

REPORT TO COUNCIL



Date: August 29, 2012
To: City Manager
From: Land Use Management, Community Sustainability (GS)
Application: A12-0010 **Owner(s):** Stephen Cipes
Address: 4870 Chute Lake Road **Applicant:** Stephen Cipes
Subject: ALR Inclusion
Existing OCP Designation: Resource Protection Area
Existing Zone: A1 - Agriculture 1
RR1 - Rural Residential 1
RR2 - Rural Residential 2

1.0 Recommendation

THAT Agricultural Land Reserve appeal A12-0010 for Lot 1, Sections 24 and 25, Township 28, Similkameen Division Yale District Plan KAP78562, located at 4870 Chute Lake Road for inclusion of land in the ALR under Section 17(3) of the Agricultural Land Commission Act, be supported by Municipal Council;

AND THAT Council forward the subject application to the Agricultural Land Commission (ALC).

2.0 Purpose

The applicant is requesting permission from the Agricultural Land Commission (ALC) to include a 0.20 hectare portion of the parent ~25.2 hectare (62.25 ac) parcel located at 4870 Chute Lake Road.

3.0 Land Use Management

The inclusion application is in support of a previous ALC application which resulted in an approval for a "Food Primary" Liquor License conditional upon the inclusion of a 0.2 ha portion of the subject property which is currently not within the ALR. In essence this file is a procedural requirement for a previous Land Commission decision in support of Summerhill's desire for a Food Primary liquor license. The Food Primary license permits Summerhill to sell a much wider variety of alcoholic beverages in their onsite bistro/lounge.

The Summerhill decision to allow a Food Primary license on ALR land is unique and does not appear to indicate a larger change in direction by the ALC. Rather, it is site specific applying only to Summerhill Winery.

Other restrictions on the food and beverage service lounge such as the maximum area attributed to this use (i.e. 125m²) still applies.

A handwritten signature in black ink, appearing to be "JW".

4.0 Proposal

4.1 Project Background/Description

The applicant's inclusion application is a condition of ALC Resolution #101/2012. This resolution is the result of a former City of Kelowna file (A10-0008) which proposed to exclude 0.28 ha of the 25.2 ha parcel from the ALR, comprising the Summerhill winery building and associated parking, and include 0.4 ha into the ALR which has potential for grape production.

Upon considering the above proposal, the ALC concluded:

THAT the application to exclude 0.28 ha containing the Summerhill Winery structures be refused as proposed.

However, the Commission allowed Summerhill Winery to be issued a "Food Primary" LCLB license permitting the sale of the widest range of liquor products from the winery lounge.

The approval is subject to the following conditions:

- 1. That a 0.2 ha portion of the subject property be included into the ALR*
- 2. That the license must be issued within three years from the date of this decision.*

This inclusion application is therefore in support of the ALC condition that "a 0.2 ha portion of the subject property be included into the ALR".

Upon receipt of this application by the City of Kelowna the ALC committed to supporting the enhanced license.

4.2 Site Context

The subject property is located in the Southwest Mission Sector in an area comprised of a mix of agricultural (A1) and large lot (RR1 & RR2) housing uses.

Summerhill is located on a relatively large, split zoned parcel at 25.2 hectares (62.3 acres) in size. Most of the subject property is zoned A1 - Agricultural with a small portion zoned RR1 - Rural Residential 1. The majority of the property is planted for grape production and also contains Summerhill's operations including the winery and bistro and the iconic pyramid.

The -0.2 ha proposed for inclusion in the ALR fronts onto Lakeshore Road and is zoned RR2 - Rural Residential 2. The property is located adjacent to an enclave of large lot residential properties.

Parcel Summary: 4870 Chute Lake Road
 Parcel Size: 25.2 ha (62.25 ac)
 Elevation: 387 m - 465 m

The surrounding properties are zoned as follows:

Direction	Zoning	ALR	Land Use
North	RR2 - Rural Residential 2	No	Rural Residential
South	A1 - Agriculture 1	Yes	Rural/agricultural
East	A1 - Agriculture 1	Yes	Rural/agricultural
West	A1 - Agriculture 1	Yes	Rural/agricultural

Subject Property Map - 4870 Chute Lake Road



5.0 Current Development Policies

5.1 2030 Official Community Plan: Greening Our Future

Objective 5.33 Protect and enhance local agriculture¹.

