

REPORT TO COUNCIL



Date: October 24, 2016

RIM No. 1210-21

To: City Manager

From: Community Planning Department (MS)

Application: A16-0001

Owner: Hillcrest Farm Market Inc.

Address: 560 Highway 33 E

Applicant: Chanchal Bal

Subject: Application to the ALC for a Non-Farm Use (Commercial Assemblies)

1.0 Recommendation

THAT Agricultural Land Reserve Appeal No. A16-0001 for Lot B Section 24 TWP 26 ODYD District Plan KAP81726 Except Plan EPP1364, located at 560 Highway 33 E, Kelowna for a non-farm use on land in the Agricultural Land Reserve pursuant to Section 20(3) of the *Agricultural Land Commission Act*, NOT be supported by Council;

AND THAT Council directs 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 an application to the Agricultural Land Commission to obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for a "Non-farm use" within the Agricultural Land Reserve (ALR) to hold commercial assembly activities, including but not limited to weddings, anniversaries, reunions, festivals and concerts.

3.0 Community Planning

Community Planning does not support the non-farm use application, and recommends that Council not send it to the Agricultural Land Commission (ALC) for consideration.

On August 2, 2016, the Ministry of Agriculture, after consultation of almost one year with the farming community and regulators, issued a press release which brought clarity to what is permitted with respect to commercial events. Operations that wish to extend the parameters of this permitted use are required to have ALC approval through a non-farm use application.

The Ministry of Agriculture has developed a regulation that establishes that Agricultural Land Reserve (ALR) land owners will not need a permit from the ALC to host specific activities like commercial weddings, concerts or non-agriculture related festivals, providing that:

- The farm is classified as having farm status under the Assessment Act;
- No new, permanent structures are being built;
- All parking must be on the farm (no road parking) but the parking area must not be permanent nor interfere with the farm's agricultural productivity;
- The number of guests at any event is 150 or less; and
- The number of events is 10 or less in a calendar year.

This non-farm use application is required, as the operators wish to be able to hold an unlimited number of commercial events, from March 15th to November 15th, for up to 500 people, with the ability to have up to 1000 people twice per year.

Community Planning does not support the application for the following reasons:

- The OCP specifies that urban uses should be contained within the Permanent Growth Boundary¹;
- Bylaw enforcement, such as noise, parking and traffic;
- Potential upgrades to Highway 33, (see attached letter from MOTI), that would be born by the City of Kelowna;
- Commercial event operations to have the ability to impact farmland and to supercede the farming operation as the primary business on the property; and

The Ministry of Agriculture, through consultation with the farming community and regulators over the past year, have struck a balanced approach for events in the ALR. This balance, if implemented consistently through the City of Kelowna, would be equitable among farming operators, and is designed to avoid significant impacts to neighbourhoods and avoid replacing farming as the primary use on the land. Diversion from the 10 events permitted per year per farming operation has potential to impact the neighbourhood, as well as add additional resourcing impacts upon Bylaw enforcement, that would be born by City resources.

4.0 Proposal

4.1 Background

Hillcrest Farm Market owns and operates 140 acres of farmland in the City of Kelowna. The family has been farming in Kelowna for over 100 years. The family has taken steps to diversify and vertically expand the operation, through a farm market and cherry processing facility on site. The farm produces primarily cherries, but also apples, peaches, plums, table grapes and vegetable ground crops.

Initiatives to diversify the operation since 2010 include the farm café, fruit stand, and bed and breakfast. Pre-application discussions regarding future agri-tourism activities such as farm tours and an RV Park have been ongoing.

¹ City of Kelowna, 2016. OCP, Chapter 5.33 Policy 3

At the time Highway 33 E was expanded to four lanes by the Ministry of Transportation and Infrastructure (MOTI) land was required from the farm for the highway. The family negotiated with MOTI to salvage the subsoil and topsoil from the land prior to construction. With these soils, topographical challenges were modified and 10 acres put into production. In addition, the knoll where events are proposed to take place was built.

In addition to the proposed farm tours, Hillcrest Farms would like to undertake 'Farm to Table' catering, in accordance with the ALC Policy #4 - Agri-Tourism in the ALR. One of the activities identified in this policy document is:

- *Catered food and beverage service special events where farm products from the farm are promoted, but not a service requiring the use of a permanent commercial kitchen.*²

Hillcrest has invested in a custom built portable kitchen for the proposed catered events.

