

REPORT TO COUNCIL



Date: June 27, 2016

RIM No. 1210-21

To: City Manager

From: Community Planning Department (TY)

Application: A16-0003 **Owner:** Balwinder Singh & Harbax Kaur Khun Khun

Address: 3754 East Kelowna Road **Applicant:** Balwinder Singh Khun Khun

Subject: Non-Farm Use for Full Time Farm Help in a Permanent Building

Existing OCP Designation: REP - Resource Protection Area

Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Commission Application No. A16-0003 for Lot B Section 14 Township 26 ODYD Plan KAP84170, located at 3754 East Kelowna Road, Kelowna, BC for a Non-Farm Use pursuant to Section 21 (2) of the Agricultural Land Commission Act, NOT be supported by Council; AND THAT Council direct staff NOT to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

To consider a staff recommendation NOT to support a Non-Farm Use Application to the Agricultural Land Commission for full time farm help in a permanent dwelling.

3.0 Community Planning

Community Planning does not support the proposed application to allow the non-farm use of a permanent farm help dwelling. The application as proposed is to house a total of 27 farm workers (as per federal standards) in a time frame ranging from March 5th to November 15th.

The structure on this property, for this farm operation would be in use 37 weeks of each year, permanently. This type of structure and use, although proposed as farm help dwelling, is defined as Congregate Housing in Kelowna's Zoning Bylaw No. 8000, and is permitted in MRM - Multiple Unit Residential (Medium Density) Future Land Use designations.

Staff recommend temporary dwellings. An alternative to consider may be a renovation to the existing principal dwelling. A renovation/addition could accommodate kitchen and shower requirements for temporary farm workers within the existing dwelling structure, which would accommodate the placement of temporary sleeping trailers or bunk houses on the property.

4.0 Proposal

4.1 Background

The applicant owns three parcels of land in the Kelowna area, totaling 13.7 hectares/34 acres of tree fruits (apples and cherries). Another 134 acres/54 hectares are leased by the applicant in the Kelowna area as part of this fruit tree agricultural operation.

The current farm operation employs numerous full time staff as well as Temporary Foreign Workers through the Seasonal Agriculture Worker Program (SAWP). Accommodations for these workers are spread out over the three properties in existing dwellings and buildings. The applicant has noted that current structures do not meet federal standards for SAWP employees.

The subject property is 13 acres in size, active agriculture includes 8 acres of apples and 4 acres of cherries. One single family dwelling, one mobile dwelling and an agri-accessory building also are located on the property.

4.2 Project Description

This application is a Non-Farm Use application to the ALC for Farm Worker Housing. The structure is to accommodate a total of 27 Temporary Farm Workers for an eight month long agricultural operation. The dates required by the applicant for worker accommodation are March 5th to November 15th. The proposed structure is a two storey, permanent stick build dwelling with a concrete footing complete with permanent water and electrical services and an on site septic system.

The owner/applicant has poured a concrete footing without proper permits or Geotechnical engineering on an exposed bank. It is unknown if the existing illegal footings conform to City Zoning regulations with regards Site Context to setbacks from side property lines. BC Building Code compliance is also unknown. City of Kelowna Building and Permitting Department has issued a Stop Work Order on this property as this concrete foundation work was completed without required geotechnical engineering or building permits which is unlawful.

The proposed structure is situated along the east property line, along the top of a bank. The elevation in this area is 451.0 m, with the grade immediately sloping down at the property line to an elevation of 424.0 m. The slope is approximately 1.7:1 ratio. The soils in this area which include the bank are classified as Rutland & Dartmouth Soils which have characteristics of gravel, stone.

4.3 Proposed Farm Worker Housing Use

The applicant is proposing to construct a permanent, two storey structure for the purposes of housing employees through the Temporary Farm Worker programs. The applicant farms a total of 168 acres (34 owned, 134 leased). The attached SAWP contract (Attachment C) shows that a total of 40 different individuals will be employed in the farm operation in 2016. The proposed permanent dwelling, under federal regulations has the potential to accommodate 27 workers.

