

## **Poltorak, Brenna AGRI:EX**

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**From:** MacDonald, Leslie S TRAN:EX  
**Sent:** Friday, May 31, 2013 12:07 PM  
**To:** Withler, Carl AGRI:EX  
**Cc:** Tegart, Greg AGRI:EX  
**Subject:** RE: Kondolas property in the vicinity of Kelowna B.C.

Thank you for your well-written and thorough response Carl. I also appreciate the quick turn-around. Have a good weekend.

Leslie

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**From:** Withler, Carl AGRI:EX  
**Sent:** Friday, May 31, 2013 12:00 PM  
**To:** MacDonald, Leslie S AGRI:EX  
**Cc:** Tegart, Greg AGRI:EX  
**Subject:** Kondolas property in the vicinity of Kelowna B.C.

Hi Leslie, as you requested here are a few bullets of "history" on the Kondolas property for the meeting on Monday:

- The Kondolas purchased the property on Old Vernon road approximately 10 years ago as "an old mill site" with thousands of cubic meters of material visible on site and reasonably knowing it was within the ALR.
- Prior to, and post purchase, fires were common on the property as mill waste piles would combust requiring the services of Kelowna Fire Department. The Kondolas fought fire and attempted some grinding/removal themselves.
- Approximately five years ago Better Earth products began grinding and mixing the material on site as compost and soil amendments. That process has ceased and Better Earth is now carrying out business on K.L.O. road.
- Since the termination of Better Earth's activities the Kondolas have attempted to find others to clean up, or partner with to clean their property. At this time, that seems unsuccessful.
- Failing a business agreement with others, the Kondolas have focussed on removing the property from the ALR and retained the services of a local Agrologist to prepare a report and make presentation to council in April of 2013.
- Council did not support the application and requested staff to work with the Kondolas on "other options" for the property.
- Since that time Kondolas have made subsequent presentations to council(lors) and advice from the ALC has been sought on legal options for "non-farm use" applications. (Refer to letter of guidance from ALC)
- The most recent efforts have been for the Kondolas to contact Minister Letnick requesting (and receiving) an on site visit on Monday June 4<sup>th</sup>.

Should further information be required of me I am available this afternoon on my cell at s.22  
day.

Have a great

Sacred cows make the best hamburger.... (Mark Twain)

**Carl Withler P. Ag.**  
**Resource Stewardship Agrologist**  
**Ministry of Agriculture**  
**Interior Region**

**Poltorak, Brenna AGRI:EX**

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**From:** Greg Sauer <gsauer@kelowna.ca>  
**Sent:** Thursday, May 9, 2013 2:44 PM  
**To:** Withler, Carl AGRI:EX  
**Subject:** 982 Old Vernon Road  
**Attachments:** 20130509095808.pdf

Fyi, hopefully passing it back off.



**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](http://www.alc.gov.bc.ca)

May 8, 2013

Reply to the attention of Martin Collins  
Our file: 19519

Greg Sauer  
City of Kelowna  
1435 Water St  
Kelowna, B.C.  
V1Y 1J4

Dear Sir

**Re: Proposed Exclusion of 982 Old Vernon Road (Kandola) from the Agricultural Land Reserve**

Thank you for your May 7, 2013 e-mail which provided information about an Agricultural Land Commission exclusion application for 982 Old Vernon Road that has been submitted to the City of Kelowna. You indicate that the City of Kelowna Council has deferred consideration of the application and directed staff to work with the applicants and the Agricultural Land Commission (ALC) to determine viable options for keeping the subject property in the Agricultural Land Reserve (ALR). You have also provided other information about discussions that occurred between the applicants and the adjoining landowner (McColman) whose property is similarly debilitated.

This is to advise that the Commission's preferable approach to ascertaining a future land use for the subject property is for the City to forward the ALC exclusion application to the Agricultural Land Commission. Section 30(2) of the *ALC Act* permits the Commission the flexibility, when reviewing exclusion applications, to retain the land in the ALR while permitting a specific non-farm use or subdivision. In addition, Section 21 of BC Regulation #171/2002 requires that exclusion applications be forwarded from the local government within 60 days of receipt of the application. With the application before it, the Commission can appropriately undertake discussions with the applicant about potential suitable land uses. The Commission finds this approach preferable to working with the applicant while the application is held in abeyance, because there is potential for delay (frustrating the landowner and inconsistent with the regulation), and because the appropriate statutory process to discuss land use in the ALR is through the application process.