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 .5 Agri-tourism, Wineries, Cideries, Retail Sales. Support agritourism uses that can be proven to be in aid of and directly associated with established farm operations. Permit wineries, cideries and farm retail sales (inside and outside the ALR) only where consistent with existing ALC policies and regulations.

6.0 Technical Comments

Not applicable.

7.0 Application Chronology

Date of Application Received: May 31, 2012
Agricultural Advisory Committee August 9, 2012

¹ City of Kelowna 2030 Official Community Plan (2011) - Development Process Chapter; p. 5.33.

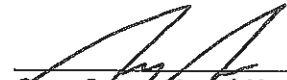
The above noted application was reviewed by the AAC and the following recommendation was passed:

THAT the Agricultural Advisory Committee support Agricultural Land Reserve Application No. A12-0010 for 4870 Chute Lake Road, by Stephen Cipes (Summerhill Pyramid Winery), to obtain approval from the ALC under Section 17(3) of the Agricultural Land Commission Act to include a portion of the subject property in the ALR.

Anecdotal Comment:

None.

Report prepared by:



Greg Sauger, Land Use Planner

Approved for Inclusion:



Todd Cashin Manager, Manager, Environment & Land Use

Attachments:

Applicant's Submission (2 pages)
ALC Decision (8 pages)



Agricultural Land Commission
133-4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

April 19, 2012

Reply to the attention of Ron Wallace
ALC File: 52268

Brian French
C & F Land Resource Consultants Ltd
4383 Happy Valley Road
Victoria, B.C.
V9C 3Z3

Dear Sir:

Re: Application for Exclusion from the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 101/2012 and a sketch plan outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

Other approvals may be necessary. Prior to proceeding, the Commission suggests you contact the City of Kelowna.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Brian Underhill', written over a horizontal line.

Brian Underhill, Executive Director

Enclosure: Minutes/Sketch Plan

cc: City of Kelowna, File: A10-0008
Barry Beiller, LCLB, Victoria

MC/52268d1





PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on March 20, 2012 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C.

COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Jim Johnson	Commissioner
Sylvia Pranger	Commissioner
Jerry Thibeault	Commissioner
Gord Gillette	Commissioner
Lucille Dempsey	Commissioner
Denise Dowswell	Commissioner
Jim Collins	Commissioner

COMMISSION STAFF PRESENT:

Martin Collins	Regional Planner
Colin Fry	Executive Director
Brian Underhill	Executive Director

APPLICATION ID: #52268

PROPOSAL: To exclude 0.28 ha of the 25.2 ha parcel from the ALR, comprising the Summerhill winery building and associated parking, and include 0.4 ha into the ALR which has potential for grape production.

(Application submitted pursuant to section 30(1) of the *Agricultural Land Commission Act*)

PROPERTY INFORMATION:

PROPERTY 1

Owner: Stephen Cipes.
Date of Acquisition: July 1986
Parcel ID: 026-350-807
Title No. KX96478
Legal Description: Lot 1, Sections 24 and 25, Twp 28, SDYD, Plan KAP78562
Civic Address: 4870 Chute Lake Road, Kelowna, B.C
Size: 25.2 ha
Area in ALR: 25 ha
Current Land Use: Winery, grape production, parking, outbuildings
Farm Classification: Yes No
 (BC Assessment)

SITE INSPECTION MEETING:

A site inspection meeting was conducted on September 27th, 2011 following which a report was prepared. The report was provided to the applicant (for confirmation of accuracy) and then provided to the Commissioners noted above.

Section 14(2) of the *Agricultural Land Commission Act* provides that a member of the Commission who was not present at a meeting to determine an application or other matter may vote on the application or matter only if a summary of the meeting is given to the member before the vote. The site inspection meeting report constitutes a written record of the site inspection meeting and has been provided to all Commission members recorded above.

EXCLUSION MEETING:

For applications pursuant to section 30(1) of the *Agricultural Land Commission Act*.

