

REPORT TO COUNCIL



Date: June 14, 2016

RIM No. 0940-50

To: City Manager

From: Community Planning Department (TY)

Application: DVP15-0191 & DP16-0110 **Owner:** Eva M. Linttell

Address: 2075 KLO Road **Applicant:** Tyler Linttell

Subject: Development Variance Permit & Farm Protection Development Permit

Existing OCP Designation: REP Resource Protection Area

Existing Zone: A1t - Agriculture 1 with Agri-tourist Accommodation

1.0 Recommendation

THAT Final Adoption of Rezoning Bylaw No. 11188 (TA15-0010) and Text Amendment Bylaw No. 11189 (Z15-0045) be considered by Council;

AND THAT Council NOT authorize the issuance of Development Variance Permit No. DVP15-0191 for Lot B District Lot 131 ODYD Plan 39954, located at 2075 KLO Road, Kelowna, BC.

2.0 Purpose

To consider a Staff recommendation to NOT issue a Development Variance Permit to vary the location of agri-tourist accommodation units on the subject property.

3.0 Community Planning

Community Planning does not support the proposed location of the agri-tourist accommodation units. The current DVP15-0191 & DP16-0110 application is to determine if the proposed location of the Agri-tourist Accommodation Units (RV sites) and Farm Plan is acceptable to Council.

Agri-tourist accommodation is a *permitted non-farm* use in the Agricultural Land Reserve (ALR) according to the ALR Subdivision and Procedure Regulation. While the use is a *permitted non-farm use* by the Agricultural Land Commission (ALC), the activity is not a *farm-use* and therefore

may be regulated or prohibited by a local government bylaw. The City of Kelowna regulates this use in a number of ways as outlined in Kelowna's Official Community Plan (OCP) and Zoning Bylaw No. 8000 throughout this report. City of Kelowna regulates agri-tourist accommodation as a secondary use if the accommodation is associated with an agri-tourism activity, this accommodation and tourism activity must be subordinate and secondary to the principal agricultural use.

City Council gave second and third readings to applications TA15-0110 & Z15-0045 to rezone the subject parcel from the A1 zone to the A1t zone, and to permit a total of 10 RV sites on the subject property. Council considered the RV Sites to be secondary based on the proposed Farm Plan provided during these applications. The Farm Plan currently proposed is substantially the same as originally proposed to Council.

Community Planning do not support the Variance as proposed as the principals of Homeplating (Farm yard footprint) are not realized with the proposed layout. RV Sites and associated permanent infrastructure are proposed throughout the property and go well beyond Kelowna's established agricultural guidelines and objectives.

Guidelines¹ On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only;

Objective² Minimize Impacts on Agricultural Land. Minimize the impact of penetration of road and utility corridors through agricultural lands, utilizing only those lands necessary and to the maximum capacity prior to seeking new corridors.

Additional policies are found in section 7.0 of this report.

The existing driveway, principal dwelling, parking areas, accessory building and basketball sport court do not meet a contiguous footprint, close to a front property line. The location of the proposed RV Sites, gravel drives and permanent infrastructure such as underground City of Kelowna water and sewer services as well as upgraded underground electrical services are proposed through the centre of the property, and across the rear perimeter of the agricultural parcel.

3.1 Application Background

In February of 2016, Kelowna Council gave second and third reading to a Text Amendment and Rezoning application on the subject parcel, granting the ability to increase allowable agri-tourist accommodation units (RV Sites) from five units permitted in Zoning Bylaw No. 8000 to ten units, and to rezone the parcel from the A1 zone to the A1t zone.

Requirements of Fourth Reading/Final Adoption of TA15-0010 and Z15-0045 include:

- Satisfy Development Engineering requirements (enter into a servicing agreement and providing bonding to complete the appropriate upgrades);
- Registering a Section 219 Restrictive Covenant, restricting the allowable area on the land, dates, and storage of the agri-tourist accommodation operation;
- Applying for a Development Variance Permit for the location of the units; and
- Apply for a Farm Protection Development Permit for all proposed uses on the parcel.

¹ City of Kelowna Official Community Plan, 1.2 (Farm Protection Development Permit Guidelines Chapter).

