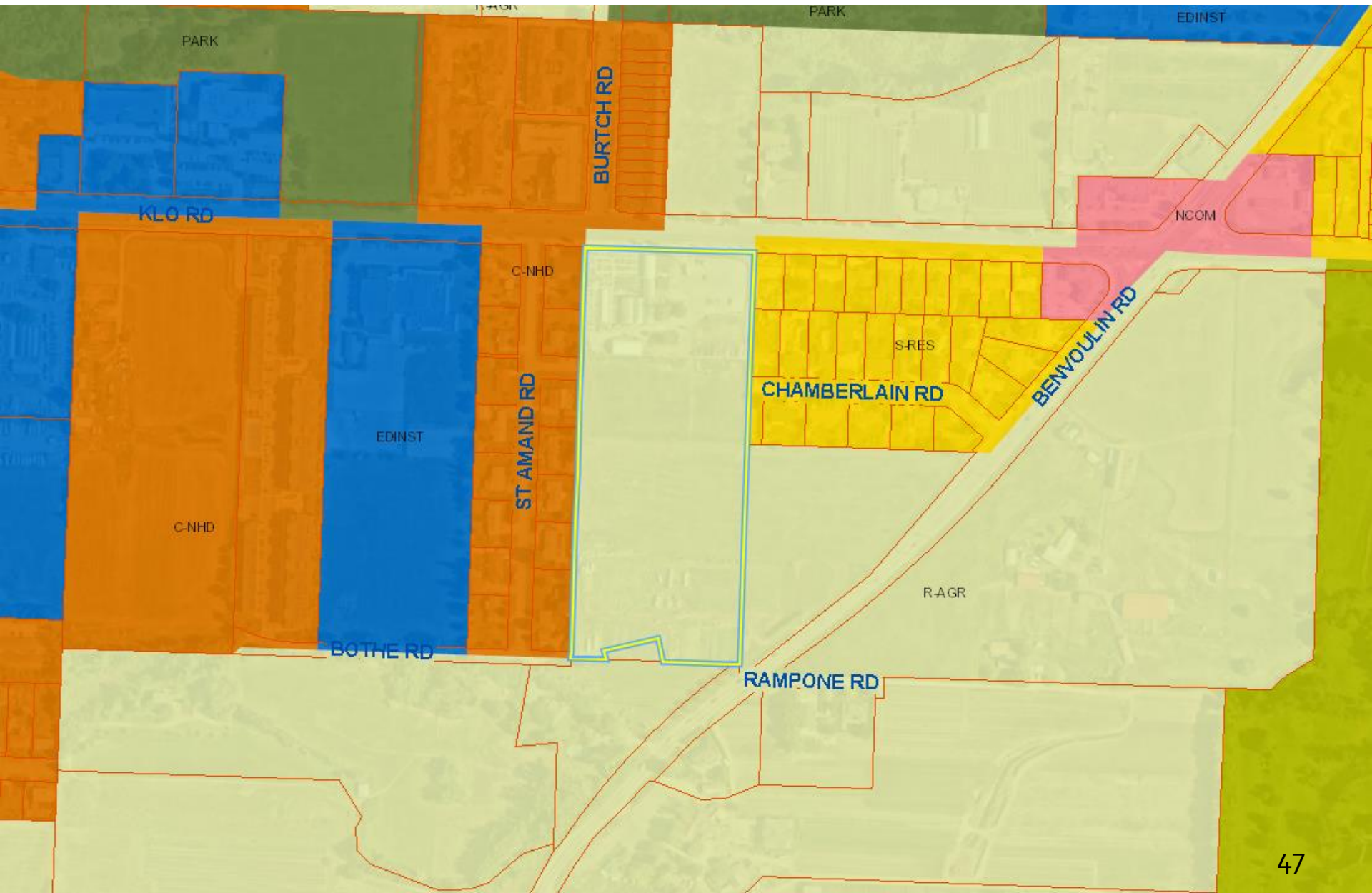
Development Process



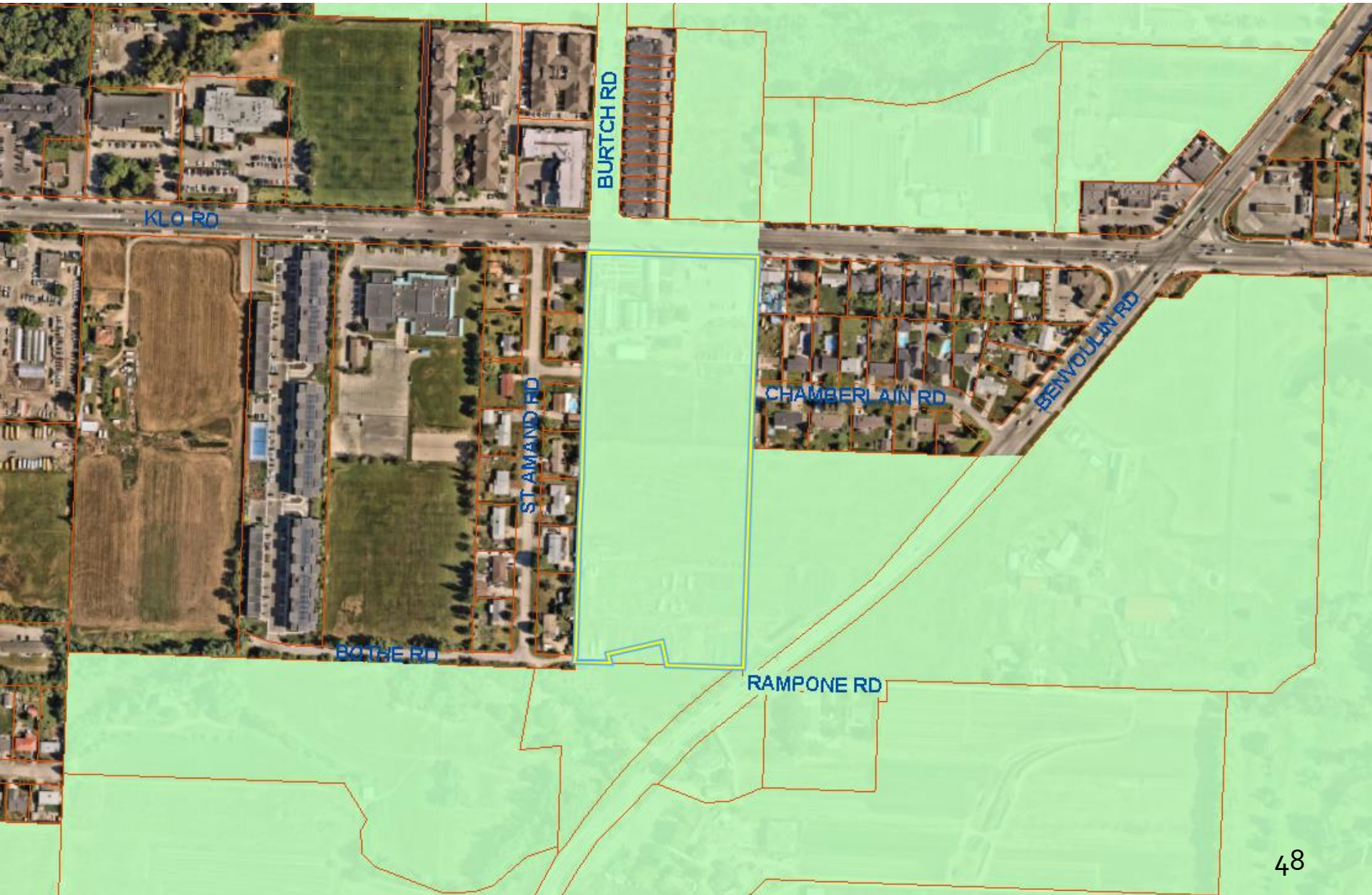
Context Map



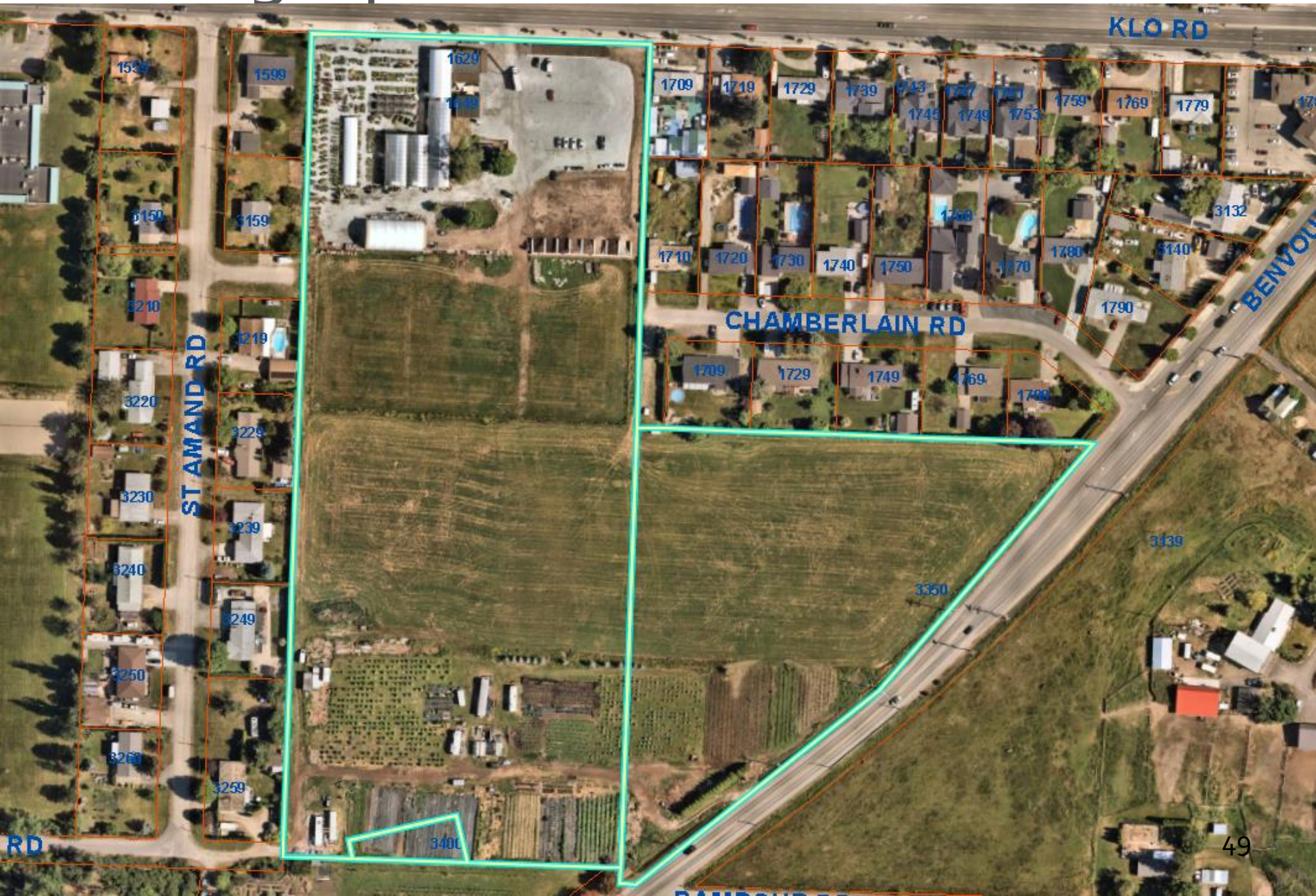
OCP Future Land Use / Zoning



Agricultural Land Reserve



Farming Operation



Aerial View



Site Photos



Approximate location of
179 m² soil/rock storage

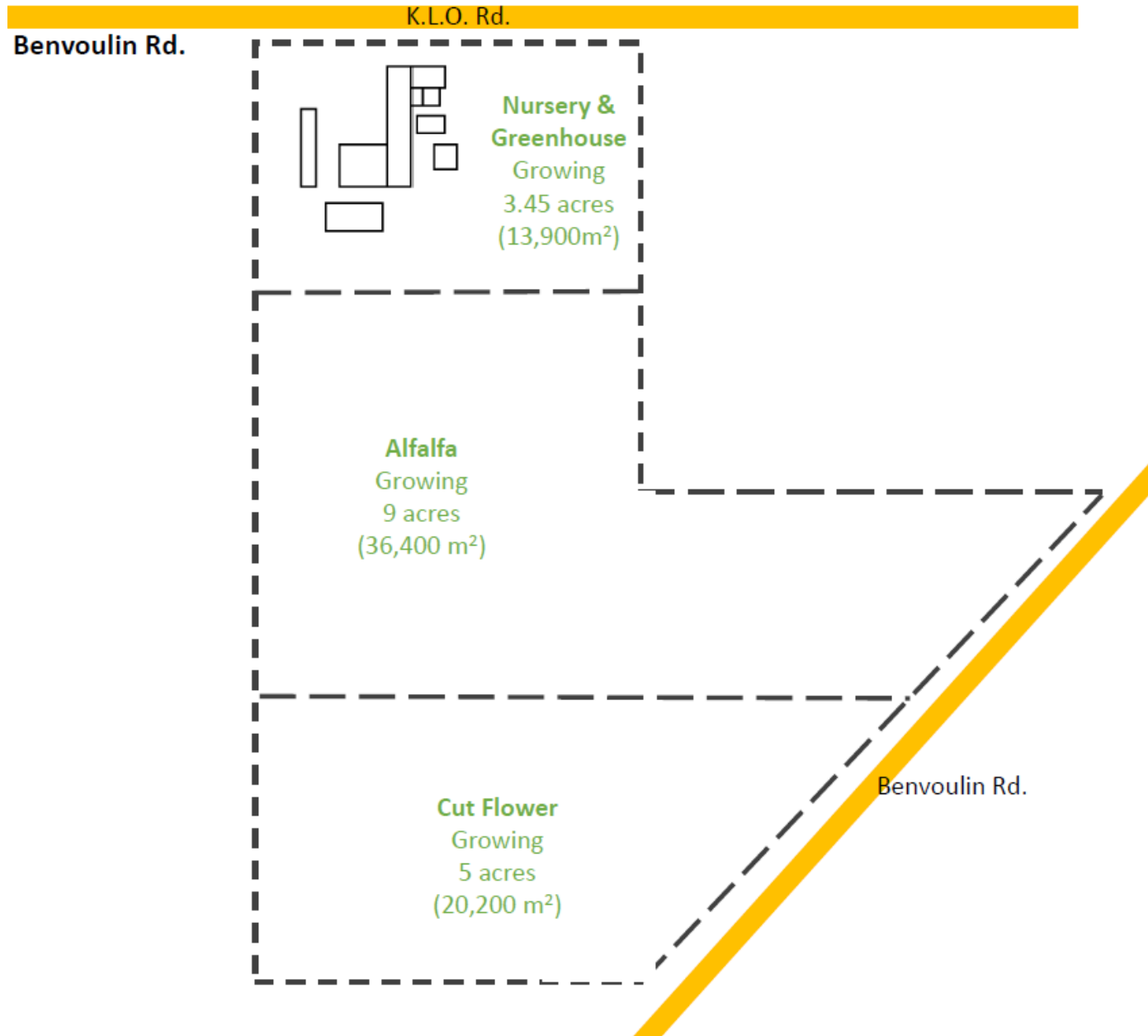
Background

- ▶ A previous non-farm use application was applied for in 2015;
 - ▶ This allowed for previous nursery business to operate from 2016-2019 through an approved Temporary Use Permit.
- ▶ In August 2023, Bylands was approved a new Business Licence (BL) for the operation as it conformed;
- ▶ In April 2024, the City issued a letter indicating that Bylands was no operating within the condition of their BL.
 - ▶ The letter indicated that a non-farm use application was required.

