



**Agricultural Land Commission**  
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May 13, 2014

ALC File: #53542

Chanchal Bal  
1795 McCurdy Road East  
Kelowna, B.C. V1P 1B5

Dear Mr. Bal:

**Re: Application to Conduct a Non-Farm Use on Land in the Agricultural Land Reserve (ALR)**

Please find attached the Minutes of Resolution #101/2014 as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly. The Commission has also attached a sketch plan depicting the decision.

Further correspondence with respect to this application is to be directed to Ron Wallace.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Chief Tribunal Officer

Enclosures: Minutes of Resolution #101/2014  
Sketch plan

cc: City of Kelowna (File #A13-0007)

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## MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on March 26, 2014 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C. as it relates to Application #53542.

### COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Gordon Gillette	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner
Jerry Thibeault	Commissioner
Lucille Dempsey	Commissioner

### COMMISSION STAFF PRESENT:

Ron Wallace	Planner
Colin J. Fry	Chief Tribunal Officer

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### PROPOSAL (Submitted pursuant to section 20(3) of the *Agricultural Land Commission Act*)

To legalize an existing "food and beverage service lounge" (café) on the subject property. The facility includes approximately 272 ft<sup>2</sup> of indoor and 372 ft<sup>2</sup> of outdoor seating for café customers, along with a display and retail sales area. The café also shares approximately 1,090 ft<sup>2</sup> with the farm market. The shared space includes the kitchen area, staff and public washrooms, storage and pie preparation areas.

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### PROPERTY INFORMATION:

**Owner:** Hillcrest Farm Market Inc.

**Legal:** PID: 028-389-387  
Lot A, Section 24, Township 26, Osoyoos Division Yale District, Plan EPP7145

**Location:** 700 Highway 33 East, Kelowna

**Size:** 5.8 ha (5.6 ha in the ALR)

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### LEGISLATIVE CONTEXT FOR COMMISSION CONSIDERATION

Section 6 (Purposes of the commission) of the *Agricultural Land Commission Act* states:

- 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.

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## COMMISSION CONSIDERATION

The Commission reviewed a previous application involving the subject property:

Application #18547      To subdivide Lot 3 (being 29.2 ha) into three lots of approximately 9.7 ha.  
(Basran, 1989)              The Commission, by Resolution #9/89, approved the request for  
subdivision into three lots.

**Note: The subject property was created from this approval.**

In its consideration of this application the Commission reviewed some of the chronology of events – as outlined by both the applicant and in the City’s ‘Report to Council’ – to better understand the details of this non-farm use proposal.

The application is to legalize an existing "food and beverage service lounge" (i.e. Hillcrest Farm Market Café) on the subject property.

At issue – as the Commission understands – is that the proposed building was not constructed as authorized by the City of Kelowna’s building permit for a farm retail sales and Bed & Breakfast (issued in November 2010); as the main floor was altered to include a café with interior seating. The facility includes approximately 272 ft<sup>2</sup> of indoor and 372 ft<sup>2</sup> of outdoor seating for café customers, along with a display and retail sales area. The café is considered a “Food Primary Establishment” pursuant to the City of Kelowna Zoning Bylaw which is not allowed on parcels (like the subject property) zoned for agriculture (A-1 designation). As a result, the business has been operating without a business license since the summer of 2012 as a non-conforming use.

The Commission wishes to express its disapproval of the process of receiving an application for the purpose of reviewing the option to either ‘legalizing an existing non-farm use’ or refusing the existing use (which implies the requirement to bring the use into compliance with the *ALC Act* and its Regulations) on ALR land. The Commission is extremely frustrated that this proposal was not submitted before construction so that it could carefully consider the use in context to Section 6 of the *ALC Act* as noted above.

In its consideration the Commission noted the subject property is part of a larger agricultural operation consisting of three properties totaling approximately 35 ha. Further, each of these parcels is in agricultural production which helps supply the farm products sold from the farm market and provide for the meals sold from the café. It was expressed by the applicant that the café has become an integral component of the overall business plan of the farm; and that if required to be removed, the impact to the overall business would be significant. As a result the Commission is prepared to support the proposal subject to the conditions outlined below.

## IT WAS

**MOVED BY:**                      **Commissioner Thibeault**  
**SECONDED BY:**                **Commissioner Gillette**

THAT the request to legalize an existing "food and beverage service lounge" (café) on the subject property be conditionally approved.

