

REPORT TO COUNCIL



Date: January 20th 2020

To: Council

From: City Manager

Department: Development Planning Department (AK)

Application: Non-Farm Use Application **Owner:** William Trent Kitsch/Maria Louise Kitsch

Address: 2830 East Kelowna Road **Applicant:** William Trent Kitsch/Maria Louise Kitsch

Subject: Non-Farm Use Application A19-0016 Winery and Covenant Discharge

Existing OCP Designation: REP – Resource Protection Area

Existing Zone: A1 – Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve Appeal No. A19-0016 for Lot A, Section 16, Township 26, ODYD, Plan 32982 Except Plan KAP71228 located at 2830 East Kelowna Road, Kelowna for a non-farm use in the Agricultural Land Reserve pursuant to Section 20 of the Agricultural Land Commission Act, be supported by Council;

AND THAT the Council directs Staff to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

To consider a non-farm use application to build an alcohol production facility (winery) on a parcel that is currently in the process of converting to a vineyard and to discharge a 'no-disturb' covenant on the subject land.

3.0 Development Planning

Staff are recommending support for the proposed non-farm use application. The Agricultural Land Commission requires at least two (2) hectares of grapes to be planted and ready for production on the subject site for the winery to be considered a 'farm use'. A non-farm use application is required as this property is in the process of converting to a vineyard. Specifically, the owners are in the process of planting 14 acres (5.7ha) of grapes but the plants are not yet mature enough to be considered harvestable/production ready therefore the site does not meet the ALC threshold for the winery to be considered 'farm use'. The applicants already operate a winery and own vineyards near the subject site. Specifically, the applicants

own two parcels totaling approximately 24 acres with 12.7 acres (5.1 ha) planted with grapes. If the proposed non-farm use application is approved it would facilitate the relocation of the existing winery from its current location at 3330-3340 Neid Road to the subject site. The proposed use would only be considered a non-farm use until the grapes currently planted on site become mature enough to meet ALC threshold regulations.

A portion of the subject site is encumbered by a 'no-disturb' covenant area that was registered on the title of the lot as a condition of a previous ALR exclusion and subdivision application which was approved in 1993. Part of this non-farm use application is to request that the ALC discharge the covenant to allow the property owners to improve and potentially farm or place agricultural structures within a portion of this covenant area. The covenant was intended to protect a potentially hazardous slope and retain this area as a natural buffer. Staff are recommending this request be supported as it is meant to improve the agricultural use of the site and any development within this area would be subject to a site specific geotechnical report and environmental assessment required through the City's Development Permit process.

The Official Community Plan states to 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 operations

This application meets the criteria stated in the Official Community plan regarding support for non-farm use application. Specifically the proposed use (winery) is permitted within the City's Zoning Bylaw, the proposal is meant to allow for an established winery to expand and relocate, and there are no significant negative impacts anticipated on municipal infrastructure or productive agricultural lands.

4.0 Proposal

4.1 Background

The subject site is a 20 acre (8.1ha) agricultural parcel. There is an existing single detached house and an existing dwelling being used for farm help on the property. Previously, the parcel was planted to cherries, currently approximately 14 acres (5.7ha) of the property are in the process of being converted to grapes. The proposal is to demolish the existing dwelling for farm help and build a purpose built winery building. The amount of grapes currently planted on the subject parcel do not meet the ALC threshold regulations to allow for a winery to be constructed on the lot therefore a non-farm use application has been submitted for consideration.

The ALR Use, Subdivision and Procedure Regulation permits alcohol production facilities, such as wineries, as 'farm use' provided they meet the prescribed thresholds and are of appropriate scale and scope as per the intent of ALR regulations. An alcohol production facility does not qualify as a designated farm use if it located on a parcel that is not actively producing the required 'Primary Farm Product'. Primary Farm Product (PFP) means the farm product that is the primary ingredient used in a fermentation process to make an alcohol product, generally grapes, grain or honey. In the case of a winery the Primary Farm Product is grapes.

The ALC requires that there must be a robust relationship between the primary farm product and the farm in order for an alcohol production facility to qualify as a designated farm use. Specifically at least 50% of the

primary farm product must be grown on the facility parcel (the property where the winery is to be located), or a minimum of 2 ha of the primary farm product must be in production on the facility parcel. As the farm is in the process of converting to a vineyard the amount of grapes that are ready for production on the property where the winery is proposed do not meet this threshold.