Sections 22 and 23(1) of BC Regulation 171/2002 provide for an exclusion meeting with the applicants.

An exclusion meeting was held on October 24th, 2011 at the ALC Offices at #133, 4940 Canada Way, Burnaby, B.C.. Those in attendance were:

- Stephen Cipes - Owner, Summerhill Winery
- Ari Cipes – applicant's son
- Ezra Cipes – applicant's son
- Brian French – Applicant's agent
- Ron Wallace – ALC staff
- Commissioners and staff noted above.

The applicant indicated that Summerhill Winery (est. 1986) was one of the premier wineries in B.C. with 120 employees in the summer and 60 employees in the winter. The winery is in an excellent location (relative to the City of Kelowna) and has a vibrant seasonal wedding business. Between 1,000 and 3,000 visitors a day come to the winery in the summer season.

The reason for the exclusion/inclusion application is so that Summerhill Pyramid Winery can obtain a "Food Primary" LBLC license. This would permit the sale of all types of liquor from the winery lounge. Currently the "Winery Lounge" endorsement restricts the sale of liquor in the winery lounge to wine. The applicant indicates that it is difficult to operate a restaurant business throughout the year if it does not serve beer and other liquors, because it is challenging to attract and keep a high quality chef(s). Excluding the winery lounge from the ALR (0.28 ha) would eliminate the need for the Commission to authorize a "Food Primary" LCLB license within the ALR, avoiding precedent. In addition the applicant is offering to include more arable land into the ALR than is being requested for exclusion (0.4 ha vs 0.28 ha), and to plant a portion of the included land to grapes.

Another benefit of a "Food Primary" license is that it would reduce paperwork for occasional

large scale events, such as weddings and catered dinners. Currently if a wedding or another event wishes to serve liquors other than wine in the winery lounge, then the proponent must apply for the appropriate "special occasion" license from Liquor Control and Licensing Branch (LCLB).

During the meeting the applicant's agent, Brian French, pointed out that eight golf courses located in the ALR in the Okanagan Valley had full service restaurants on the premises. The point was that if these non- farm uses are permitted the privilege of selling all types of liquor in their restaurants, why not wineries.

COMMISSION CONSIDERATION:

Context

Section 6 of the *Agricultural Land Commission Act* identifies the purposes of the Commission as: (1) to preserve agricultural land; (2) to encourage farming on agricultural land in collaboration with other communities of interest; and (3) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Agricultural Capability

Based on the information contained in Map 82E0.83 (Scale 1:20,000) of the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system, the agricultural capability ratings for the 0.28 ha portion of the property proposed for exclusion are identified as being:

Unimproved Rating: 4A Improved Rating: (*2)

Class 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

Class 4 – Land in this class has limitations that require special management practices or severely restrict the range of crops, or both.

The limiting subclass is as follows:

A soil moisture deficiency

* this improved rating signifies tree fruit and grape suitability.

Although the land in its undisturbed state has good capability for agriculture (with irrigation), the 0.28 ha subject site has little capability for agricultural use because of historic soil disturbance associated with winery construction, parking and access.

The 0.4 ha proposed for inclusion has the same capability for agricultural development as noted above, and apart from a single dwelling has not been debilitated by construction.

Agricultural Suitability

The Commission assessed the agricultural suitability of the proposed exclusion and inclusion sites. The Commission acknowledged that the 0.28 ha area containing the winery building area was unsuitable for soil based cultivation due to debilitation arising from development. However, the winery processing structure (which contains the winery lounge – the bistro) is integral to Summerhill Pyramid Winery; essential for processing the grapes, and marketing the wine produced on the property. Though the 0.28 ha area is not suitable for soil based agriculture, the winery processing building containing the winery lounge located on the 0.28 ha area is essential to, and should be retained with the larger 25 ha vineyard property.

