



AGRICULTURAL LAND COMMISSION FILE 54508

**REASONS FOR DECISION
OF THE OKANAGAN PANEL**

Application submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act*

Applicant:

**Western Global
Enterprises Inc.
(the "Applicant")**

Agent:

**Better Earth Garden Centre
(the "Agent")**

Application before the Okanagan Regional Panel:

**Gerry Zimmermann, Panel Chair
Jim Johnson
Greg Norton**



THE APPLICATION

[1] The legal description of the property involved in the application is:

a. Parcel Identifier: 012-637-874

Parcel A (Plan B1813) of Lot 68, District Lot 131, Osoyoos Division Yale District, Plan 186

b. Parcel Identifier: 012-637-882

Parcel A (DD 146178F and Plan B6796) of Block 58, District Lot 131, Osoyoos Division Yale District, Plan 186

(the "Properties")

[2] The Properties are 7.2 ha in area.

[3] The Properties have the civic address 1629 – 1649 KLO Road, Kelowna, BC.

[4] The Properties are located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Properties are located within Zone 1 as defined in s. 4.2 of the ALCA.

[6] Pursuant to s. 20(3) of the ALCA, the Applicants are applying to use a portion of the Properties to operate as a Garden Centre/Nursery. The proposal is to use 700 m² of the 7.2 ha farm to sell landscaping products to include: soil products, soil additives, mulches and landscape rock. It is noted that all of these products would be brought in from off-site. No composting would be sold that is produced on site. (the "Proposal").

[7] On January 28, 2016, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Okanagan Regional Panel (the "Panel").

RELEVANT STATUTORY PROVISIONS



[8] The Application was made pursuant to s. 20(3) of the *ALCA*:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[9] The Panel considered the Application within the context of s. 6 of the *ALCA*:

6 The following are the purposes of the commission:

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

EVIDENTIARY RECORD BEFORE THE PANEL

[10] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history and compliance
4. Agricultural capability map, ALR context map, and satellite imagery

All documentation noted above was disclosed to the Agent in advance of this decision.

[11] The City of Kelowna Council has resolved to forward the application to the ALC with a recommendation of support.



The Agricultural Advisory Committee recommended that Council support the proposed non-farm use for a portion of the property to operate as a landscape business.

[12] The Panel reviewed a previous application and a compliance and enforcement issue involving the Properties:

Application ID: 5011
Legacy File: 30448
(Carmcross, 1996)

To exclude 7.5 ha from the ALR in order to develop a Christian High School for 300-500 students. The organization needed to expand its operation. The Commission was not convinced that no non-ALR sites could be used for a school site. While a non-ALR location might not be the most desirable from the perspective of the Society, such a site should be given priority over an ALR location. The application, by Resolution #387/96, was refused.

Issue ID: 50118
(City of Kelowna, 2014)

On July 15, 2014, ALC's Compliance and Enforcement staff issued a letter to the owners of the Properties to alert the tenants to cease operations as a landscaping business and soil screening operation, as the non-farm use was unauthorized by the ALC.

The proponents of Better Earth Garden Centre (the Agent) met with the City of Kelowna's Community Planning staff in the summer of 2014 to better understand the requirements of the *ALC Act and Regulation*, and to establish a plan to undertake compliance. With this understanding, the Agent terminated the leases of the other tenants, and began to remove berms and debris that were brought in as part of these operations. The Agent removed 1944 m³ of material left on the Properties by previous tenants. They are currently rehabilitating the land to return it growing alfalfa.



On March 15, 2015, the ALC rescinded the stop work order due to the efforts of Better Earth Garden Centre to bring the Properties into compliance.

SITE VISIT

[13] On February 1, 2016, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[14] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the applicant on February 11, 2016 (the "Site Visit Report"). The Agents, Krystal and Alex Luymes, reviewed the Site Visit Report and made the comment that they would like to turn Better Earth Garden Centre into more a Garden Centre/Nursery and would like the report to reflect that in the language used, as opposed to "Landscape Centre" or "Landscaping Business."

FINDINGS

[15] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and 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 identified on BCLI map sheet 82E.083 for the mapping units encompassing the Property are Class 2 and Class 3, more specifically (7:2 – 3:3WF).

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.

The limiting subclasses associated with this parcel of land are W (excess water), and F (low fertility).

[16] The Panel reviewed the BCLI ratings and concurs that the Properties are comprised of prime agricultural land. It was noted the majority of the Properties are used to grow alfalfa



including the area previously used as a fill site by the previous tenants. The southern portions of the Properties are in the process of being planted with ornamental shrubs and trees as part of the proponents' proposed Garden Centre/Nursery business. Most of the structures are located on the north end of the Properties adjacent to KLO Road, including an office, greenhouse, house and trailer. The proposed 700 m² area to be used for selling landscaping products is located adjacent to KLO Road.

[17] The Panel acknowledges the efforts of Better Earth Garden Centre (the Agent) in working with both the City of Kelowna staff and the ALC's Compliance and Enforcement staff towards both rehabilitating and bringing the Properties into compliance with existing zoning and the *ALC Act*. However, the Panel is concerned about the potential for the site to become associated with unauthorized non-farm uses as has occurred previously. Therefore, the Panel is only prepared to support the Proposal as outlined, for a temporary three year period through the issuance of a Temporary Use Permit (TUP) with the City of Kelowna.

The Panel would be prepared to review the Garden Centre/Nursery operation during the spring or summer of 2019 (prior to the termination of the TUP) to determine whether it is prepared to support an extension of the Proposal.

DECISION

[18] For the reasons given above, the Panel allowed the Proposal (for a temporary three year period) to use ±700 m² of the 7.2 ha farm to sell landscaping products to include: soil products, soil additives, mulches and landscape rock as a complement to the nursery business.

[19] The approved Proposal is subject to the following conditions:

- a. the issuance of a Temporary Use Permit (TUP) (with the City of Kelowna) for a period of three years until the fall of 2019; and
- b. Approval for non-farm use is granted for the sole benefit of the Agent and is non-transferable.



[20] 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.

[21] Panel Chair **Gerry Zimmermann**, concurs with the decision.

Commissioner **Jim Johnson**, concurs with the decision.

Commissioner **Greg Norton**, concurs with the decision.

[22] Decision recorded as Resolution #67/2015.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the Agricultural Land Commission Act.

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #67/2015. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

February 24, 2016

Date Released