

COMMITTEE REPORT



Date: September 12, 2018

RIM No. 1210-21

To: Agricultural Advisory Committee (AAC)

From: Community Planning Department (AK)

Application: A18-0010 **Owner:** Marlys Wolfe

Address: 575-579 Rifle Road **Applicant:** Marlys Wolfe

Subject: Non-Farm Use Application for Cannabis Production

1.0 Purpose

The applicant is requesting permission in accordance with Section 20(3) of the Agricultural Land Commission Act to allow for a non-farm use to produce cannabis.

2.0 Proposal

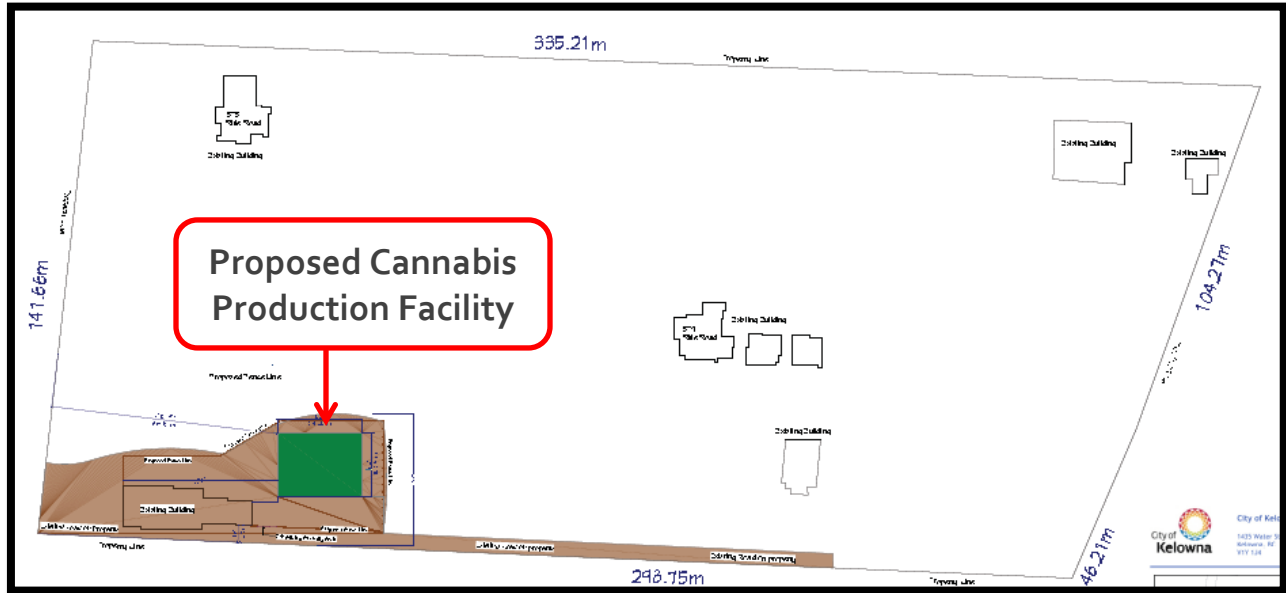
2.1 Background

The property owner has been in discussions with City staff regarding permission to grow cannabis on the property for several years. In 2013 the property owner applied to Health Canada to become a licensed producer of medical marijuana (Health Canada No. 10MM-0006). Federal and provincial regulations related to cannabis have changed during the last few years. Federal legislation related to medical cannabis production has changed from the Marijuana for Medical Purposes Regulations (MMPR) enacted in 2013 to the Access to Cannabis for Medical Purposes Regulation (ACMPR) enacted in 2016 and now most recently the enactment of the Cannabis Act is expected to occur in 2018.

In 2014 the ALC deemed the lawfully sanctioned production of medical marijuana a farm use. In July of 2018 the province amended the ALR Use, Subdivision, and Procedure Regulation to clarify that the lawful production of cannabis is a farm-use if produced:

- Outdoors in a field,
- In a structure that has a base consisting entirely of soil, or
- In a structure approved for the purpose of growing crops constructed, or in the process of being constructed, before the date on which the regulation came into force.

