

4. ALC Decisions Update - 982 Old Vernon Rd. A19-0018

May 30, 2024

ALC File: 58053

Manraj Kandola
DELIVERED ELECTRONICALLY

Dear Manraj Kandola:

Re: Reasons for Decision - ALC Application 58053:

Please find attached the Reasons for Decision of the Okanagan Panel for the above noted application (Resolution #334/2024). As the agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with section 11(2)(b) of the ALR General Regulation.

Under section 33.1 of the *Agricultural Land Commission Act* ("ALCA"), the Chair of the Agricultural Land Commission (the "Commission") has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
 - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or

- Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

Please direct further correspondence with respect to this application to
ALC.Okanagan@gov.bc.ca

Yours truly,



Dimitri Giannoulis, Land Use Planner

Enclosures: Reasons for Decision (Resolution #334/2024)
 Schedule A: Decision Map

cc: City of Kelowna (File: A19-0018). Attention: Barb Crawford

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AGRICULTURAL LAND COMMISSION FILE 58053
REASONS FOR DECISION OF THE OKANAGAN PANEL

Non-Farm Use Application Submitted Under s.20(2) of the *Agricultural Land Commission Act*

Applicants: Jeetender Kandola
Manraj Kandola

Agent: Manraj Kandola

Property: Parcel Identifier: 012-206-687
Legal Description: Lot 3, Section 1, Township
23, Osoyoos Division Yale District, Plan 546
Civic: 982 Old Vernon Road, Kelowna, BC
Area: 4.04 ha (entirely within the ALR)

Panel: Gerald Zimmermann, Okanagan Panel Chair
Joe Deuling
Erin Carlson

OVERVIEW

- [1] The Property is located within the Agricultural Land Reserve (“ALR”) as defined in section 1 of the *Agricultural Land Commission Act* (“ALCA”).
- [2] Application 58053 relates to the historical Russo Sawmill (the “Sawmill”). The Sawmill began operations in the 1950s and expanded over time. The Applicants purchased the Property in 2005 and closed the Sawmill, at which time a considerable amount of wood waste from the Sawmill was stockpiled on the Property. The majority of the historic wood waste has since been removed or burned; however, some remains and new materials have been placed on the Property since the closure of the Sawmill. Presently, two commercial operations use the Property: TNT Trucking Services (“TNT”) and A1 Tree Services (“A1”). Ryan Nixon is the owner and operator of TNT.
- [3] The Applicants are applying to the Agricultural Land Commission (the “Commission” or “ALC”) under section 20(2) of the ALCA to continue various non-farm uses on the Property temporarily (for six years), with the Property being reclaimed for agriculture (soil bound or not) and all non-farm uses ceasing at the end of six years. The uses for which approval is sought are:
- Soil blending: the grinding, screening, sorting, piling, mixing, and decomposing of historic mill wood waste, new wood chips and yard waste, and sand, to create soil products for commercial sale, including for agricultural purposes.

- Importing new wood chips and green waste onto the Property for soil blending.
- Importing boulders, rocks, and gravel onto the Property for sorting and crushing into commercial aggregate products.
- Importing sand for soil blending.
- Vermiculture composting (using red wiggler worms).
- Parking vehicles and equipment for TNT to conduct the above uses on the Property.
- Parking vehicles and equipment for TNT to conduct other commercial/industrial uses off the Property (e.g. hauling, road snow clearing).
- Maintenance on TNT's vehicles and equipment.
- Parking vehicles and equipment for A1 to conduct arborist/landscaping work off the Property.
- Office space on the Property to support the above.

Additionally, the Applicants seek to retain unauthorized fill that has been placed as a berm along the north edge of the Property. Collectively, the above constitutes the "Proposal".

[4] The Proposal was considered in the context of the purposes and priorities of the Commission set out in section 6 of the ALCA:

6 (1) The following are the purposes of the commission:

- (a) to preserve the agricultural land reserve;

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

(2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:

- (a) the size, integrity and continuity of the land base of the agricultural land reserve;
- (b) the use of the agricultural land reserve for farm use.

EVIDENTIARY RECORD

[5] The Proposal, along with related documentation from the Applicants, Agent, local government, third parties, and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision.

[6] The Panel conducted a walk-around and meeting site visit on December 6, 2023 in accordance with the *ALC Policy Regarding Site Visits in Applications* (the “Site Visit”). A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications*. The site visit report was certified as

accurately reflecting the observations and discussions of the Site Visit by the Agent on January 22, 2024 (the “Site Visit Report”).

BACKGROUND

- [7] Four properties have historically been related to the Sawmill, which in the Application Package may be referred to as Lot 1, 2, 3, or 4 based upon their legal description lot numbers. Lot 3 is the only lot for which non-farm use approval is sought in this Application.
- [8] The Sawmill building itself existed on Lot 2 (1040 Old Vernon Road – the adjacent parcel to the east), but sawmill-affiliated storage and operations expanded onto all four Lots over time, including the Property (Lot 3). The Sawmill began operations in the 1950s; under section 23 of the ALCA, the Sawmill was able to continue operating within the use and extents it had had prior to the enactment of the ALR in 1972, but by 1985 the Sawmill expanded beyond its historical extents onto adjacent Lots, becoming non-compliant.
- [9] In 1985, ALC application 19519 was submitted to expand the footprint of the sawmill facility and allow the storage of logs, lumber, and sawdust on a 1.7 ha portion of the Property, which was approved under ALC Resolution #993/85. In 1997, the Commission became aware that the sawmill operations had expanded beyond the approved extents and enforcement ensued.

