

# REPORT TO COUNCIL



**Date:** July 12, 2016

**RIM No.** 0940-93

**To:** City Manager

**From:** Community Planning Department (TY)

**Application:** TUP16-0001 **Owner:** Western Global Enterprises Inc

**Address:** 1629 - 1649 KLO Road & 3350 Benvoulin Road **Applicant:** 0978221 BC Ltd. Better Earth Garden Centre (Krystal & Alex Luymes)

**Subject:** Temporary Use Permit Application

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

**Existing Zone:** A1 - Agriculture 1 (ALR)

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## 1.0 Recommendation

THAT Council authorizes the issuance of Temporary Use Permit No. TUP16-0001 to allow a Non-Farm Use of agricultural land in the Agricultural Land Reserve as per ALC Resolution #67/2015 for Parcel A (Plan B1813) Of Lot 68, ODYD Plan 186, located at 1629 - 1649 KLO Road, Kelowna, BC, and Parcel A (DD146178F & PL B6796) of Block 58 District Lot 131 ODYD Plan 186, located at 3350 Benvoulin Road, Kelowna BC for a three (3) year period ending October 1, 2019 subject to the following condition:

- a) The use on the land be in accordance with Schedule "A" (Better Earth Garden Site Plan)
- b) The use on the land be in accordance with Schedule "B" (ALC File 54508, Resolution #67/2015)

AND FURTHER THAT any application to extend the permit must be approved by the Agricultural Land Commission and by Council prior to this permit expiring.

## 2.0 Purpose

To temporarily allow a Non-Farm Use on the subject property as per Agricultural Land Commission Resolution #67/2015.

## 3.0 Community Planning

Community Planning has worked with the applicant since 2014 to prepare an agricultural plan for a Non-Farm Use application (A15-0006) to the Agricultural Land Commission (ALC) in 2015. The purpose of the application was to bring the business Better Earth Garden Centre into compliance as the existing operation did not comply with the ALC Act or the City of Kelowna Bylaw No. 8000.

The non-compliance uses on the land included retail sales of non-farm products and the landscaping portion of the business operating on the land.

The ALC issued a resolution to allow the non-farm use as proposed in Schedule "A" under a Temporary Use Permit for a period of three (3) years. This TUP is to be granted to the "agent", Better Earth Garden Centre, and is non-transferable.

## 4.0 Proposal

### 4.1 Background

In 2012, the property had been farmed by Better Earth Products, who farmed the property in primarily corn and potatoes. Subsequently, the current owners, Better Earth Garden Centre, took over the lease and initiated a nursery and landscape supply centre. In addition, they sub-leased portions of the property to three other tenants, including other landscaping businesses and a soil screening operation (see attached submission).

Since 2014 the applicant has terminated two sub-leases of landscaping companies from the property and removed a significant amount of fill and debris, including wood and concrete waste from a previous tenant. In addition, a mobile home and a shed were removed from the property.

Approximately 2400 m<sup>2</sup> (0.6 acre) in area was cleared of debris and will be restored to alfalfa in the fall, and the tree and nursery shrub component of their business has increased. In addition, they have implemented a dust and weed control plan to address neighbours' concerns. The dust control plan includes:

- removal of dust producing activities at the center of the property (to be replaced with alfalfa);
- placement of concrete bins to contain soil products located near KLO Road; and
- posting of signs to slow traffic on site.

For weed control, a program of mowing the perimeter of the property to reduce weeds has been implemented.

In the spring of 2015, the applicants met with City staff to determine if their operation could comply completely within the ALC Act and Regulation. In terms of addressing the ALC Policy #2<sup>1</sup> - Farm Retail Sales in the ALR, the applicants determined that they required more area for non-farm product than was allowed under the Regulation. The policy restricts the area of non-farm retail product to 50% of 300 square metres (i.e. 150 square metres). The applicants were not able to fit their landscaping products into this area, and as such submitted a non-farm use application (A15-0006).

Note that all the above products would be brought in from off-site. No composting would be sold that is produced on site. The applicants produce a small amount of compost, of which 100% is used to amend their soil for alfalfa production.

### 4.2 Project Description

The application put forth to the ALC is detailed on the attached Schedule "A". The Non-Farm Use portion of the application is to permit non-farm retail sales of soil additives, mulch and landscape rock, in an area 700 m<sup>2</sup> in size. It is noted that these products are to be accessory to

<sup>1</sup> ALC, 2003. Activities Designated as Farm Use – Farm Retail Sales in the ALR.

[http://www.alc.gov.bc.ca/alc/DownloadAsset?assetId=8CCC181D8D864EE1956A235F975B7C42&filename=policy\\_2\\_farm\\_retail\\_sales.pdf](http://www.alc.gov.bc.ca/alc/DownloadAsset?assetId=8CCC181D8D864EE1956A235F975B7C42&filename=policy_2_farm_retail_sales.pdf)

the nursery business. The permitted area for non-farm retail sales is a maximum of 150 m<sup>2</sup> under the ALC Act.

The ALC panel will review the Garden Centre during the Spring of 2019 to determine whether it is prepared to support an extension of the TUP.

Under the *Local Government Act*, Section 492 - 497, A Temporary Use Permit may only be granted by Council for a period of up to three (3) years. One extension is permitted to be granted by Council for a maximum of up to three (3) years. After the end of the second extension period, the use is no longer permitted, no additional TUP may be granted for that use.

#### 4.3 Site Context

The subject property is located in the South Pandosy / KLO Sector of the City and is within the Agricultural Land Reserve. The Future Land Use of the property is Resource Protection Area (REP). It is zoned A1 - Agriculture 1 (Maps 1 - 4, below) and is outside of the Permanent Growth Boundary.