Existing structures on the subject parcel:

- A foundation has been poured by the applicant without the proper permits in 2016.
- The property currently contains one single family dwelling & one mobile home

City of Kelowna Council Policy 03 - Agricultural Land Reserve (A.L.R.) Referrals:

All approvals for Agricultural Dwellings, Additional for full-time farm workers in the Agricultural Land Reserve require a “Non-Farm Use” application to the ALC. This Policy does not apply to Temporary Farm Worker Housing.

The City of Kelowna Community Planning Department has the authority through the ALC and Kelowna City Council to permit temporary farm worker housing, provided a development meets certain requirements. City Staff do not have the authority to approve development on ALR land that does not meet current guidelines.

Although the proposed employees are authorized through a TFW program, the applicant is seeking occupation of the proposed dwelling from March to November of each year, meaning the building would only be vacant for 3 months of the year. The applicant is also proposing to build a new structure, with a permanent foundation.

As the proposed development does not meet the City of Kelowna’s requirements for Temporary Farm Worker housing, it must be sent to the ALC as a Non-farm Use Application. See below a table identifying where the proposed development does and does not meet Kelowna guidelines.

4.4 Temporary Farm Worker Housing Criteria (TFWH) *Proposed Development Checklist*

Requirement (Federal regulations & City of Kelowna agriculture goals)		Explanation
Workers are required for a temporary, seasonal basis only.	X	The proposed application is for three terms of workers ranging from 4 - 7 months for a total span of 37 weeks (9 months) of a year.
Housing should be provided as a “bunkhouse” style accommodation, very minimalist in nature	✓	The overall design of this structure is a very simple, minimalist design. The two storey design does take up less of a footprint on the land.
Housing should be in an existing building or a manufactured home	X	The proposed design does not utilize either of two existing dwellings on the subject parcel. It is not a mobile/manufactured home, rather a stick build.
Housing is to be provided on a temporary foundation (no concrete footings) and no basement	X	The applicant proposes to construct the dwelling on a permanent concrete footing. The applicant has poured a concrete footing for the proposed dwelling without the proper permits or Geotechnical assessment on an exposed slope.
Housing located on a declared home plate. Consideration given where topography or agricultural viability demonstrated	✓	The proposed location does not interfere with current or future farming & is in close proximity to an existing building & service road.
Living space to be 7 m ² per person. (does not include washrooms, laundry, storage)	✓	Proposed 189 m ² of living space which equals 27 workers. Federal regulations also require: 1 shower per 10 workers, 1 toilet per 10 workers The applicant is proposing a total of 4 toilets and 4 showers. This number of toilets and showers would accommodate 40 workers; <u>however</u> , the size of living space limits the dwelling to

[illegible]