- [10] In 2000, Application 33623 was submitted by the Russo's (the original sawmilling family) to use all the Property and Lot 2 for a "sawmilling, wood waste recycling/composting, and pallet recycling" operation. Application 33623 was approved under ALC Resolution #437/2000, subject to conditions, including the agricultural reclamation of Lot 1, and that a fence be built to the east, north, and west.
- [11] In correspondence dated January 25, 2007 (the "2007 Chair Letter"), in response to an inquiry from McColman and Sons Demolition Ltd., the Chair of the Commission noted, "The ALC considers the processing and recycling of construction wood, metal, concrete and trees to be largely consistent with the sawmill/wood recycling non-farm uses permitted by Resolution #437/2000. In addition, the Commission confirms that the financial security to be adequate to complete a 6 ft high chain link fence on the west, east and north boundaries of the facility. Finally, the Commission confirms that the adjoining Lot 1, Plan 546 has been reclaimed to an agricultural standard as required by Resolution #437/2000. In view of the above, the Commission considers all of the conditions of Resolution #437/2000 to be substantially complete..." The financial security, which had been in the amount of \$30,000, was released in 2018. The Panel notes that it observed on the Site Visit that a portion of the fencing along the western boundary of the Parcel is missing.
- [12] The Applicants, who purchased the Property in 2005, closed the Sawmill, at which time ~122,330 m³ of wood waste was stockpiled on the Property. Based on the 'Land Capability Assessment' from Valhalla Consulting Inc.

dated January 9, 2013, in 2006, the Applicants paid for a controlled curtain burner for three months to eliminate wood waste; from 2008-2011, Better Earth Products screened wood waste and took it to a cogeneration plant, until it was no longer accepted. As of 2012, there was approximately 23,000 m³ of wood waste remaining on the Property.

[13] In 2013, application 53295 was submitted by the Applicants to exclude the entire Property from the ALR based upon its historical sawmill use causing what was submitted to be low suitability for agriculture. The Commission considered that the Property historically had a sawmill use, and that after 2005 the Applicants made efforts to remediate the Property, but that fully rehabilitating the Property was claimed to be prohibitively expensive. The Commission refused the exclusion by Resolution #92/2014 on the grounds that reclamation or improvement of the Property is possible to an extent, and that even without full reclamation, non-soil bound agriculture is possible. The Commission also noted that the Property is within an agricultural area and surrounded by ALR land, so the exclusion of the Property could impact the area and lead to further exclusion or non-farm use applications. An application for judicial review of Resolution #92/2014 was refused.

[14] Subsequently, TNT Trucking Services (as defined above, TNT) and A1 Tree Services (as defined above, A1) have been operating on the Property as lessees. A1 has brought green waste onto the Property to be mixed with the historic wood waste for the purpose of soil blending.

[15] A topographic survey from June 2020 measured ~11,114 m³ of mill waste in piles but did not appear to consider below-grade volumes. On the Site Visit, Ryan Nixon of TNT estimated that there is ~19,114 m³ of historic wood waste remaining in total. Upon the request of the City of Kelowna for more information, the Applicants supplied a January 4th, 2023, letter from agrologist Catherine Piedt (the “Jan. 4th Piedt Letter”), which provided volumetric estimates on 11 types of “waste wood and soil required for restoration” (e.g., wood pile, green waste, tailings, etc.) totaling 78,738 m³ of material piles on the Property. The Jan. 4th Piedt Letter used pile measurements (width x length x height) to estimate volume, except a visual estimate of 30,583 m³ for the “Below grade materials”, which is not specific about the type of material, but may include historic wood waste.

[16] Public correspondence from five individuals was collected by the City of Kelowna and forwarded to the ALC with concerns about the state of the Property and its operations, with concerns including:

- Nuisance: unsightliness, noise (day and night), dust, noxious weeds (including from the berm), truck/industrial vehicle traffic.
- The hauling/dumping of wood products and non-compostable material.
- Non-compliant uses of the Property for trucking and commercial operations.
- Doubts over the remediation that has occurred or is proposed to occur.

- Possible/unknown soil, water, and air pollution from materials brought onto the Property and from vehicle maintenance performed on the Property.
- Flooding on adjacent parcels, leading to orchard tree damage.

[17] Further public correspondence was sent to the ALC directly with concerns. The Commission has directly received three pieces of public correspondence from the same individual (November 13th and 20th 2023, and February 29th, 2024), with additional concerns including:

- The piles of debris and levels of industrial work have greatly increased since 2014.
- Concern over a lack of temporal or financial commitment from the Applicants for reclamation, a lack of commitment for future agriculture, and unclear commercial/industrial intentions.
- Wood debris being placed on the Property by companies other than A1.
- Concerns that some of the types of materials accepted by TNT are hazardous and not suitable for composting.
- The activities on the Property are encouraging surrounding parcels to conduct similar non-farm activities.
- Concerns regarding a Ministry of Environment and Climate Change Strategies (“Ministry of Environment”) ‘warning letter’ sent to TNT.
- Concerns regarding a ‘toxicity test analytical report’ from September 2008.

[18] All the public correspondence described above is included in the Application materials.

