

# REPORT TO COUNCIL

**Date:** January 27<sup>th</sup> 2020

**To:** Council

**From:** City Manager

**Department:** Development Planning (AK)

**Application:** TA19-0017 **Owner:** Geen, David

**Address:** 2975 Gallagher Drive **Applicant:** Sellinger, Bob

**Subject:** Zoning Bylaw Text Amendment, ALR Non-Adhering Residential Use Permit and Temporary Farm Worker Housing Permit

**Existing OCP Designation:** REP – Resource Protection Area

**Existing Zone:** A<sub>1</sub> – Agriculture 1

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## 1.0 Recommendation

THAT Zoning Bylaw Text Amendment Application No. TA19-0017 to amend the City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "A" attached to the Report from the Development Planning Department dated January 27<sup>th</sup> 2020 for Lot A, Section 12, Township 26, ODYD, Plan EPP71625 located at 2975 Gallagher Drive, Kelowna, BC, NOT be considered by Council;

## 2.0 Purpose

To consider a Staff recommendation to NOT support an application for a Text Amendment to the Zoning Bylaw to facilitate temporary farm worker housing for up to 70 temporary farm workers on the subject property, which would result in a total of up to 130 temporary farm workers for a single farm unit located within the same City Sector and increase the maximum 'temporary farm worker housing footprint' from 0.3ha to 0.95ha.

## 3.0 Development Planning

Development Planning staff are recommending non-support for the proposed application which would result in a total of 130 temporary farm workers for a single farm unit located within the same City Sector and increase the maximum 'temporary farm worker housing footprint' from 0.3ha to 0.95ha. The City's Zoning Bylaw limits the amount of housing for temporary farm workers per farm unit in each City Sector to avoid an excessive concentration of workers in agricultural areas that lack amenities such as shops, services, sanitary connection, parks, and access to transit. The subject site is an isolated agricultural parcel not located near transit, stores, or other amenities.

Staff are recommending non-support due to the fact that 60 beds of TFWH has been deemed to be the maximum amount of workers that is appropriate for each farm unit in each Sector of the City. The property owners have previously been granted approval for 60 workers within the same Sector on the subject property early in 2019 (A19-0005 AND FH19-0001). In 2017, Council adopted new regulations for Temporary Farm Worker Housing (TFWH) following consultation with the Ministry of Agriculture, the farming industry, and the public. The regulations were intended to address concerns related impact on agricultural land, increased demands on municipal infrastructure, and the potential 'detachment' of the workers having no connection to the overall community. The current zoning bylaw regulations allow farmers to have accommodations for up to 40 temporary farm workers on parcels less than 8.0 ha and up to 60 temporary farm workers for parcels 8.0 ha or greater on farm units within each City sector. This maximum applies to each 'farm unit', which is defined as the group of parcels owned, rented, or leased by an individual farmer. This enables farmers to have multiple TFWH locations within the City but not in the same Sector of the City. Staff recommend that more urban locations of the City are more appropriate for this level of housing.

#### **4.0 Proposal**

##### **4.1 Background**

The property is farmed by Coral Beach Farms Ltd. The company currently has 930 acres of cherries planted with an additional 250 acres planned in 2020 for a total of 1,180 acres. 300 of those acres are in the City of Kelowna. The majority of land owned or leased by the company is in the Central and North Okanagan. In 2018 the company produced 3,750 tons of cherries, and upwards of 6,000 tons is expected by 2021. The cherries are currently packed at the company's facility in Carr's Landing and a new packing facility under construction on a property on Shanks Road near Highway 97 N is anticipated to be used in 2020.

Coral Beach Farms employs approximately 1,000 staff in the peak summer season. By 2023 the company expects to employ over 1,400 staff. Approximately 60% of seasonal staff are brought in under the Seasonal Agricultural Workers Program (SAWP) program from Mexico and Jamaica, with the remainder primarily being international backpackers and out-of-province Canadians.

The property owners have previously been granted approval for 60 workers within the same Sector on the subject property early in 2019 (A19-0005 AND FH19-0001). The applicants have provided a detailed letter (attached) which states the company currently has 222 beds in City of Kelowna and 474 beds for workers in Lake Country and Vernon. The applicants have also provided a letter of opinion from an agrologist (attached) on the proposed worker accommodation area and its impact on the overall agricultural operations on the subject property.

##### **4.2 Project Description**

The property owners have applied for permits to accommodate 70 additional workers on the subject site located at 2975 Gallagher Road which will mean up to 130 workers will be housed on the property. The subject property is zoned for A1 - Agriculture and located within the Agricultural Land Reserve (ALR). The lot is 61 hectares (151 acres) in area. Approximately 96 acres are presently planted as cherry orchard and cherry/apple tree nursery. The proposed accommodation is required in order to house seasonal workers to maintain the cherry orchard on the property and nearby orchards of Coral Beach Farms.

