



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 9, 2010

Reply to the attention of Brandy Ridout
ALC File: 51267

Jim Wyse
Burrowing Owl Vineyards Ltd
RR 1 S52 C20
Oliver, BC V0H 1T0

Dear Mr. Wyse:

Re: Application for Non-farm Use in the Agricultural Land Reserve

Please find attached the Minutes of Resolution #2373/2010 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a white background.

Erik Karlsen, Chair

Enclosure: Minutes

cc: Regional District of Okanagan-Similkameen, 101 Martin St., Penticton, BC, V2A 5J9
(C09-06576.470)

BR/
51267d1



A meeting was held by the Provincial Agricultural Land Commission on March 16, 2010 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Gerry Zimmermann	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

For Consideration

Application:	51267
Applicant:	Burrowing Owl Vineyards Ltd
Agent:	Jim Wyse
Proposal:	To obtain a Food Primary License for an existing food and beverage service lounge that would permit the sale of other liquor besides B.C. wines. B.C. Regulation #171/2002 permits a food and beverage service lounge no larger than 125 m ² (indoors) and 125 m ² (outdoors - patio) for wineries. The current Winery License permits wine to be purchased from another winery licensed under section 12 of the Liquor Control and Licensing Act for manufacturing purposes or for sale by the glass.
Legal:	Lot 1 District Lot 2450S Similkameen Division Yale District Plan KAP60091 PID: 023-908-271
Location:	6915 Burrowing Owl Place, 2.7 km north from Osoyoos Lake

Site Inspection

A site inspection was not conducted for the application.

Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

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.

Discussion

The Commission discussed the complete file material in detail including information submitted in the applicant's original application and the additional information submitted February 7, 2010. The additional material was supplied in response to Regional District Area Director Patton's letter of non-support and included comments responding to points in 'how the Commission makes a decision', a rebuttal to Allan Patton's letter, information

on agri-tourism, the Burrowing Owl Vineyards (BOV) presentation to Regional District of Okanagan-Similkameen (RDOS) Board, RDOS Planning Department Analysis and Recommendations, a brochure entitled 'The Green Winery', and a copy of the Food Primary Licence issued to BOV in 2003.

The Commission noted the key points that the proposal would entail no change to the winery development footprint and that the restaurant has been operating since 2003 (originally with a food primary licence). The Commission also acknowledged the applicant's statement that the operation has an exemplary track record and the operators believe strongly in the agri-tourism program, having developed a facility that minimizes the impact on the agricultural land by building on top of production areas to avoid sprawl and uses as much local product as possible.

The applicant's indication that the fundamental reason for the proposal is to allow beer that is produced in BC (with special attention given to Okanagan brewers) to be offered to their customers was also discussed.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. As the proposal would not require any additional land to be removed from agricultural production, the Commission believed that it would not have a directly negative impact on the subject property or surrounding ALR lands. However, it believed that the issue went beyond the use of the land and had wider policy implications.

The Commission recalled that it had refused a request in 2004 from Summerhill Winery to serve all types of liquors at its winery lounge. This was done on the grounds that the proposal did not meet the intent of Section 2(1) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation which was to assist wineries and cideries in the marketing of products produced onsite while at the same time ensuring that the primary purpose of the winery restaurant was to use food to complement and sell wine which was produced on-site. When the Regulation was established, it was recognized that allowing food service would allow a producer to feature products produced on the farm and that a food lounge could attract visitors to the farm and area.

After a review of the present application, the Commission continues to believe that the restriction of only serving wines produced and VQA wine produced in BC continues to be relevant. The Commission was concerned that a Food Primary Licence moves away from the original intent of the winery lounge being linked to the growing, processing, marketing and sale of grapes as an agricultural business and moves towards a more commercial operation in the ALR. It believed that if the matter were to be considered, it should be considered on an industry-wide basis rather than through individual applications.

IT WAS

MOVED BY: Commissioner Zimmermann
SECONDED BY: Commissioner Mayer

THAT the application to obtain a Food Primary License for an existing food and beverage service lounge that would permit the sale of other liquor besides B.C. wines be refused.

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.

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government. This includes zoning, subdivision, or other land use bylaws, and decisions of any authorities that have jurisdiction under an enactment.

CARRIED
Resolution #2373/2010