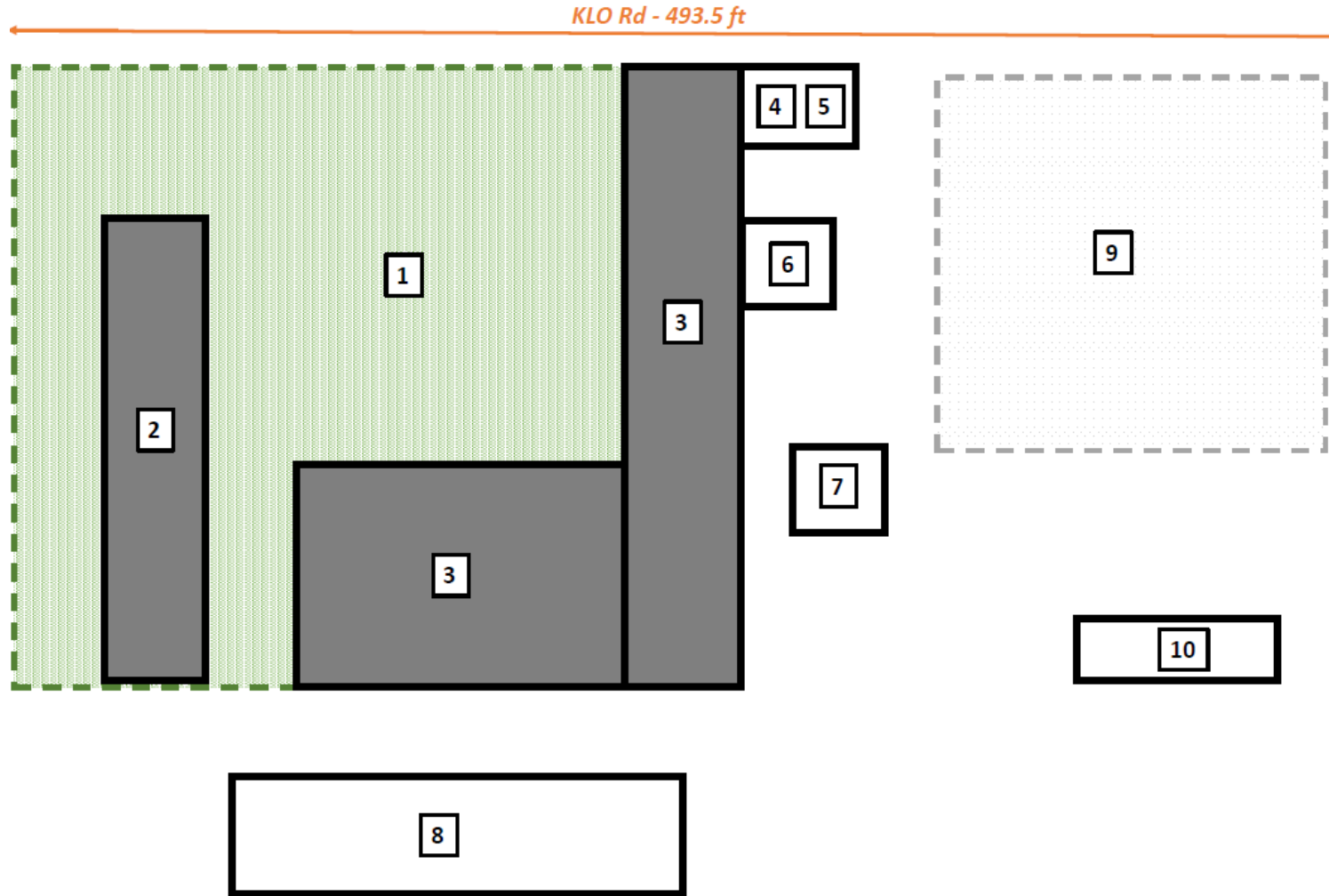
Project Details

- ▶ The applicant is seeking permission to allow for the sale of soil, soil amendments, and decorative rock in 179 m² concrete corrals;
- ▶ A Non-Farm Use is required for the applicant to sell products not produced on-site that exceed the 150 m² area.
- ▶ If approved, a Text Amendment is required to go back to Council.

Site Plan



Site Plan



Non-Farm Use Applications

- ▶ Official Community Plan provides support for non-farm use applications where the proposal meets:
 - ▶ i. Are consistent with the Zoning Bylaw and the 2040 OCP;
 - ▶ ii. Provide significant benefits to local agriculture;
 - ▶ iii. Do not require the extension of municipal services;
 - ▶ iv. Will not utilize productive and agricultural lands;
 - ▶ v. Will not preclude future use of lands for agriculture; and,
 - ▶ vi. Will not harm adjacent farm operations.

AAC Recommendation

- ▶ Request for AAC to provide a recommendation for Council of either support or non-support.
- ▶ Following the meeting the application will be forwarded to Council.



Conclusion of Staff Remarks

4. ALC Decisions Update - 982 Old Vernon Rd. A19-0018

May 30, 2024

ALC File: 58053

Manraj Kandola
DELIVERED ELECTRONICALLY

Dear Manraj Kandola:

Re: Reasons for Decision - ALC Application 58053:

Please find attached the Reasons for Decision of the Okanagan Panel for the above noted application (Resolution #334/2024). As the agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with section 11(2)(b) of the ALR General Regulation.

Under section 33.1 of the *Agricultural Land Commission Act* ("ALCA"), the Chair of the Agricultural Land Commission (the "Commission") has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
 - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or

- Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

Please direct further correspondence with respect to this application to ALC.Okanagan@gov.bc.ca

Yours truly,



Dimitri Giannoulis, Land Use Planner

Enclosures: Reasons for Decision (Resolution #334/2024)
 Schedule A: Decision Map

cc: City of Kelowna (File: A19-0018). Attention: Barb Crawford

58053d1



AGRICULTURAL LAND COMMISSION FILE 58053
REASONS FOR DECISION OF THE OKANAGAN PANEL

Non-Farm Use Application Submitted Under s.20(2) of the *Agricultural Land Commission Act*

Applicants: Jeetender Kandola
Manraj Kandola

Agent: Manraj Kandola

Property: Parcel Identifier: 012-206-687
Legal Description: Lot 3, Section 1, Township
23, Osoyoos Division Yale District, Plan 546
Civic: 982 Old Vernon Road, Kelowna, BC
Area: 4.04 ha (entirely within the ALR)

Panel: Gerald Zimmermann, Okanagan Panel Chair
Joe Deuling
Erin Carlson

OVERVIEW

- [1] The Property is located within the Agricultural Land Reserve (“ALR”) as defined in section 1 of the *Agricultural Land Commission Act* (“ALCA”).
- [2] Application 58053 relates to the historical Russo Sawmill (the “Sawmill”). The Sawmill began operations in the 1950s and expanded over time. The Applicants purchased the Property in 2005 and closed the Sawmill, at which time a considerable amount of wood waste from the Sawmill was stockpiled on the Property. The majority of the historic wood waste has since been removed or burned; however, some remains and new materials have been placed on the Property since the closure of the Sawmill. Presently, two commercial operations use the Property: TNT Trucking Services (“TNT”) and A1 Tree Services (“A1”). Ryan Nixon is the owner and operator of TNT.
- [3] The Applicants are applying to the Agricultural Land Commission (the “Commission” or “ALC”) under section 20(2) of the ALCA to continue various non-farm uses on the Property temporarily (for six years), with the Property being reclaimed for agriculture (soil bound or not) and all non-farm uses ceasing at the end of six years. The uses for which approval is sought are:
- Soil blending: the grinding, screening, sorting, piling, mixing, and decomposing of historic mill wood waste, new wood chips and yard waste, and sand, to create soil products for commercial sale, including for agricultural purposes.

- Importing new wood chips and green waste onto the Property for soil blending.
- Importing boulders, rocks, and gravel onto the Property for sorting and crushing into commercial aggregate products.
- Importing sand for soil blending.
- Vermiculture composting (using red wiggler worms).
- Parking vehicles and equipment for TNT to conduct the above uses on the Property.
- Parking vehicles and equipment for TNT to conduct other commercial/industrial uses off the Property (e.g. hauling, road snow clearing).
- Maintenance on TNT's vehicles and equipment.
- Parking vehicles and equipment for A1 to conduct arborist/landscaping work off the Property.
- Office space on the Property to support the above.