The Ministry of Agriculture's *Discussion Paper and Proposed Minister's Bylaw Standards - Regulating Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve*³ indicates that commercial assembly activities require ALC approval as a Non-farm use in the ALR. Notwithstanding that the Discussion Paper has not been yet adopted as a Minister's Standard, this application is requesting approval to hold commercial assemblies on the property.

4.2 Project Description

The applicant is proposing to hold special events on the property, including but not limited to weddings, anniversaries, reunions, festivals and concerts. Many of the activities will be agri-tourism activities, such as educational school tours, fundraisers, as a sightseeing location for tourists, and small farm to table functions to promote our fruits and vegetables. See attached for the applicant's package and Map 1. Other details include:

- Location and Grading
 - No additional grading of land form changes is proposed as part of this application.
- Parking
 - The upper parking area proposed for the special events is also used for loading cherries (not at the same time).
 - Parking areas proposed are two gravel areas near the portable kitchen, and one below the turf area. There is a one way driving loop around the site.
 - If required, overflow parking can be accommodated also by:
 - Parking along the access to the Proposed Special Events area; and
 - Parking at the Fruit Stand parking lot and being transported to site by bin-trailer or shuttle van.
 - All driving lanes and parking lots will remain as gravel. No resurfacing to asphalt or concrete is proposed.

² ALC, Policy No. 4 Agri-Tourism in the ALR

³ Ministry of Agriculture, Strengthening Farming Program Innovation and Adaptation Services Branch, Sept. 14, 2015. *Regulating Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve*.

- Kitchen and Food Service
 - Full food service is supplied for events. The intent is to provide a 'Farm to Table' experience, using fresh fruit and vegetables grown from the farm.
 - Much of the food is prepared in the existing commercial kitchen at the Farm Retail Sales building, with some of it being prepared and finished in the portable kitchen at the Special Events area.
 - A portable, self-contained Special Events kitchen is proposed as part of the application.
 - Buffet service is provided.
- Liquor Service
 - Liquor Service is not proposed to be served by the applicant. The applicant requires that their customers secure a special events liquor license for the event they are holding.
- Services
 - No additional services (including power, water or septic hookups) are proposed as part of the application.
 - Only portable toilets are proposed. These will only be located in the current location of a platform, where they are dropped off and picked up after each event. No additional permanent septic facilities are proposed as part of the application.
- Structures
 - No permanent structures are proposed as part of the application.
 - Temporary structures (tents) are proposed for the special events.
 - No other spaces are proposed for the special events on the property.
- Capacity:
 - Most events will range from 30 - 100 people.
 - The proposed maximum capacity for most events proposed is 500 people (with the exception of below).
 - The proposed maximum capacity for a maximum of twice annually is 1000 people.
- Season:
 - Unlimited number of events, (potentially daily), from March 15th to November 30th, per year.

4.3 Site Context

The subject property is located in the Rutland 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. The subject properties are accessed by Highway 33 E at the Springfield Road intersection.

The contiguous farm operation for this application includes 4 properties:

- 1071 McKenzie Road
- 560 Hwy 33 E
- 570 Hwy 33 E
- 700 Hwy 33 E

Parcel Summary - Combined four properties:

Parcel Size: 35 ha (86.7 acres)

Elevation: 421 to 493 metres above sea level (masl)

The subject property is located along the urban/rural interface area with the Permanent Growth Boundary with uses west of Highway 33. The large road cross section (averaging approximately 50 metres) provides extensive buffering from farm practices.

Zoning and land uses adjacent to the property are as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Orchard
South	A1 - Agriculture 1 Roadway	No No	Rural Residential Highway
East	A1 - Agriculture 1	Yes	Rural/agricultural
West	A1 - Agriculture 1 RU1 - Large Lot Housing	Yes Yes/No	Rural/agricultural Residential