² City of Kelowna Official Community Plan, 7.5.1 (Infrastructure Chapter).

The applicant has completed the first two requirements. The DVP and Farm Protection Development Permit applications currently being considered by Council is the final step to give Final Reading to the Rezoning from A1 to A1t and to grant the Text Amendment that will allow a total of 10 RV Sites on the subject parcel.

4.0 Proposal

4.1 Background

The subject parcel is 7.7 ha/14.24 ac and is in the process of converting the hay field into vegetable gardens, implementing an apiary and constructing a bird barn for broiler chickens. The applicant is developing a family run RV park and farm as well as third party leasing of certain farm operations.

4.2 Project Description

The development proposed by the applicant consists of two components, a phased agriculture plan as detailed in Schedule C, and RV Sites. The agriculture plan is phased over a five-year full buildout including vegetable gardens, laying chickens, broiler chickens and honey bees. All components will be implemented as detailed in Schedule C by the end of 2016. The agri-tourist accommodation component consists of ten RV sites complete with permanent water, sewer and power hookups along with the associated washroom and shower facilities. The bird component of the agriculture and the RV sites will be operated by the Lintell family, with the vegetable component leased to Wise Earth Farms (John Hofer and Brenda Paterson), and the apiary leased to McPhail Enterprises (Mark McPhail).

The proposed Farm Plan does increase the amount and diversity of farming on the subject parcel from previous agricultural production of hay which does meet agricultural goals. The proposed plan does not further disturb the Mission Creek Riparian Management Area along the south of the subject property.

Table 1: Breakdown of Proposed Uses

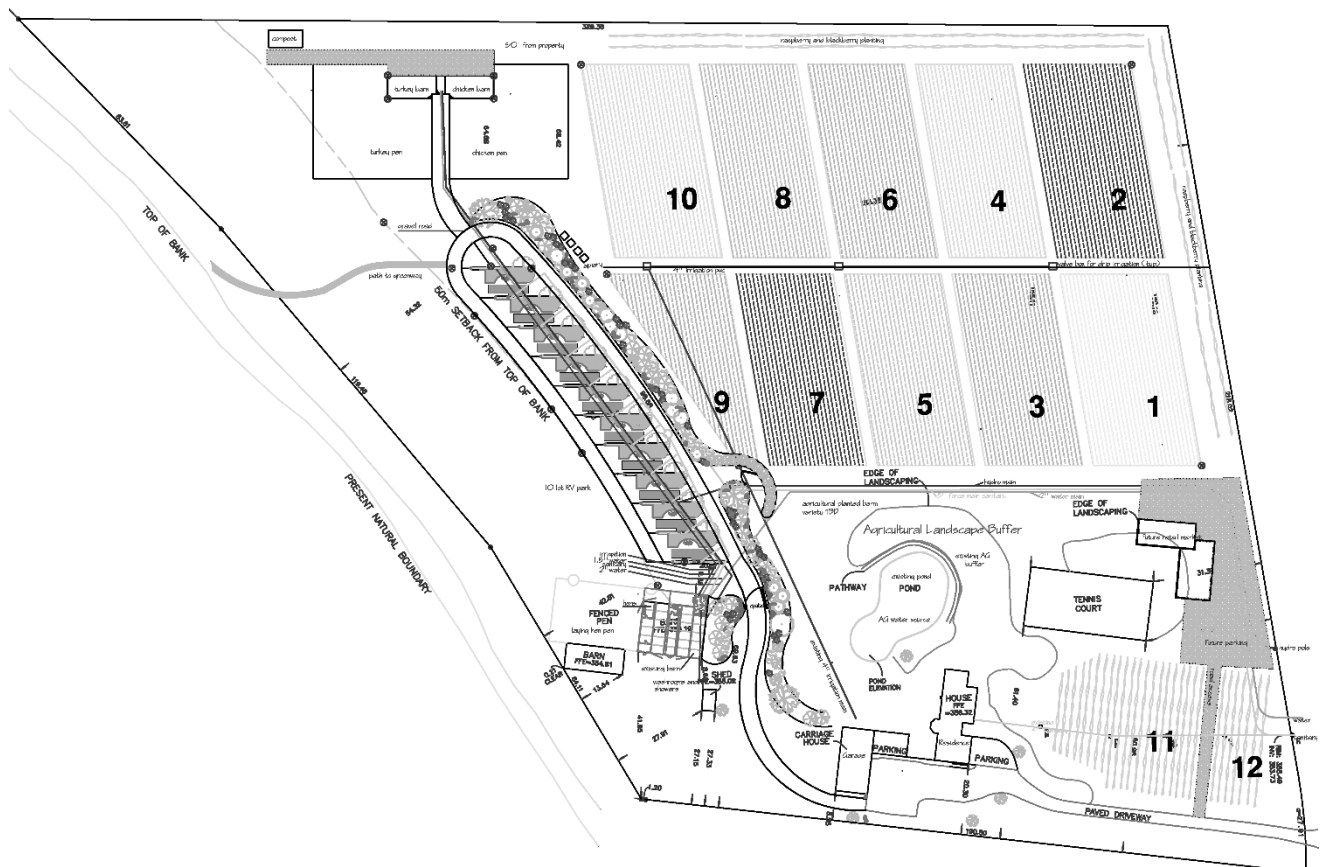
Existing Residential farm yard & non-farm use footprint (including all driveway, parking areas & structures)	4,485 m ²	1.11 ac	8%
Proposed Agri-tourist Accommodation Footprint (unit pads & washrooms/ showers)	2,215 m ²	.55 ac	4%
Proposed Agriculture Area	29,600 m ²	6.82 ac	51%
Undisturbed Riparian Management Area (Mission Creek)	9,010 m ²	2.23 ac	16%
Remaining Land (not agriculture, undeveloped, or landscape buffer)	12,337 m ²	3.54 ac	21%
Subject Parcel	57,647 m²	14.25 ac	100%