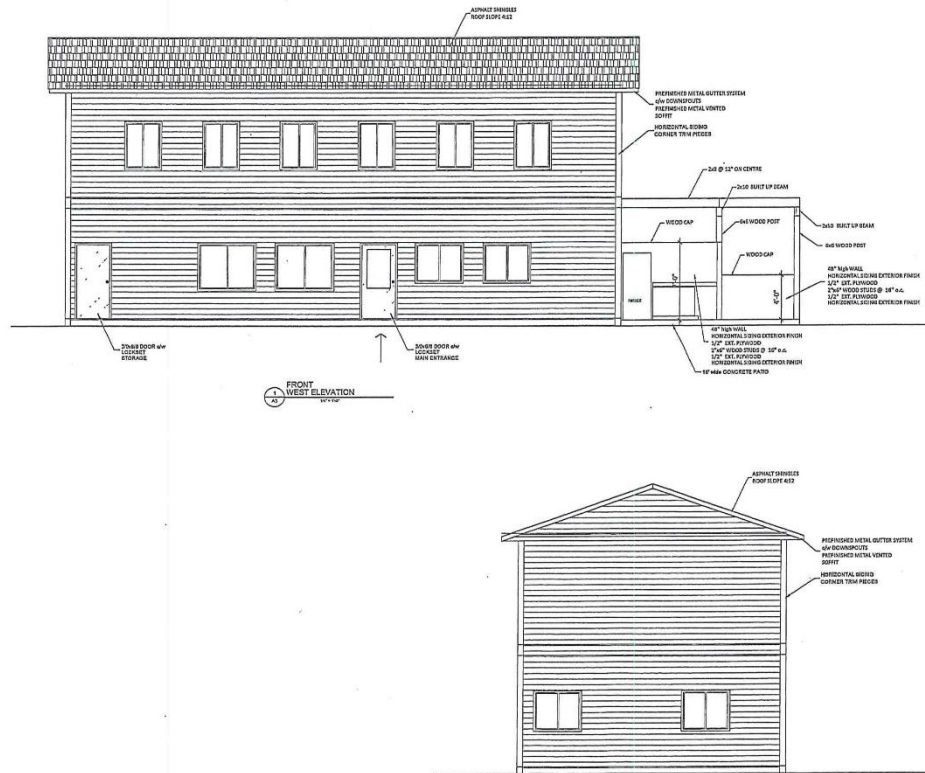
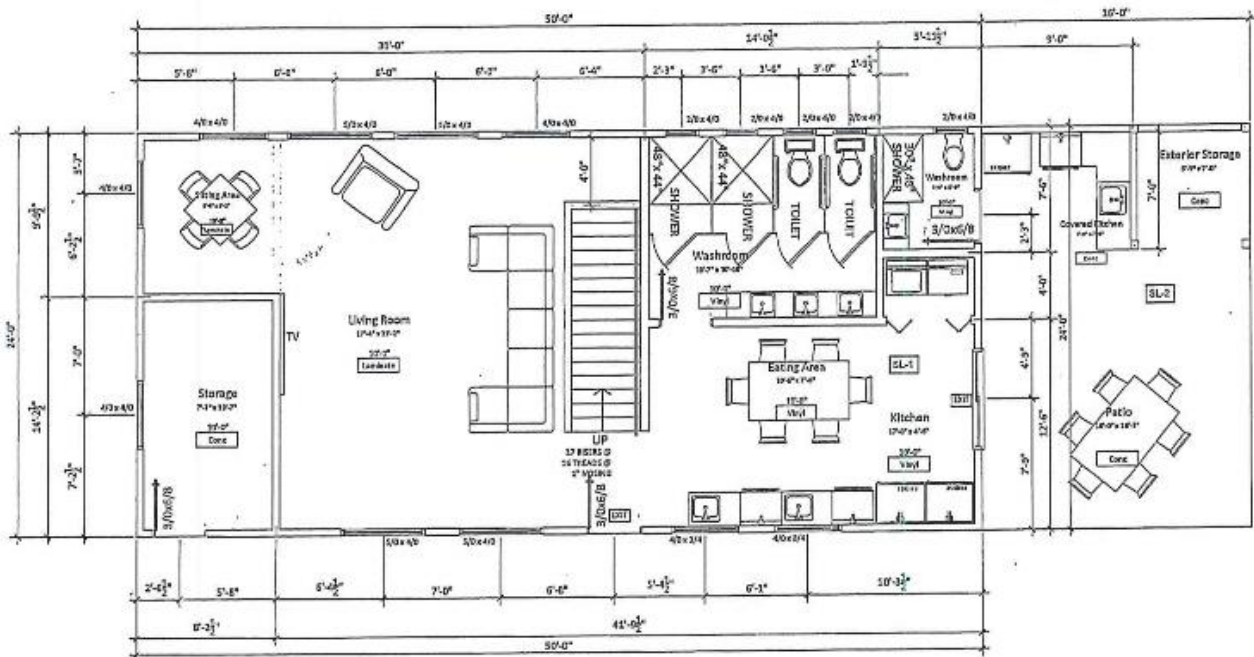