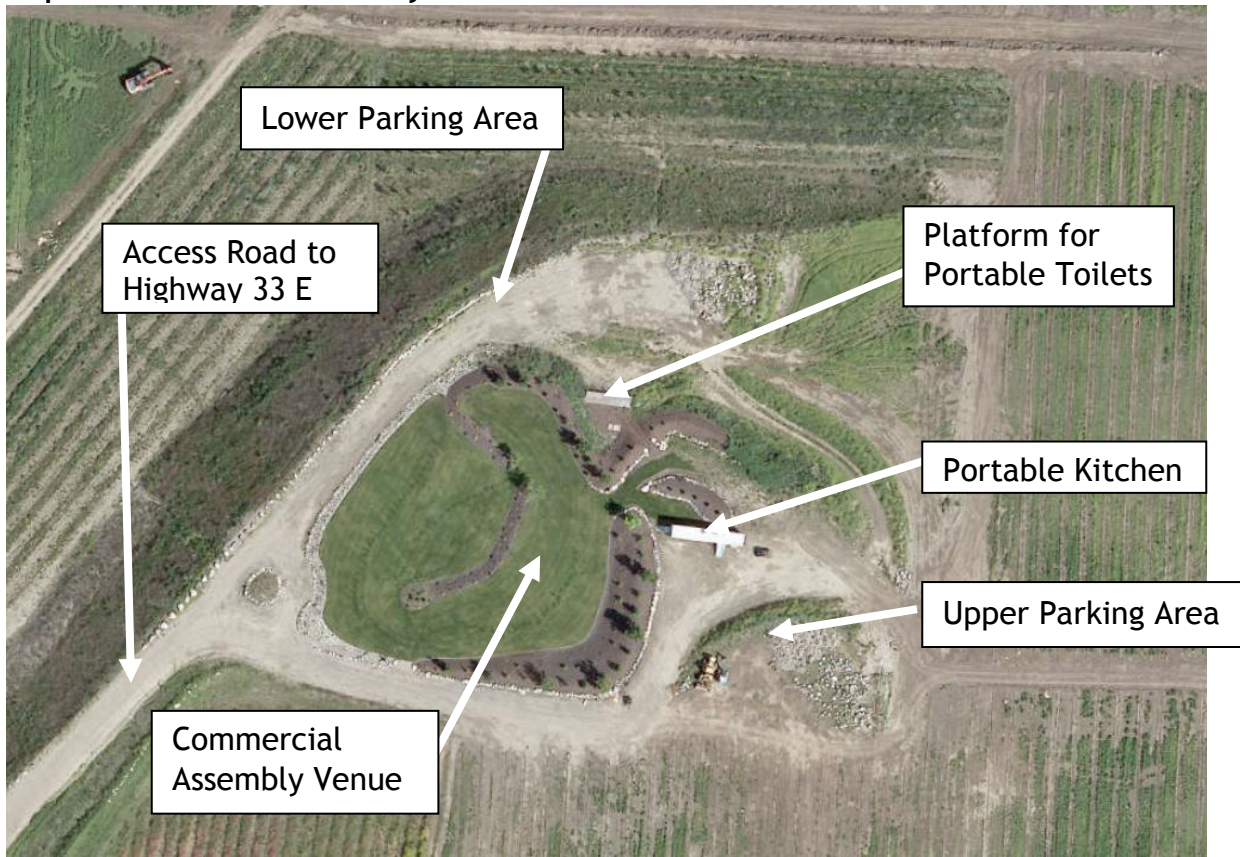
Map 1 - Subject Property - Hwy 33 E 560



Map 2 - Hillcrest Farms Operation



Map 3 - Commercial Assembly Venue



Map 3 - Agricultural Land Reserve



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Future Land Use⁴

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 Guidelines⁵

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 agriculture⁶.

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 land⁷.

⁴ City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

⁵ City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

⁶ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

⁷ 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 Criteria⁸

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.

6.0 Technical Comments

6.1 Building & Permitting Department

Building Permits are required for the existing kitchen trailer and any other structure that are proposed to be built or installed on the property. In addition:

- Septic Approval is required;
- Washroom requirement needs to be addressed;
- Water must be provided for fire fighting;
- Potable water must be provided to the kitchen trailer;
- Access to the area must be provided for emergency services;
- Electrical permits must be provided; and
- NFPA requirements must be provided for the kitchen hood.

6.2 Development Engineering Department

Development Engineering has no comments at this point in time with regard to this application, however, a comprehensive report will be provided at the time of development application submission when the Agricultural Land Commission agrees to the proposed activity on the subject property.