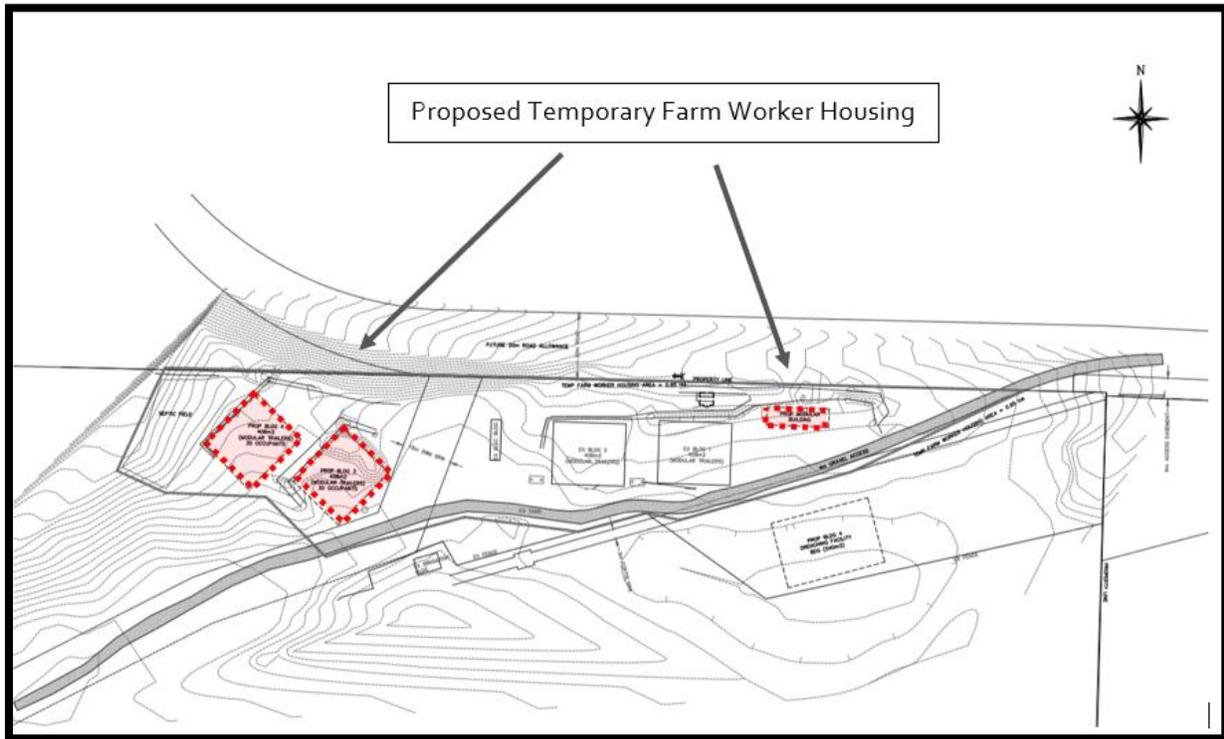
The application is for 70 additional beds for temporary farm worker housing (TFWH) in temporary structures on non-permanent foundations. Specifically, the proposal is to accommodate 70 additional seasonal farm workers by placing 12 'ATCO' trailers on the property. The majority of the housing will be

located in two 'pods' of 6 trailers each. Each pod includes bedrooms, shared washrooms and a common kitchen area.

The proposed housing is located in a City Sector that currently has approximately 60 units of temporary farm worker housing (TFWH). In comparison the Rutland City Sector has approximately 231 units of existing TFWH and the McKinley City Sector has 180 units of TFWH. The applicant owns multiple parcels within the City of Kelowna and surrounding area. Staff have discussed other possible sites with the applicant. The applicant has advised that the subject site is the least disruptive location to their agricultural operation and is intended to be the least disruptive to adjacent properties. In addition to the proposed housing the applicant is also proposing to construct 44 units of temporary farm worker housing in the East Kelowna City Sector.

The Official Community Plan (OCP) states that temporary farm worker housing should utilize all existing dwellings within a farm unit prior to building new temporary farm worker housing. The applicants have clarified that throughout their farms in Kelowna, and also in Lake Country and Vernon, 100% of the dwellings are used for farm staff. Specifically, the applicants state they have zero non-farm use rental accommodation, which could otherwise be converted to use for temporary farm worker housing.