Figure 2. Proposed Floor Plans



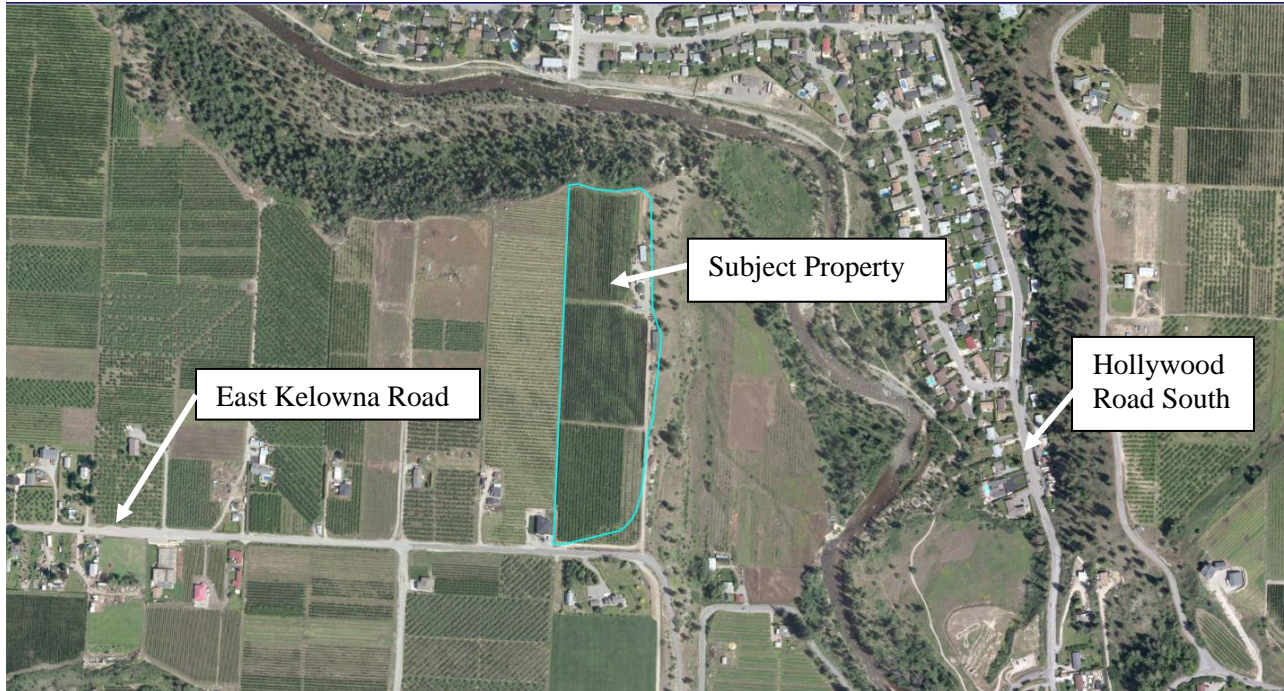
Main Floor Plan

4.5 Site Context

The subject property is in the ALR: land use to the east, west, southwest and south is agricultural and is surrounded completely by properties in the ALR (see Map 3). The subject property is also within the South East Kelowna Irrigation District (SEKID) water supply area.

Parcel Size: 5.5 ha (13.07 acres)
Elevation: 448.0 to 456.0 metres above sea level (masl) (approx.)