6.3 Bylaw Services

Due to noise concerns from this event site in previous years, for each event hosted, Bylaw Services would like to see efforts to mitigate noise impacts on neighbouring properties. There are a number of outstanding bylaw contraventions that should be brought into compliance before other activities are pursued.

⁸ City of Kelowna Agriculture Plan (1998); p. 130.

6.4 Fire Department

Regarding the events application specifically, the Fire Department notes the following:

- The commercial mobile kitchen trailer is self-contained with respect to fire suppression and no additional fire suppression is required for the kitchen.
- Tents fall under part 3 of the BCBC. Therefore, they require a Building Permit each time one is erected. Part of this requirement is to confirm that the materials used are made of fire resistant material, as well as that exiting is sufficient.

Of note for the other structures existing at Hillcrest Farms:

- The Cherry Packing Plant currently does not have sufficient permanent fire suppression system. BMID is not able to provide fire flow to this property (see attached letter). Currently, a temporary tank satisfies the fire flow requirements of the use of the structure as a packing plant when active. (this would apply at all times, active or not for insurance purposes)
- Any use of any other building for *assembly use* would not have sufficient fire flow, over and above the existing 30 person capacity of the Café. This should read that a permanent system should be installed to satisfy all weather conditions and appropriate fire department operations. A fire alarm would have to be installed should the existing buildings be used for an event that serves alcohol, and has more than 150 people. The requirement for other life safety documents and devices would be applicable at this time as well. The current restaurant has an occupant load of 30 so that it is not classified as an Assembly occupancy. There is also a bed and breakfast on the second floor with 6 bedrooms. The building department accepted a posted sign indicating that no more than 10 people would sleep there. Any more than 10 people requires a fire alarm system.

6.5 Interior Health Authority

A summary of the Interior Health Authority response is below, (for a full response, see the attached letter):

- It appears that holding events on the property, such as weddings, would not be a significant benefit to agriculture.

6.6 Irrigation District (BMID)

BMID has provided a letter (attached), but, specifically to this application, has noted that there are no water services proposed, and fire protection to the area is a concern.

6.7 Ministry of Transportation and Infrastructure

The Ministry has no objection on the condition that should the Ministry find the venue generated traffic load negatively impacts the daily performance of Hwy 33, the City agrees to directly work with the proponent to restore highway operations to a level acceptable to the Ministry.

7.0 Application Chronology

Date of Application Received:	January 25, 2016
Date of Complete Application Received:	March 11, 2016
Agricultural Advisory Committee	April 14, 2016

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:

Moved By Ed Schiller/Seconded By Domenic Rampone

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 560 Highway 33 to hold commercial assembly activities including weddings, anniversaries, reunions, festivals and concerts.

Carried
Jeff Ricketts - Opposed

ANECTDOTAL COMMENT:

The Agricultural Advisory Committee supported the "non farm use" on this property, however, recognizing that this is a working cherry orchard, strongly suggest that patrons of an event are warned that pesticides have been used upon entry. That patrons have limited access to the surrounding Orchard to eliminate exposure to chemicals. The Agricultural Advisory Committee recognize and support the education component but raised concern on how success that will be. Recommended that a covenant be placed to ensure that if the property is sold, the use not be sold as a business, and that it be only for the current owner. The Agricultural Advisory Committee acknowledged the non-farm-use criteria being consistent with OCP Policy with respect to a non-farm use that uses existing infrastructure; not preclude future use of land for farming and not harm adjacent farms.

Date Public Consultation Completed:	No Public Consultation Required for Non-Farm Use Files
Date of Final Referral Comments Received	August 4, 2016

8.0 Alternate Recommendation

THAT Agricultural Land Reserve Appeal No. A16-0001 for Lot B Section 24 TWP 26 ODYD District Plan KAP81726 Except Plan EPP1364, located at 560 Highway 33 E, Kelowna for a non-farm use on land in the Agricultural Land Reserve pursuant to Section 20(3) of the *Agricultural Land Commission Act*, NOT be supported by Council;

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

Report prepared by:

Melanie Steppuhn, Land Use Planner

Reviewed by:

☐

Todd Cashin, Subdivision, Suburban and Rural Planning Manager

**Reviewed by
Approved for Inclusion:**

☐

Ryan Smith, Community Planning Department Manager

Approved for Inclusion:

☐

Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Applicant Package
Locations of Uses
MOTI Letter
BMID Letter
Interior Health Letter