To deal with the fact the proposed housing is located in an isolated rural area, the applicants are proposing to provide bus transportation to urban amenities such as grocery stores or banks. The site is accessed by easement over the Kirschner Mountain property the applicants are proposing to pay the cost of upgrading a portion of this easement to a municipal emergency road standard to ensure safe access to the site. The trailers are located near a low-point of the property and the proposed location is not highly visible from the surrounding area. A landscape buffer has been installed as condition of the previous approval for 60 workers on the subject site and would be required to be expanded to buffer the proposed units.



#### 4.3 Site Context

The site is located outside of the Permanent Growth Boundary and within the Belgo-Black Mountain City Sector. The site is located on a portion of Layer Cake Mountain and was planted with cherries starting in 2017/18. The lot is adjacent to Mission Creek to the south and west which is designated as Park in the Official Community Plan and Zoned P<sub>3</sub> – Parks and Open Space. The lot is adjacent to Kirschner Mountain to the north which is designated S<sub>2</sub>Res – Single/Two Unit Residential in the OCP and zoned A<sub>1</sub> – Agriculture 1. The property is accessed by easement from Gallagher Road to the east, and the location of the access easement will likely become a future road to service Kirschner Mountain development.

### 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 5.33.1 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 5.34 Preserve productive agricultural land.*

Policy 5.34.2 Farm Help Housing. Accommodation for farm help on the same agricultural parcel will be considered only where:

- Agriculture is the principal use on the parcel; and
- The applicant demonstrates that the additional housing is necessary to accommodate farm employee(s) whose residence on the farm property is considered critical to the overall operation of the farm. The primary consideration is whether the scale of the farm operation is large enough that permanent help is deemed necessary.
- Temporary farm worker housing (e.g. bunkhouse accommodation on non-permanent foundations) is the preferred solution where the need for farm worker housing is justified.

#### **Chapter 15 Farm Protection Development Permit Guidelines.**

Design temporary farm working housing such that:

- Temporary farm worker housing should use all existing dwellings within the farm unit, prior to building new temporary farm worker housing, unless the existing dwellings are used for a use consistent with the Agriculture Land Commission Act. Alternatively, the existing dwellings on the farm unit must be removed, decommissioned to an approved use or demolished including decommissioning the existing septic system, prior to the authorization of a new temporary farm worker housing structure.
- Temporary farm worker housing footprint should be contiguous with the residential footprint (i.e. homeplate) and / or within 50 metres of the road and/or located to maximize agricultural potential and limit negative impacts on the farm parcel.
- Temporary farm worker housing should have a minimum 3 metre wide vegetated buffer for screening to adjacent property lines and between the temporary farm worker housing and active farming areas.

5.2 City of Kelowna Agriculture Plan

Allow Temporary Farm Worker Housing, as permitted by City of Kelowna bylaw. Temporary Farm Worker Housing, as permitted by the City of Kelowna, should be allowed. The TFWH footprint means the portion of a lot that includes all structures, driveways and parking areas associated with the temporary farm worker housing, including but not limited to structures for cooking, sanitary, living and sleeping. The footprint does not include the vegetated buffer

6.0 **Technical Comments**

6.1 Development Engineering Department

- See Attached Servicing Memo (Attachment A)

6.2 Ministry of Agriculture

- Ministry staff in general support the development of farm worker accommodation appropriate to the farm operation's agricultural activity and consistent with the ALC's Act and Regulations.
- Based on the information provided, Ministry staff consider the proposal to be a reasonable application based on the crop, scale, and location of the agricultural operation. Ministry staff are aware of Kelowna's accompanying referral requests for FH19-0006 farm help application and TA19-0017 zoning bylaw text amendment and will respond separately following further review.
- Ministry staff anticipate that the zoning bylaw text amendment will require Minister's approval given that the City of Kelowna's is identified in the Local Government Act's Right to Farm Regulation with the proposed bylaw being submitted following 3<sup>rd</sup> reading.

7.0 **Application Chronology**

Date of Application Received:	October 18 <sup>th</sup> 2019
Date Public Consultation Completed:	December 20 <sup>th</sup> 2019
Agricultural Advisory Committee	December 12 <sup>th</sup> 2020

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on December 12<sup>th</sup> 2019 and the following recommendation was passed:

*THAT The Agricultural Advisory Committee recommends that Council support temporary farm worker housing for up to 70 additional farm workers on the subject property, which would result in a total of up to 130 temporary farm workers for a single farm unit located within the same City Sector.*

## 8.0 Alternate Recommendation

### 8.1 Discussion

Should Council support the applicant's proposal, several approvals are required:

1. Zoning Bylaw Amendment (TA19-0017) - The property owners have applied for a site-specific text amendment to the Zoning Bylaw to allow for structures to accommodate a maximum of 70 temporary farm workers on the property, and to accommodate a maximum of 130 temporary farm workers on this farm unit in the Belgo-Black Mountain City Sector. A text amendment is also required to increase the maximum Temporary Farm Worker Housing Footprint from 0.4ha to 0.95ha to accommodate the proposed structures. In 2019 the property owners obtain permission for Temporary Farm Worker Housing to house 60 workers on the subject site at 2975 Gallagher Road.