The parcel is encumbered by a no-disturb covenant area that was required to be registered on the title of the lot as a condition of a previous ALR exclusion application. Part of this non-farm use application is to remove this covenant to allow the property owners to maintain and potentially farm or place agricultural structures within a portion of this covenant area.

Regarding the proposed covenant removal. The covenant was placed on the property as a condition to allow 1.2ha of land to be excluded and subdivided from the ALR in 1993. Specifically, the approval was subject to the following conditions:

1. The retention of the escarpment above the 410 meter contour line as a natural vegetative buffer.
2. The registration of a covenant over this area preventing the disturbance of vegetation or the construction of structures in this area.
3. The construction of a chain link fence on the downslope side of the buffer.

During the exclusion process council recommended that the above conditions be placed on the application, and ALC staff recommended that further study of the escarpment in this area be reviewed. A slope analysis has not been commissioned during the exclusion and subdivision process. This area is currently part of the City's 'High Hazard' and 'Natural Environmental' Development Permit areas. This means a geotechnical report and an environmental assessment would be required prior to any the development to confirm what is proposed is safe and not disturbing a highly environmentally sensitive area. The applicants request to wait to commission a site specific geohazard report or environmental assessment until after the covenant is discharged but prior to any development in this area. Development permit guidelines are in place to regulate development within this area. During the development permit process a new covenant may be required based on the results of a site specific geohazard assessment or environmental assessment.