The Commission also discussed the agricultural suitability of the proposed 0.4 ha inclusion area. The applicants have suggested including 0.2 ha Lot 1, Plan 9116 into the ALR (a residential parcel containing a bed and breakfast business) and the adjoining vacant 0.2 ha area which is part of the 25 ha subject parcel, but does not lie within the ALR. The applicant has indicated in a December 7, 2011 brief to the ALC that the *"exclusion of the winery facility was not a necessary part of the approval needed, and the offer to include the land would stand if another solution to the beverage service issue, such as a allowing a non-farm use could be granted."* The 0.2 ha portion of the subject property that does not lie within the ALR, has good capability and suitability for agricultural development, and the Commission believed it should be included into the ALR. In contrast the 0.2 ha - Lot 1, Plan 9116 is a residential parcel and has limited suitability for agriculture and does not warrant inclusion into the ALR.

Assessment of Potential Impact on Agriculture

The Commission also assessed the impact of the exclusion/inclusion proposal against its mandate of preserving agricultural land. The Commission recalled its 2004 decision to refuse the applicant a *"Food Primary"* LCLB license on the grounds the purpose of the winery lounge was to market wines produced on the property. At that time the Commission did not believe that a full service restaurant which served the broadest range of liquor products was appropriate in the ALR.

The Commission was sympathetic to the applicant's contention that it was challenging to retain high quality chefs in the winery lounge without a robust year round restaurant business, which requires that the winery lounge serve the broadest range of liquors. The applicant's current proposal, to exclude the winery building, intends to remove the administration of the winery lounge business from the Commission's purview in order to acquire a *"Food Primary"* license. While the exclusion/inclusion proposal envisages no net loss of productive agricultural land, the Commission expressed concerns about the impacts of removing the winery from the ALR. The Commission's most significant concern was that the applicant, could, (without reference to the Commission) replace the winery building in the 25 ha remainder and develop, and/or sell the

0.28 ha excluded area for other commercial or residential uses. This could result in the alienation of land with potential for grape production.

The Commission did not believe the inclusion of Lot 1, Plan 9116 into the ALR was appropriate given its small size and current residential (B&B) use. However, the Commission did believe there was a beneficial impact to including the 0.2 ha portion of the subject property into the ALR. Inclusion would ensure that the land will not be subdivided and another residence constructed on productive agricultural land.

Other Factors

The Commission undertook winery consultation meetings in December 2011 and February 2012 to gather information and input related to potentially amending current policy for winery lounges. The Commission met with Okanagan Similkameen local government representatives in December 2011, and with winery representatives in February 2012. The meetings revealed that local government authorities in Okanagan Similkameen region had significant concerns about the land use impacts of amending the current regulatory thresholds and permitting "Food Primary" license for all wineries. Concerns about access, traffic, policing and other services were articulated. In contrast, most wineries that were consulted supported a broader range of liquor sales, believing there were very few negative land use impacts associated with expanding the range of liquor products that could be sold at a winery lounge.

Following the consultation, the Commission determined not to amend its current policy regime with respect to winery lounges, but to consider non-farm use applications related to "Food Primary" LCLB licenses that permit the sale of other types of alcohol other than wines from wineries, on their own merits, guided by the goals and purposes of the *ALC Act*.

CONCLUSIONS:

1. That the property under application has agricultural capability, is appropriately designated as ALR and is suitable for agricultural use.
2. That the exclusion proposal has potential to negatively impact agriculture.
3. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

IT WAS

MOVED BY: Commissioner J. Dyson
SECONDED BY: Commissioner G. Gillette

THAT the application to exclude 0.28 ha containing the Summerhill Winery structures be refused as proposed.

However, the Commission allowed Summerhill Winery to be issued a "Food Primary" LCLB license permitting the sale of the widest range of liquor products from the winery lounge.

The approval is subject to the following conditions:

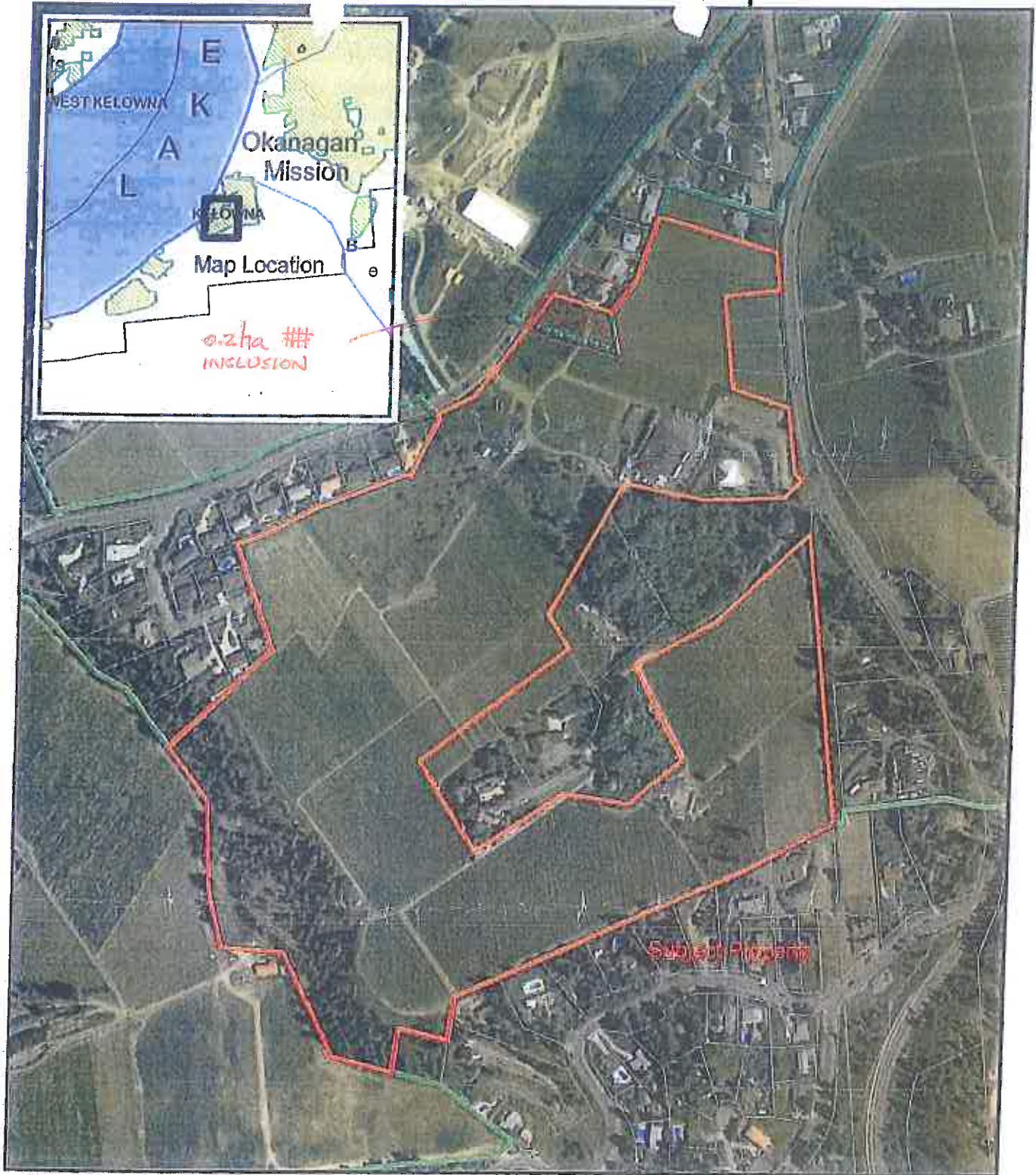
- 1) That a 0.2 ha portion of the subject property be included into the ALR
- 2) That the license must be issued within three years from the date of this decision.

AND THAT the applicant be advised of the provisions of Section 33 of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration.

- S.33 (1) *On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that*
- (a) evidence not available at the time of the original decision has become available,*
 - (b) all or part of the original decision was based on evidence that was in error or was false.*
- (2) *The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the reconsideration.*

AND THAT the applicant be advised that a revised proposal does not constitute new information and will not be considered as a basis for reconsideration and the time limit for submitting a request for reconsideration is one (1) year from the date of the decision letter.

CARRIED
Resolution #101/2012



RESOLUTION # 101/2012



Airphoto Map

2007 Natural Colour - Ortho

Map Scale: 1:5,000

50 0 50 100 150 200 250



Meters

ALC File #:	52268
Mapsheet #:	82E.083
Map Produced:	April 27, 2011
Regional District:	Central Okanagan