In 2017, Council adopted new regulations for Temporary Farm Worker Housing (TFWH) following consultation with the Ministry of Agriculture, the farming industry, and the public. The regulations were intended to address concerns related to:

- Potential misuse of farm worker housing;
- Loss of agricultural land;
- Changes to the agricultural landscape;
- Increased demands on municipal infrastructure; and
- A perceived 'detachment' of the workers having no connection to the community.

The regulations allow farmers to have accommodations for up to 40 temporary farm workers on parcels less than 8 ha and up to 60 temporary farm workers for parcels 8 ha or greater on farm units within each City sector. This maximum applies to each 'farm unit', which is defined as the group of parcels owned, rented, or leased by an individual farmer. This enables farmers to have multiple TFWH locations within the City but not in the same Sector of the City. The main reason for the limit on worker allocation is to avoid concentrating a large amount of workers in an otherwise agricultural or rural area where there are typically not many amenities such as transit or grocery stores. The limit on the number of farm workers per City Sector is also in place to minimize impacts such as traffic and noise on surrounding properties.

2. Non-Adhering Residential Use (A19-0017) – Owners of land within the Agricultural Land Reserve are required to obtain approval from the Agricultural Land Commission for dwellings for temporary farm help where it exceeds what would be considered one dwelling unit on a property. Should Council choose to support the site specific text amendment and non-adhering residential use application, approval from the Agricultural Land Commission would be required prior to adoption of the text amendment.
3. Temporary Farm Worker Housing Permit (FH19-0006) – A Farm Worker Housing permit must be approved by Council confirming the proposal meets the City of Kelowna regulations and guidelines related to temporary farm worker housing. In keeping with the Ministry of Agriculture's Guide to Bylaw Development in Farming Areas and the City's regulations for TFWH, the property owner would be required to register Section 219 restrictive covenants on title that generally state:
  - The TFWH will be used for temporary farm workers only;

- The owner will remove the TFWH if the farm operation changes such that it is no longer required; and
- The TFWH will only be used for farm workers for a specified number of months of the year (typically a maximum of eight, though may be increased to ten).

The proposed temporary farm worker accommodation meets all other regulations of the Zoning Bylaw and the guidelines stated in Official Community Plan. The proposal is also consistent with Ministry of Agriculture standards for temporary farm worker accommodation. Specifically, agriculture is the principal use on the parcel, and the applicant has demonstrated that the housing is necessary to accommodate farm employees whose residence on the farm property is considered critical to the overall operation of the farm. The proposed accommodation is on non-permanent foundations which is the preferred solution where the need for farm worker housing is justified.

## 8.2 Alternative Recommendations

THAT Zoning Bylaw Text Amendment Application No. TA19-0017 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "A" attached to the report from the Development Planning Department dated January 27<sup>th</sup> 2020 for Lot A, Section 12, Township 26, ODYD, Plan EPP71625 located at 2975 Gallagher Drive, Kelowna, BC be considered by Council;

AND THAT the Zoning Bylaw Text Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zoning Bylaw Text Amending Bylaw be considered subsequent to the outstanding conditions of approval as set out in Schedule "A" attached to the Report from the Community Planning Department dated January 27<sup>th</sup> 2020;

AND THAT final adoption of the Zoning Bylaw Text Amending Bylaw be considered subsequent to approval from the Ministry of Agriculture;

AND FURTHER THAT final adoption of the Zoning Bylaw Text Amending Bylaw be considered in conjunction with Council's consideration of a Non-Adhering Residential Use Permit, and Farm Help Development Permit for the subject property.

**Report prepared by:** Alex Kondor, Planner Specialist

**Reviewed by:** Terry Barton, Development Planning Department Manager

**Approved Inclusion:** Ryan Smith, Divisional Director, Planning & Development Services

**Attachments :**

Schedule A: Zoning Bylaw Text Amendments

Attachment A: Development Engineering Memo

Attachment B: Supporting Documents (Site Plan, Letter of Rational, Agrologist Report)