The proposed structure does not meet the above-noted criteria; the property owner is now applying for a non-farm use application to proceed with a proposed production facility that would be in an enclosed building with a cement foundation. The cannabis production facility is proposed to be in an enclosed 4,800 sqft (445 sqm) building to be located on an existing parking lot on the property.



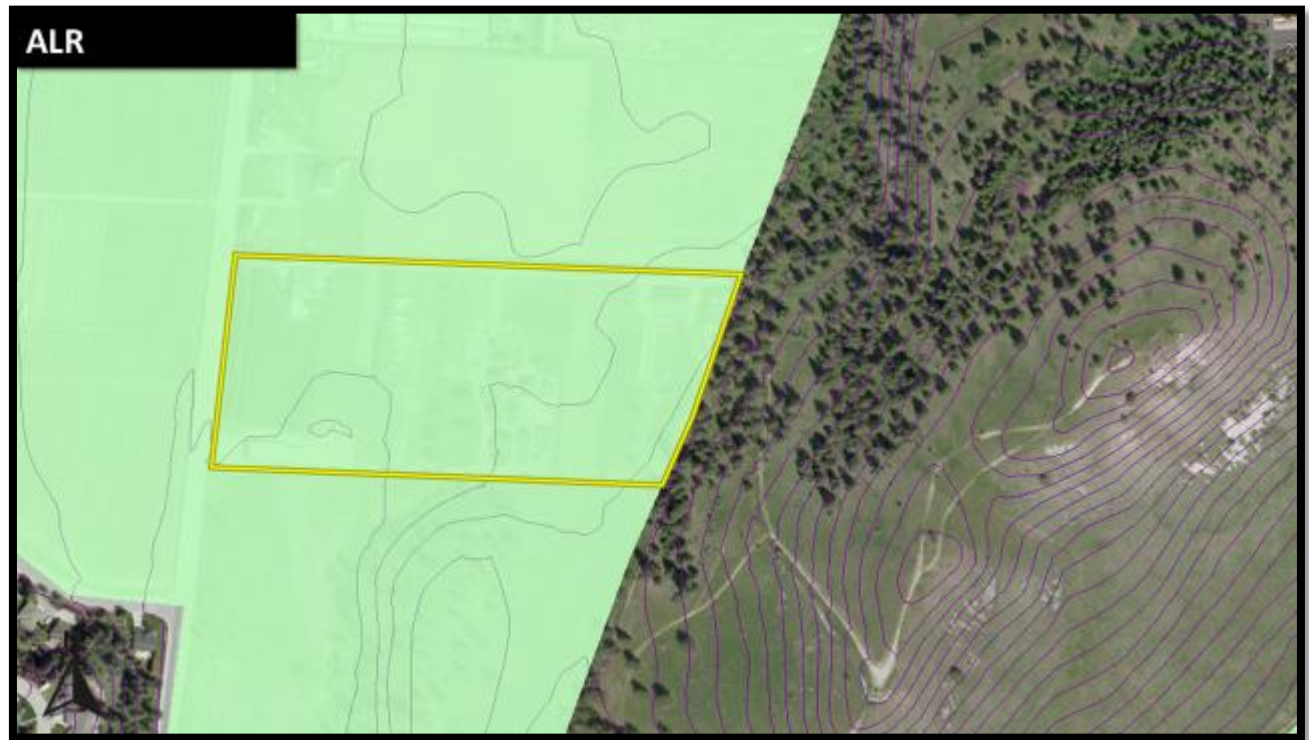
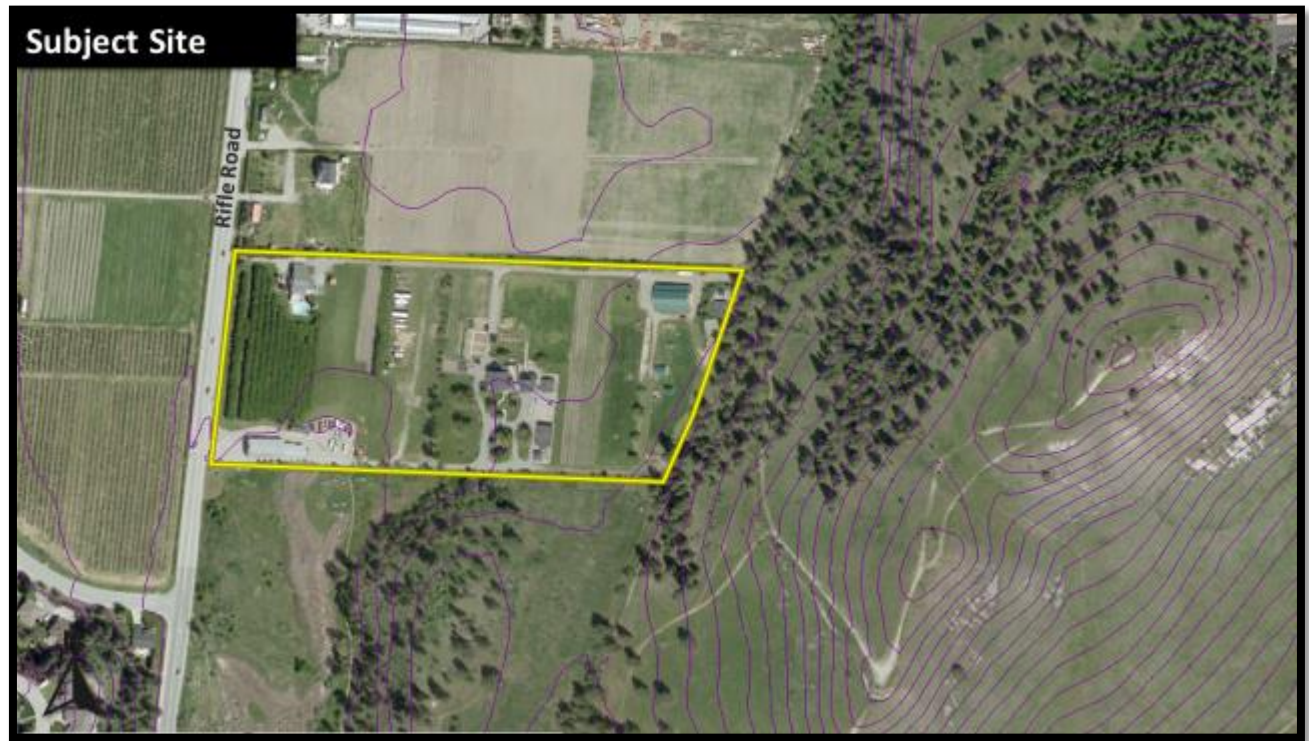
The property owner has also submitted a non-farm use application to legitimize existing additional dwellings on the property which will be processed by staff and presented to AAC for consideration at a future date.

