



Agricultural Land Commission
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January 12, 2005

Reply to the attention of BRANDY RIDOUT
ALC File: #G-36219

Horst & Ilse Mueller
3189 Boucherie Road
Kelowna, BC - V1Z 2H1

Dear Mr. and Mrs. Mueller:

Re: Application to exclude land from the Agricultural Land Reserve

Please find attached the Minutes of Resolution #537/2005 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

cc: Regional District of Central Okanagan (#A-05-05)

BR/ly/Encl.
Minutes

36219d1

Resolution #537/2005 - #36219

Page 2

The Commission considered the additional information and noted that it had been made aware of the majority of the information either at the site visit or through the file material. The substantive new information included income records and the possible installation of a fence that could inhibit airflow. The Commission did not consider these issues to be relevant to the potential exclusion request.

The Commission acknowledged that there are challenges to farming, but did not believe that the issues faced by the applicant were unique or warranted the exclusion of property with prime agricultural capability ratings.

IT WAS

MOVED BY: Commissioner Irvine

SECONDED BY: Commissioner McCoubrey

THAT the staff report be received

AND THAT the application to exclude the 7.4 ha subject property from the ALR be refused on the grounds that the land has good agricultural capability

CARRIED



Staff Report
Application # G – 36219
Applicant: Horst & Ilse Mueller
Location: Westbank

DATE RECEIVED: August 19, 2005

DATE PREPARED: October 3, 2005

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Regional Research Officer

PROPOSAL: To exclude the 7.4 ha subject property from the ALR.

This application is made pursuant to section 30(1) of the *Agricultural Land Commission Act*.

BACKGROUND INFORMATION:

The applicant has indicated that he is applying for exclusion as a result of complaints from neighbours about the operation of the farm. These include early morning noise, dust, and spraying. In addition, it is noted that there have been problems with trespassing, vandalism and pollution from cars.

Application for exclusion has been refused three times in the past (different owners) as the land has good agricultural capability.

The application is not supported by the Regional Board, Advisory Planning Commission, Agricultural Advisory Committee, Planning Services, the Resource Stewardship Agrologist, or the Land Use Agrologist.

Local Government:

Regional District of Central Okanagan

Legal Description of Property:

PID: 002-968-711

Lot 1, District Lot 581, Osoyoos Division Yale District, Plan 16924

Purchase Date:

May 1993

Location of Property:

3189 Boucherie Road - Kelowna

BACKGROUND INFORMATION (continued):

Size of Property:

7.4 ha (The entire property is in the ALR).

Present use of the Property:

Vineyard, two homes, and associated outbuildings.

Surrounding Land Uses:

WEST: Residential and agriculture (ALR)
SOUTH: Residential and agriculture (non-ALR)
EAST: Residential and agriculture (ALR)
NORTH: Residential (non-ALR)

Agricultural Capability:

Data Source: Agricultural Capability Map # 82E.083
The majority of the property is identified as having Prime ratings.

Official Community Plan and Designation:

Westside Official Community Plan, Bylaw No. 1050
Designation: Agricultural

Zoning Bylaw and Designation:

Zoning Bylaw No. 871
Designation: A1-Agricultural

PREVIOUS APPLICATIONS:

Application #00525-0

Applicant: Bloomfield / Day / Salloum
Decision Date: March 1975
Proposal: To exclude the 7.4 ha subject property from the ALR.
Decision: Refused (and refused leave to appeal)

Application #06648-0

Applicant: Bloomfield / Day / Salloum
Decision Date: November 23, 1978
Proposal: To exclude the 7.4 ha subject property from the ALR.
Decision: Refused - the property has excellent capability for agriculture under irrigated conditions. The Commission does not feel that the location of the property or the fact that a portion of it consists of salty soils warrants the exclusion of Class 1 and 2 agricultural land.

Application #25898-0

Applicant: Borge & Vera Christensen
Decision Date: August 13, 1991
Proposal: To exclude the 7.4 ha subject property from the ALR.
Decision: Refused - land has a high capability rating. Two similar requests for exclusion have previously been refused on the same grounds.

RELEVANT APPLICATIONS:

Application #01854-0

Applicant: Whittal, P L
Decision Date: March 11, 1976
Proposal: To exclude a 0.13 ha portion of the 19.4 ha subject property from the ALR.
Decision: Refused - the proposed subdivision/exclusion would be a degree of encroachment on the orchard.

Application #14014-0

Applicant: P.C. Pearson
Decision Date: April 22, 1982
Proposal: To exclude the 4.9 ha subject property from the ALR.
Decision: Refused - the property is suitable for agriculture as demonstrated by its present use and agricultural capability rating of Class 1 and 2.

Application #26202-0

Applicant: Reiner Mannhardt
Decision Date: June 16, 1992
Proposal: To subdivide the 19.0 ha subject property into one 8.0 ha lot and one 11.0 ha lot.
Decision: Refused - the property had good agricultural potential based on its capability and size.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Regional District of Central Okanagan Regional Board: Does not support application.

Westside South Advisory Planning Commission: Recommended non-support of the application. The APC noted the following: the property has been farmed prior to the surrounding homes being build and the soils are very good for grape growing only.

Planning Services Department Comments: Can appreciate the difficulties that the property owner has endured in operating their vineyard over the past 12 years. However, the property has been identified through previous applications to the Commission as having excellent capability for agriculture under irrigated conditions. All previous applications for exclusion have been refused for this reason. As noted by the AAC, there are avenues available to the property owner that while costly, may alleviate some of the difficulties they have encountered. These include fencing and "no trespassing" signs.

