

# REPORT TO COUNCIL



**Date:** June 25, 2018

**RIM No.** 1210-21

**To:** City Manager

**From:** Community Planning Department (TH, LB)

**Application:** A18-0006 & A18-0007      **Owner:** 0927687 B.C. LTD., INC. No. BC0927687

**Address:** 3330-3340 Neid Road      **Applicant:** Ria Kitsch

**Subject:** Non-Farm Use Application

Existing OCP Designation: REP – Resource Protection Area

Existing Zone: A1 – Agriculture 1

Agricultural Land Reserve: Yes

---

## 1.0 Recommendation

THAT Agricultural Land Reserve Appeal No. A18-0006 for Lot B Section 16 Township 26 ODYD Plan 26053, located at 3330-3340 Neid Road, Kelowna for a Non-Farm Use in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act NOT be supported by Council;

AND THAT Council directs Staff NOT to forward application A18-0006 to the Agricultural Land Commission for consideration;

AND THAT Agricultural Land Reserve Appeal No. A18-0007 for Lot B Section 16 Township 26 ODYD Plan 26053, located at 3330-3340 Neid Road, Kelowna for a Non-Farm Use in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act NOT be supported by Council;

AND FURTHER THAT Council directs Staff NOT to forward application A18-0007 to the Agricultural Land Commission for consideration.

## 2.0 Purpose

To consider a Staff recommendation NOT to support two Non-Farm Use applications to the Agricultural Land Commission (ALC) for three events that exceed what is permitted under Section 3(4)(k) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation.

### 3.0 Community Planning

Community Planning staff do not support the proposal to host three gatherings for events on the subject property in the Agricultural Land Reserve (ALR). This use, particularly at the proposed scale of 350 to 1,000 people per event, is not in keeping with Official Community Plan policies about directing urban uses to within the Permanent Growth Boundary and protecting agricultural land. Holding this type of commercial use on agricultural land presents neighbourhood impacts (e.g. noise, parking, access) and both short- and long-term impacts to agricultural land.

#### *Neighbourhood Impacts*

In Kelowna, many agricultural properties are surrounded by other large agricultural properties, and an event that generates noise may only affect a few immediate neighbours in those instances. In this case, the subject property is on the boundary of the ALR in an agricultural / residential interface area. A single family residential neighbourhood (Hall Road area) is directly to the west of the property, with 10 residential properties abutting the west property line. A total of 40 properties are within 100 m of the subject property, the majority of which are within the Hall Road residential area.

Section 7 of the City of Kelowna Good Neighbour Bylaw No. 11500 requires that no owner or occupier of a property use the property in such a way that noise or sound is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public. This regulation applies at any time of day or night. Along with several hundred guests, the proposed events are proposed to have live entertainment, generating additional sound that could affect nearby residents. Although agricultural operations often generate noise, under the *Farm Practices Protection (Right to Farm) Act* a farmer is not liable for disturbances resulting from a farm operation provided it is in accordance with normal farm practices. Large gatherings for events are not considered normal farm practice.

The property is accessed via Neid Road, off East Kelowna Road. Neid Road is a narrow rural road approximately 6 m in width, which is the minimum for two-way travel. To ensure access for vehicles and emergency services, parking is not permitted along Neid Road. Emergency access along public roads and to buildings on the property must be maintained at all times. The proposal includes parking along existing driveways on the subject property, which is estimated to accommodate 100 to 150 vehicles. Both ALC and City regulations require that all parking be provided on the property, and staff are concerned that overflow parking demand may impact access along Neid Road, as well as access for nearby private and public lands (e.g. East Kelowna Park).

Neighbourhood consultation is not a requirement of ALC applications; therefore, surrounding neighbours have not been given the opportunity to ask questions or provide feedback on the proposed events.