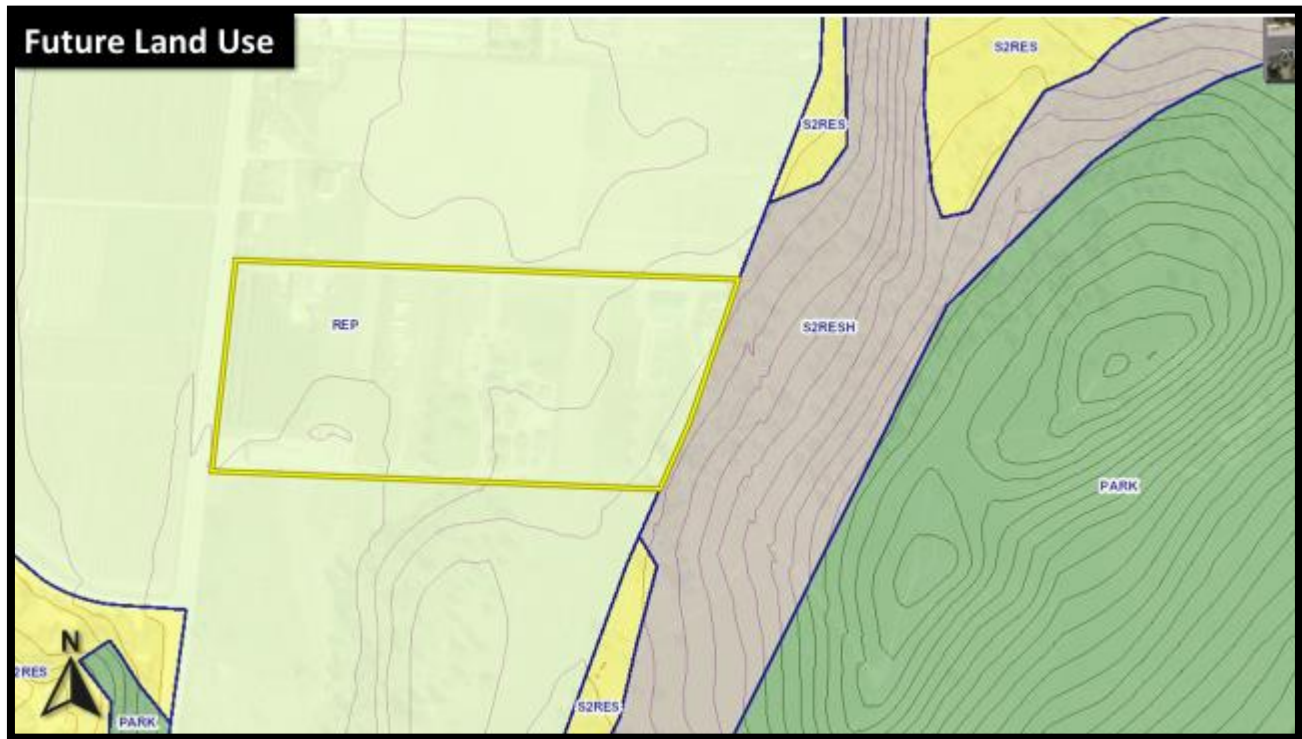
2.2 Site Context

The subject site is an 11 acre (4.5 ha) agricultural property located on the east side of Rifle Road near the intersection with Longhill Road. There is a wide range of agricultural activity on the property which includes the growing of various fruits and vegetables as well as echinacea and herbs and garlic. The farm also contains livestock such as chickens, turkeys, llamas, goats and sheep.

Parcel Summary – 579 Rifle Road:

Parcel Size: 4.5ha (11.19 acres)
 Elevation: 450-460 metres above sea level (masl) (approx.)





2.3 Neighbourhood Context

The subject property lies within the Glenmore – Clifton – Dilworth city sector. The property is in the ALR, zoned A1 – Agriculture 1, and designated Resource Protection Area (REP) in the Official Community Plan. Adjacent properties to the north, south and west are also located in the ALR, zoned A1 and designated Resource Protection Area (REP) in the OCP. The property adjacent to the east rear property line is an undeveloped parcel not located in the ALR but zoned A1 and designated a mix of Single/Two Unit Residential and Park.

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

Table 1: Zoning and Land Use of Adjacent Property

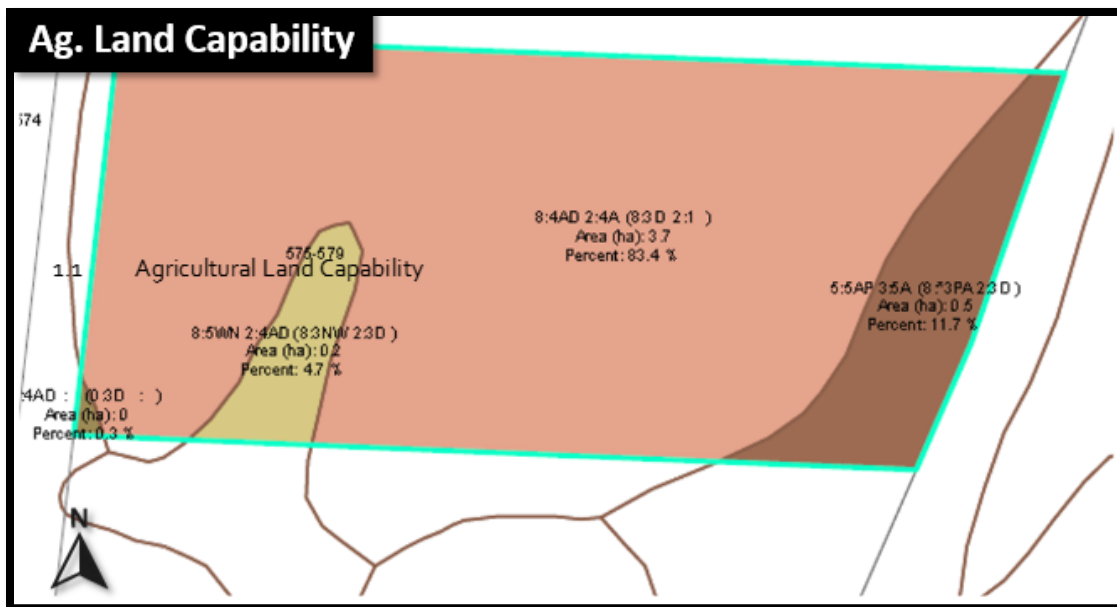
Direction	Zoning	ALR	Land Use
North	A1 – Agriculture 1	Yes	Agriculture
South	A1 – Agriculture 1	Yes	Undeveloped
West	A1 – Agriculture 1	Yes	Agriculture
East	A1 – Agriculture 1	No	Undeveloped