The Phased Agricultural Plan (Schedule C) outlining the principal use on the land must be adhered to in order to operate the secondary use of RV Sites. Should the Farm Plan change, an amended Farm Protection DP is required. A staff level amendment would occur should the revised farm plan substantially show that the agriculture is the primary use, otherwise a Council consideration of the amendment would take place.

Image 1: 2015 Existing Conditions 2075 KLO Road



Image 2: Proposed Agriculture & RV Sites



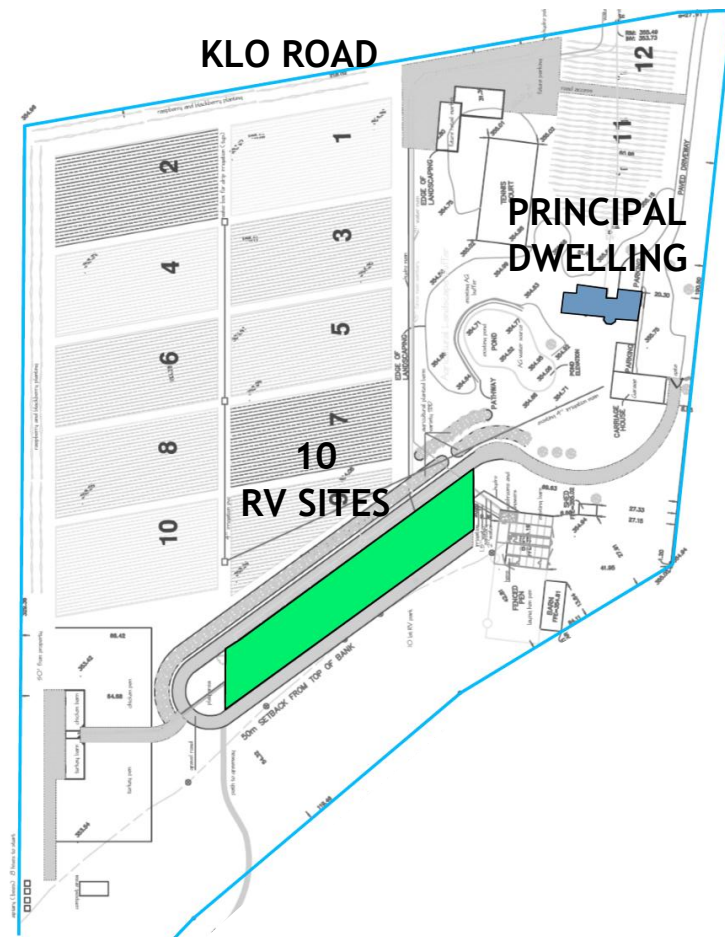
4.3 Variance

The proposed variance is required as the location of the ten RV sites do not adhere to Zoning Bylaw No. 8000 regulation of:

- Within 30.0 m of the principal residence or
- Within 30.0 m of a road frontage of the lot.