#### *Agricultural Impacts*

Kelowna's Agriculture Plan and Official Community Plan (OCP) outline several actions, objectives and policies focused on protecting agricultural land and promoting farming, reflective of Council's priority to preserve agricultural land. The OCP suggests the City only support Non-Farm Use applications (where approved by the ALC) under certain conditions, as follows (Policy 5.33.6):

- Consistency with the Zoning Bylaw and the OCP – the proposed events are not permitted uses under the A1 – Agriculture 1 zone and are not consistent with OCP policies or the property's Future Land Use designation of REP – Resource Protection Area;
- Provision of significant benefits to local agriculture – while the proposed events would serve local food and wine, this is not considered agri-tourism under the ALC and it is unclear how the events would provide a significant benefit to farming in Kelowna. The Ministry of Agriculture echoed these comments in their referral feedback (see Attachment C);

- Ability to accommodate using existing municipal infrastructure – nearby rural roads may be impacted by high traffic and parking demand for the events;
- Minimize impacts on productive agricultural lands – the area to be used for the events far exceeds a typical farm residential footprint or lounge or picnic liquor endorsement areas, and could instead be used for agricultural production;
- Does not preclude future use of lands for agriculture – the proposed events are temporary and do not preclude the property's future use for agriculture; however, the gravel parking on the property is considered a permanent facility and agricultural viability is impacted in those areas;
- Does not harm adjacent farm operations – adjacent farm operations are orchards and vineyards, and potential harmful impacts are limited.

Both the OCP and Zoning Bylaw support and allow for wineries and associated facilities. A Farm Protection Development Permit is generally required to determine the most appropriate siting for such uses and to ensure the development complies with City and ALC regulations. Siting considerations include placing publicly accessible buildings close to the road to limit impacts to agricultural production. The winery space on the subject property was converted without permits, and the location in the centre of the property has a greater impact on the land. There is no landscape buffer to delineate the residential or public use areas from the agricultural uses.

For context, current City of Kelowna policy aims to contain all residential uses (i.e. house, accessory buildings, driveway, yard, landscaping, pool, etc.) on agricultural land within a 2,000 sq m residential footprint, and Council recently gave third reading to a text amendment to add this as a regulation in the A1 – Agriculture 1 zone. The area must be contiguous and generally located on a property line along a road. The application proposes a 3,000 sq m area for the proposed gatherings and an additional 2,800 sq m (approx.) for parking, in addition to the houses and paved driveways.

The ALC requires that all parking for events be provided on-site, and that parking areas must neither be permanent nor interfere with the farm's agricultural productivity. The ALC suggests that parking be accommodated along field edges, adjacent to internal farm roads, and immediately adjacent to farm buildings. Gravel is considered a permanent material under ALC Policy L-22, and the subject property has approximately 1,060 sq m of permanent gravel parking used for large events. This further impacts the amount of land available for agricultural production.

One of the themes of the Agriculture Plan is to improve awareness of local agriculture. While the subject events propose serving local wines and foods, the exposure of large gatherings in excess of 150 people on an agricultural property may falsely suggest to residents, business owners, and current and future ALR landowners that this is a permitted use on agricultural land. The Ministry of Agriculture highlights concern with the potential proliferation of large events in its referral comments (see Attachment C). Agricultural land is generally much more affordable than commercial land, making it attractive to businesses looking to establish commercial operations. As farm operations add events and other non-farm commercial ventures, the limits of primary agricultural use versus secondary uses are difficult to define and compliance and enforcement is made more challenging.

#### *Urban Use & Comparable Venues in Kelowna*

To reduce development and speculative pressure on agricultural land, the OCP directs urban uses to lands in the urban portion of the Permanent Growth Boundary (Policies 5.3.1 & 5.33.3). The proposed events, with hundreds of attendees, are considered an urban use and are appropriate within a commercial area rather than an agricultural property outside of the Permanent Growth Boundary.

An event of this type and scale would typically be associated with a hotel, restaurant or other commercial or institutional use that permits public gathering for events. These would generally be found in the City's Urban and Village Centres, where there are more transportation options, parking, and better access for emergency services. Appropriately zoned properties would be fully serviced and indoor venues would have permanent washrooms and food preparation facilities. Outdoor venues that can host large events are typically farther away from residential neighbourhoods.

The gatherings proposed in this application are for a total of 350, 400, and 1,000 people for the three different events. Kelowna venues that can accommodate around the same number of people include, but are not limited to:

#### Indoor

- Coast Capri Hotel      main ballroom maximum capacity for stand up events: 300 people.
- Laurel Packing House      maximum capacity for stand up events: 300 people.
- Delta Grand Hotel      all 14 event rooms maximum capacity for stand up events: 1,750 people.