Additionally, the Applicants seek to retain unauthorized fill that has been placed as a berm along the north edge of the Property. Collectively, the above constitutes the "Proposal".

[4] The Proposal was considered in the context of the purposes and priorities of the Commission set out in section 6 of the ALCA:

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; and,
- (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.

EVIDENTIARY RECORD

[5] The Proposal, along with related documentation from the Applicants, Agent, local government, third parties, and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision.

[6] The Panel conducted a walk-around and meeting site visit on December 6, 2023 in accordance with the *ALC Policy Regarding Site Visits in Applications* (the “Site Visit”). A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications*. The site visit report was certified as

accurately reflecting the observations and discussions of the Site Visit by the Agent on January 22, 2024 (the “Site Visit Report”).

BACKGROUND

- [7] Four properties have historically been related to the Sawmill, which in the Application Package may be referred to as Lot 1, 2, 3, or 4 based upon their legal description lot numbers. Lot 3 is the only lot for which non-farm use approval is sought in this Application.
- [8] The Sawmill building itself existed on Lot 2 (1040 Old Vernon Road – the adjacent parcel to the east), but sawmill-affiliated storage and operations expanded onto all four Lots over time, including the Property (Lot 3). The Sawmill began operations in the 1950s; under section 23 of the ALCA, the Sawmill was able to continue operating within the use and extents it had had prior to the enactment of the ALR in 1972, but by 1985 the Sawmill expanded beyond its historical extents onto adjacent Lots, becoming non-compliant.
- [9] In 1985, ALC application 19519 was submitted to expand the footprint of the sawmill facility and allow the storage of logs, lumber, and sawdust on a 1.7 ha portion of the Property, which was approved under ALC Resolution #993/85. In 1997, the Commission became aware that the sawmill operations had expanded beyond the approved extents and enforcement ensued.

- [10] In 2000, Application 33623 was submitted by the Russo's (the original sawmilling family) to use all the Property and Lot 2 for a "sawmilling, wood waste recycling/composting, and pallet recycling" operation. Application 33623 was approved under ALC Resolution #437/2000, subject to conditions, including the agricultural reclamation of Lot 1, and that a fence be built to the east, north, and west.
- [11] In correspondence dated January 25, 2007 (the "2007 Chair Letter"), in response to an inquiry from McColman and Sons Demolition Ltd., the Chair of the Commission noted, "The ALC considers the processing and recycling of construction wood, metal, concrete and trees to be largely consistent with the sawmill/wood recycling non-farm uses permitted by Resolution #437/2000. In addition, the Commission confirms that the financial security to be adequate to complete a 6 ft high chain link fence on the west, east and north boundaries of the facility. Finally, the Commission confirms that the adjoining Lot 1, Plan 546 has been reclaimed to an agricultural standard as required by Resolution #437/2000. In view of the above, the Commission considers all of the conditions of Resolution #437/2000 to be substantially complete..." The financial security, which had been in the amount of \$30,000, was released in 2018. The Panel notes that it observed on the Site Visit that a portion of the fencing along the western boundary of the Parcel is missing.
- [12] The Applicants, who purchased the Property in 2005, closed the Sawmill, at which time ~122,330 m³ of wood waste was stockpiled on the Property. Based on the 'Land Capability Assessment' from Valhalla Consulting Inc.

dated January 9, 2013, in 2006, the Applicants paid for a controlled curtain burner for three months to eliminate wood waste; from 2008-2011, Better Earth Products screened wood waste and took it to a cogeneration plant, until it was no longer accepted. As of 2012, there was approximately 23,000 m³ of wood waste remaining on the Property.

[13] In 2013, application 53295 was submitted by the Applicants to exclude the entire Property from the ALR based upon its historical sawmill use causing what was submitted to be low suitability for agriculture. The Commission considered that the Property historically had a sawmill use, and that after 2005 the Applicants made efforts to remediate the Property, but that fully rehabilitating the Property was claimed to be prohibitively expensive. The Commission refused the exclusion by Resolution #92/2014 on the grounds that reclamation or improvement of the Property is possible to an extent, and that even without full reclamation, non-soil bound agriculture is possible. The Commission also noted that the Property is within an agricultural area and surrounded by ALR land, so the exclusion of the Property could impact the area and lead to further exclusion or non-farm use applications. An application for judicial review of Resolution #92/2014 was refused.

[14] Subsequently, TNT Trucking Services (as defined above, TNT) and A1 Tree Services (as defined above, A1) have been operating on the Property as lessees. A1 has brought green waste onto the Property to be mixed with the historic wood waste for the purpose of soil blending.

[15] A topographic survey from June 2020 measured ~11,114 m³ of mill waste in piles but did not appear to consider below-grade volumes. On the Site Visit, Ryan Nixon of TNT estimated that there is ~19,114 m³ of historic wood waste remaining in total. Upon the request of the City of Kelowna for more information, the Applicants supplied a January 4th, 2023, letter from agrologist Catherine Piedt (the “Jan. 4th Piedt Letter”), which provided volumetric estimates on 11 types of “waste wood and soil required for restoration” (e.g., wood pile, green waste, tailings, etc.) totaling 78,738 m³ of material piles on the Property. The Jan. 4th Piedt Letter used pile measurements (width x length x height) to estimate volume, except a visual estimate of 30,583 m³ for the “Below grade materials”, which is not specific about the type of material, but may include historic wood waste.

- [16] Public correspondence from five individuals was collected by the City of Kelowna and forwarded to the ALC with concerns about the state of the Property and its operations, with concerns including:
- Nuisance: unsightliness, noise (day and night), dust, noxious weeds (including from the berm), truck/industrial vehicle traffic.
 - The hauling/dumping of wood products and non-compostable material.
 - Non-compliant uses of the Property for trucking and commercial operations.
 - Doubts over the remediation that has occurred or is proposed to occur.

- Possible/unknown soil, water, and air pollution from materials brought onto the Property and from vehicle maintenance performed on the Property.
- Flooding on adjacent parcels, leading to orchard tree damage.

[17] Further public correspondence was sent to the ALC directly with concerns. The Commission has directly received three pieces of public correspondence from the same individual (November 13th and 20th 2023, and February 29th, 2024), with additional concerns including:

- The piles of debris and levels of industrial work have greatly increased since 2014.
- Concern over a lack of temporal or financial commitment from the Applicants for reclamation, a lack of commitment for future agriculture, and unclear commercial/industrial intentions.
- Wood debris being placed on the Property by companies other than A1.
- Concerns that some of the types of materials accepted by TNT are hazardous and not suitable for composting.
- The activities on the Property are encouraging surrounding parcels to conduct similar non-farm activities.
- Concerns regarding a Ministry of Environment and Climate Change Strategies (“Ministry of Environment”) ‘warning letter’ sent to TNT.
- Concerns regarding a ‘toxicity test analytical report’ from September 2008.

[18] All the public correspondence described above is included in the Application materials.

[19] A warning letter from the Ministry of Environment was issued to TNT dated November 8, 2023, regarding unauthorized discharge on the Property (the “MOE Letter”). The MOE Letter explains:

- On October 10th, 2023, Ministry of Environment staff conducted an on-site inspection of the soil screening and blending operation located at 982 Old Vernon Road.
- TNT has discharged waste without a valid authorization, which is an offence under the *Environmental Management Act* (“EMA”).
- The Ministry of Environment requests that TNT corrects the non-compliance; failing to do so enforcement may be taken.
- Yard waste and wood residue are considered waste and must be managed in accordance with the EMA.
- Leachate was observed originating from these piles to the ground.
- It has not been determined by a qualified professional that the base of the facility is impermeable clay.
- “Actions to be taken: TNT must apply for a waste discharge authorization with the Ministry of Environment”.

