

August 3, 2023

ALC File: 64060

**Robert Moskowitz
Landstar Development**

Delivered Electronically

Dear Robert Moskowitz:

Re: Reasons for Decision - ALC Application 64060

Please find attached the Reasons for Decision of the Okanagan Panel for the above noted application (Resolution #383/2023). As agent, it is your responsibility to notify the applicant 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 s. 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

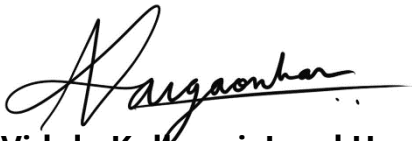
- Evidence that all or part of the original decision was based on evidence that was in error or was false.

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,



Vidula Kulkarni, Land Use Planner

Enclosures: Reasons for Decision (Resolution #383/2023)
Schedule A: Decision Map (Siting of Non-Farm Uses)

cc: City of West Kelowna (File Z 20-08/A 21-07). Attention: Carla Eaton

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AGRICULTURAL LAND COMMISSION FILE 64060
REASONS FOR DECISION OF THE OKANAGAN PANEL

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

Applicant: Blackmun Bay Development Limited
Partnership by its General Partner 1087032
BC Ltd.

Agent: Robert Moskovitz, Landstar Development

Property: Parcel Identifier: 011-516-402

Legal Description: All that portion of District
Lot 522, Group 1, Osoyoos Division Yale
District, more particularly described as
follows: Commencing at the North West
Corner of said District lot; thence South 11
Chains 61 Links more or less along the
Westerly Boundary; thence Easterly Parallel
to the Northerly Boundary to Okanagan Lake;
thence following the shore line of said Lake
in a North Easterly direction to the North East
Corner of said District Lot 522; thence
Westerly along the North Boundary to the
point of commencement and containing by a
measurement 16 acres more or less.

Civic: 2211 Campbell Rd, West Kelowna, BC



Area: 7.09 ha (3.34 ha within the ALR)

Panel:

Gerry Zimmermann, Okanagan Panel Chair

Joe Deuling

OVERVIEW

- [1] The Property is located within the Agricultural Land Reserve (ALR) as defined in s. 1 of the Agricultural Land Commission Act (ALCA).
- [2] The Property is bisected by Campbell Road. The 3.34 ha eastern portion of the Property is in the ALR (the “ALR Portion”) and the 3.75 ha western portion of the Property is not in the ALR (the “Non-ALR Portion”). The Non-ALR Portion of the Property was conditionally approved for exclusion by the Agricultural Land Commission (the “Commission” or the “ALC”) in 2013 by ALC Resolution #97/2013 (ALC Application #52888) and subsequently removed from the ALR.
- [3] The Applicant is now applying to the Commission under s. 20(2) of the ALCA to permit non-farm uses on ALR Portion of the Property as follows:
- **Marina Access Lane:** To construct lane access over an existing driveway and proposed utility infrastructure right of way to access a future 60-slip boat marina/boat moorage on the foreshore of the Property on Okanagan Lake. The marina/boat moorage is for use by residents of a future townhome development on the Non-ALR Portion of the Property. The Application submits that the new access lane will terminate with a loading zone and vehicle turnaround area, that will connect to a pedestrian pathway that leads to the marina/boat moorage. The total proposed area for accessing the marina/boat moorage is ~0.2 ha. The Proposal consists of a 1,384 m² access lane (6 m wide) plus 346 m² (1.5 m

wide) pedestrian space, and a 33 m² recycled asphalt or gravel crush surface pathway (1,764 m² total); and

- **Stormwater Drainage:** To construct a 250mm stormwater drainage pipe with an average depth of 1.5 m and construct an access road on top in a right of way registered under section 218 of the Land Title Act along the northern boundary of the ALR Portion of the Property to service the future townhome development proposed on the Non-ALR Portion of the Property impacting a 1380 m² area of the ALR Portion;
- To construct a 250mm stormwater drainage pipe with an average depth of 1.5 m within a 1.5 m wide by 300 mm deep swale in a right of way registered under section 218 of the Land Title Act along the southern boundary of the ALR Portion of the Property to service the future townhome development proposed on the Non-ALR Portion of the Property impacting a 450 m² area of the ALR Portion.
(collectively, the “Proposal”).