2.4 Agricultural Land Capability

The Land Capability Classification for Agriculture in BC manual published by the Ministry of Agriculture which assesses the agricultural capability of land, identifies that approximately 83% of the subject property has a Class 4 agricultural land capability, most of which can be improved to Class 3. The portion of the land on which the proposed cannabis facility is located is Class 5 and Class 4 and could be improved to Class 3.

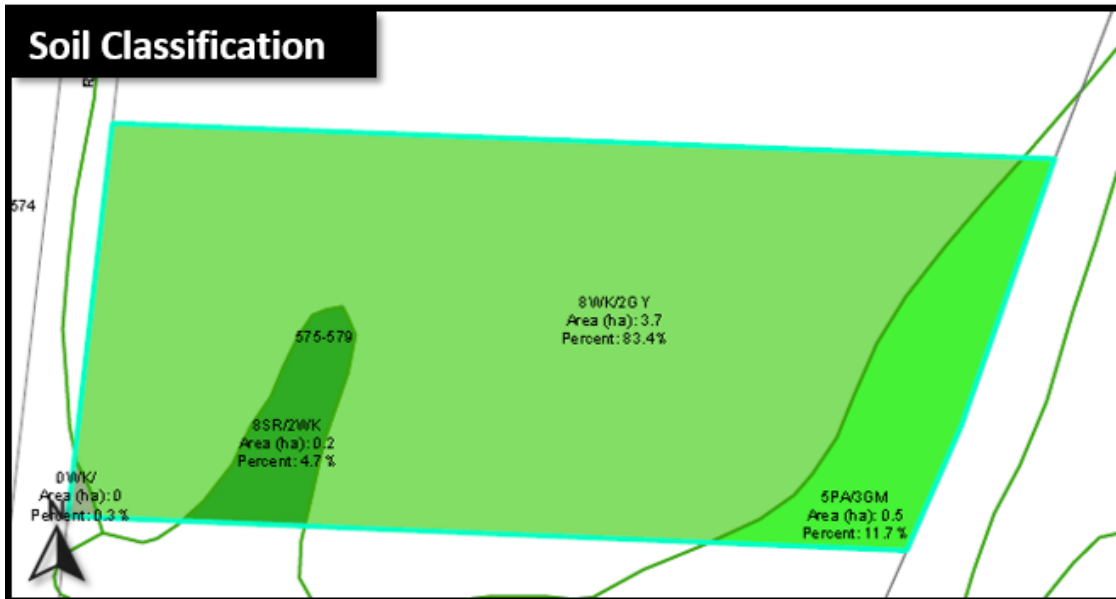
Generally, according to the Land Capability Classification for Agriculture in BC manual the land capability classes are defined as follows.