ANALYSIS AND FINDINGS

The ALCA and *Environment Management Act (EMA)*

[20] As described above, the MOE Letter states: “Actions to be taken: TNT must apply for a waste discharge authorization with the Ministry of Environment”. As reflected in the Site Visit Report, TNT is awaiting the Commission’s decision on this Application before applying to the Ministry of Environment for waste discharge authorization.

[21] The Panel notes that neither an active ALC application process nor an approved application relieves an operator from complying with the EMA.

[22] Further to sections 2 and 31 of the ALCA, a person conducting an activity on ALR land is subject to the ALCA and any orders of the Commission, as well as any requirements under the EMA. The Applicants, and those operating on the Property, must comply with both the ALCA and EMA and must not engage in activities prohibited under those statutes unless or until all applicable requirements are met. A permitted or approved use in the ALR does not relieve the owner or occupier of the responsibility to comply with applicable Acts (such as the EMA), regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[23] The Panel also acknowledges public correspondence that was received with concerns about pollution to the soil and groundwater from soil blending and vehicle maintenance activities. The correspondence included an 'Analytical Report' from Bodycote Testing Group dated September 30, 2008, billed to the City of Kelowna. The Analytical Report included notes that several substances sampled at the Property and 1040 Old Vernon Road were measured to be "over [the] guideline". Also, there is a public correspondence concern that TNT has brought on hazardous material unsuitable for composting. The Panel reviewed the report; however, the Panel notes that the report is from 2008 (16 years old at the time of this decision). Further, however, and more fundamentally, compliance and enforcement in relation to the EMA is the jurisdiction of Ministry of Environment, rather than the ALC, and these concerns should be directed to the Ministry.

The Uses of the Property

[24] The Panel's understanding of the state of the Property and the uses occurring is based upon Application as well as observations and discussion at the Site Visit. The Property includes three general areas: the residential area, the parking area, and the soil blending area. The latter two are predominantly non-farm use areas. The residential area includes a principal residence fronting Old Vernon Road where no non-farm uses occur. The parking area includes personal vehicles, vehicles and equipment for TNT and A1, the office structure, part storage, a vehicle scale (needing repair), and the coverall structure for vehicle maintenance. The soil blending area

includes piles of varying sizes and compositions of materials, relatively sorted and separated. Piles of materials include large-diameter logs, rocks/boulders, sand/gravel, historic wood waste, mixed “tailings” (mixed branches, logs, stumps, rocks, gravel, and debris), fresh green waste from A1, and vermiculture soil mixture piles.

- [25] As per the Site Visit Report, Mr. Nixon of TNT explained the material processing operations on the Property:
- Operations include grinding, screening, decomposing, and sorting.
 - A magnet is used to separate metal.
 - Excavation of the historical wood waste has occurred on the Property down until natural clay is reached, typically two feet below the previous grade.
 - The “tailings” pile on the Property includes coarser pieces of wood, rocks, and “garbage” and is roughly 7,000-10,000 cubic yards (5,352-7,646 m³).
 - The pile has been partially screened but requires further sorting by hand to remove debris.
 - For vermiculture, TNT uses worms to decompose material into worm castings: a valuable fertilizing soil input.
 - The end products of the soil blending and material processing operations on the Property include subsoil/fine aggregate, topsoil, and worm castings, which have been sold to homeowners, schools, and farms.

- The blending ratio for the primary soil product is relatively equal parts sand, subsoil, topsoil, and biomass; the biomass is relatively equal parts new green waste from A1 and historical wood waste. TNT states that the historical wood waste comprises ~10-15% of the final soil product.
- Since the historical wood waste only comprises a portion of the final product, materials have been required to be brought onto the Property for processing and blending the historical wood waste.
- Vehicle maintenance occurs on the Property in the covered tent structure to keep vehicles and equipment operating, while saving costs and time from having the work done elsewhere.

[26] As per the Site Visit Report, Mr. Nixon explained that TNT also offers offsite commercial services: trucking, hauling, snow plowing and demolition services. The vehicles and equipment used for the other services are parked on the Property. Mr. Nixon says that for the economic viability of the company, and therefore so that the reclamation work on the Property may continue, these other sources of revenue have been necessary.

[27] Offsite, A1 performs tree removal and grinding services. On the Property, A1 places new green waste, but is not involved with the main soil blending operation and would not be directly involved with the reclamation. A1 parks vehicles and equipment in the parking area.

- [28] The Panel finds that the above commercial uses of the Property are not permitted uses in the ALR Use Regulation. As such, the Applicants properly applied for permission for the uses in the Proposal, as in the absence of Commission approval on an application, they could not be undertaken.
- [29] In evaluating which of the uses applied for should be approved, the Panel was mindful of the kinds of uses for which the Commission historically gave approval, namely in Resolution #437/2000 (as further interpreted and applied in the 2007 Chair Letter). These are informative in part given that some historic wood waste, an earlier consideration, remains and its presence remains a detriment to the agricultural suitability of the Property. This said, circumstances have changed since 2007. Resolution #437/2000 and the 2007 Chair Letter were done in a different context: either prior to or immediately after the closure of the Sawmill, when substantially more historic wood waste existed on the Property, and as part of a different configuration of proposed uses. Further, the fencing condition of Resolution #437/2000 is no longer fully complied with. Properly, the Applicants made the Application covering both uses that may have been appropriate in that earlier context and the expanded uses in which they have engaged or wish to engage, with the Commission's decision on this Application to supersede any prior approvals to the extent they still had any force or effect.
- [30] Of the uses applied for as part of the Proposal, the Panel finds the following to be consistent with the prior approval. While that in itself would not be determinative given the above, in all the circumstances the Panel grants

approval for those uses (except to the extent they involve the import of the categories of material listed in section 36 of the ALR Use Regulation) for the periods and subject to the conditions set out later in this decision. The Panel does so given both the continued issues to which the remaining historic wood waste gives rise, and the Applicants' intention to reclaim the Property for agriculture and ultimately cease all non-farm uses. For the periods the Panel sets out and subject to conditions, these uses continue to make sense pursuant to section 6 of the ALCA:

- Soil blending (grinding, screening, sorting, piling, mixing, and decomposing of historic mill wood waste, new wood chips and yard waste, and sand, to create soil products for commercial sale, including for agricultural purposes), since it involves breaking down the historic wood waste into a soil product, and involves the processing and recycling of trees, wood, and subsoil materials.
- The import of materials (including wood chips, topsoil, and sand, but not unchipped lumber or wood waste or any other material in the categories listed in section 36 of the ALR Use Regulation as Prohibited Fill) onto the Property for soil blending and processing. The Panel notes that the inquiry giving rise to the 2007 Chair Letter described receiving materials onto the land for processing.

[31] At the Site Visit, Ryan Nixon explained that materials have been required to be imported onto the Property for processing and blending to make a sellable product from the historic wood waste.

- [32] The Commission must give priority to protecting and enhancing the size, integrity and continuity of the ALR; and use of the ALR for farm use. With that in mind, the Panel is interested in the eventual reclamation of the Property that makes the land available for agricultural use (either soil bound or non-soil bound) and thereby strengthens the integrity and continuity of the ALR and farm uses in the area. For this reason, the Panel supports the importation of some new material that enables that processing and soil blending in the interest of removing material from the Property, and will allow the import of material for soil blending and vermiculture composting (which are activities that involve the processing of the historic wood waste), other than where the material is in a category listed in section 36 of the ALR Use Regulation.
- [33] The Panel is aware of the concerns regarding noise, dust, and unsightliness related to the soil blending and non-farm use operations on the Property. The Panel understands that operations with heavy equipment may create a degree of nuisance even when local bylaws and best practices are respected. Although the activities in support of processing and removing materials from the Property may include some noise, dust, and unsightliness, the activities are in the interest in resolving those concerns in the long-term and are necessary for the improvement of land within the ALR and encouraging farming.
- [34] A concern was raised in the public correspondence about companies other than A1 bringing material onto the Property. The non-farm use approval

granted under Resolution #437/2000 was not restrictive on who could place material on the Property, or where the material should be sourced from, only the general type of material. The main concern of the Panel is the type and appropriateness of any material placed on the Property, not the entity who places it, so long as it is authorised by TNT or the Applicants, and thoroughly inspected to be clean and appropriate.