The location as proposed by the applicant is along the rear of the property, positioned along the Riparian Management Area setback from Mission Creek. The closest RV site is within 85.0 m of the principal residence, the furthest RV site located 180.0 m from the principal residence.

Image 3: Principal Dwelling & Agri-tourist Accommodation Siting



City staff are certainly in support of expanding agriculture on the property. One way to reduce speculation and reduce the possibility of an accessory use becoming a principal use is to maintain a small footprint on the land. The proposed site plan does not represent that minimal footprint. The proposed RV site location is the same soil makeup as the remaining parcel of land in agricultural production. The RV site location that would meet Zoning Bylaw No. 8000, between the principal residence and the road, is being used as agriculture.

No additional dwellings or suites are a result of this application. The principal dwelling remains the only living space on the property. The existing barn is being renovated for washroom and showers only. No kitchen facility is being created within the barn.

4.4 BREAKDOWN OF AGRICULTURAL PHASING PLAN - as per attached Schedule C

FARM USE YEAR ONE 2016	
VEGETABLE GARDEN	ENTIRE VEGETABLE FIELD PLOWED & DISKED
	PLOTS 1 & 2 PLANTED AUGUST 1 ST (WINTER, SPRING CROPS FOR 2017)
	PLOTS 3 & 4 PLANTED JUNE 1 ST (SQUASH)
	PLOTS 5 & 6 PLANTED MAY 15 TH (CORN)
	PLOTS 7 & 8 PLANTED JUNE 15 TH (LEGAL HEMP)
	PLOT 10 PLANTED MAY 15 TH (GROUND CHERRIES)
	PLOT 11 PLANTED (FLOWERS)
	PERIMETER PLANTING (RASPBERRIES & BLACKBERRIES)
BROILER CHICKENS	CONSTRUCTION OF COOP
	300 CHICKENS
APIARY	8 COLONIES
LAYING HENS	100 LAYING HENS MAY 1 ST
YEAR 2 2017	
VEGETABLE GARDEN	PLOTS 1, 2 & 11 PERMANENT BEDS CREATED, HIGH DENSITY & FREQUENT PLANTINGS.
	ALL REMAINING PLOTS TO CONTINUE WITH YEAR 1 AGRICULTURE
BROILER CHICKENS	INCREASED TO 500 CHICKENS, AN ADDITIONAL 500 CHICKENS IN THE FALL
APIARY	IF SUCCESSFUL, INCREASE COLONIES. EXISTING 8 WILL REMAIN PERMANENTLY.
LAYING HENS	CONTINUATION OF YEAR 1
YEAR 3 2018	
VEGETABLE GARDEN	PLOTS 3, 4, 5, 6 PERMANENT BEDS CREATED, HIGH DENSITY & FREQUENT PLANTINGS.
	PLOTS 7, 8, 9, 10, 12 TO CONTINUE WITH YEAR 1 AGRICULTURE
BROILER CHICKENS	INCREASE TO 1,000 CHICKENS, AN ADDITIONAL 1,000 CHICKENS IN THE FALL
YEAR 4 2019	
VEGETABLE GARDEN	PLOTS 7, 8, 9, 10, 12 CREATING PERMANENT BEDS, HIGH DENSITY & FREQUENT PLANTINGS.
YEAR 5 FULL BUILDOUT 2020	
VEGETABLE GARDEN	ENTIRE VEGETABLE GARDEN AREA IS IN PERMANENT BEDS, FULLY IRRIGATED
	RASPBERRIES & BLACKBERRIES ARE ESTABLISHED AS A SOLID PERIMETER
BROILER CHICKENS	1,000 CHICKENS, ADDITIONAL 1,000 CHICKENS IN THE FALL
APIARY	A MINIMUM OF 8 COLONIES, WITH THE POSSIBILITY OF ADDITIONAL COLONIES.
LAYING HENS	100 LAYING HENS
NON-FARM USE YEAR 1 2016	
AGRI-TOURIST ACCOMMODATION UNITS	10 RV SITES CREATED, SEWER, WATER, ELECTRICAL, GRAVEL DRIVE AND PADS.