- Class 3 land has limitations that require moderately intensive management processes and the range of crops may be restricted. The limitations may restrict the choice of suitable crops or affect timing and ease of tillage, planting and harvesting; and methods of soil conservation.
- Class 4 land has limitations which make it suitable for only a few crops, or the yield for a wide range of crops is low, or the risk of crop failure is high, or soil conditions are such that special development and management practices are required.
- Class 5 land is generally limited to the production of perennial forage crops and specially adapted crops (crops such as cranberries suited to unique soil conditions not amenable to a wide range of common crops). Productivity of these suited crops may be high.



2.5 Soil Classification

The Soil Management Handbook for the Okanagan and Similkameen Valley's published by the BC Ministry of Agriculture, which categorizes soils having similar agriculturally important characteristics into 'soil management groups' identifies that the vast majority of the property (83%) is comprised of Gellatly (GY) and Westbank (WK) soils, which are generally well-suited to all climatically adapted crops. The portion of the land on which the proposed cannabis facility is proposed is near a portion of Summerland (SR) and Westbank (WB) soil which are generally not well suited for crops, as the soils within this group have developed in gravelly, cobbly, stony and bouldery coarse to medium-textured fluvial fan deposits. These sites are best suited to the grassland crop, however, where surface soils are non-stony suites crops include vegetables and various berries.



3.0 Community Planning

The application is a non-farm use application to allow for a cannabis production facility. A non-farm use application is required as recent amendments to the ALC regulations state lawful production of cannabis is designated as farm use for the purposes of the Act only if produced outdoors in a field or inside a structure that has a base consisting entirely of soil or that was built for crop production before the date on which the regulations came into force.

Amendments to the Zoning Bylaw related to non-medical cannabis are currently being considered by council. Staff are proposing updating the current Zoning Bylaw definition of medical marijuana production facilities to encompass both medical and non-medical cannabis production facilities within the same defined use. This use is currently allowed only in several industrial zones. Staff are not proposing to include cannabis production facilities as an allowable use in the A1 zone.

The primary objective of the AAC is to advise on sustainable agricultural land use from a multiple bottom line (ie: cultural, economic, environmental and social) perspective. Staff are asking AAC to consider this application and provide a recommendation to Council.

Report prepared by: Alex Kondor, Planner Specialist

Reviewed by: Laura Bentley, Community Planning Supervisor

Attachments:

Schedule A – Policies

Schedule B – Site Plan and Non-Farm Use Application

SCHEDULE A - Policies



Subject: 575-579 Rifle Road (A18-0010)

City of Kelowna Agriculture Plan (2017)

The recently adopted Agricultural Plan recommends several bylaw and policy changes meant to address concern over the non-farm use of ALR land. Specifically the following to the Official Community Plan and Development Application Procedure Bylaw updates are recommended by the plan:

1. Restrict non-farm uses that do not directly benefit agriculture. Only support non-farm uses in farm areas that have a direct and ongoing benefit to agriculture or meet essential requirements of municipal government.
2. Allow for the Community Planning Manager to request an Agricultural Impact Assessment by a Professional Agrologist that quantifies the impacts of a non-farm use that may affect agricultural activity.

Kelowna Official Community Plan (OCP)

Goals for a Sustainable Future

One of the main goals of the OCP is to: Enable healthy and productive agriculture. Promote healthy and productive agriculture through diverse strategies that protect farmlands and food production.

Agricultural Land Use Policies

Objective 5.33 Protect and enhance local agriculture Policy .1 - Protect Agricultural Land.

Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Objective 5.33 Protect and enhance local agriculture Policy .6 - Non-farm Uses.

Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operation

Agricultural Land Reserve Use, Subdivision and Procedure Regulation

Section 2.5 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, B.C. Reg.171/2002, as amended:

The lawful production of cannabis is designated as farm use for the purposes of the Act if produced outdoors in a field or inside a structure

- (a) that has a base consisting entirely of soil, or
- (b) that was, before the date on which this section came into force,
 - (i) constructed for the purpose of growing crops inside it, including but not limited to the lawful production of cannabis, or
 - (ii) under construction for the purpose referred to in subparagraph (i), if that construction
 - (A) was being carried out in accordance with all applicable authorizations and enactments, and
 - (B) continues without interruption from the date it began to the date the structure is completed, other than work stoppages considered reasonable in the building industry, and that has not been altered since that date to increase the size of its base or to change the material used as its base.