[4] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 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 Applicant, 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 February 7, 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. The site visit report was certified by the Agent on March 24, 2023 as accurately reflecting the observations and discussions of the Site Visit (the “Site Visit Report”).

BACKGROUND

- [7] In 2013, the previous landowner applied to the Commission to exclude ~1.74 ha of the 7.1 ha Property from the ALR (ALC application #52888). The Commission considered that the proposed exclusion area west of Campbell Road had limited agricultural capability and that Campbell Road would provide an adequate buffer between excluded lands to the west and the ALR remainder to the east, that at the time was in orchard production, and approved the proposal by Resolution #97/2013, on the understanding that the applicant would work with the District of West Kelowna regarding any requirements for road dedication along Campbell Road as a means of providing adequate buffering to the ALR-Portion of the Property.
- [8] The City of West Kelowna Council Report dated April 19, 2022 (the “Council Report”) states that the Marina Access Lane is not consistent with the current Official Community Plan (OCP) and zoning designations.
- [9] The Council Report further states that the Applicant has applied to amend the OCP and zoning bylaw to support a residential townhome development of up to 60 units on the Non-ALR Portion, and a private dock up to 60 boat slips on Okanagan Lake. The Non-ALR Portion proposes an OCP amendment from Agricultural to Low Density Multiple Family and the zoning amendment is from Agricultural (A1) to Low Density Multiple Family (R3). On the ALR Portion, the zoning amendment includes a site-specific text amendment to the Agricultural (A1) Zone to allow access to a private dock. On Okanagan

Lake, the proposed zoning amendment is from Recreational Water Use (W1) to Intensive Water Use Zone (W2).

[10] The ALC received 26 public comments (the “Public Correspondence”) against the Proposal including 3 letters from the neighbouring Community Association. The Public Correspondence raised that:

- The orchard on the ALR Portion was historically successful and has been left to deteriorate for the past three years.
- The Proposal would increase urban and farm conflicts through increased traffic. The Proposal to have a private boat moorage accessed through farmland presents an adverse impact to, and no benefit for, farming.
- The residential development should not be tied to the ALR Portion of the Property through a marina.
- There is a possibility of renting out of boat slips in case all the 60 boat slips are not used by the future townhome owners.
- An agrologist had advised the City’s Agricultural Advisory Committee that the agricultural land had deteriorated, and the peach orchard was dying off, but the “land does not deteriorate, crops do”.
- There is a confusion around who will manage the orchard in future.
- The Proposal does not meet section 6 of the ALCA.

[11] Additionally, according to the City of West Kelowna Council Report, the City of West Kelowna received 110 written submissions both in favour and against the Proposal, including an 80-person petition against it.

ANALYSIS AND FINDINGS

[12] To assess agricultural capability on the Property, the Panel referred to agricultural capability ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings applicable to the Property are Class *1, Class *2, Class *3, and Class 7, more specifically:

- 33.3% of the ALR Portion of the Property is improvable to Class *2 with limiting subclasses of Aridity and Topography;
- 33.3% of the ALR Portion of the Property is improvable to (60%) Class *3 and (40%) Class 7 with limiting subclasses of Topography, Salinity and Inundation;
- The remaining 33.3% of the ALR Portion of the Property is improvable to (60%) Class *1, (40%) Class *2 with limiting subclasses of Topography, Aridity and Stoniness.

Class 1 - land is capable of producing the very widest range of crops. Soil and climate conditions are optimum, resulting in easy management.

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

Class 7 - land has no capability for soil bound agriculture.

The asterisk(*) prescript is used in the Modified Land Capability Classification for Tree Fruits and Grapes. It indicates that modified stoniness and/or topography classes have been used. This modifier is applied to regions where tree fruits and grapes are a mainstay of agriculture, as they can be grown on steeper and stonier land than the common field crops and therefore, they are rated less severely.