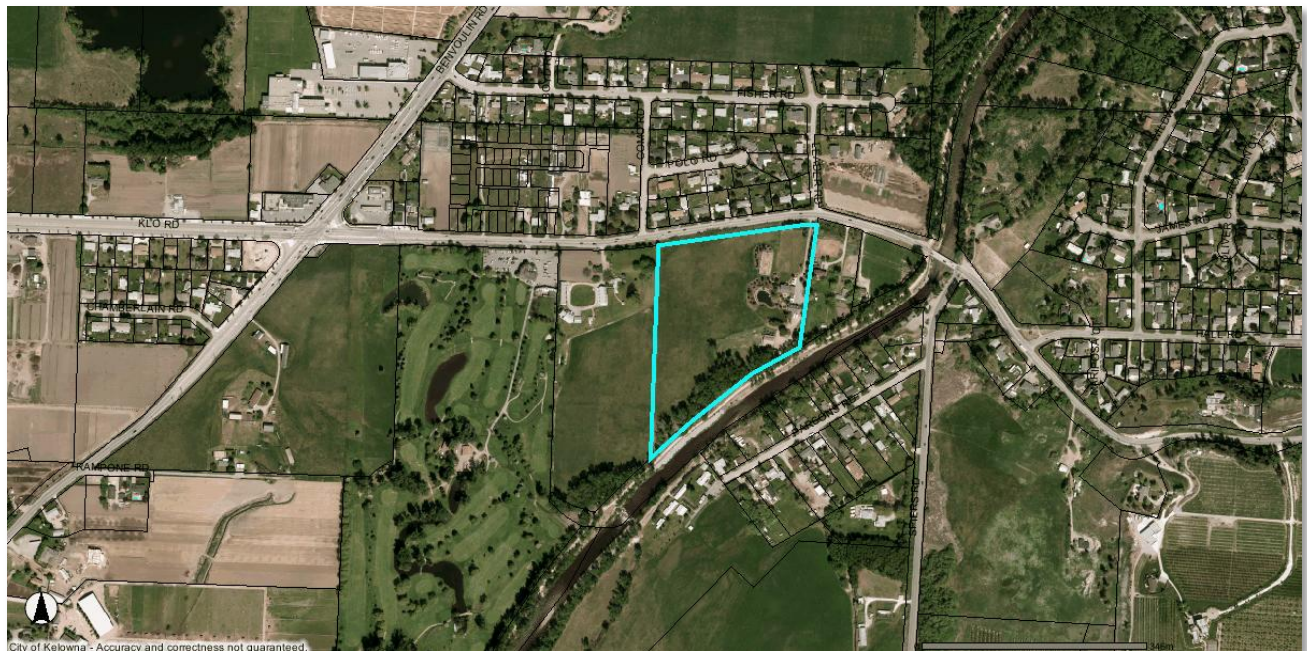
Image 4: Example of Vegetable Farm, Wise Earth Farm, 3019 Leader Rd



4.5 Site Context

Neighbourhood Context

The subject property is located between KLO Road and Mission Creek in the South Pandosy / KLO Sector of Kelowna. The site area is 5.76 hectares (14.24 acres). The soils in this area are Class 4 with improved ratings of Class 2 according to Canada Land Inventory. Overall soil limitations include "excess water" and "fertility" in small areas. These soils are suitable for pasture, as well as forage and vegetable crops.



Map 1: Parcel Summary: 5.76 ha/14.24 ac

Mission Creek Greenway runs along the south property line of the subject parcel. Land on the subject parcel within the Mission Creek Riparian Area is not able to be developed on as shown in the Riparian Management Area, Mission Creek Map in this report. 2075 KLO Road is in the Agricultural Land Reserve, designated REP Resource Protection Area in Kelowna's OCP and outside of the Permanent Growth Boundary. A Riparian Area Setback requirement for Mission Creek runs adjacent to the south property line of the subject parcel. As the parcel is upstream of Gordon Drive, the Minimum Riparian Management Area is 50 m, measured perpendicularly inland from the top of bank, top of ravine, or natural boundary of Mission Creek.

