

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 (July 13th 2018).

In order to protect and enhance local agriculture the policy of the Official Community Plan only provides support for non-farm use applications where the proposed use meets the following criteria:

- i. Consistent with the Zoning Bylaw and OCP;
- ii. provides significant benefits to local agriculture;
- iii. can be accommodated using existing municipal infrastructure;
- iv. minimizes impacts on productive agricultural lands;
- v. will not preclude future use of the lands for agriculture; and,
- vi. will not harm adjacent farm operations.

i. Consistent with the Zoning Bylaw and OCP

This use is not consistent with the Zoning Bylaw as this use, produced in this manner, is only permitted in several industrial zones. Council recently gave 3rd reading of amendments to the Zoning Bylaw related to non-medical cannabis which include updating the Zoning Bylaw definition of 'medical marihuana production facilities' to encompass both medical and non-medical cannabis production facilities within the same defined use and to only allow this use in the industrial zones where the use of 'medical marihuana production facilities' is currently allowed (the I₁, I₂, I₃, I₄ Zones).

ii. Provides significant benefits to local agriculture

This relatively new lawful crop product has the potential to create new economic development opportunities for local farmers but it also has potential to negatively affect local agriculture. The effects of land speculation and the development of 'concrete bunkers' on viable farmland are two of the largest potential impacts to local agriculture.

The Province has limited cannabis production in the ALR to be grown in ways that preserve the productive capacity of agricultural land. 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 only 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 before the date on which the regulation came into force.

All other forms of cannabis production and associated activities require a non-farm use application.

A key theme of the City's Agricultural Plan is fostering and sustaining farm business and farmland. The Agricultural Plan notes the two top challenges to farming and food production in Kelowna, indicated by survey results, are: difficulties accessing land for farming due to speculation, high costs, and capital inputs (73%); and competing non-farm uses for farmland (70%). The non-farm use of agricultural land for production of cannabis or any type of non-farm use is of concern because once it's approved the use is rarely reversed, thus the land becomes alienated from agricultural production for the foreseeable future and likely in perpetuity. The change in land use patterns may lead to speculation, and creates a land valuation based non-farm use activities rather than agricultural activities.

iii. Can be accommodated using existing municipal infrastructure

The proposed use can likely be accommodated using existing infrastructure. The servicing requirements of the proposed use will likely require high volumes of electrical power to service the proposed building which may require electrical system upgrades. There is no municipal sewer in the area. The property owner will be required to install a private septic system in accordance with Interior Health regulations.

iv. Minimizes impacts on productive agricultural lands

On July 31st 2018 an independent Advisory Committee commissioned by the Minister of Agriculture submitted an interim report and recommendations for legislative, regulatory and/or administrative changes that would revitalize the ALR and the Agricultural Land Commission (ALC). The Committee had significant concerns about cannabis production in the ALR and provided the following recommendations:

- *Recommendation 1: Establish an immediate moratorium on all non-soil bound cannabis production and facilities in the ALR pending provincial-level analysis of impacts*
- *Recommendation 2: Following a provincial level analysis, enable the ALC to establish rules/criteria for cannabis production throughout the ALR; permit cannabis production in the ALR only through application to the ALC*

The revitalization report notes: "Federal legalization of non-medical cannabis will lead to land use issues not previously contemplated by the B.C. government and its agencies, including the ALC. The potential impacts to the ALR will likely be significant and are not yet fully understood. Advertisements for sale of ALR land and information provided to local governments across B.C. suggest there is currently significant promotion/speculation for cannabis production in the ALR."

In response to concerns about the potential impacts of cannabis production, in September 2018, the Union of British Columbia Municipalities (UBCM) endorsed a resolution requesting the Province to place a moratorium on further use of ALR lands to grow recreational cannabis pending a review and consultation on the use of the ALR for cannabis production.

While the Province amended the ALR regulations to limit non-soil based cannabis production, broader concerns remain about the use of agricultural land for cannabis production and the potential impacts on productive agricultural lands.

v. Will not preclude future use of the lands for agriculture

The parking lot where the structure is proposed was once used for crop production and converted to a parking lot in the late 2000s. If the proposed building is constructed it is unlikely the future use of the land on which the building is placed will be used for anything other than non-soil based cannabis production, in part because of the nature of and requirements for cannabis production facilities. The purpose built cannabis facility could potentially limit the opportunity for future food related agriculture activities on the property.

vi. Will not harm adjacent farm operation

Cannabis operations licensed by Health Canada are expected to follow best practices for protecting the environment and public health. Health Canada has advised, however, these best practices may not be adequate to contain all odours from this type of operation. The most likely impact on adjacent farm operations may be air quality (odour) depending on ventilation technology.

4.0 Proposal

4.1 Background

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 Marihuana 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.

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 marihuana (Health Canada No. 10MM-0006). Staff and property owners have been coordinating for several years regarding various bylaw compliance related issues including:

- June 2016 – A non-farm use application to hold weddings did not proceed as ALR regulations changed to allow weddings with specific conditions (e.g. maximum of 150 people at up to 10 events per year).
- October 2017 – A non-farm use application was submitted for a landscaping company operating in an existing building in the south-west corner of the property. This was resolved in Spring 2018 with the property owner entering into a compliance agreement stipulating that the building will be vacated by December 1st 2018.
- July 2018 – A non-farm use application to legitimize existing additional dwellings on the property has been submitted. This application is under-review by staff and will be presented to Council for consideration at a future date.

In 2014 the ALC deemed the lawfully sanctioned production of medical marihuana 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 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 processing, packaging, and storage of cannabis material would also take place within the building.