[35] Section 36 of the ALR Use Regulation, 'Prohibited Fill', lists categories of materials that must not be used as fill on agricultural land, including but not limited to: demolition waste (including concrete and wood waste), treated wood, and unchipped lumber. Section 36 of the ALR Use Regulation came into force and effect on February 22, 2019, after Resolution #437/2000 which allowed wood waste recycling. The uses that the Applicants ask be allowed in the Proposal include that A1 would place wood chips and "green waste" on the Property for soil blending. Given this decision is being made in the context of section 36, the Panel finds that no material in any of the categories listed in section 36 (including unchipped lumber and wood waste) may be imported onto the Property from the date of this decision moving forward, even for the purpose of soil blending. For clarity, however, all materials already on the Property at the time of this decision (including if in a category listed in section 36) may be processed and removed from the Property.

[36] TNT and the Applicants are responsible for ensuring that any material to be placed on the Property is clean, and of a type permitted within this decision.

[37] For additional clarity, (a) any uses that were approved in Resolution #437/2000 or Resolution #993/85 that are not expressly approved by the Panel in this decision, are no longer permitted on the Property as of the date of this decision, and (b) the uses that are approved by the Panel in this decision may only occur subject to the conditions of this decision being met.

[38] So far in this portion of the decision, the Panel has addressed elements of the Proposal that may overlap with uses permitted in prior Commission decisions. The Panel now turns to certain other elements of the Proposal that are not consistent with previously approved uses, namely:

- The parking of vehicles and equipment or use of an office for TNT or A1 to conduct commercial/industrial uses off the Property (e.g. snow clearing or tree removal); commercial/industrial parking for offsite work was not earlier contemplated by the Commission.
- The berm created on the Property with unauthorized fill placement.
- Vehicle and equipment maintenance.

[39] Each of the above-proposed uses is considered below.

[40] TNT parks equipment and vehicles on the Property for offsite work including snow removal from roads, hauling, and demolition services. Some of the equipment is used for onsite and offsite work, while some is only used for offsite work. As noted in the Site Visit Report, "Mr. Nixon says that for the economic viability of the company, and therefore so that the reclamation

work on the Property may continue, these other sources of revenue have been necessary.” The Panel notes that generally, parking commercial/industrial vehicles and equipment within the ALR is a non-farm use that is inappropriate because it discourages agriculture and is more appropriately located in industrially zoned, serviced, and designated areas.

[41] This being said, the Panel finds that it is reasonable that heavy machinery and some vehicles and structures may be required to complete the approved uses, and not removed from the land each day. The 2007 Chair Letter itself seemingly supported the addition of an office trailer raised in the inquiry to which the Chair responded.

[42] Regarding vehicles/equipment used for offsite work only:
The Panel finds that vehicles/equipment not involved in reclamation/soil blending, such as snowplows, should be removed because they are not involved in the processing of the wood waste. In order to provide time to relocate the vehicles, the Panel will allow any vehicles/equipment used solely for offsite commercial work to remain on the Property for one year from the date of this decision, but no longer than that.

[43] Regarding vehicles/equipment used for onsite and offsite work:
The Panel finds it reasonable that some equipment and vehicles would be used by TNT both for reclamation/soil blending work and for offsite work. The Panel understands that it may be impractical and impede the reclamation and soil blending work if equipment used onsite and offsite was

immediately forced to be parked elsewhere. Particularly considering the time-limited nature of the approval given, the Panel is amenable to allowing TNT to park its vehicles and equipment that are used for onsite and offsite work for three years from the date of this decision.

[44] However, considering that large equipment can have physical impacts on the land (such as compaction of soil), vehicle and equipment parking even if otherwise permitted by this decision may only occur on a limited portion of the Property, as identified in Schedule A.

[45] The Panel also considered if A1 should be permitted to park its vehicles and equipment on the Property for offsite work. A1 deposits wood chips and green waste which are used with the soil blending operation to process the historic wood waste. The basis for the Panel allowing TNT to park their vehicles and equipment is because the equipment is multi-purpose, and because TNT is doing the soil blending. Since that is not the case for A1, the Panel finds that no exception should be granted to A1 and as such it is not amenable to A1 parking its vehicles or equipment on the Property; this is consistent with the general principle that commercial/industrial equipment parking within the ALR is not appropriate. For clarity, however, the Panel notes that A1 may continue to bring onto the Property further wood chips and green waste, so long as done in accordance with this decision and all applicable regulations, including section 36 of the ALR Use Regulation (e.g. no construction wood waste or unchipped lumber).

- [46] The Panel understands that the existing office trailer could be used to support the onsite and offsite work of A1 and TNT. The Panel finds it to be appropriate for the office to be used to support operations that are permitted by this decision, namely that of TNT. However, for the same reasons that parking of vehicles or equipment by A1 is not permitted, the office trailer may not be used by A1.
- [47] The Panel understands that the maintenance of vehicles and equipment for the permitted use may be required from time to time. The Panel notes that maintenance activities must be done in a manner that does not negatively impact the land and must abide by all conditions of this decision and all other Acts and authorizations, including the EMA.
- [48] The Panel considered the existing berm placed near the northwestern corner of the Property. The berm appears to be over two metres tall. The Panel understands that the visual state of the Property is unpleasant, with many piles of materials, and heavy equipment. The Panel also understands that heavy equipment is loud to operate, as required for reclamation work and soil blending. Therefore, the Panel finds that the berm can benefit the adjacent parcels in the short term as a visual and noise barrier. However, the Panel is aware of public complaints that the berm has not appropriately been seeded and managed to prevent noxious weeds, and that the berm obstructs views beyond the Property. Therefore, the Panel is only amenable to having the berm remain temporarily, for three years from the date of this

decision. Weed management should be undertaken during the period that the berm remains in place, such as trimming, spraying, or cutting/pulling weeds, but the berm is not expected to be hydroseeded, since its allowance to remain is only temporary.

Agricultural Reclamation

[49] In the 'Applicant Submission' form, the Applicant writes that "The future proposal for next 6 years is to move towards reclaiming the land to a viable agriculture standard..." And as per the Site Visit Report, Mr. Nixon explained that "TNT wishes to remediate the land as quickly as feasible".

[50] The Panel referred to *Policy P-10: Criteria for Agricultural Capability Assessments* and *Policy P-11: Expert Opinions in ALC Matters* in their evaluation of the Application materials.

[51] The Commission received a professional report dated January 9, 2013, prepared by Valhalla Environmental Consulting Inc. titled: "Land Capability Assessment: 982 Old Vernon Rd., Kelowna, BC..." (the "Valhalla Report") written by Matthew Davidson P.Ag and Catherine Orban P.Ag. Field investigations were conducted on October 24th, 2012, which included three soil test pits. The Valhalla Report states that the soil and site conditions equate to currently (at the date of the report) unimproved agricultural capability of Class 5 agricultural capability due to soil moisture deficit in the summer, and excess water conditions in the spring, fall, and winter. The Valhalla Report states that the Property is improvable to Class 3 with

irrigation and water control improvements. The Valhalla Report says that despite the wood waste removal/processing that occurred from 2005-2011 (costing the Applicants \$175,000), approximately 23,000 m³ of wood waste remained as of 2012. To be suitable for intensive soil bound agriculture, the Valhalla Report stated that ~\$1,040,639 would be required for remediation by trucking away the wood waste and placing new soil. The Valhalla Report evaluated that rehabilitating the Property for soil bound agriculture (crops or livestock) would not likely be financially feasible. The Property may be used for non-soil bound agriculture, including greenhouses/horticulture, but intensive livestock operations may not be suitable due to noise/odour/traffic conflicts with surrounding residential uses.