#### Outdoor

- City Waterfront Park      500 + people (gates are installed in an area set by organizer)
- City Park      1,000 + people (gates are installed in an area set by organizer)

Once outstanding winery permitting and licensing items are addressed, the applicant has several options to pursue hosting smaller events that are consistent with the ALR Regulation in ways that support and promote agriculture while protecting the land for agricultural use. Large-scale events can still support local agricultural production, but should be directed to appropriately zoned locations in the City where the impacts to neighbours and agricultural land are minimized.

## 4.0 Proposal

### 4.1 Background

#### *Gathering for an Event Regulations*

Under the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002)* (the ALR Regulation), a farm in the ALR may hold a maximum of 10 gatherings for an event each year under the following conditions:

1. The farm must be located on land classified as farm under the *Assessment Act*;
2. Permanent facilities must not be constructed or erected in connection with the event;
3. Parking for those attending the event must be available on the farm, but must not be permanent nor interfere with the farm's agricultural productivity;
4. No more than 150 people, excluding residents and employees of the farm, may be gathered on the farm at one time for the purpose of attending the event;
5. The event must be of no more than 24 hours duration;
6. No more than 10 gatherings for an event of any type may occur on the farm within a single calendar year.

These provisions were established in August 2016, and are typically applied for weddings, music festivals, and other gatherings that are not prescribed under other permitted farm or non-farm uses. If a proposed gathering does not meet all of the above conditions, a Non-Farm Use application must be made through the Agricultural Land Commission, and this is first considered by the local government. Compliance with liquor licensing is also required, and these large events are typically held outside of regularly permitted beverage service areas.

ALC Policy L-22 offers interpretation of the above ALR Regulation provisions, and requires that:

- Those hosting events make every effort to avoid negative impacts to the use of agricultural land;
- Permanent facilities not be constructed or erected for any event activity; and
- All vehicles visiting the farm be parked on site, and that parking areas not be permanent (e.g. gravel, asphalt, concrete).

With the exception of personal family events, which are exempt from the above regulations, neither the City of Kelowna nor the ALC take into consideration if a gathering for an event charges fees through tickets, venue rental, or other means.

#### *Agricultural Context & Benefits*

Provincial and municipal regulations and policies allow a farm to have agricultural production and related uses such as packaging, storage, or retail sales on the land. These regulations and policies both support agricultural operations and seek to avoid non-farm commercial ventures on farm land. Farmers, specifically wineries and other alcohol production facilities, are afforded several privileges on agricultural land to ensure the farm is economically sustainable. On ALR land, these benefits include:

- **Tasting room & farm retail sales.** This allows a farmer to operate alcohol tastings and sales on their own property instead of leasing or purchasing commercial space on appropriately zoned land elsewhere in the City. In Kelowna, a Farm Protection Development Permit is required prior to constructing a tasting room.
- **Unlimited gathering for events within an alcohol production facility's licensed food and beverage service lounge.** This allows a farmer to host events, whether related or unrelated to the farm, within a licensed lounge, which is limited to 250 sq m in area (125 sq m indoors plus 125 sq m outdoors).
- **Ten gathering for events within a calendar year, up to 150 people.** This allows a farmer to host weddings, festivals and other events under the ALR Regulation conditions listed above. Local municipalities have authority to require permits for these 10 events.
- **Reduced property taxes.** Commercial businesses are taxed at a significantly higher rate than agricultural business operations on land classified as farm. This allows a farmer to operate more competitively in a commercial market, recognizing that a farm is restricted to farm-related commercial / industrial operations only.

In all cases a farmer must comply with all relevant municipal and provincial regulations, including the building code, business licensing, liquor licensing, health and safety, parking, and noise. The above noted benefits help to ensure agricultural land is for farm use while supporting the viability of agricultural operations, including options for tourism and events. This assists in keeping farm land valued appropriately for agriculture and in maintaining a competitive economic advantage for local BC farmers.

#### *Winery Application Process*

A farmer wishing to construct and operate a winery, tasting room, and / or retail sales area on land in the ALR is able to do so provided municipal and provincial regulations and processes are met. The following applications for permits and licenses are required in Kelowna:

1. Farm Protection Development Permit to ensure the land and farm meet all requirements for a wine manufacturing facility and tasting room, and to determine the most appropriate siting for the buildings.
2. Building Permit to construct the proposed uses, including renovations to an existing building.