SCHEDULE B – Site Plan and Non-Farm Use Application



Subject: 575-579 Rifle Road (A18-0010)

579 Rifle Road

New 2 Story facility

Lot size:
11.19 acres = 45,284 sq.m.

Property Information	
Property Address:	575-579 Rifle Rd
ESD:	00075 Plan #: 1249 Lot #: 0 Block #: 21
Extra Legal Information:	
Section: 33&34	
SC Assessment Information	
Roll Number:	6518000 Jurisdiction:
Net Land Value:	952,294 A/R:
Net Imp. Value:	\$1,364,100 Lot Size:
Net Total Value:	\$1,456,394 Lot Size Unit:
Actual Use:	130 TREE FRUITS ACRES
Land Use Related Information	
Zoning Code:	A1 Inside A/R: Yes
Future Land Use:	RPD Water Provider: CDD
Land Use Contract:	No

KID: 209775 Plan 1249 Lot 0 Block 21 Section 33 & 34

Development Permit - Not for Construction



Provincial Agricultural Land Commission - Applicant Submission

Application ID: 57976

Application Status: In Progress

Applicant: Marlys Wolfe

Local Government: City of Kelowna

Local Government Date of Receipt: This application has not been submitted to local government yet.

ALC Date of Receipt: This application has not been submitted to ALC yet.

Proposal Type: Non-Farm Use

Proposal: On July 13, 2018 the Agricultural Land Reserve Use, Subdivision and Procedures Regulation was amended by Order in Council No. 380 (the "Amendment"). The Amendment repealed subsection 2(p), which addressed cannabis production in the ALR, and added a new subsection 2.5, which stipulated that cannabis production within new buildings would only be deemed "farm use" where the structure had a base consisting entirely of soil. The applicant has permission from Health Canada to build a production building under application 10-0006, and that permission is based on a building which includes a concrete floor. Further, the applicant has been in discussion with the City of Kelowna since January, 2018 with respect to the planned construction of a 60' x 80' production building on the site of an existing parking lot (the "Building") That Building is intended for the future production or organic health products containing cannabis and the production of organic cannabis. The Amendment appears to have changed the regulatory framework that would apply to the Building, such that the applicant must now apply for a non farm use for the .9 ha area which currently serves as a gravel parking lot for equipment and machinery. The attached photographs show the area in issue, immediately behind the existing red shop, which is housing United Landscape until December, 2018. It would be the applicant's preference not to apply for a non farm use, but that appears to be the consequence of the Amendment.

Current Use of Parcels Under Application

1. Quantify and describe in detail all agriculture that currently takes place on the parcel(s).

This 11 acre farm is used to grow Echinacea, various herbs, garlic, various fruits and vegetables, lavender and perennials for resale. There is a site licensed kitchen producing various retail products from products grown on the farm and three health products that have their Natural Health Product numbers from Health Canada. The farm also has animals, animal pastures and shelters - chickens, turkeys, llamas, goats, ducks, sheep. The farm is certified organic with Pacific Agricultural Society under number 16-495. List of products produced on the farm: Jams, Jellies, Pancake syrups, preserves, salsas, flavoured vinegars, health products of Echinacea tincture, herbal throat spray, mouthwash, calendula hand cream; Blueberry Echinacea Mint Iced Tea, Minced Garlic, Thai Dipping Sauce, Pickled Garlic, Garlic Rosemary Wine Jelly, spice blends using various herbs and garlic, honey from bees that are raised on the farm.

2. Quantify and describe in detail all agricultural improvements made to the parcel(s).

Since purchasing the property in 2003, the back 6 acres has been totally transformed from bare land to the following:

Perimeter and cross fencing, irrigation, planting Echinacea, lavender, garlic, vegetable gardens, various herbs, and small fruit and nut trees. Bees and honey have been introduced - 25 hives. Buildings built were our residence, a small farm store, outbuildings for animals, shop for crop processing, feed storage, machinery repairs and maintenance; three storey garage which houses a floor for packaging storage for the farm's value added products; a floor for the Site Licenced kitchen where processing occurs for the value added and natural health products Packaging and labelling designed; site licence acquired, certificate organic status obtained, NHP numbers from Health Canada obtained.