AND THAT the approval is subject to the following conditions:

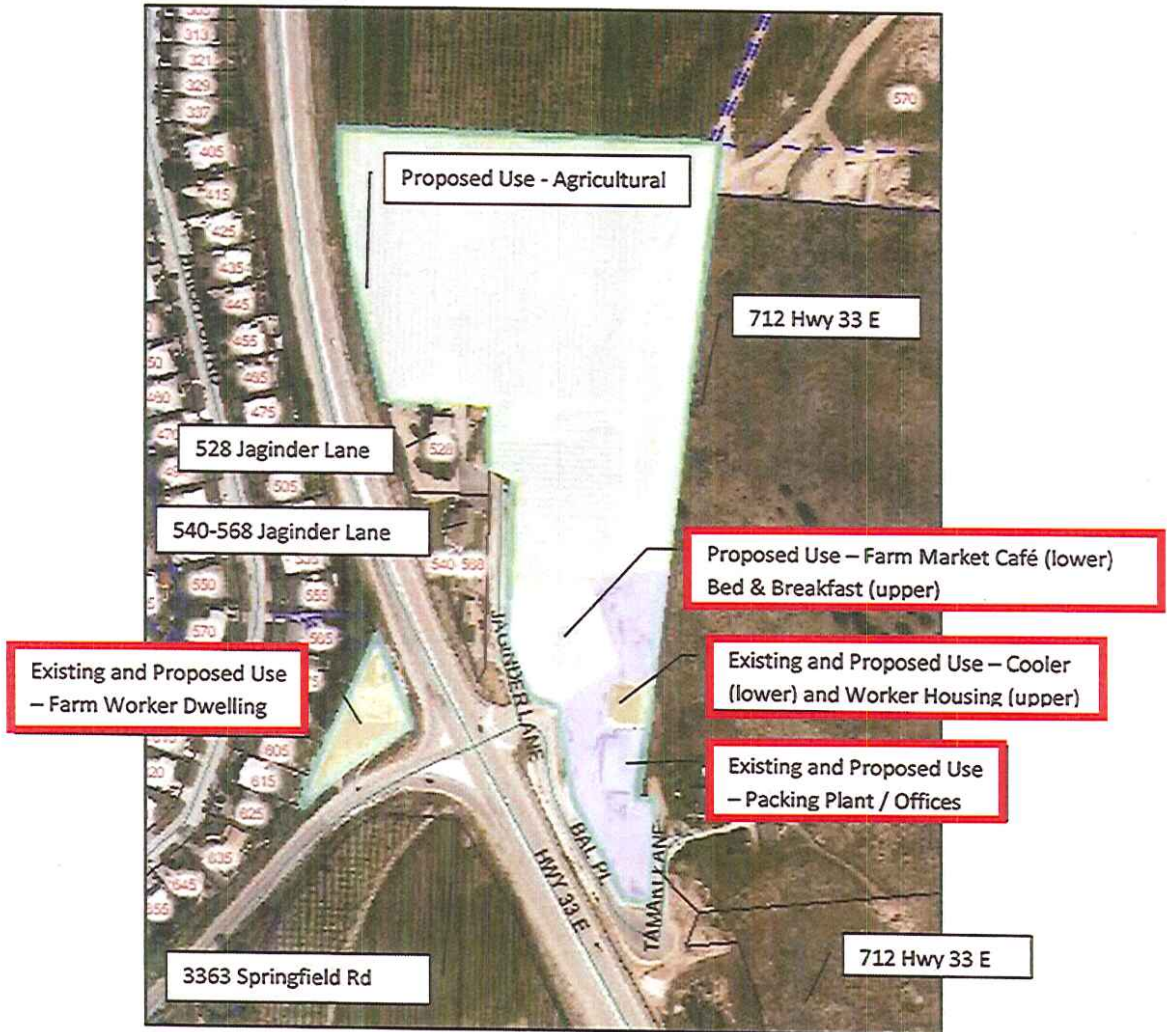
1. That the Café facility be limited to its current size and that there be submission of notification or an application to the Commission should there be plans in the future for any significant changes or plans to expand the current footprint.
2. Approval for non-farm use is granted for the sole benefit of the applicant and is non-transferable.

AND FINALLY THAT 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.

**CARRIED**

**Resolution #101/2014**

ALC Application # 53542 (Hillcrest Farm Market Inc.)



Non farm uses conditionally  
Approved by Resolution # 101/2014