[19] A warning letter from the Ministry of Environment was issued to TNT dated November 8, 2023, regarding unauthorized discharge on the Property (the “MOE Letter”). The MOE Letter explains:

- On October 10th, 2023, Ministry of Environment staff conducted an on-site inspection of the soil screening and blending operation located at 982 Old Vernon Road.
- TNT has discharged waste without a valid authorization, which is an offence under the *Environmental Management Act* (“EMA”).
- The Ministry of Environment requests that TNT corrects the non-compliance; failing to do so enforcement may be taken.
- Yard waste and wood residue are considered waste and must be managed in accordance with the EMA.
- Leachate was observed originating from these piles to the ground.
- It has not been determined by a qualified professional that the base of the facility is impermeable clay.
- “Actions to be taken: TNT must apply for a waste discharge authorization with the Ministry of Environment”.

ANALYSIS AND FINDINGS

The ALCA and *Environment Management Act (EMA)*

[20] As described above, the MOE Letter states: “Actions to be taken: TNT must apply for a waste discharge authorization with the Ministry of Environment”. As reflected in the Site Visit Report, TNT is awaiting the Commission’s decision on this Application before applying to the Ministry of Environment for waste discharge authorization.

[21] The Panel notes that neither an active ALC application process nor an approved application relieves an operator from complying with the EMA.

[22] Further to sections 2 and 31 of the ALCA, a person conducting an activity on ALR land is subject to the ALCA and any orders of the Commission, as well as any requirements under the EMA. The Applicants, and those operating on the Property, must comply with both the ALCA and EMA and must not engage in activities prohibited under those statutes unless or until all applicable requirements are met. A permitted or approved use in the ALR does not relieve the owner or occupier of the responsibility to comply with applicable Acts (such as the EMA), regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[23] The Panel also acknowledges public correspondence that was received with concerns about pollution to the soil and groundwater from soil blending and vehicle maintenance activities. The correspondence included an 'Analytical Report' from Bodycote Testing Group dated September 30, 2008, billed to the City of Kelowna. The Analytical Report included notes that several substances sampled at the Property and 1040 Old Vernon Road were measured to be "over [the] guideline". Also, there is a public correspondence concern that TNT has brought on hazardous material unsuitable for composting. The Panel reviewed the report; however, the Panel notes that the report is from 2008 (16 years old at the time of this decision). Further, however, and more fundamentally, compliance and enforcement in relation to the EMA is the jurisdiction of Ministry of Environment, rather than the ALC, and these concerns should be directed to the Ministry.

The Uses of the Property

[24] The Panel's understanding of the state of the Property and the uses occurring is based upon Application as well as observations and discussion at the Site Visit. The Property includes three general areas: the residential area, the parking area, and the soil blending area. The latter two are predominantly non-farm use areas. The residential area includes a principal residence fronting Old Vernon Road where no non-farm uses occur. The parking area includes personal vehicles, vehicles and equipment for TNT and A1, the office structure, part storage, a vehicle scale (needing repair), and the coverall structure for vehicle maintenance. The soil blending area

includes piles of varying sizes and compositions of materials, relatively sorted and separated. Piles of materials include large-diameter logs, rocks/boulders, sand/gravel, historic wood waste, mixed “tailings” (mixed branches, logs, stumps, rocks, gravel, and debris), fresh green waste from A1, and vermiculture soil mixture piles.

- [25] As per the Site Visit Report, Mr. Nixon of TNT explained the material processing operations on the Property:
- Operations include grinding, screening, decomposing, and sorting.
 - A magnet is used to separate metal.
 - Excavation of the historical wood waste has occurred on the Property down until natural clay is reached, typically two feet below the previous grade.
 - The “tailings” pile on the Property includes coarser pieces of wood, rocks, and “garbage” and is roughly 7,000-10,000 cubic yards (5,352-7,646 m³).
 - The pile has been partially screened but requires further sorting by hand to remove debris.
 - For vermiculture, TNT uses worms to decompose material into worm castings: a valuable fertilizing soil input.
 - The end products of the soil blending and material processing operations on the Property include subsoil/fine aggregate, topsoil, and worm castings, which have been sold to homeowners, schools, and farms.

- The blending ratio for the primary soil product is relatively equal parts sand, subsoil, topsoil, and biomass; the biomass is relatively equal parts new green waste from A1 and historical wood waste. TNT states that the historical wood waste comprises ~10-15% of the final soil product.
- Since the historical wood waste only comprises a portion of the final product, materials have been required to be brought onto the Property for processing and blending the historical wood waste.
- Vehicle maintenance occurs on the Property in the covered tent structure to keep vehicles and equipment operating, while saving costs and time from having the work done elsewhere.

[26] As per the Site Visit Report, Mr. Nixon explained that TNT also offers offsite commercial services: trucking, hauling, snow plowing and demolition services. The vehicles and equipment used for the other services are parked on the Property. Mr. Nixon says that for the economic viability of the company, and therefore so that the reclamation work on the Property may continue, these other sources of revenue have been necessary.

[27] Offsite, A1 performs tree removal and grinding services. On the Property, A1 places new green waste, but is not involved with the main soil blending operation and would not be directly involved with the reclamation. A1 parks vehicles and equipment in the parking area.