The limiting subclasses associated with this parcel of land are A (soil moisture deficiency), I (inundation), N (salts), P (stoniness), and T (topographic limitations).

- [13] Based on the agricultural capability ratings, the Panel finds that the ALR Portion of the Property has mixed prime and secondary agricultural capability that is highly capable of supporting tree fruits and grape production.

- [14] The ALR Portion of the Property has perimeter fencing and irrigation rights from the Okanagan Lake and the Application Material indicates that a vineyard is also planned for the ALR Portion of the Property.
- [15] The Application material includes a letter dated February 13, 2023, from the Volcanic Hills Estate Winery that confirms their interest in operating a vineyard on the ALR Portion of the Property (the “Letter from the Volcanic Hills Estate Winery”). Volcanic Hills Estate Winery states that the Property, *“according to the Grape Atlas features a highly fertile and suitable soil for the growing of high quality vinifera grape vines”* and advises that they have been in discussions with the developer of the Property for several years regarding their interest in a long-term lease that would allow Volcanic Hills Estate Winery to replant the site and add the grape production from this site into their winery operation. The Panel reviewed the Letter from the Volcanic Hills Estate Winery and determines that a vineyard on the ALR Portion is viable given the agricultural capability of the land and the interest expressed by a local grower.
- [16] The Panel understands from the Application material, including the Site Visit Report that there is an existing ~ 3 to 4 m wide driveway off Campbell Road used to access the orchard and farmhouse on the ALR Portion of the Property that the Applicant proposes to modify and upgrade into a Marina/Boat Moorage Access Lane.

- [17] The Applicant submits that the Marina/Boat Moorage Access Lane through the ALR-Portion of the Property is the shortest distance to access the marina/boat moorage from the future townhome development on the Non-ALR Portion of the Property, and will make use of the existing driveway alignment, and will not include a boat launch or parking area. The Marina/Boat Moorage Access Lane would also include two access points for farm vehicles to enter the ALR Portion of the Property.
- [18] The Applicant further submits that the parking for owners of the boats (trailers and vehicles) will be located in the Non-ALR Portion of the Property, within designated parking spaces within the proposed townhome development.
- [19] While the Applicant did not apply for the proposed marina/boat moorage, this use is a factor for deciding if the proposed marina/boat moorage access lane should be allowed because, among other things, it affects the character of the proposed access, and impacts the ALR Portion and its utility for farm use.
- [20] From the Application Material including the drawings titled 'Access Lane Design' and the engineering drawings prepared by CTQ Engineering Consultants, the Panel understands the cross section for the marina/boat moorage access lane is 10.5 metres wide, including 6 metres for vehicle access that will provide for two-way vehicle traffic, including emergency

vehicles, 1.5 metre wide pedestrian space, and a 3 metre fenced and planted boulevard space.

[21] Based on the Panel's review of the Application material, the Panel finds the proposed 10.5 m wide access lane, including dedicated pedestrian space and a fenced and planted boulevard space, is excessive and over-built for farm use and would restrict farm vehicles from using the access to maneuver in and around orchard or vineyard rows. In the Panel's experience, the design of this access lane restricts farm vehicle use and would require anyone farming the ALR-Portion of the Property to construct a further farm road to accommodate farm vehicle turn movements thereby reducing the area available for orchard or grape production.

[22] The Panel also finds the proposed 10.5 m wide access lane, including dedicated pedestrian space and a fenced and planted boulevard space, excessive and over built for private boat moorage access by Non-ALR Property residents. Non-ALR Property residents could access their boat moorage on foot and use hand-pulled carts or golf carts to help transfer supplies from their residence to their boats. The Application Material clearly states this access is for private residents of the Property, not the general public.

[23] For the reasons set out above, the Panel finds that that a 3 m wide farm access having a permeable surface, without any sidewalks or treed boulevard space, as shown in the proposed Marina Access Lane drawings,

would be more appropriate for the site. A reduced access could still provide residents with access to their boats and reduce the potential for conflict between the agricultural and non-agricultural uses on the ALR Portion of the Property.