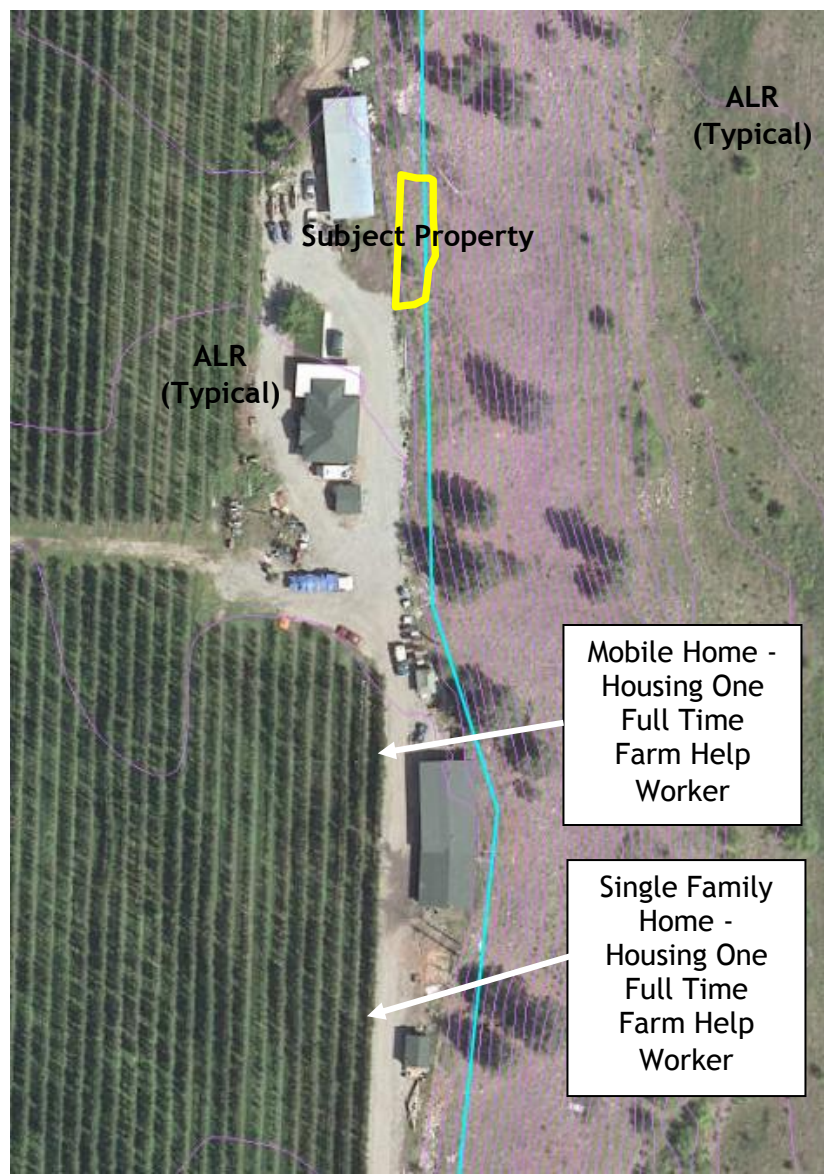
Map 1 - Neighbourhood



Map 2 - Agricultural Land Reserve



Map 3 -
Conditions



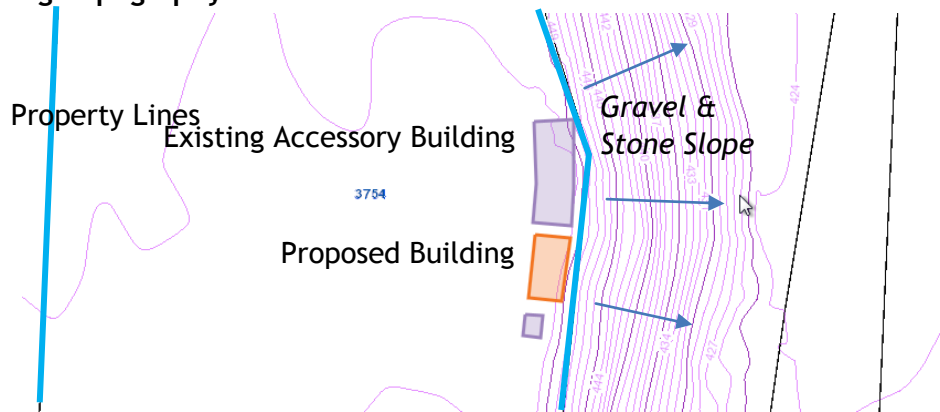
Existing Site

Storage Shed

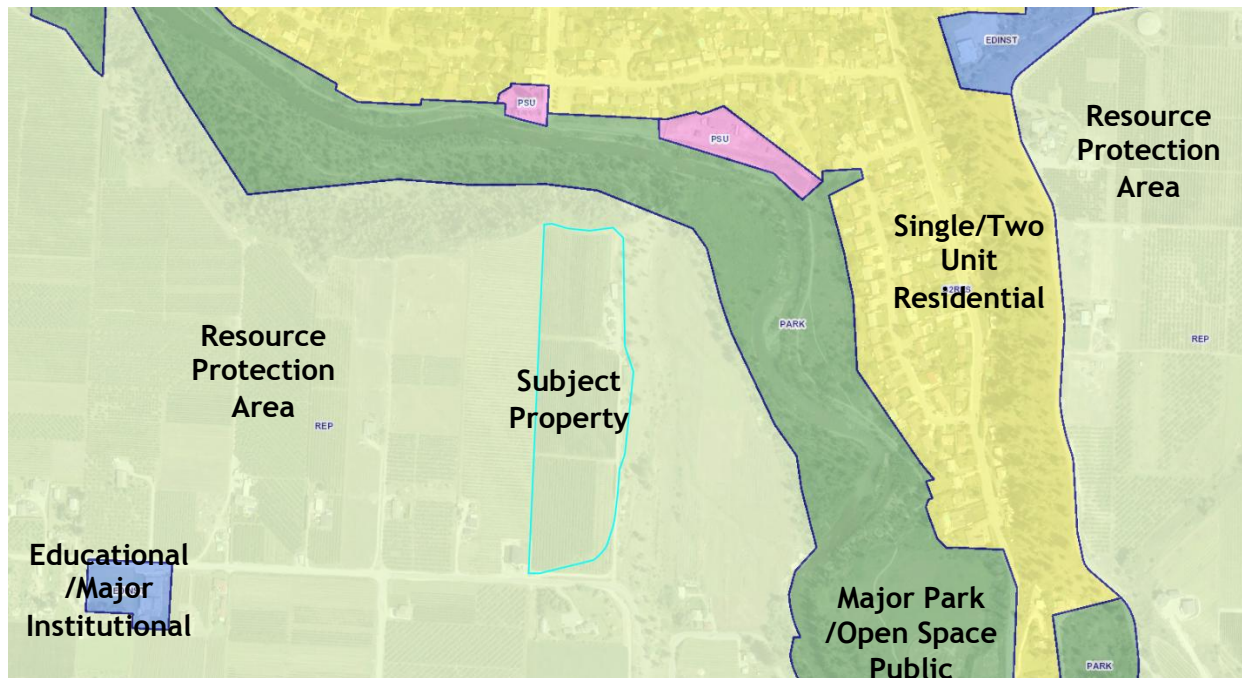


Foundation
Location

Map 4 - Existing Topography



Map 5 - Future Land Use



4.6 Zoning of Adjacent Property Table

Direction	Zoning Designation	Land Use	Future Land Use	ALR
North	A1 - Agriculture 1	CoK Naturalized Bank	REP & PARK	Yes
East	A1 - Agriculture 1	Agricultural / Rural Residential	REP	Yes
South	A1c - Agriculture 1 with Carriage House	Rural Residential	REP	Yes
West	A1 - Agriculture 1	CoK Vacant Land (Future Road Reserve)	REP	Yes

4.7 Zoning Analysis Table

Section 11 - A1 Zone Accessory Structures		
CRITERIA	A1 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	2.0 ha / 20,000 m ²	5.2 ha / 52,896 m ²
Lot Width	40.0 m	m
Development Regulations		
Site coverage for residential development	10%	1%
Height	9.5 m or 2 ½ storeys	m
Front Yard	6.0 m	m
Side Yard (west)	3.0 m	m
Side Yard (east)	3.0 m	m
Rear Yard	3.0 m	m
❗ It is unknown if a variance would be required for the proposed building / existing foundation as a survey plan has not been provided by the applicant.		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Future Land Use¹

With respect to lands outside the Permanent Growth Boundary, Chapter 4 of the OCP states:

- Lands outside the permanent growth boundary will not be supported for urban uses.

Farm Protection Development Permit Guidelines²

Farm Protection Development Permit Guidelines include:

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

Objective 5.33 Protect and enhance local agriculture³.

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.

Policy .3 Urban Uses. 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.

Policy .7 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.

Objective 5.34 Preserve productive agricultural land⁴.