- [28] The Panel finds that the above commercial uses of the Property are not permitted uses in the ALR Use Regulation. As such, the Applicants properly applied for permission for the uses in the Proposal, as in the absence of Commission approval on an application, they could not be undertaken.
- [29] In evaluating which of the uses applied for should be approved, the Panel was mindful of the kinds of uses for which the Commission historically gave approval, namely in Resolution #437/2000 (as further interpreted and applied in the 2007 Chair Letter). These are informative in part given that some historic wood waste, an earlier consideration, remains and its presence remains a detriment to the agricultural suitability of the Property. This said, circumstances have changed since 2007. Resolution #437/2000 and the 2007 Chair Letter were done in a different context: either prior to or immediately after the closure of the Sawmill, when substantially more historic wood waste existed on the Property, and as part of a different configuration of proposed uses. Further, the fencing condition of Resolution #437/2000 is no longer fully complied with. Properly, the Applicants made the Application covering both uses that may have been appropriate in that earlier context and the expanded uses in which they have engaged or wish to engage, with the Commission's decision on this Application to supersede any prior approvals to the extent they still had any force or effect.
- [30] Of the uses applied for as part of the Proposal, the Panel finds the following to be consistent with the prior approval. While that in itself would not be determinative given the above, in all the circumstances the Panel grants

approval for those uses (except to the extent they involve the import of the categories of material listed in section 36 of the ALR Use Regulation) for the periods and subject to the conditions set out later in this decision. The Panel does so given both the continued issues to which the remaining historic wood waste gives rise, and the Applicants' intention to reclaim the Property for agriculture and ultimately cease all non-farm uses. For the periods the Panel sets out and subject to conditions, these uses continue to make sense pursuant to section 6 of the ALCA:

- Soil blending (grinding, screening, sorting, piling, mixing, and decomposing of historic mill wood waste, new wood chips and yard waste, and sand, to create soil products for commercial sale, including for agricultural purposes), since it involves breaking down the historic wood waste into a soil product, and involves the processing and recycling of trees, wood, and subsoil materials.
- The import of materials (including wood chips, topsoil, and sand, but not unchipped lumber or wood waste or any other material in the categories listed in section 36 of the ALR Use Regulation as Prohibited Fill) onto the Property for soil blending and processing. The Panel notes that the inquiry giving rise to the 2007 Chair Letter described receiving materials onto the land for processing.

[31] At the Site Visit, Ryan Nixon explained that materials have been required to be imported onto the Property for processing and blending to make a sellable product from the historic wood waste.

- [32] The Commission must give priority to protecting and enhancing the size, integrity and continuity of the ALR; and use of the ALR for farm use. With that in mind, the Panel is interested in the eventual reclamation of the Property that makes the land available for agricultural use (either soil bound or non-soil bound) and thereby strengthens the integrity and continuity of the ALR and farm uses in the area. For this reason, the Panel supports the importation of some new material that enables that processing and soil blending in the interest of removing material from the Property, and will allow the import of material for soil blending and vermiculture composting (which are activities that involve the processing of the historic wood waste), other than where the material is in a category listed in section 36 of the ALR Use Regulation.
- [33] The Panel is aware of the concerns regarding noise, dust, and unsightliness related to the soil blending and non-farm use operations on the Property. The Panel understands that operations with heavy equipment may create a degree of nuisance even when local bylaws and best practices are respected. Although the activities in support of processing and removing materials from the Property may include some noise, dust, and unsightliness, the activities are in the interest in resolving those concerns in the long-term and are necessary for the improvement of land within the ALR and encouraging farming.
- [34] A concern was raised in the public correspondence about companies other than A1 bringing material onto the Property. The non-farm use approval

granted under Resolution #437/2000 was not restrictive on who could place material on the Property, or where the material should be sourced from, only the general type of material. The main concern of the Panel is the type and appropriateness of any material placed on the Property, not the entity who places it, so long as it is authorised by TNT or the Applicants, and thoroughly inspected to be clean and appropriate.

[35] Section 36 of the ALR Use Regulation, 'Prohibited Fill', lists categories of materials that must not be used as fill on agricultural land, including but not limited to: demolition waste (including concrete and wood waste), treated wood, and unchipped lumber. Section 36 of the ALR Use Regulation came into force and effect on February 22, 2019, after Resolution #437/2000 which allowed wood waste recycling. The uses that the Applicants ask be allowed in the Proposal include that A1 would place wood chips and "green waste" on the Property for soil blending. Given this decision is being made in the context of section 36, the Panel finds that no material in any of the categories listed in section 36 (including unchipped lumber and wood waste) may be imported onto the Property from the date of this decision moving forward, even for the purpose of soil blending. For clarity, however, all materials already on the Property at the time of this decision (including if in a category listed in section 36) may be processed and removed from the Property.

[36] TNT and the Applicants are responsible for ensuring that any material to be placed on the Property is clean, and of a type permitted within this decision.

[37] For additional clarity, (a) any uses that were approved in Resolution #437/2000 or Resolution #993/85 that are not expressly approved by the Panel in this decision, are no longer permitted on the Property as of the date of this decision, and (b) the uses that are approved by the Panel in this decision may only occur subject to the conditions of this decision being met.

[38] So far in this portion of the decision, the Panel has addressed elements of the Proposal that may overlap with uses permitted in prior Commission decisions. The Panel now turns to certain other elements of the Proposal that are not consistent with previously approved uses, namely:

- The parking of vehicles and equipment or use of an office for TNT or A1 to conduct commercial/industrial uses off the Property (e.g. snow clearing or tree removal); commercial/industrial parking for offsite work was not earlier contemplated by the Commission.
- The berm created on the Property with unauthorized fill placement.
- Vehicle and equipment maintenance.

[39] Each of the above-proposed uses is considered below.

[40] TNT parks equipment and vehicles on the Property for offsite work including snow removal from roads, hauling, and demolition services. Some of the equipment is used for onsite and offsite work, while some is only used for offsite work. As noted in the Site Visit Report, "Mr. Nixon says that for the economic viability of the company, and therefore so that the reclamation

work on the Property may continue, these other sources of revenue have been necessary.” The Panel notes that generally, parking commercial/industrial vehicles and equipment within the ALR is a non-farm use that is inappropriate because it discourages agriculture and is more appropriately located in industrially zoned, serviced, and designated areas.