[52] The Panel notes that over a decade has passed since the Valhalla Report was created, and that much activity has occurred on the Property since that time. Thus, the Panel finds that the agricultural capability evaluation of the Valhalla Report is somewhat limited but provides a general understanding of the agricultural capability of the land, which appears to remain capable for a wide range of agriculture upon reaching a reclaimed state, with further improvements possible. The Valhalla Report finds that reclaiming the land for soil bound agriculture would not be economically feasible due to costs of removing the wood waste and placing fill, but non-soil bound agriculture remains possible, such as greenhouses. The Panel notes that the situation has now changed: the historic wood waste is no longer intended to be removed in its unusable state but turned into a product and sold.

[53] The Reclamation Plan and the Application materials discuss the reclamation of the Property as the processing or removal of materials from the Property, with possibly the addition of new topsoil. The Panel understands that land with historical industrial uses would possibly require additional treatment to be reclaimed to an agricultural standard, but that is difficult or impossible to know with piles of surface material on the land. The Panel's immediate concern is the removal of all historic wood waste and other imported materials from the Property; any future reclamation beyond the removal of these materials, including importation of fill for reclamation purposes, should only be contemplated under a separate application. The Panel notes that placement of soil amendments to improve soil fertility does not require an application to the Commission if it is consistent with section 35 (f) of the ALR Use Regulation.

[54] The Application includes an "Agrologist's Report to Support City of Kelowna Temporary Use Permit Application" dated March 31, 2022, prepared at the request of Mr. Nixon. The report was written and signed by Carl Withler, B.Sc, P.Ag., and Catherine Piedt, B.Sc., P.Ag. of Ecora and Green Spark Consulting (the "Ecora Report"). The Ecora Report describes the current site conditions and operational activities, and summarizes best practices being administered. Under 'General Commentary and Recommendations', the authors state that "Mr. Nixon is cleaning up remnant wood waste... into a useable product. In carrying out this activity, there is a significant reduction in potential fire risk... Observations on site confirmed that he is managing the operation in a manner to reduce potential effects related to noise, dust,

fire and environmental considerations.” The Ecora Report recommends creating a no operating buffer inside the property boundary, seeding the berm, continuing dust control, and monitoring activities semi-annually.

[55] Subsequently on January 4th, 2023, a supplemental letter by Catherine Piedt was sent to the City of Kelowna, commissioned by Mr. Nixon (this was defined earlier as the Jan. 4th Piedt Letter). The letter includes a “Restoration Plan” section, which states “The following steps (at a minimum) would likely be required to complete restoration”:

- Process all remnant waste from the sawmill operation.
- Remove the non-farm use structures.
- Identify areas on site suitable for potential agricultural capability and soil productivity (with the addition of topsoil).
- Spread topsoil in suitable amounts in the areas identified. It is estimated that 61,000 m³ of soil would be required.

[56] The Jan. 4th Piedt Letter also includes a “Monitoring Plan” section, which includes that the parking should be limited to one area, no large boulders or trash remain on the site, works are contained to the Property, and that the volume of remnant mill waste continues to be reduced. Monitoring is proposed to occur every six months.

[57] The Ecora Report and the Jan. 4th Piedt Letter was not based on soil samples or test pits. The Restoration and Monitoring Plans in the Jan. 4th Piedt Letter did not include a detailed temporal or spatial plan for the phasing of the

removal of historic wood waste and feedstocks for soil blends. The 'Statement of Qualifications' in the Ecora Report confirms that Carl Withler and Catherine Piedt are agrologists with varied experiences, but agricultural reclamation in particular is not substantiated as an area of experience or expertise. Therefore, the Panel finds that a more detailed operational plan is required.

[58] As per the Site Visit Report, TNT may be interested in using some of the soil products it blends on the Property for reclamation purposes. The Panel understands that imported fill or soil amendments may be required to reclaim the Property once all materials have been removed; however, the Panel considers this as part of a second phase of work that should be contemplated under a separate application in the event if fill is required.

[59] The Panel notes that efforts to come into compliance with the EMA regarding unauthorized waste discharge must not include unauthorized paving or other works that would require ALC approval, unless ALC approval is otherwise granted to do so.

The Appropriateness of a Six Year Timeline

[60] The Applicants request a six year timeline for the Proposal. As explained by the Agent and Mr. Nixon in the Site Visit Report:

- The reason why six years is requested to remediate the Property is partially based on financial reasons, but also based on the amount of time the processing of the historical wood waste and managing the final products will take.
- To attempt to complete the intended works in three years would be rushed and have an inferior result.
- At the end of six years, the intention is for there to be no more commercial operations occurring on the Property, and for all the piles of materials to be removed.

[61] As explained in the Committee Report from the City of Kelowna dated November 12, 2020, a six year timeline would coincide with a three year Temporary Use Permit (“TUP”), and one possible three year renewal; the requirement for a renewal would be an opportunity for the City to evaluate the reclamation progress to date.

[62] The Jan. 4th Piedt Letter states: “We understand that the City has requested specific details on timelines for how quickly the material will be reduced. This is currently unknown, and any estimates at this time to determine how fast the piles will be reduced would be premature and inaccurate... It is anticipated that all remnant waste material will be processed within the

period of time allowed by the issuance of one TUP and assuming monitoring is confirming continued waste reduction as second TUP.”

[63] The Panel understands that processing the historic wood waste, selling the soil products created, remediating the Property, and removing all vehicles and equipment would take time. The Panel notes that the Jan. 4th Piedt Letter does not provide a detailed professional explanation of what a reasonable timeframe to achieve all the above will entail, but the author anticipates that the remnant wood waste material will be processed within three years (the length of one TUP). The Panel acknowledges that some work will need to be done by hand on the Property, which is more time consuming. As stated above, the Panel finds that the priority is the removal of materials, not the comprehensive reclamation of the Property at this time. The Panel is concerned that six years may be unnecessarily long to finish processing the material, since only a fraction of the original historic wood waste is still in its original condition, and since TNT has equipment and vehicles available for soil blending on the Property. In light of Ms. Piedt’s comments and the Panel’s understanding of the current situation, the Panel finds that a three year timeline is more reasonable and appropriate than six years, and that the rapid reclamation of the land should be prioritized over the reasons for TNT to prefer six years.

[64] Given the objective to remove the historic wood waste and other materials from the Property, the Panel finds it necessary to limit the period of new fill importation to one year only in order to focus on removing material. The

Panel finds that allowing fill importation within the 2nd or 3rd year would go against the objective of ultimately removing materials from the Property by the end of the three year approval.

DECISION

[65] For the reasons given above, the Panel approves the following uses on the Property for a time limited period, subject to conditions:

For up to one year from the date of this decision (May 30, 2025), the following activities may occur on the Property subject to the conditions set out in paragraph 66 of this decision:

- Importing wood chips, sand, subsoil, and topsoil for soil blending, but not including the importation of any material in the categories listed in section 36 of the ALR Use Regulation; and
- Parking vehicles and equipment for TNT that are not used in relation to the soil blending (e.g. snowplough trucks). The vehicles and equipment for TNT that are used in relation to the soil blending are addressed separately, below.

For up to three years from the date of this decision (May 30, 2027), the following uses may occur on the Property subject to the conditions set out in paragraph 66 of this decision:

- Soil blending in the form of the grinding, screening, sorting, piling, mixing, and decomposing of historic mill wood waste (that remains on

the Property at the time of this decision), new wood chips, and sand, to create soil products for commercial sale, including for agricultural purposes;

- Processing of rocks, boulders, and gravel (that exist on the Property at the time of this decision) for commercial sale;
- Vermiculture composting;
- Retaining the berm in the northwestern corner of the Property;
- Parking vehicles and equipment for TNT involved with onsite work; and
- Using the existing office trailer for TNT.

[66] Conditions to be met within 120 days of this decision (Due Sep. 27, 2024):

- a) The submission of a \$50,000 financial security (e.g. Irrevocable Letter of Credit, Certified Cheque, or Bank Draft) made payable to the Minister of Finance c/o the Agricultural Land Commission.
 - i. The financial security is to ensure that the approved uses are conducted in accordance with the approval and the conditions of this decision.
 - ii. Some or all of the financial security will be accessible to and used by the Commission as a penalty upon default to comply with all conditions of the approval contained herein.
 - iii. Release of the financial security will be dependent upon compliance with conditions (b-p) below, as deemed satisfactory by the Commission.
- b) The submission of an affidavit signed by the Applicants and Ryan Nixon (on behalf of TNT) committing to adhering to the conditions of this decision.