### 3. Liquor License and Business License to operate a winery and associated facilities.

#### *Subject Property*

The current property owners purchased the property in 2012 and subsequently built a second single detached house (2012) and began a wine production operation in the garage of the new house (2016). At the time a Building Permit was not applied for to facilitate the change in use from residential garage to wine production and tasting room. To bring the structure into compliance and apply for a Business License for the winery operation, the applicant submitted a Building Permit application for this change in April 2018 and is working with the City to complete the requirements to receive occupancy.

Since starting the wine production in 2016, a large gathering for an event occurred on the parcel in 2016 and 2017. City of Kelowna Bylaw Services responded to noise complaints associated with this event and also noted concerns with parking along narrow rural roads around the property.

#### *Non-Farm Uses & Compliance on Agricultural Land*

The City of Kelowna, including Staff, the Agricultural Advisory Committee and City Council, have worked in conjunction with the ALC to promote and protect agriculture uses on agricultural land. The City faces compliance issues related to commercial operations, and observations over the past ten years show the encroachment of non-farm uses on agricultural land. This includes non-farm uses increasing in size year over year, encroaching where agriculture previously occurred on the land. In some cases, agriculture is not only reduced but eliminated as a non-farm use may generate a higher revenue. City Bylaw Services, Business Licensing and Planning work together with the ALC on compliance and enforcement efforts.

#### 4.2 Project Description

The Non-Farm Use applications are to request approval for the following three events:

Application & Event	Date & Time	Number of People	Area	Beverage Service
A18-0006: Splendor in the Grass, Kitsch Wines Vintage Celebration	July 14, 2018 6:00 pm to 10:00 pm	1,000 (850 guests, 150 event staff)	Residential hard surface & landscape areas	Wine service proposed through LCLB special event permit
A18-0007: Dream Car Rally Fundraiser for Ronald McDonald House	August 25, 2018 5:30 pm to 10:00 pm	350	Residential hard surface & landscape areas	Not yet specified
A18-0007: Heart of Gold Kelowna General Hospital Fundraiser Gala	September 8, 2018 5:30 pm to 11:00 pm	400 (350 guests, 50 event staff)	Residential hard surface & landscape areas	Not yet specified

The first event, proposed to be held Saturday July 14, is under application A18-0006. The next two events, proposed to be on Saturday August 25 and Saturday September 8, are under application A18-0007. The events were separated into different applications based on the scale and nature of the events. All three events exceed the ALR Regulation provisions for gathering for an event, mainly due to the number of people expected to attend, and must be considered under Non-Farm Use applications.

Approximately 3,000 sq m of the property is proposed to be used for event gathering space (primarily outdoors) and 2,800 sq m of the property is proposed to be used for event parking for each event, as per the map below. Based on the minimum parking stall size requirements in the Zoning Bylaw, the proposed parking areas would yield approximately 100 to 150 parking spaces.

**Map 1 – Proposed Site Plan for Events**

#### 4.3 Site Context

The subject property is in the City's Southeast Kelowna sector and is outside of the Permanent Growth Boundary. The property is at the end of Neid Road, accessed off East Kelowna Road. It is 7.6 ha (18.8 ac) in area and ranges from approximately 399 m to 424 m above sea level, with steep slopes along the northwest and southwest boundaries. It currently has two single detached houses as well as active agriculture in the form of grapes grown for wine production. One older single detached house is along the north property line. In 2012 a second single detached house was constructed in the centre of the property, replacing another house and accessory buildings; the north dwelling was intended to remain for farm help use.

Approximately 4.2 ha (10.3 ac) of the property is planted with grapes, including Pinot Noir, Pinot Gris, Chardonnay, and Riesling. The current property owners planted the vineyards and installed drip irrigation since purchasing the property. The property previously had orchards and vineyards.

Since 2016 a wine production facility and wine tasting room has been operating in the garage of the newer single detached house. The property has a manufacturer license for the winery and the applicant is working with the Province's Liquor Control and Licensing Branch (LCLB) to ensure compliance on other licensing matters.