Policy .1 Secondary Suites. Encourage secondary suites on agricultural land to be located within a permitted principal dwelling.

Policy .3 Homeplating. 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.

¹ City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

² City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

³ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

⁴ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

5.2 City of Kelowna Agriculture Plan

ALR Application Criteria⁵. Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported.

General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

5.3 Agricultural Land Commission Act (ALCA)

Purposes of the commission - Section 6 of the ALCA

The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

6.0 Technical Comments

6.1 Building & Permitting Department

- A Stop Work Order has been placed on the property with regards to a concrete foundation that is underway.
- Should this application be successful, Development Cost Charges (DCCs) are required to be paid prior to issuance of any Building Permits for new construction.
- Full Plan check for Building Code related issues will be done at time of Building Permit applications.
- Geotechnical report is required to address the sub soil conditions and site drainage at time of building permit application.

6.2 Development Engineering Department

- Should this application be successful, a full site analysis is required in order to determine access restrictions, geotechnical requirements.
- On-site treatment and disposal of wastewater is under the jurisdiction of the Public Health Officer.

⁵ City of Kelowna Agriculture Plan (1998); p. 130.

7.0 Application Process

As noted previously in this report, all permanent dwellings for full time farm workers are sent to the ALC for recommendation as a Non-Farm Use Application. As this application is both a) for a permanent, stick-build structure and b) for use 37 weeks of the year (71% of the year) this is not considered a temporary use.

The process for this application (A16-0003) is as follows:

Application is reviewed by AAC for comments	These comments are forwarded to Council for their consideration
Application is considered by Council	<p>Council may:</p> <p>Support & forward to AAC</p> <ul style="list-style-type: none"> - AAC would consider the application. <p>Non-Support & forward to AAC</p> <ul style="list-style-type: none"> - AAC would consider the application. <p>Non-Support & Not forward to AAC</p> <ul style="list-style-type: none"> - AAC would not receive the application as it would be defeated. The applicant may come forward with an alternative proposal immediately. The applicant may wait 6 months to apply for the same proposal.
Should the application be considered by ALC	<p>ALC Supports</p> <ul style="list-style-type: none"> - The applicant must now receive proper permits from City of Kelowna. <p>ALC Defeats</p> <ul style="list-style-type: none"> - Application is defeated. (Applicant options same as above)

8.0 Application Chronology

Date of Application Received:	February 2, 2016
Date of Complete Application:	March 30, 2016
Date of Agricultural Advisory Committee:	April 14, 2016

9.0 Agricultural Advisory Committee

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on April 14, 2016 and the following recommendations were passed:

THAT the Agricultural Advisory Committee recommends that Council support an application to the Agricultural Land Commission under Section 20(3) of the Agricultural Land Commission Act for "non-farm use" on the subject property at 3754 East Kelowna Road for a permanent dwelling to accommodate 27 farm workers.

The following Anecdotal Comments were included in the recommendation:

The Agricultural Advisory Committee supported this application for "non-farm use" on this property realizing that farmers require farm help and recognize that this particular proposal presents a small footprint and could be smaller than a trailer type of arrangement. The Agricultural Committee raised concerns with the number of people in the farm area which raised a broader issue of farm worker housing in general; suggested the City find ways to accommodate farmer's objective of having workers closer to shopping and transit and not residing on agricultural land. The Agricultural Committee raised concerns with the building

design and the lack of privacy. Suggested some form of condition be placed on the property ensuring utilities and water are turned off during the non-farm work period of the year. The Agricultural Committee suggested the mobile home on the property be researched for any bylaw issues.

10.0 Alternate Recommendation

THAT Agricultural Land Commission Application No. A16-0003 for Lot B Section 14 Township 26 ODYD Plan KAP84170, located at 3754 East Kelowna Road, Kelowna, BC for a Non-Farm Use pursuant to Section 21 (2) of the Agricultural Land Commission Act, NOT be supported by Council; AND THAT Council direct Staff to forward the subject application to the Agricultural Land Commission for consideration.

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:

Farm Operation Details
Proposed Architectural Plans (farm worker dwelling)
Context/Site Photo