Table 2: Adjacent land uses are as follows:

Orientation	Zoning	Land Use	Future Land Use
North	A1	Single Family Dwelling Properties	S2RES
East	A1	Single Family Dwelling	REP
South	A1 RR3	Mission Creek Greenway Single Family Dwelling Properties Single Family Dwelling with Hay	PARK S2RES REP
West	A1	Single family Dwelling with Vegetable & Truck, Hay	REP



Map 2: Mission Creek Riparian Management Area Map

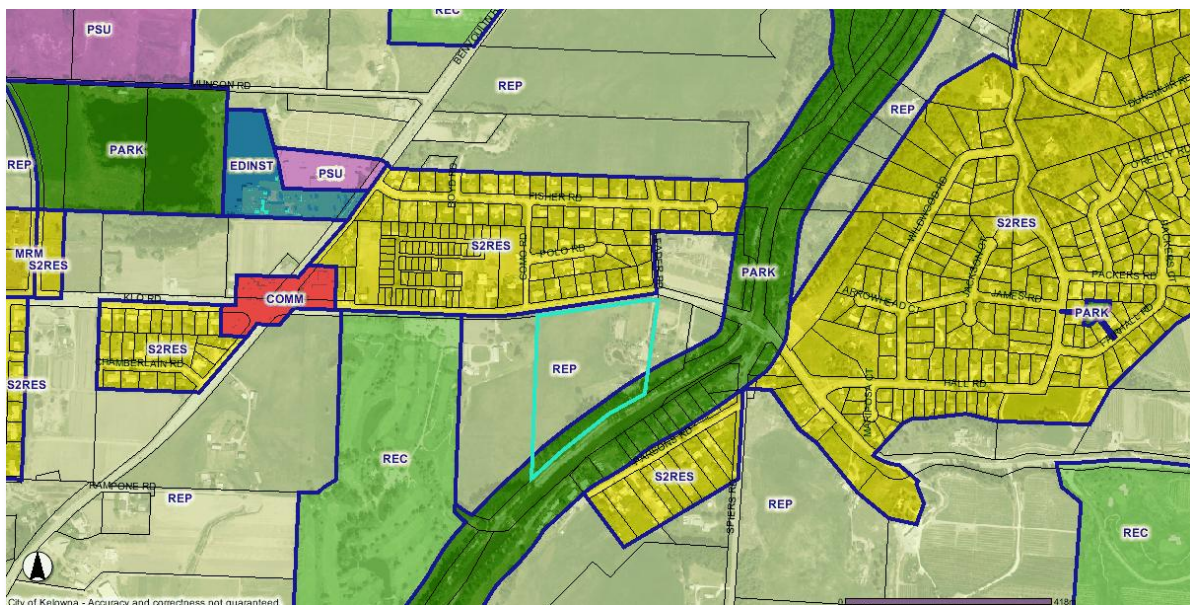
4.6 Zoning Analysis Table

CRITERIA	A1t ZONE REQUIREMENTS	EXISTING	PROPOSED
Existing Lot/Subdivision Regulations			
Minimum Lot Area	2.0 ha / 20,000 m ²	5.76 ha / 57,627 m ²	5.76 ha / 57,627 m ²
Minimum Lot Width	40.0 m	246.0 m	246.0 m
Development Regulations			
Maximum Site Coverage	10%	1,370 m ² = 2%	1,370 m ² = 2%
Maximum Height	9.5 m / 2 ½ storeys	2 storeys	2 storeys
Minimum Front Yard	6.0 m	93.0 m	93.0 m
Minimum Side Yard (west)	3.0 m	> 150.0 m	> 150.0 m
Minimum Side Yard (east)	3.0 m	8.5 m	8.5 m
Minimum Rear Yard	10.0 m	22.0 m (barn)	22.0 m (office & washrooms)
Other Regulations			
Maximum setback from Mission Creek	50.0 m	~29.0 m (barn)	~29.0 m (office & washrooms)
Maximum Number of Agri-tourist Accommodations	5 units	<i>na</i>	10 units ^①
Agri-tourist Accommodation	WITHIN 30 m of principal residence or property line fronting a road	<i>na</i>	~ 180 m ^②
OCP Homeplating guidelines (non-agricultural use footprint maximum area)	60 m x 60 m = 3,600 m ² & Located adjacent to a property line	8,126 m ² & Adjacent to a property line	8,126 m ² (Existing) + ~ 2,920 m ² (RV Sites)
^① Indicates a requested Text Amendment to the maximum number of agri-tourist accommodations (final adoption being considered in conjunction with this report) ^② Indicates a requested Variance to the maximum distance from a principal residence.			