Conditions to be met within six months (Due Nov. 30, 2024):

- c) An Operations Plan that outlines the projected volume of soil blend feedstocks that will be imported (for one year from the date of this decision), processed and exported, such that by the end of the three year period all soil blend feedstocks (including historic wood waste) have been removed from the Property. This plan must be prepared by a Professional Agrologist registered with the BCIA in the practice area of Waste Management, Bio-Renewable and Bio-Processing. The plan must include current and annual estimated volumes of inputs and outputs to ensure that no soil feedstocks remain after the three-year period.
- d) If the registered professional agrologist who completes the Operations Plan needs to be replaced for the Annual or Closure Reports, the Commission must be notified and have the opportunity to review and approve the change. This condition continues to apply beyond six months.

Conditions to be met within one year (Due May 30, 2025):

- e) All TNT vehicles and equipment must be removed from the Property that are only used for offsite commercial/industrial work.
- f) The first Annual Report by the same agrologist to demonstrate (to the satisfaction of the Commission) that the timelines, conditions, and estimated input and output volumes outlined in the Operations Plan are being followed.

Conditions to be met within two years (Due May 30, 2026):

- g) The second Annual Report by the same agrologist to demonstrate (to the satisfaction of the Commission) that the timelines, conditions, and estimated input and output volumes outlined in the Operations Plan are being followed.

Conditions to be met within three years (Due May 30, 2027):

- h) Any remaining unprocessed materials must be removed (including the historic wood waste, new green waste, rocks, boulders, aggregates, tailings, other debris, or other imported fill).
- i) All piles of processed soil must be completely removed.
- j) All berms must be completely removed.
- k) All commercial/industrial vehicles and equipment must be removed.
- l) The following commercial/industrial structures and improvements must be removed: the modular trailers, sea-cans, weighing station, outdoor storage racks, and any commercial signage.

Conditions to be met within 3.5 years (Due Nov. 30, 2027):

- m) A **Closure Report** by the same agrologist to demonstrate (to the satisfaction of the Commission) that the Operations Plan has been completed and conditions (h-l) have been accomplished.

General conditions:

- n) This approval is for the sole benefit of the Applicants and TNT and is non-transferable; this approval is not valid for any other commercial operator on the Property, or for any future owners of the Property.
- o) The non-farm use area is to be in substantial compliance with the attached Schedule A: Decision Map.
- p) Any works required for compliance for the Ministry of Environment must be compliant with the ALCA and regulations, or must:
 - i. obtain permission from the Commission first; and,
 - ii. not involve paving of the Property or other contraventions of the ALCA or regulations.

[67] After the expiry of the three years, only uses allowed under the ALCA or ALR Use Regulation shall be permitted on the Property without further application. For clarity, no prior previous ALC non-farm use approvals on the Property continue to apply.

[68] For the reasons given above, the Panel refuses the Proposal to allow A1 to continue to store its vehicles/equipment on the Property.

[69] Should the above conditions of approval not be completed to the satisfaction of the ALC within the timeframe(s) specified, the approval will expire and a new application may be required.

[70] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[71] These are the unanimous reasons of the Panel.

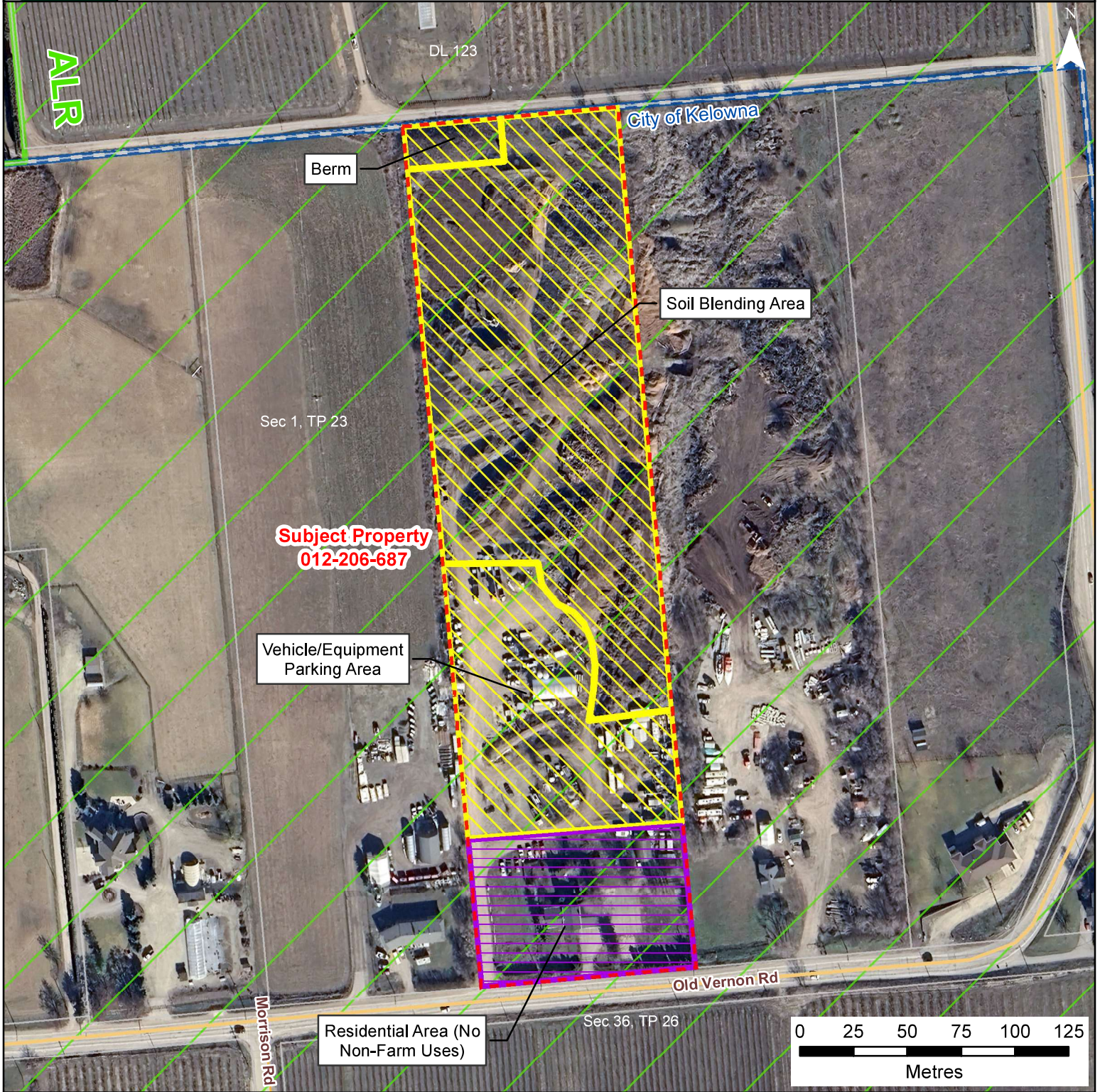
[72] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

[73] Resolution #334/2024
Released on May 30, 2024

A handwritten signature in black ink, appearing to read 'G. Zimmermann', with a long horizontal flourish extending to the right.

Gerry Zimmermann, Panel Chair

On behalf of the Okanagan Panel



ALC FILE NO: 58053
RESOLUTION NO: #334/2024

MAP PRODUCED: May 24, 2024

MAP SCALE: 1:2,500

DATA SOURCES & NOTES:
ALC, BCGW and Google Earth.
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Columbia.

Map for reference only. Accuracy not
guaranteed.

-  Approved Non-Farm Use Area (~3.35 ha)
-  Residential Area (No Non-Farm Uses) (~0.69 ha)
-  Subject Property
-  Agricultural Land Reserve
-  Municipalities
-  PMBC Parcel Cadastre