It is noted that the recently completed Westside OCP did not identify the subject property as warranting exclusion from the ALR. One of the policies of the OCP is to consider support for exclusion where the land is of very poor agricultural quality or where surrounding conflicting, non-ALR land uses permanently prevent the reasonable agricultural use of the land in the long-term.

Planning services staff recommended that this application not be authorized by the Board and that the applicable ALC portion of the application fee is returned to the applicant. Planning staff notes that the applicant has not addressed, through submission of any new information/professional reports, the OCP policy noted above.

With respect to the difficulties in farming the property, it is recommended that the property owner enter into discussion with staff from the local Ministry of Agriculture and Lands office to discuss the issue.

Agricultural Advisory Committee: Does not support the application and noted the following issues:

- *Fencing* (if fencing had been considered, some members of the AAC felt the farmer should not have to pay for fencing, the applicant stated it was impractical to fence, mention was made of a similar property on Thacker Road, which is completely fenced, surrounded by housing, and is very profitable.
- *"No trespassing" signs* (the applicant has not posted "no trespassing" signs).
- *Buffering* (there is no buffering on the new houses built at the rear of the vineyard. There was a note that staff was to investigate buffering issues).

OTHER COMMENTS:

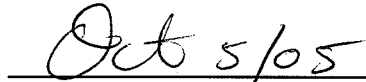
In response to referral of the application by the Regional District to the Ministry of Agriculture and Lands, the following comments were received.

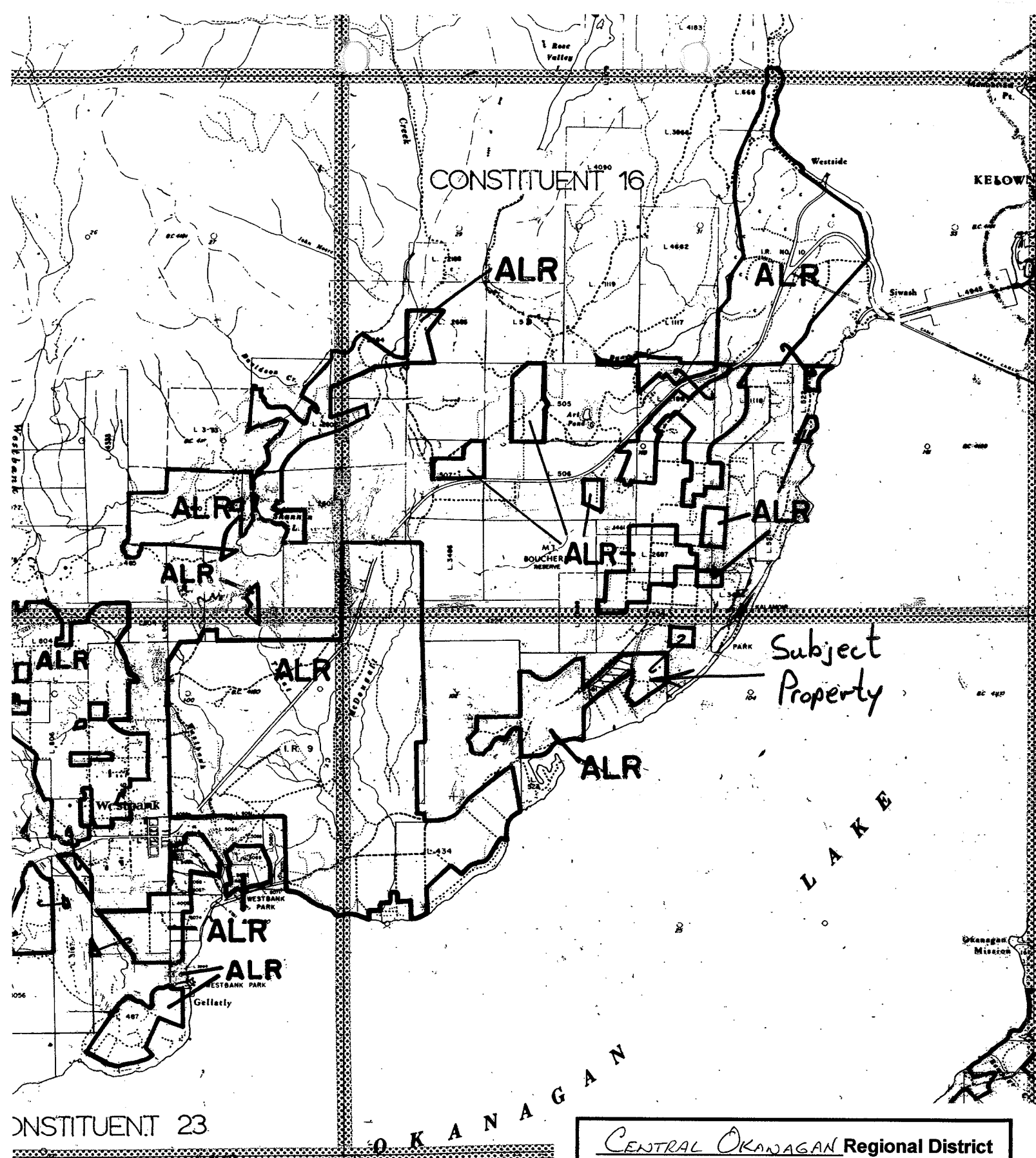
Resource Stewardship Agrologist: Does not support the application and notes that there has been no thought to the benefit or no net loss to agriculture.

Land Use Agrologist: Does not support the exclusion.

END OF REPORT


Signature


Date



Subject Property

<u>CENTRAL OKANAGAN</u> Regional District	
Application #	<u>02-05-36219</u>
Subject Property	<input type="text"/>
Base Sheet #	<u>82E/13</u> Scale: 1:50,000



CONSTITUENT

ALR