Current uses on the property are as follows (calculations are approximate):

Use	Area (hectares)	Percent of Land Suitable for Agriculture
Subject property	7.6 ha	
Steep slopes	1.3 ha	
<b>Land suitable for agriculture</b>	<b>6.3 ha</b>	
Residential footprint	1.1 ha	17%
Single detached house #1 residential footprint	0.1 ha	
Single detached house #2 residential footprint	1.0 ha	
Active agriculture (grapes)	4.2 ha	66%
Gravel parking area	0.1 ha	2%

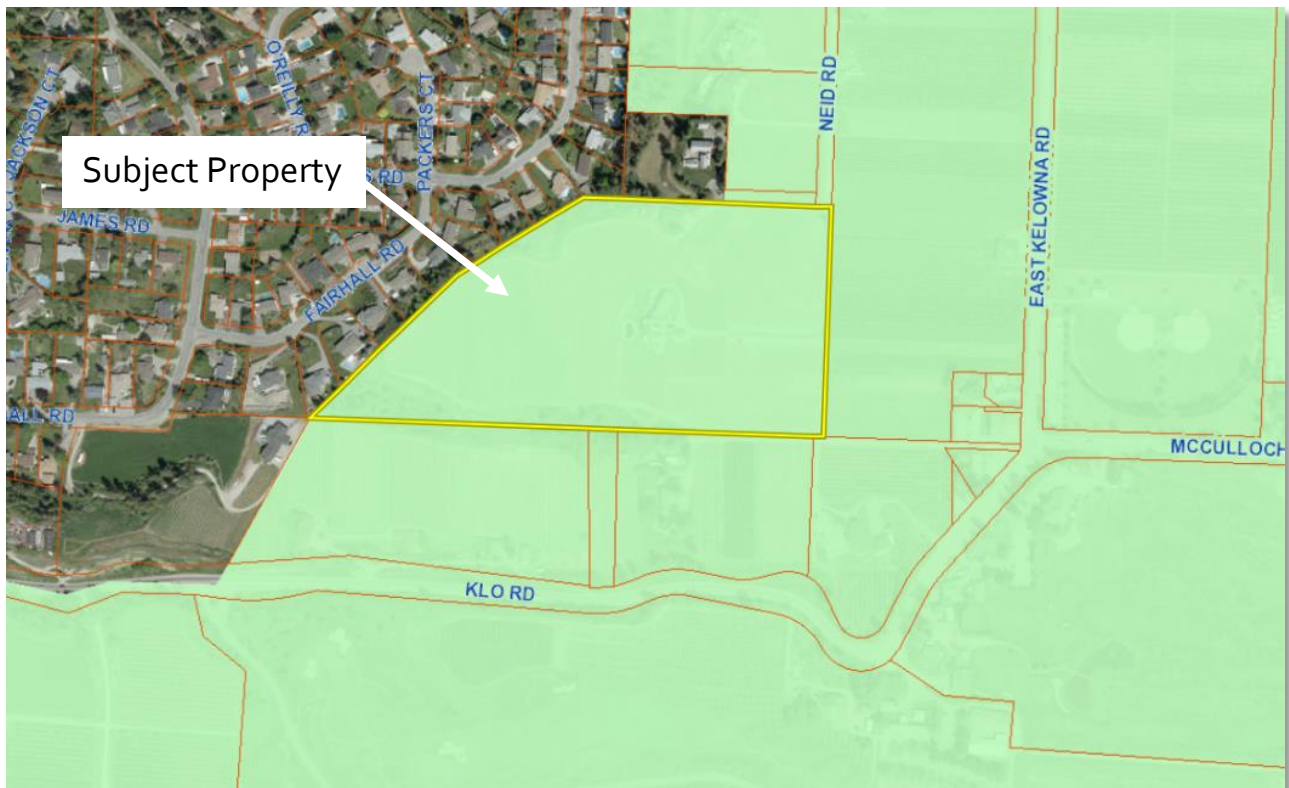
The adjacent parcels to the north, east and south are at a similar elevation to the subject property, and have agricultural production in different forms of fruit as well as farm residences. The west portion of the property slopes down towards the adjacent to a single family residential neighbourhood.