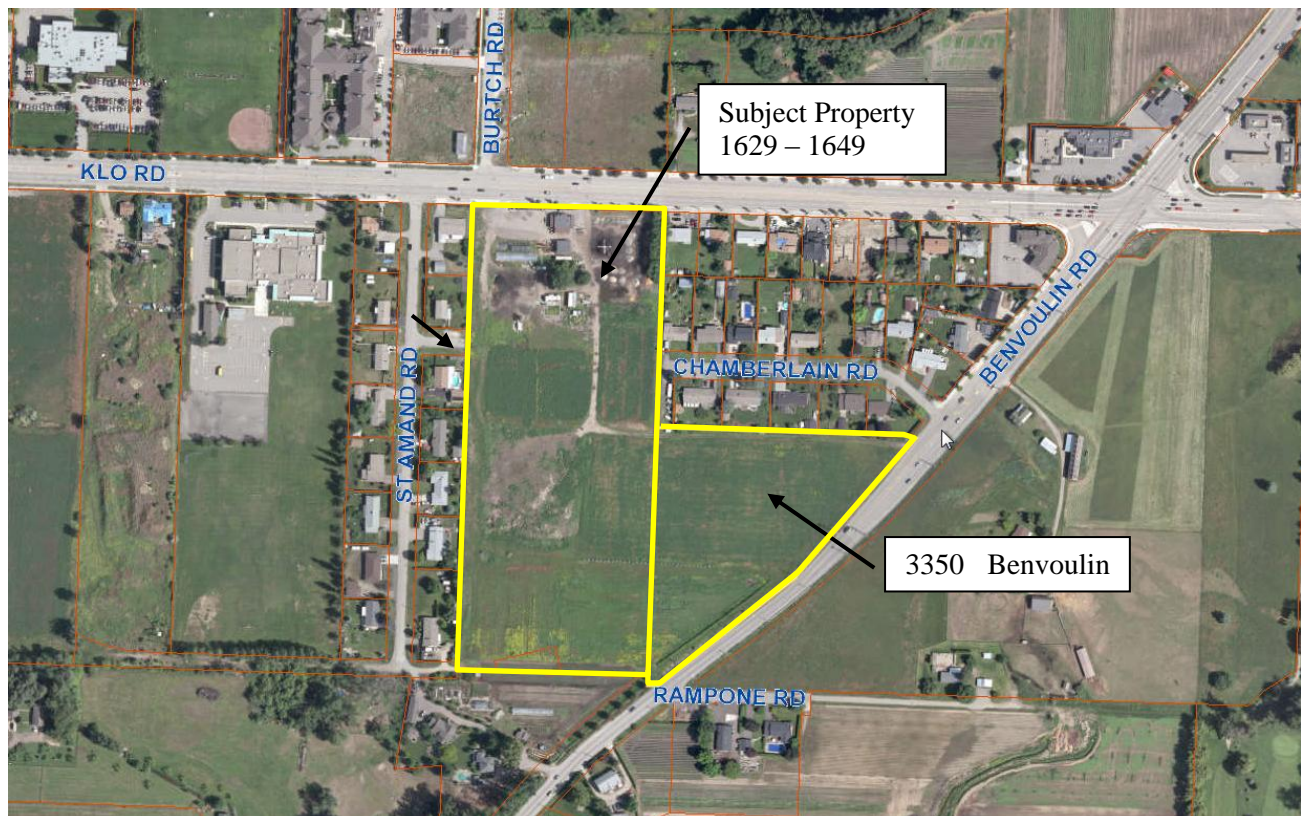
Note that the applicant leases two other properties that are contiguous to the subject property. These are 3350 Benvoulin Road and 3400 Benvoulin Road. These are also shown in the maps below.

Parcel Summary - 1629 - 1649 KLO Road:

Parcel Size: 5.03 ha (12.4 acres)

Elevation: 348.5 to 349.85 metres above sea level (masl)

#### Map 1 - Neighbourhood



Adjacent land uses are as follows:

Orientation	Zoning	ALR	Land Use
North	RU2 RR1	Yes	Vacant
East	A1	No Yes	Rural Residential Agriculture
South	A1	Yes	Agriculture Rural Residential
West	RU1	Yes	Urban Residential

## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

#### Future Land Use<sup>2</sup>

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 Guidelines<sup>3</sup>

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 agriculture<sup>4</sup>.

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.

<sup>2</sup> City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

<sup>3</sup> City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

<sup>4</sup> City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

Objective 5.34 Preserve productive agricultural land<sup>5</sup>.

## 5.2 City of Kelowna Agriculture Plan

### ALR Application Criteria<sup>6</sup>

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.

### Agricultural Land Reserve Use, Subdivision and Procedure Regulation - Farm Retail Sales

Section 2 (2) The following activities are designated as farm use for the purposes of the Act and may be regulated but must not be prohibited by any local government bylaw except a bylaw under section 917 of the Local Government Act:

- (a) farm retail sales if
  - (i) all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or
  - (ii) at least 50% of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m<sup>2</sup>.

## 6.0 Technical Comments

### 6.1 Development Engineering Department

As there are no proposed changes to the access off of KLO Road, Development Engineering have no comments.

## 7.0 Application Chronology

Date of ALC Resolution:	February 24, 2016
Date of Application Received:	April 21, 2016
Date Public Consultation Completed:	June 8, 2016

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<sup>5</sup> City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

<sup>6</sup> City of Kelowna Agriculture Plan (1998); p. 130.

**Report prepared by:**

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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:**

Schedule "A" - Agricultural & Non-Farm Use Site Plan

Schedule "B" - Agricultural Land Commission Resolution 67/2015