4.2 Project Description

The proposed cannabis production facility is a 4,800 sqft (445 sqm) two storey building. The building will be used for the growing and processing of cannabis material. The applicant has advised that in accordance with Health Canada regulations the storing, packaging and processing must be done indoors. The proposed location is an existing parking lot in the south west quarter of the property.



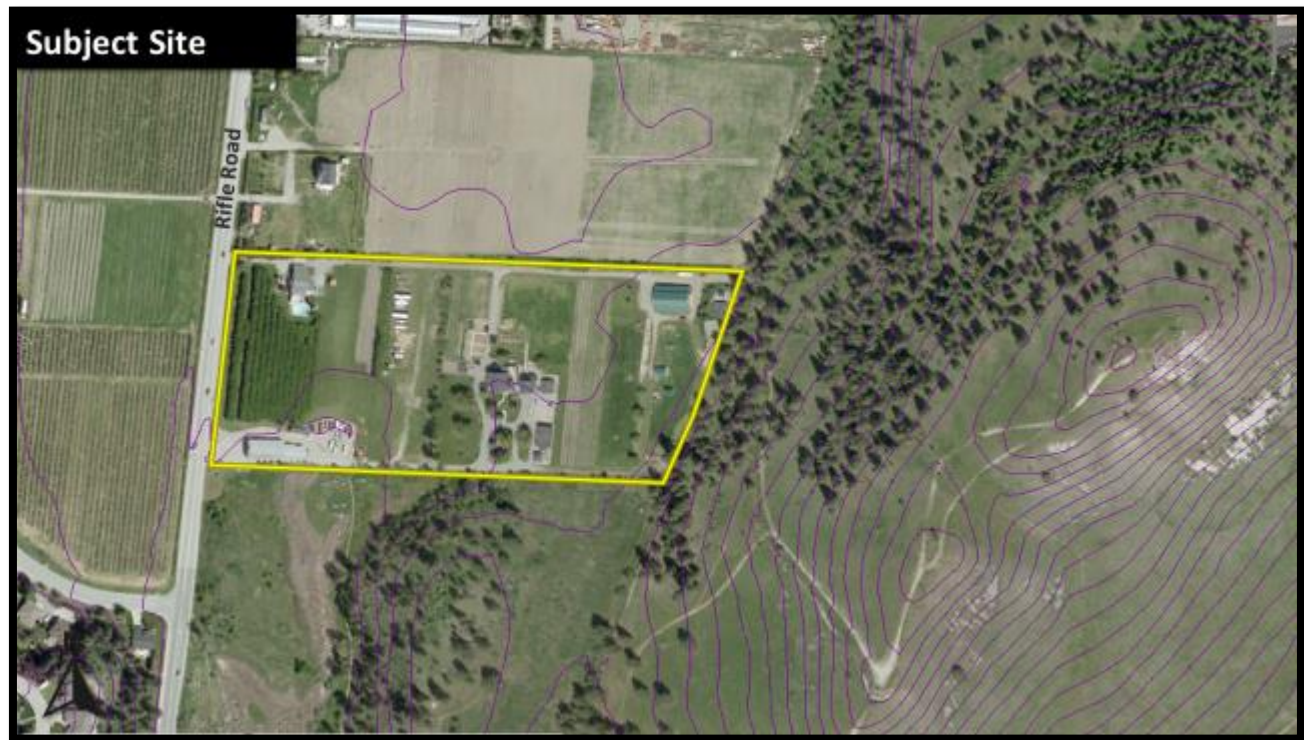
4.3 Site Context

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.

The surrounding area is agricultural. The adjacent properties are zoned A1 – Agriculture and are mostly within the ALR. Surrounding agricultural uses include orchards, hay farming, and greenhouses. There is a residential neighborhood approximately 150m the subject site.

Specifically, adjacent land uses are as follows:

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

Subject Property Map:**4.4 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 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, 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.

4.5 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 portion of the land on which the proposed cannabis facility is proposed is near soils which are generally not well suited for crops, as the soils 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.

5.0 Current Development Policies

5.1 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 updates 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.

5.2 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

5.3 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.

6.0 Technical Comments

Comments from referral agencies and departments are in Attachment A.

7.0 Application Chronology

Date of Application Received: July 16th 2018
Date Public Consultation Completed: n/a – Not required

Agricultural Advisory Committee September 13th 2018

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on September 13th 2018 and the following recommendations were passed:

THAT the Agricultural Advisory Committee recommends that Council not support Agricultural Land Reserve Application No. A18-0010 for the property located at 575-579 Rifle Road to allow for a Non-Farm Use to produce cannabis on the subject property under Section 20(3) of the Agricultural Land Commission Act.

The following anecdotal comments were made:

The Agricultural Advisory Committee does not support the application as greater clarity is needed on the policies of senior levels of government moving forward. In some cases, regulations are not yet in place or have not yet been tested. There is uncertainty on whether compliance with senior levels of government is to be considered within the mandate of the Committee.

8.0 Alternate Recommendation

THAT Agricultural Land Reserve Appeal No. A18-0010 for Lot 8, Block 21, Sections 33 and 34 Township 26 ODYD Plan 1249, located at 575-579 Rifle Road, Kelowna for a Non-Farm Use application in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act attached as 'Attachment B' to this report be supported by Council;

AND THAT Council directs Staff to forward application A18-0010 to the Agricultural Land Commission for consideration.

Report prepared by: Alex Kondor, Planner Specialist

Reviewed by: Laura Bentley, Community Planning Supervisor

Approved for Inclusion: Ryan Smith, Community Planning Department Manager

Attachments:

Attachment A: Technical Circulation Comments

Attachment B : Non-Farm Use Application