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

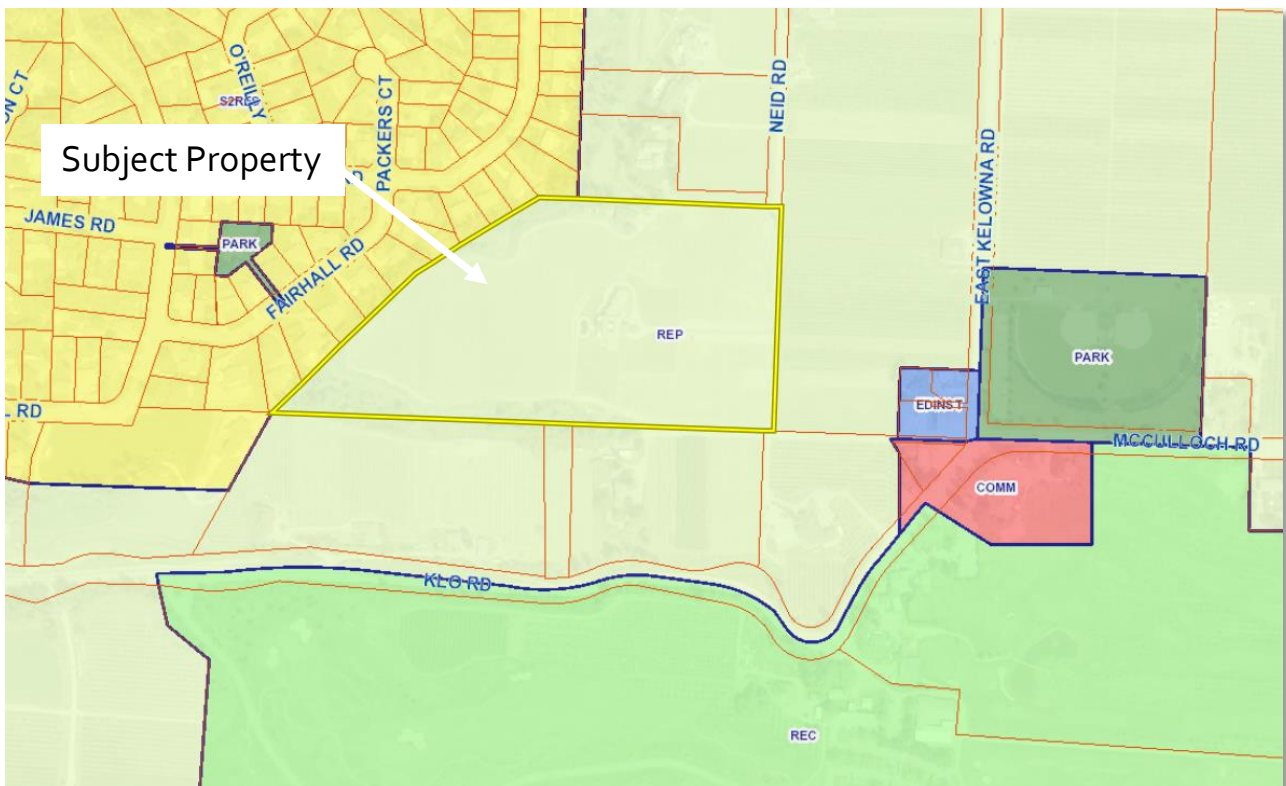
Direction	Zoning	ALR	Land Use
North	A1 – Agriculture 1	Yes	Agriculture / Rural Residential
South	A1 – Agriculture 1	Yes	Agriculture
East	A1 – Agriculture 1	Yes	Agriculture
West	RR3 – Rural Residential 3	No	Rural Residential