[41] This being said, the Panel finds that it is reasonable that heavy machinery and some vehicles and structures may be required to complete the approved uses, and not removed from the land each day. The 2007 Chair Letter itself seemingly supported the addition of an office trailer raised in the inquiry to which the Chair responded.

[42] Regarding vehicles/equipment used for offsite work only:
The Panel finds that vehicles/equipment not involved in reclamation/soil blending, such as snowplows, should be removed because they are not involved in the processing of the wood waste. In order to provide time to relocate the vehicles, the Panel will allow any vehicles/equipment used solely for offsite commercial work to remain on the Property for one year from the date of this decision, but no longer than that.

[43] Regarding vehicles/equipment used for onsite and offsite work:
The Panel finds it reasonable that some equipment and vehicles would be used by TNT both for reclamation/soil blending work and for offsite work. The Panel understands that it may be impractical and impede the reclamation and soil blending work if equipment used onsite and offsite was

immediately forced to be parked elsewhere. Particularly considering the time-limited nature of the approval given, the Panel is amenable to allowing TNT to park its vehicles and equipment that are used for onsite and offsite work for three years from the date of this decision.

[44] However, considering that large equipment can have physical impacts on the land (such as compaction of soil), vehicle and equipment parking even if otherwise permitted by this decision may only occur on a limited portion of the Property, as identified in Schedule A.

[45] The Panel also considered if A1 should be permitted to park its vehicles and equipment on the Property for offsite work. A1 deposits wood chips and green waste which are used with the soil blending operation to process the historic wood waste. The basis for the Panel allowing TNT to park their vehicles and equipment is because the equipment is multi-purpose, and because TNT is doing the soil blending. Since that is not the case for A1, the Panel finds that no exception should be granted to A1 and as such it is not amenable to A1 parking its vehicles or equipment on the Property; this is consistent with the general principle that commercial/industrial equipment parking within the ALR is not appropriate. For clarity, however, the Panel notes that A1 may continue to bring onto the Property further wood chips and green waste, so long as done in accordance with this decision and all applicable regulations, including section 36 of the ALR Use Regulation (e.g. no construction wood waste or unchipped lumber).

- [46] The Panel understands that the existing office trailer could be used to support the onsite and offsite work of A1 and TNT. The Panel finds it to be appropriate for the office to be used to support operations that are permitted by this decision, namely that of TNT. However, for the same reasons that parking of vehicles or equipment by A1 is not permitted, the office trailer may not be used by A1.
- [47] The Panel understands that the maintenance of vehicles and equipment for the permitted use may be required from time to time. The Panel notes that maintenance activities must be done in a manner that does not negatively impact the land and must abide by all conditions of this decision and all other Acts and authorizations, including the EMA.
- [48] The Panel considered the existing berm placed near the northwestern corner of the Property. The berm appears to be over two metres tall. The Panel understands that the visual state of the Property is unpleasant, with many piles of materials, and heavy equipment. The Panel also understands that heavy equipment is loud to operate, as required for reclamation work and soil blending. Therefore, the Panel finds that the berm can benefit the adjacent parcels in the short term as a visual and noise barrier. However, the Panel is aware of public complaints that the berm has not appropriately been seeded and managed to prevent noxious weeds, and that the berm obstructs views beyond the Property. Therefore, the Panel is only amenable to having the berm remain temporarily, for three years from the date of this

decision. Weed management should be undertaken during the period that the berm remains in place, such as trimming, spraying, or cutting/pulling weeds, but the berm is not expected to be hydroseeded, since its allowance to remain is only temporary.

Agricultural Reclamation

- [49] In the 'Applicant Submission' form, the Applicant writes that "The future proposal for next 6 years is to move towards reclaiming the land to a viable agriculture standard..." And as per the Site Visit Report, Mr. Nixon explained that "TNT wishes to remediate the land as quickly as feasible".
- [50] The Panel referred to *Policy P-10: Criteria for Agricultural Capability Assessments* and *Policy P-11: Expert Opinions in ALC Matters* in their evaluation of the Application materials.
- [51] The Commission received a professional report dated January 9, 2013, prepared by Valhalla Environmental Consulting Inc. titled: "Land Capability Assessment: 982 Old Vernon Rd., Kelowna, BC..." (the "Valhalla Report") written by Matthew Davidson P.Ag and Catherine Orban P.Ag. Field investigations were conducted on October 24th, 2012, which included three soil test pits. The Valhalla Report states that the soil and site conditions equate to currently (at the date of the report) unimproved agricultural capability of Class 5 agricultural capability due to soil moisture deficit in the summer, and excess water conditions in the spring, fall, and winter. The Valhalla Report states that the Property is improvable to Class 3 with

irrigation and water control improvements. The Valhalla Report says that despite the wood waste removal/processing that occurred from 2005-2011 (costing the Applicants \$175,000), approximately 23,000 m³ of wood waste remained as of 2012. To be suitable for intensive soil bound agriculture, the Valhalla Report stated that ~\$1,040,639 would be required for remediation by trucking away the wood waste and placing new soil. The Valhalla Report evaluated that rehabilitating the Property for soil bound agriculture (crops or livestock) would not likely be financially feasible. The Property may be used for non-soil bound agriculture, including greenhouses/horticulture, but intensive livestock operations may not be suitable due to noise/odour/traffic conflicts with surrounding residential uses.