On the front 5 acres cherry trees have been planted and perennials have been added. The front red shop will be vacated by United Landscape in December, 2018 and Falcon Ridge will continue to supply perennials to the landscape company for their use. The red shop now houses shade perennials and that will increase as well as the area used for sun perennials. Additional apple trees and landscape trees for resale will increase if space is available.

3. Quantify and describe all non-agricultural uses that currently take place on the parcel(s).

*Our primary residence and the first floor of the garage
Secondary residence located at the front of the farm which is occupied by farm help in exchange for labour
Small cabin that was erected in lieu of a manufactured home permitted by the City of Kelowna
Driveways that are shared residential/farm use
Parking lot for equipment storage behind front red shop*

Adjacent Land Uses

North

Applicant: Marlys Wolfe

Land Use Type: Agricultural/Farm
Specify Activity: Apple orchards

East

Land Use Type: Unused
Specify Activity: Bare land

South

Land Use Type: Unused
Specify Activity: Bare land

West

Land Use Type: Agricultural/Farm
Specify Activity: Apple orchards

Proposal

1. How many hectares are proposed for non-farm use?

0.9 ha

2. What is the purpose of the proposal?

On July 13, 2018 the Agricultural Land Reserve Use, Subdivision and Procedures Regulation was amended by Order in Council No. 380 (the "Amendment"). The Amendment repealed subsection 2(p), which addressed cannabis production in the ALR, and added a new subsection 2.5, which stipulated that cannabis production within new buildings would only be deemed "farm use" where the structure had a base consisting entirely of soil. The applicant has permission from Health Canada to build a production building under application 10-0006, and that permission is based on a building which includes a concrete floor. Further, the applicant has been in discussion with the City of Kelowna since January, 2018 with respect to the planned construction of a 60' x 80' production building on the site of an existing parking lot (the "Building") That Building is intended for the future production of organic health products containing cannabis and the production of organic cannabis. The Amendment appears to have changed the regulatory framework that would apply to the Building, such that the applicant must now apply for a non farm use for the .9 ha area which currently serves as a gravel parking lot for equipment and machinery. The attached photographs show the area in issue, immediately behind the existing red shop, which is housing United Landscape until December, 2018. It would be the applicant's preference not to apply for a non farm use, but that appears to be the consequence of the Amendment.

3. Could this proposal be accommodated on lands outside of the ALR? Please justify why the proposal cannot be carried out on lands outside the ALR.

The federal permission received for medical cannabis from Health Canada was received only for my farm land location. The Building as proposed with a concrete floor will be more secure and will meet Health Canada's guidelines for a production facility. I was the 6th person in Canada to have applied to Health Canada for a production licence for cannabis. It was based on wanting to add more health products to our lineup that would be certified organic. We already have certified organic status on our farm, already have a website and market our products with the farm logo and appeal with products grown on our own farm, not elsewhere. Provincial regulations were in place up to July 13th that would have allowed the building on my land. The amendment of July 13th changed the provincial regulations so that I would require a non farm use for the building if I wanted a cement floor as opposed to an earth floor.

4. Does the proposal support agriculture in the short or long term? Please explain.

Yes. This would increase agriculture grown on our property - not only in the building that we are building but if we build the building on the parking lot we are using land that is not and would never be future agriculture. While it is selfevident that the parking lot has no value for food products, a site visit

Applicant: Marlys Wolfe

could be co-ordinated for anyone at the ALC or City of Kelowna involved in making this decision. In addition, we would have the land space available for increasing perennials and landscape trees that would not be added if we used that land for the cannabis production building (allowed if we did an earth floor) instead of using the redundant parking lot.

Applicant Attachments

- Site Photo - Red Shop & Parking Lot 1
- Site Photo - Red Shop & Parking Lot 2
- Site Photo - Red Shop & Parking Lot 3
- Proposal Sketch - 57976
- Site Photo - Red Shop Parking Lot
- Certificate of Title - 008-623-368

ALC Attachments

None.

Decisions

None.

Applicant: Marlys Wolfe