Map 2 – Agricultural Land Reserve

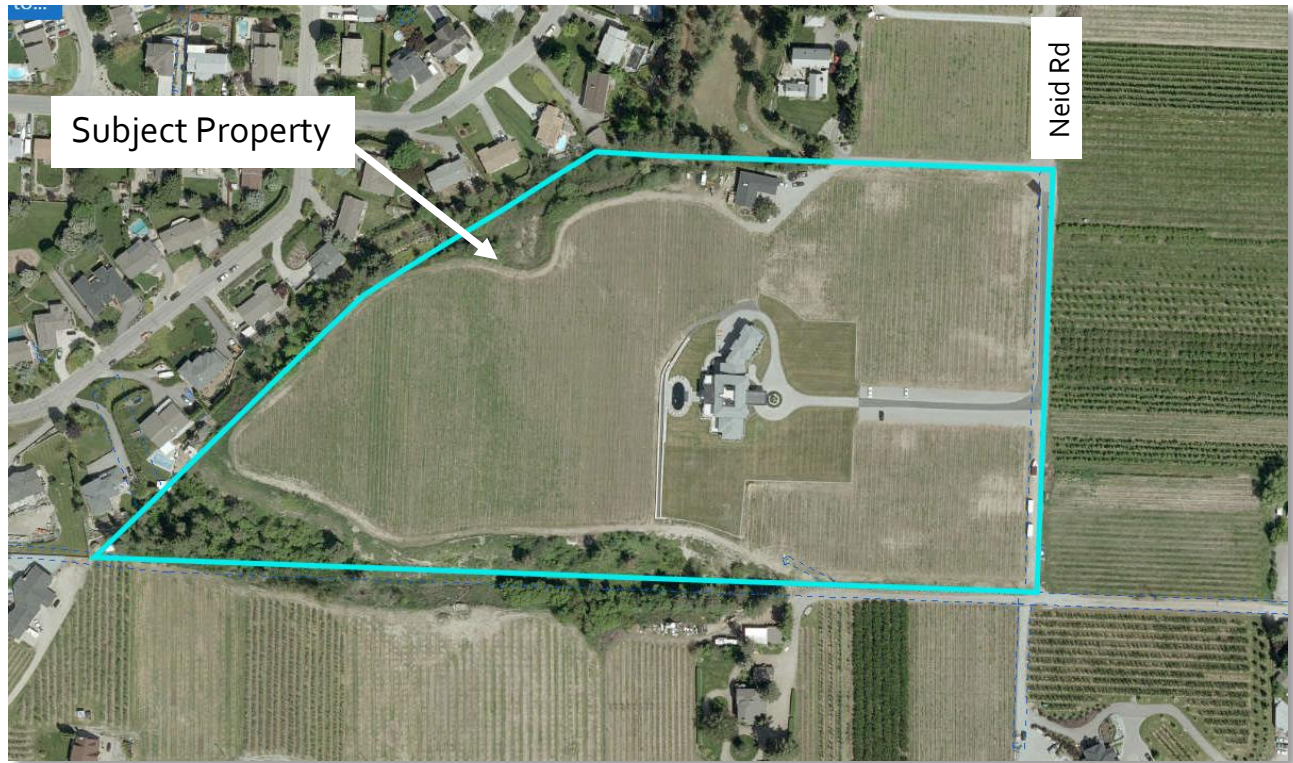


Map 3 – Future Land Use





Map 4 – Subject Property (2017)



Map 5 – Subject Property Historic (2009)



## **6.0 Current Development Policies**

Relevant City of Kelowna policies and ALC regulations and policies are in Attachments A and B, respectively.

## **7.0 Technical Comments**

Comments from referral agencies and departments are in Attachment C.

## **8.0 Application Chronology**

Date of Application Received: May 22, 2018

Date Public Consultation Completed: Not Required for Non-Farm Use applications

Agricultural Advisory Committee: Scheduled for June 14, 2018; however, the AAC could not make quorum, therefore Council does not have AAC comments to consider for this application.

## **9.0 Alternate Recommendation**

THAT Agricultural Land Reserve Appeal No. A18-0006 for Lot B Section 16 Township 26 ODYD Plan 26053, located at 3330-3340 Neid Road, Kelowna for a Non-Farm Use in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act be supported by Council;

AND THAT Council directs Staff to forward application A18-0006 to the Agricultural Land Commission for consideration;

AND THAT Agricultural Land Reserve Appeal No. A18-0007 for Lot B Section 16 Township 26 ODYD Plan 26053, located at 3330-3340 Neid Road, Kelowna for a Non-Farm Use in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act be supported by Council;

AND FURTHER THAT Council directs Staff to forward application A18-0007 to the Agricultural Land Commission for consideration.

**Report prepared by:** Tracey Hillis, Planner & Laura Bentley, Community Planning Supervisor

**Reviewed by:** Ryan Smith, Community Planning Department Manager

**Approved for Inclusion:** Doug Gilchrist, Community Planning & Strategic Investments Divisional Director

## **Attachments:**

Attachment A: City of Kelowna Policies

Attachment B: Provincial Regulations & Policies

Attachment C: Technical Comments