[52] The Panel notes that over a decade has passed since the Valhalla Report was created, and that much activity has occurred on the Property since that time. Thus, the Panel finds that the agricultural capability evaluation of the Valhalla Report is somewhat limited but provides a general understanding of the agricultural capability of the land, which appears to remain capable for a wide range of agriculture upon reaching a reclaimed state, with further improvements possible. The Valhalla Report finds that reclaiming the land for soil bound agriculture would not be economically feasible due to costs of removing the wood waste and placing fill, but non-soil bound agriculture remains possible, such as greenhouses. The Panel notes that the situation has now changed: the historic wood waste is no longer intended to be removed in its unusable state but turned into a product and sold.

[53] The Reclamation Plan and the Application materials discuss the reclamation of the Property as the processing or removal of materials from the Property, with possibly the addition of new topsoil. The Panel understands that land with historical industrial uses would possibly require additional treatment to be reclaimed to an agricultural standard, but that is difficult or impossible to know with piles of surface material on the land. The Panel's immediate concern is the removal of all historic wood waste and other imported materials from the Property; any future reclamation beyond the removal of these materials, including importation of fill for reclamation purposes, should only be contemplated under a separate application. The Panel notes that placement of soil amendments to improve soil fertility does not require an application to the Commission if it is consistent with section 35 (f) of the ALR Use Regulation.

[54] The Application includes an "Agrologist's Report to Support City of Kelowna Temporary Use Permit Application" dated March 31, 2022, prepared at the request of Mr. Nixon. The report was written and signed by Carl Withler, B.Sc, P.Ag., and Catherine Piedt, B.Sc., P.Ag. of Ecora and Green Spark Consulting (the "Ecora Report"). The Ecora Report describes the current site conditions and operational activities, and summarizes best practices being administered. Under 'General Commentary and Recommendations', the authors state that "Mr. Nixon is cleaning up remnant wood waste... into a useable product. In carrying out this activity, there is a significant reduction in potential fire risk... Observations on site confirmed that he is managing the operation in a manner to reduce potential effects related to noise, dust,

fire and environmental considerations.” The Ecora Report recommends creating a no operating buffer inside the property boundary, seeding the berm, continuing dust control, and monitoring activities semi-annually.

[55] Subsequently on January 4th, 2023, a supplemental letter by Catherine Piedt was sent to the City of Kelowna, commissioned by Mr. Nixon (this was defined earlier as the Jan. 4th Piedt Letter). The letter includes a “Restoration Plan” section, which states “The following steps (at a minimum) would likely be required to complete restoration”:

- Process all remnant waste from the sawmill operation.
- Remove the non-farm use structures.
- Identify areas on site suitable for potential agricultural capability and soil productivity (with the addition of topsoil).
- Spread topsoil in suitable amounts in the areas identified. It is estimated that 61,000 m³ of soil would be required.

[56] The Jan. 4th Piedt Letter also includes a “Monitoring Plan” section, which includes that the parking should be limited to one area, no large boulders or trash remain on the site, works are contained to the Property, and that the volume of remnant mill waste continues to be reduced. Monitoring is proposed to occur every six months.

[57] The Ecora Report and the Jan. 4th Piedt Letter was not based on soil samples or test pits. The Restoration and Monitoring Plans in the Jan. 4th Piedt Letter did not include a detailed temporal or spatial plan for the phasing of the

removal of historic wood waste and feedstocks for soil blends. The 'Statement of Qualifications' in the Ecora Report confirms that Carl Withler and Catherine Piedt are agrologists with varied experiences, but agricultural reclamation in particular is not substantiated as an area of experience or expertise. Therefore, the Panel finds that a more detailed operational plan is required.

[58] As per the Site Visit Report, TNT may be interested in using some of the soil products it blends on the Property for reclamation purposes. The Panel understands that imported fill or soil amendments may be required to reclaim the Property once all materials have been removed; however, the Panel considers this as part of a second phase of work that should be contemplated under a separate application in the event if fill is required.

[59] The Panel notes that efforts to come into compliance with the EMA regarding unauthorized waste discharge must not include unauthorized paving or other works that would require ALC approval, unless ALC approval is otherwise granted to do so.

The Appropriateness of a Six Year Timeline

[60] The Applicants request a six year timeline for the Proposal. As explained by the Agent and Mr. Nixon in the Site Visit Report:

- The reason why six years is requested to remediate the Property is partially based on financial reasons, but also based on the amount of time the processing of the historical wood waste and managing the final products will take.
- To attempt to complete the intended works in three years would be rushed and have an inferior result.
- At the end of six years, the intention is for there to be no more commercial operations occurring on the Property, and for all the piles of materials to be removed.

[61] As explained in the Committee Report from the City of Kelowna dated November 12, 2020, a six year timeline would coincide with a three year Temporary Use Permit (“TUP”), and one possible three year renewal; the requirement for a renewal would be an opportunity for the City to evaluate the reclamation progress to date.

[62] The Jan. 4th Piedt Letter states: “We understand that the City has requested specific details on timelines for how quickly the material will be reduced. This is currently unknown, and any estimates at this time to determine how fast the piles will be reduced would be premature and inaccurate... It is anticipated that all remnant waste material will be processed within the

period of time allowed by the issuance of one TUP and assuming monitoring is confirming continued waste reduction as second TUP.”