4.7 Future Land Use

The subject property has a future land use of REP - Resource Protection, which is adjacent on both sides. Park - Major Park / Open Space (Public) exists to the south and S2RES - Single / Two Unit Residential to the north.

Map 3: Future Land Use



5.0 Public Notification

As per Council Policy 367, the applicant completed Public Notification & Consultation in the form of neighbourhood circulation and a Public Information Session. Please note, the site plan circulated was the original site plan that indicated orchard trees in the place of the vegetable and berry garden.

- Circulated information to neighbours on August 26, 2015
One letter of opposition: Lack of privacy for Parson Road Residents, Sound of diesel engines
- Held Public Information Session September 22, 2015. Approximately 13 people attended. Comments included:
Concerns with traffic safety with the driveway access on KLO Road, views of RV sites from Residential yards, the possibility of more than 10 RV sites being created after approvals, lack of privacy from Parsons Road residents, noise of RV engines and tourists.
Support for proposed RV site location, for application as proposed.

The Public Hearing for TA15-0010 & Z15-0045 brought forward a high number of support and opposition in Kelowna. Petitions, emails, and speakers represented in support and opposition of the application.

6.0 Current Development Policies

6.1 Kelowna Official Community Plan (OCP)

Farm Protection Development Permit: Objectives ³ Protect farm land and farm operations; Minimize the conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

Farm Protection Guidelines: Homeplate ⁴ On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only;

Farm Protection Guidelines: Landscape buffer ⁵ On agricultural and non-agricultural lands, establish and maintain a landscape buffer along the agricultural and/or property boundary, except where development is for a permitted farm use that will not encourage public attendance and does not concern additional residences (including secondary suites), in accordance with the following criteria:

Agricultural Land Use Policies: Protect Agricultural Land ⁶ 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.

³ City of Kelowna Official Community Plan, (Farm Protection Development Permit Guidelines Chapter).

⁴ City of Kelowna Official Community Plan, Policy 1.2 (Farm Protection Development Permit Guidelines Chapter).

⁵ City of Kelowna Official Community Plan, Policy 1.3 (Farm Protection Development Permit Guidelines Chapter).

⁶ City of Kelowna Official Community Plan, Policy 5.33.1 (Development Process Chapter).

Agricultural Land Use Policies: Urban Uses ⁷ Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Agricultural Land Use Policies: Homeplating ⁸ Locate buildings and structures, including farm help housing and farm retail sales area and structures, on agricultural parcels in close proximity to one another and where appropriate, near the existing road frontage. The goal should be to maximize use of existing infrastructure and reduce impacts on productive agricultural lands.

6.2 Ministry of Agriculture (MOA)

Regulating Agri-Tourism and Farm Retail Sales In The Agricultural Land Reserve. Discussion Paper and Proposed Minister's Bylaw Standards. ⁹

Proposed Definition: *Accessory (agri-tourism)* means that the *agri-tourism* is subordinate to the active *farm operation* on the same lot. *Agri-tourism* uses and activities only augment a farmer's regular farm income, not exceed or replace it.

Proposed Definition: *Agri-tourism* is travel that combines agricultural or rural settings with products of agricultural operations - all within a tourism experience that is paid for by visitors. It is a tourist activity, service or facility which is *accessory* to a *farm operation*, as defined in the *Farm Practices Protection (Right to Farm) Act*, where the land is classified as a farm under the *Assessment Act*; and, where the farm is in active operation each year.

