



# Provincial Agricultural Land Commission - Staff Report

## Application: 52268

**Applicant:** Stephen Cipes  
**Agent:** Morningstar Enterprises  
**Local Government:** City of Kelowna

**Proposal:** To exclude a 0.28 ha portion of the parent ~25.2 ha parcel located at 4870 Chute Lake Road. In exchange, the applicant proposes to include 0.4 ha of land into the ALR which has potential for grape or berry production.

### BACKGROUND INFORMATION

The 0.28 ha proposed for exclusion is the site of the Summerhill Winery and Sunset Bistro. The exclusion would allow the applicant to apply for a Food Primary License which would allow them to offer organic wine, spirits, and beers from around the world instead of from British Columbia only.

The 0.4 ha that is proposed for inclusion is to be used to grow organic crops and provide housing for farm and garden workers.

BC Regulation #171/2002 permits a food and beverage service lounge no larger than 125 m<sup>2</sup> (indoors) and 125 m<sup>2</sup> (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.

Summerhill has grown to become a well known destination winery offering a full service restaurant - Sunset Bistro. In 2004 the area allocated for the bistro included 144 m<sup>2</sup> and 138 m<sup>2</sup> for indoor and outdoor space respectively.

In addition to the size constraint, the applicant has cited Section 18(7) of the Liquor Control and Licensing Act as the primary justification for the exclusion request. Section 18(7) requires that "the sale or service of liquor in a winery lounge or special event area is restricted to wine manufactured and bottled in BC". The applicant feels this regulation unduly restrict their desire to "offer organic wines, spirits and beers from around the world".

### PROPERTY INFORMATION

**PID:** 026-350-807  
**Legal Description:** Lot 1 Sections 24 and 25 Township 28 Similkameen Division Yale District Plan KAP78562  
**Property Area:** 25.2 ha  
**ALR Area:** 25.2 ha  
**Purchase Date:** July 20, 2005  
**Location:** 4870 Chute Lake Road  
**Owner:** Stephen Cipes

**Total ALR Area:**

### LAND USE

#### Current Land Use:

The 0.28 ha proposed for exclusion from the ALR contains the Sunset Bistro restaurant and Summerhill Pyramid Winery. The majority of the remainder of the property is used as a vineyard.

#### Surrounding Land Uses:

North: ALR - Agricultural, Residential  
East: ALR - Agricultural, Residential  
South: Non-ALR - Residential  
West: ALR/Non-ALR - Agricultural, Residential

## PROPOSAL DETAILS

**Exclusion Area:** 0.3 ha

**Agricultural Capability:**

The majority of the area under application is rated as: Secondary

**Source:** BCLI

**Mapsheet:** 82E.083

## PREVIOUS APPLICATIONS

**Application ID:** 40980

**Legacy #:** 35225

**Applicant:** Stephen Cipes

**Proposal:** To obtain a full liquor license for Summerhill Winery's existing restaurant facility. The facility is currently operating under a lounge endorsement (wine only)

**Decision:**

Resolution #	Decision Date	Decision Description
167/2004	April 8, 2004	The Commission refused this application to obtain a full liquor license for an existing restaurant facility on the grounds that it is not supported by local government planning documents or the Agricultural Advisory Committee for the City of Kelowna.

**Application ID:** 10830

**Legacy #:** 32160

**Applicant:** Mission View Homes Ltd

**Proposal:** subdivide a 0.3 ha homesite parcel from the property and consolidate the balance with the adjacent 20 ha Summerhill Winery vineyard

**Decision:**

Resolution #	Decision Date	Decision Description
563/1998	September 21, 1998	allow subject to the installation of fencing and vegetative buffering as agreed to by the winery operation

**Application ID:** 5363

**Legacy #:** 30589

**Applicant:** Edmond & Jill Leroux

**Proposal:** Exclude to develop

**Decision:**

Resolution #	Decision Date	Decision Description
794/1996	September 19, 1996	refused due to reasons of impact and agricultural capability

**Application ID:** 5258

**Legacy #:** 30550

**Applicant:** Stephen Cipes

**Proposal:** To establish a "J" licensed winery lounge within the winery building.

**Decision:**

Resolution #	Decision Date	Decision Description
274/1996	April 1, 1996	The Commission allowed the proposal to establish a "J" licensed winery lounge in the existing winery building.

## RELEVANT APPLICATIONS

**Application ID:** 51267

**Applicant:** Burrowing Owl Vineyards Ltd

**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 m2 (indoors) and 125 m2 (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.

**Decision:**

Resolution #	Decision Date	Decision Description
2373/2010	March 16, 2010	Refused

## LOCAL GOVERNMENT INFORMATION

### Official Community Plan:

**Bylaw Name:** Kelowna OCP  
**Designation:** Agriculture  
**OCP Compliance:** Yes

### Zoning:

**Zoning Bylaw Name:** Zoning Bylaw 8000  
**Zoning Designation:** Agriculture Zone 1  
**Minimum Lot Size:** 4.0 ha  
**Zoning Compliance:** No

### Comments and Recommendations:

#### **Agricultural Advisory Committee**

The Agricultural Advisory Committee supports the application for exclusion to obtain approval from the ALC

#### **Board/Council**

Municipal Council support the application for exclusion subject to inclusion of the 0.4 ha at 4833 Lakeshore Rd, and bonding obtained to ensure that the areas proposed for planting are put into agricultural production.

#### **Planning Staff**

Planning Staff recommend that the application for exclusion not be supported by Municipal Council, and that Council forward the application to the ALC

## ALC STAFF COMMENTS

It is recommended that the Commission consider the following:

- 1) The improved BCLI rating of the subject 25.2 ha property is approximately 4:3AT 4:2 1:4F 1:6  
The land is currently used for organic vineyard, wine production, wine sales, and a restaurant.
- 2) If approved, the applicant would require rezoning of the excluded area from Agricultural to Commercial Zoning.
- 3) Kelowna Planning Staff are concerned with further intensification of the proposed excluded land and conflict with neighbors. Bylaw enforcement records indicate that bylaw officers have attended Summerhill Winery on multiple occasions for various complaints such as insufficient parking and noise.
- 4) Three letters of opposition to expansion of the Summerhill Winery have been received. Local residents believe that if the exclusion and subsequent expansion of liquor licence occurs, there will be an increase in the following issues:
  - Noise violation and disturbance (from patrons and facility rentals for parties)
  - Overloading capacity of entertainment
  - Rural/Commercial conflict
- 5) Municipal Council support the application for exclusion subject to inclusion of the 0.4 ha at 4833 Lakeshore Rd, and bonding is obtained to ensure that the areas proposed for planting are put into agricultural production.
- 6) The Commission has previously refused an application by Summerhill Winery to obtain a full liquor license. This was done on the grounds that the proposal did not meet the intent of Section 2(1) of the ALR 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.
- 7) In consideration of application #51267 (Burrowing Owl Estate Winery), the Commission continued to believe that the restriction of only serving wines produced and VQA wine produced in BC was still 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.

## **ATTACHMENTS**

52268 Proposal Sketch.pdf  
52268\_ContextMap20k.pdf  
52268\_AirphotoMap5k.pdf  
52268letters.pdf  
52268plan.pdf

## **END OF REPORT**

**Prepared by:** Ron Wallace, Land Use Planner