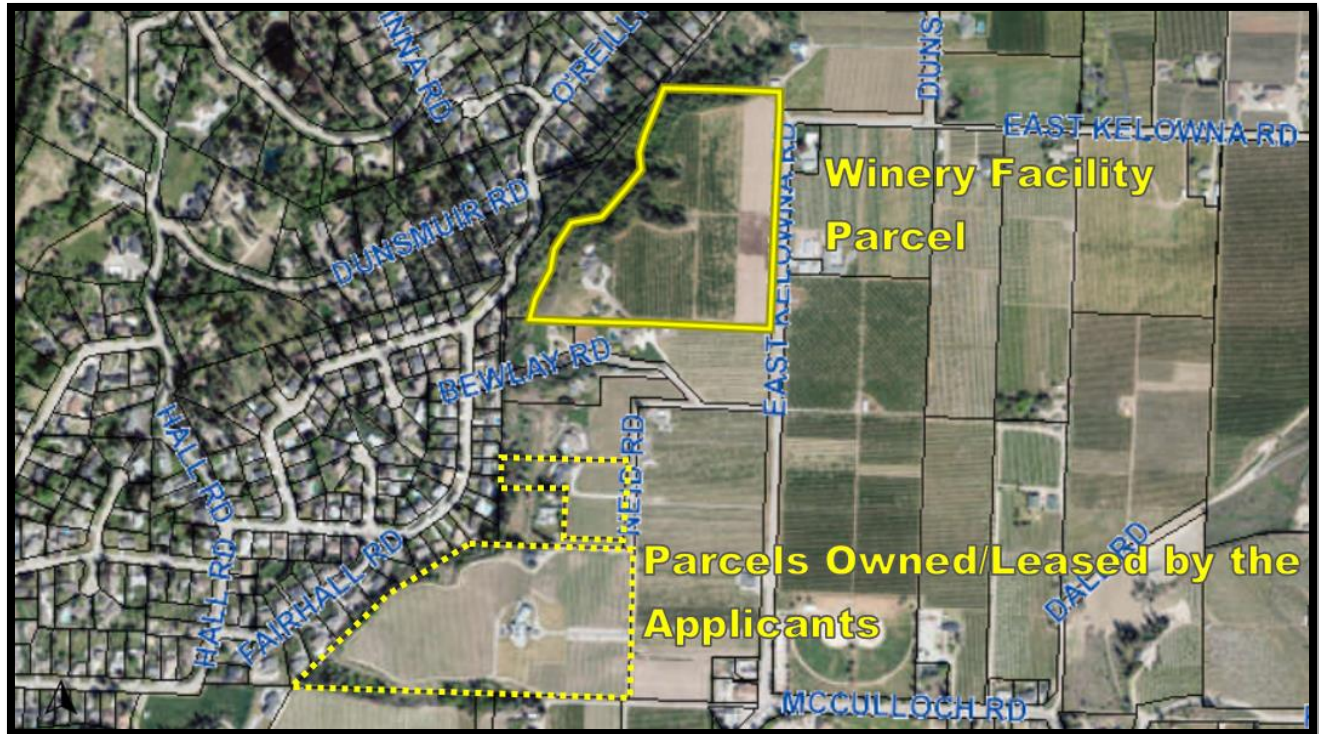
4.2 Project Description

The proposed winery is approximately 950sqm (10,200sqft) this includes a crush pad, barrel storage, and tasting area. The proposed winery meets the City's Zoning Bylaw development regulations for alcohol production facilities with respect to size, height and set-backs. The request to remove the covenant is to increase agricultural activity within the covenant area. The applicants have not provided any definitive plans for the covenant area. They have stated that a portion of the covenant area may be suitable for a cellar for the winery (barrel and case storage). Concern has also been raised from the applicants that shade and root systems created by tall trees along the edge of the covenant area are going to have a negative impact on the sun exposure and are going to impact the vineyard with respect to moisture, frost, and ripening.

Site Context

The property is designated REP – Resource Protection Area in the Official Community Plan and zoned A1 – Agriculture 1. The property is located within the Agricultural Land Reserve. The property is within the Southeast Kelowna City Sector. The properties to the North, East, and South are predominantly designated REP – Resource Protection Area in the Official Community Plan, zoned A1 – Agriculture 1 and located within the Agricultural Land Reserve. The area to the West of the site is designated Single/Two Unit Residential in the Official Community Plan and Zoned RR3 -Rural Residential 3 and is being used for single detached housing.

Subject Property Map:



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Chapter 5: Development Process

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 operations.*

Chapter 15: Farm Protection DP Guidelines

1.10 On agricultural lands, locate farm retail sales, wineries, cideries, breweries, distilleries, and any other structures and services related to the public that are defined as farm uses under the ALC Act near the road entrance or in a location that minimizes road construction to reduce the footprint and extent of services through the lot with the goal of reducing impact on the agriculture potential.

5.2 ALR Use, Subdivision and Procedure Regulation

(2.1) A winery or cidery, and ancillary uses, are designated as farm uses for the purposes of the Act if

(a) at least 50% of the farm product used to make the wine or cider produced each year is grown on the farm on which the winery or cidery is located, or

(b) the farm on which the winery or cidery is located is more than 2 ha in area and at least 50% of the farm product used to make the wine or cider produced each year is grown

(i) on the farm, or

(ii) both on the farm and on another farm located in British Columbia that provides that farm product to the winery or cidery under a contract having a term of at least 3 years.

6.0 Technical Comments

6.1 Development Engineering Department

- The subject property is within the former South East Kelowna Irrigation District service area. On-site servicing including the utilisation of existing or proposed services will be reviewed by Building & Permitting.
- The proposed building location appears to be outside of the existing Fire Hydrant coverage area.
- This subject property is currently not within the City service area. Sanitary sewage is handled by on-site wastewater disposal system(s). The existing on-site system(s) are not shown on the submitted Site Plan. The application will be reviewed by a Licenced Wastewater Practitioner and Building & Permitting.
- Provide one primary paved access driveway to East Kelowna Road. A secondary gated egress driveway is acceptable for special events and limited use only. Adequate on-site parking shall be provided with an area that will allow vehicles to turn-around and exit the property in a forward direction.

6.2 Ministry of Agriculture

- The parcel is located within the Agricultural Land Reserve (ALR), a provincial zone in which agriculture is recognized as the priority use; where farming is encouraged, and non-agricultural uses are restricted.
- Ministry staff also have concerns regarding the proposed removal of the parcel's existing covenant and previous ALC application condition given the benefits associated with vegetative buffers between agricultural and non-agricultural properties. Strong buffers and thoughtful edge planning can help play a valuable role in minimizing potential conflict between different land uses.
- Related to this, Ministry staff emphasize the recognition that there is a potential increase of neighbouring noise and traffic complaints sometimes associated with wineries in the ALR. Ministry staff strongly encourage the applicants and City of Kelowna staff to continue to engage with neighbouring property residents to help minimise this potential issue

7.0 Application Chronology

Date of Application Received:	August 15 th 2019
Agricultural Advisory Committee	October 10 th 2019

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on October 10th 2019 and the following recommendations were passed:

THAT a nonfarm-use of 4 years be supported for Agricultural Land Reserve Application No. A19-0016 for the property located at 2830 East Kelowna Road.

THAT the 'no-disturb' covenant be maintained and allow for its modernization to facilitate agricultural purposes.

Report prepared by: Alex Kondor, Planner Specialist
Reviewed/Approved for Inclusion: Terry Barton, Development Planning Department Manager

Attachments:

Attachment A – ALC Application

Attachment B – Development Plans

Attachment C – ALR Exclusion/Covenant Sketch Plan (A93-108)