Site Layout for Agri-tourism Activities: Site coverage and setbacks for agri-tourism structures must follow the standards for farm structures provided in Part 2 of the "Guide for Bylaw Development in Farming Areas".

6.3 Suburban and Rural Planning

The intent of the A1t zone is to provide assistance to bona fide farmers who wish to provide seasonal accommodation proven to be in aid of and directly associated with established farm operations. The existing non-farm structures and uses on the property do not adhere to homeplate principles. The proposed 10 RV sites and associated permanent utilities in the proposed location will increase this non conformity.

7.4 Technical Comments

- Building & Permitting Department

A full plan check for BC Building Code is required prior to issuance of a Building Permit. Engineered drawings are required for structural, mechanical, geotechnical requirements of the development.

- Development Engineering Department

The TA15-0010 & Z15-0045 requirements have been met. No additional items are required as a result of the current application.

⁷ City of Kelowna Official Community Plan, Policy 5.33.3 (Development Process Chapter).

⁸ City of Kelowna Official Community Plan, Policy 5.34.3 (Development Process Chapter).

⁹ Ministry of Agriculture, Regulating Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve, Discussion Paper and Proposed Minister's Bylaw Standards. September 14, 2015.

- Fire Department

RV sites must be accessible for an emergency vehicle. No wood burning fire pits are permitted.

7.0 Agricultural Advisory Committee

The above noted application along with Application TA15-0010 & Z15-0045 was reviewed by the Agricultural Advisory Committee at the meeting held on November 12, 2015 and the following recommendations were passed:

The Agricultural Advisory Committee did not support the application as it is contrary to the policies and bylaws of the City of Kelowna. Historically RV sites are not very compatible with agriculture. RV parks do not benefit agriculture.

The Members are pleased with the enthusiasm by the Applicant and admire the Applicant's plans; however, the plan is contrary to City bylaws. The Members feel the proposal would be more comfortable if there was more agriculture on the site then envisioned as they believe that agriculture should come first and then agri-tourism.

8.0 Alternate Recommendation

THAT final adoption of Rezoning Bylaw No. 11189 (Z15-0000) and Text Amendment Bylaw No. 11188 (TA15-0000) be considered by Council;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP15-0191 for Lot B District Lot 131 ODYD Plan 39954, located at 2075 KLO Road, Kelowna, BC;

AND THAT variances to the following section of Zoning Bylaw No. 8000 be granted:

Section 11.1.8.h - Agricultural Zones - Agri-tourist accommodation

To vary the location of agri-tourist accommodation units from within 30.0 m of the principal dwelling to within 180.0 m of the principal dwelling as shown in Schedule A.

AND THAT Council authorize the issuance of Development Permit No. DP16-0110 for Lot B District Lot 131 ODYD Plan 39954, located at 2075 KLO Road, Kelowna, BC subject to the following:

1. The dimensions and siting of the development on the land be in accordance with Schedule "A" and Schedule "C";
2. Landscaping to be provided on the land be in accordance with Schedule "B";
3. The applicant be required to post with the City a Landscape Performance Security deposit in the amount of 125% of the estimated value of the Required Landscape Buffer and Year 1 Agricultural Plan in accordance with Schedules "A", "B" and "C".

AND FURTHER THAT this Development Variance Permit and Development Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

9.0 Application Chronology

Application Complete:	August 14, 2015
Application Circulated:	August 14, 2015
Public Consultation Completed:	September 22, 2015
Updated Site Plan Received:	November 18, 2015
First Reading:	January 25, 2016
Second/Third Reading T15-0010 & Z15-0045:	February 16, 2016
TA15-0010 Z15-0045 Requirements Met:	June 2016

Report prepared by:	Tracey Yuzik, Planner
Reviewed by:	Todd Cashin, Subdivision, Suburban and Rural Planning Manager
Reviewed by:	Ryan Smith, Community Planning Department Manager
Approved for Inclusion:	Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Development Variance Permit/ Farm Protection Development Permit DVP15-0191 & DP16-0110
Schedule A: Site Plan & Floor Plans
Schedule B: Landscape Plan
Schedule C: Agricultural Plan & Phasing Plan