[63] The Panel understands that processing the historic wood waste, selling the soil products created, remediating the Property, and removing all vehicles and equipment would take time. The Panel notes that the Jan. 4th Piedt Letter does not provide a detailed professional explanation of what a reasonable timeframe to achieve all the above will entail, but the author anticipates that the remnant wood waste material will be processed within three years (the length of one TUP). The Panel acknowledges that some work will need to be done by hand on the Property, which is more time consuming. As stated above, the Panel finds that the priority is the removal of materials, not the comprehensive reclamation of the Property at this time. The Panel is concerned that six years may be unnecessarily long to finish processing the material, since only a fraction of the original historic wood waste is still in its original condition, and since TNT has equipment and vehicles available for soil blending on the Property. In light of Ms. Piedt’s comments and the Panel’s understanding of the current situation, the Panel finds that a three year timeline is more reasonable and appropriate than six years, and that the rapid reclamation of the land should be prioritized over the reasons for TNT to prefer six years.

[64] Given the objective to remove the historic wood waste and other materials from the Property, the Panel finds it necessary to limit the period of new fill importation to one year only in order to focus on removing material. The

Panel finds that allowing fill importation within the 2nd or 3rd year would go against the objective of ultimately removing materials from the Property by the end of the three year approval.

DECISION

[65] For the reasons given above, the Panel approves the following uses on the Property for a time limited period, subject to conditions:

For up to one year from the date of this decision (May 30, 2025), the following activities may occur on the Property subject to the conditions set out in paragraph 66 of this decision:

- Importing wood chips, sand, subsoil, and topsoil for soil blending, but not including the importation of any material in the categories listed in section 36 of the ALR Use Regulation; and
- Parking vehicles and equipment for TNT that are not used in relation to the soil blending (e.g. snowplough trucks). The vehicles and equipment for TNT that are used in relation to the soil blending are addressed separately, below.

For up to three years from the date of this decision (May 30, 2027), the following uses may occur on the Property subject to the conditions set out in paragraph 66 of this decision:

- Soil blending in the form of the grinding, screening, sorting, piling, mixing, and decomposing of historic mill wood waste (that remains on

the Property at the time of this decision), new wood chips, and sand, to create soil products for commercial sale, including for agricultural purposes;

- Processing of rocks, boulders, and gravel (that exist on the Property at the time of this decision) for commercial sale;
- Vermiculture composting;
- Retaining the berm in the northwestern corner of the Property;
- Parking vehicles and equipment for TNT involved with onsite work; and
- Using the existing office trailer for TNT.

[66] Conditions to be met within 120 days of this decision (Due Sep. 27, 2024):

- a) The submission of a \$50,000 financial security (e.g. Irrevocable Letter of Credit, Certified Cheque, or Bank Draft) made payable to the Minister of Finance c/o the Agricultural Land Commission.
 - i. The financial security is to ensure that the approved uses are conducted in accordance with the approval and the conditions of this decision.
 - ii. Some or all of the financial security will be accessible to and used by the Commission as a penalty upon default to comply with all conditions of the approval contained herein.
 - iii. Release of the financial security will be dependent upon compliance with conditions (b-p) below, as deemed satisfactory by the Commission.
- b) The submission of an affidavit signed by the Applicants and Ryan Nixon (on behalf of TNT) committing to adhering to the conditions of this decision.

Conditions to be met within six months (Due Nov. 30, 2024):

- c) An Operations Plan that outlines the projected volume of soil blend feedstocks that will be imported (for one year from the date of this decision), processed and exported, such that by the end of the three year period all soil blend feedstocks (including historic wood waste) have been removed from the Property. This plan must be prepared by a Professional Agrologist registered with the BCIA in the practice area of Waste Management, Bio-Renewable and Bio-Processing. The plan must include current and annual estimated volumes of inputs and outputs to ensure that no soil feedstocks remain after the three-year period.
- d) If the registered professional agrologist who completes the Operations Plan needs to be replaced for the Annual or Closure Reports, the Commission must be notified and have the opportunity to review and approve the change. This condition continues to apply beyond six months.

Conditions to be met within one year (Due May 30, 2025):

- e) All TNT vehicles and equipment must be removed from the Property that are only used for offsite commercial/industrial work.
- f) The first Annual Report by the same agrologist to demonstrate (to the satisfaction of the Commission) that the timelines, conditions, and estimated input and output volumes outlined in the Operations Plan are being followed.

Conditions to be met within two years (Due May 30, 2026):

- g) The second Annual Report by the same agrologist to demonstrate (to the satisfaction of the Commission) that the timelines, conditions, and estimated input and output volumes outlined in the Operations Plan are being followed.

Conditions to be met within three years (Due May 30, 2027):

- h) Any remaining unprocessed materials must be removed (including the historic wood waste, new green waste, rocks, boulders, aggregates, tailings, other debris, or other imported fill).
- i) All piles of processed soil must be completely removed.
- j) All berms must be completely removed.
- k) All commercial/industrial vehicles and equipment must be removed.
- l) The following commercial/industrial structures and improvements must be removed: the modular trailers, sea-cans, weighing station, outdoor storage racks, and any commercial signage.

Conditions to be met within 3.5 years (Due Nov. 30, 2027):

- m) A **Closure Report** by the same agrologist to demonstrate (to the satisfaction of the Commission) that the Operations Plan has been completed and conditions (h-l) have been accomplished.

General conditions:

- n) This approval is for the sole benefit of the Applicants and TNT and is non-transferable; this approval is not valid for any other commercial operator on the Property, or for any future owners of the Property.
- o) The non-farm use area is to be in substantial compliance with the attached Schedule A: Decision Map.
- p) Any works required for compliance for the Ministry of Environment must be compliant with the ALCA and regulations, or must:
 - i. obtain permission from the Commission first; and,
 - ii. not involve paving of the Property or other contraventions of the ALCA or regulations.