- [24] Further the Panel considered the proposed construction of two stormwater drainage pipes 1.5 metre below grade; one adjacent to the northern boundary of the ALR Portion of the Property and the other along the southern boundary of the ALR Portion of the Property and has no objection to their construction within the proposed s. 218 statutory rights of way.
- [25] The Panel reviewed the Minutes of the City of West Kelowna's Council Meeting dated April 19, 2023 (the "Council Minutes") where the Council resolved to support the Proposal. The Panel understands that road dedication to widen the portion of Campbell Road that passes through the Property (the "Campbell Road Dedication") is a condition of the City approving the zoning bylaw amendments for this Property. The Panel also reviewed the past ALC Resolution #97/2013 that conditionally approved the exclusion of the current Non-ALR Portion of the Property and finds, that dedication to widen Campbell Road was considered as part of that decision and that the ALC is able to authorize the Registrar of Land Titles to register the Campbell Road Dedication, without further application, subject to the submission of a surveyed road plan to the Commission for its execution that appropriately buffers the ALR Portion of the Property as set out in ALC Resolution #97/2013.

[26] The Panel also considered that the Property is surrounded by residential development on all sides and Okanagan Lake to the east leaving the parcel fragmented from the rest of the ALR, which in the Panel's experience, can lead to considerable development pressure. The Panel finds that the Applicant's willingness to convert the existing orchard into vineyard on the ALR Portion of the Property as a condition of approval will ensure that agriculture will be the priority use of the majority of the ALR Portion of the Property, and that the marina access lane will be subordinate, and can be used for farm vehicle movements. In considering the farmable area of the ALR Portion of the Property, the Panel finds that a \$140,000 financial security within a 3-year time limit is appropriate to ensure the planting of vinifera grape vines on the ALR Portion of the Property.

DECISION

[27] For the reasons given above, the Panel approves an access to the marina/boat moorage and construction of a storm drainage infrastructure along the northern and southern boundaries of the ALR Portion of the Property subject to the following conditions:

- (a) Removal of the existing asphalt driveway on the ALR Portion of the Property and the construction of an access to the marina/boat moorage that does not exceed 3 m in width, does not include sidewalks or planted boulevard, is constructed of a permeable surface, and is sited in accordance with Schedule A of this decision;

- (b) construction of the requested storm drainage infrastructure within a statutory right of way along the northern and southern boundaries of the ALR Portion of the Property in accordance with Schedule A of this decision
- (c) The removal of the existing orchard and planting of a vineyard on the ALR Portion of the Property within 3 years of the release of this decision;
- (d) The submission of a \$140,000 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 within 60 days of the date of the decision and prior to the construction of the Pathway;
 - i. The financial security is to ensure the approval is conducted in accordance with the conditions of this decision;
 - ii. For greater clarity, all of the financial security will be accessible to, and used by the Commission as a penalty upon default of the landowners to comply with conditions of the approval contained herein; and
 - iii. Release of the financial security will be dependent on receipt of evidence that includes a report prepared by a Qualified Professional as defined in [Policy P-11 Expert Opinions in Agricultural Land Commission Matters](#) confirming the conversion of the current orchard into a vineyard on the Property and photographic evidence of the same;

- (e) the submission of a surveyed subdivision plan for Campbell Road Dedication to the Commission for its authorization, within three years of the date of the release of this decision;
- (f) Approval of this non-farm use is granted for the sole benefit of the Applicant and is non-transferable.

[28] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan for the Campbell Road Dedication.

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

[30] 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.

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

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

[33] Resolution #383/2023

Released on August 3, 2023

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

Gerry Zimmermann, Panel Chair

On behalf of the Okanagan Panel



ALC FILE NO: 64060	RESOLUTION NO: 383/2023
MAP PRODUCED: August 3, 2023	
MAP SCALE: 1:2,000	
DATA SOURCES & NOTES: ALC, BCGW & ESRI / RDCO. Contains information licensed under Open Government License - British Columbia.	
Map for reference only. Accuracy not guaranteed.	

- Alignment of Storm Drain Infrastructure (approx.)
- Access to the Marina/Boat Moorage (approx.)
- Subject Property
- Agricultural Land Reserve
- PMBC Parcel Cadastre