[67] After the expiry of the three years, only uses allowed under the ALCA or ALR Use Regulation shall be permitted on the Property without further application. For clarity, no prior previous ALC non-farm use approvals on the Property continue to apply.

[68] For the reasons given above, the Panel refuses the Proposal to allow A1 to continue to store its vehicles/equipment on the Property.

[69] Should the above conditions of approval not be completed to the satisfaction of the ALC within the timeframe(s) specified, the approval will expire and a new application may be required.

[70] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[71] These are the unanimous reasons of the Panel.

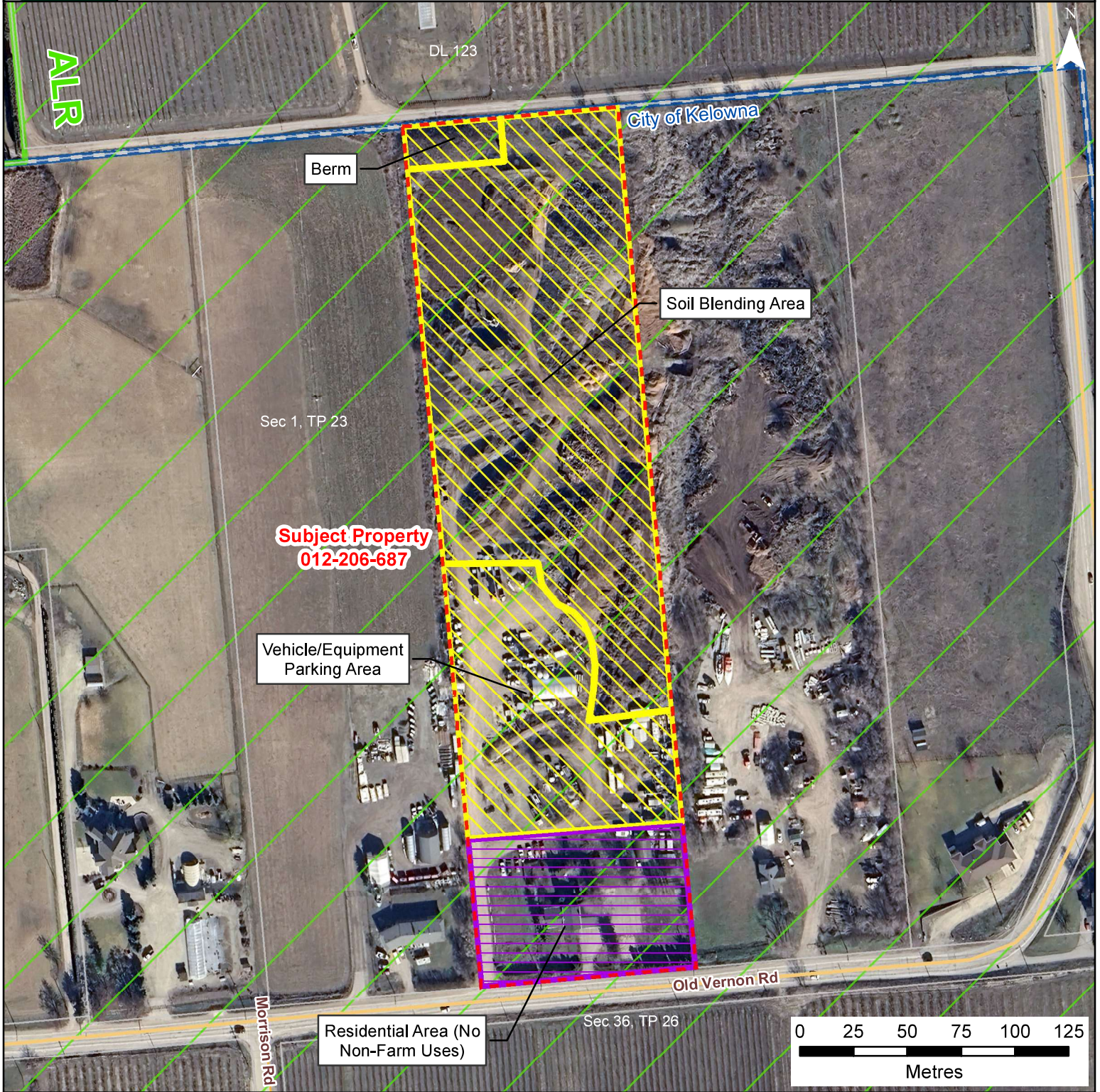
[72] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

[73] Resolution #334/2024
Released on May 30, 2024

A handwritten signature in black ink, appearing to read 'G. Zimmermann', with a long horizontal stroke extending to the right.

Gerry Zimmermann, Panel Chair

On behalf of the Okanagan Panel



ALC FILE NO: 58053	RESOLUTION NO: #334/2024
MAP PRODUCED: May 24, 2024	
MAP SCALE: 1:2,500	
DATA SOURCES & NOTES: ALC, BCGW and Google Earth. Contains information licensed under Open Government License - British Columbia.	
Map for reference only. Accuracy not guaranteed.	

-  Approved Non-Farm Use Area (~3.35 ha)
-  Residential Area (No Non-Farm Uses) (~0.69 ha)
-  Subject Property
-  Agricultural Land Reserve
-  Municipalities
-  PMBC Parcel Cadastre