If you have any questions about the above advice, please contact Martin Collins at 604-660-7021.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Martin Collins', is written over a horizontal line.

Martin Collins, Regional Planner

## **Poltorak, Brenna AGRI:EX**

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**From:** Greg Sauer <gsauer@kelowna.ca>  
**Sent:** Tuesday, May 7, 2013 9:05 AM  
**To:** Collins, Martin J ALC:EX  
**Cc:** Todd Cashin; Wallace, Ron ALC:EX; Withler, Carl AGRI:EX; Greg Sauer  
**Subject:** 982 Old Vernon Road (File No. A13-0004)

Hi Martin,

As per our conversation yesterday, the following is a summary of the recent file history for the subject property at 982 Old Vernon Road and the former Russo Mill site which by now is well known to ALC staff.

After years of discussion about potential uses for the subject property, the owners of 982 Old Vernon Road submitted an application for exclusion earlier this year. The application for exclusion noted that the intended future use of the property if successfully excluded was industrial, specifically citing the City's I6 - Transitional Industrial zone (pp. 10-13) as the desired future land use. To date the City has processed the file with consideration given by the City's AAC and a Report (p.54 - 147) forwarded to Council last week. The Council Minutes capture Council's decision to: "*defer consideration of Agricultural Land Reserve Appeal Application No. A13-0004 with respect to the property located at 982 Old Vernon Road*"; and "*directs staff to work with the Applicants and the Agricultural Land Commission in order to determine viable options for keeping the subject property within the Agricultural Land Reserve and report back to Council*".

Following the meeting staff had a brief discussion with the applicant/owners and noted that while City staff would discuss what potential opportunities may exist on the subject property that did not require an exclusion with Commission staff, it was also incumbent upon them to identify some possible solutions that may be undertaken as Non-Farm Uses. The expectation being that the uses were temporary and/or minimally invasive. The owners have recently responded by noting that they have spoken with their neighbour to the east (Al McColman of McColman Demolition) and the following was provided via email:

*We spoke with Al McColman and he is only interested in a Medium to Heavy Industrial use for a Recycling Plant. He said the city employees (? council or land use management) had told him that if ALC approved it that city would support it. He got a letter from ALR supporting him and then City shut him down. I'm not sure of the details of what went on.*

*In 2000 the Russo's were approved to the point of rezoning but didn't have the funds to upgrade the roads and fencing.*

*So in theory this option was once explored and I have the documents supporting it.*

*Have you had a chance for any discussion with your land use management team? Jetty and I have explored many options, in hopes of finding a solution that works for ALC, City Council and the neighborhood.*

*We were thinking along the lines of residential Lots since on McKenzie there are residential homes that are on smaller lots in the ALR.*

*We are open to ideas that would make this economically feasible.*

I have seen nothing to date that supports the assertion that we were prepared to support Medium to Heavy Industrial use for a Recycling Plant, rather, we like the Commission were looking at win-win options which led to the eventual remediation of the site (clean waste recycling was apparently one of them, though the operations carried out were not consistent with what was intended as Thomas Loo knows quite well). With respect to the rezoning, this was indeed supported, but only for the purpose of the Russo's obtaining financing to keep the business alive. A restrictive covenant that restricted the industrial use to the sawmill only was a requirement of staff and Council supporting the rezoning which was repealed after the properties went into foreclosure and sold off. Finally, with respect to the residential use, the only way that

it could remain in the ALR would be for Rural Residential lots which have little or no value. The number permitted would not likely be worthwhile for them and we would not want to see urban residential lots (e.g. RU1 with urban services in this location).

I understand from you that your recommendation is for the City of Kelowna to forward the application as an exclusion as is. The reason for this being that once we have forwarded on the application, it is in your queue for consideration and will be considered quicker than if it sits in our queue. The second reason is that the Commission while considering the exclusion application, has the ability to permit a non-farm use in lieu of the exclusion (as was the case with the Glenmore Rec Park). I understand this rationale and agree that this is preferable than the City holding onto it while all sides look for possible solutions. To assist me with this could you please provide a letter from the ALC recommending that the City of Kelowna finish processing the application and forward it to the ALC for consideration? If you could cite the ALC's decision with respect to the Glenmore Rec Park that may be useful.

Thanks in advance.

Regards,

Greg Sauer, Environment & Land Use Planner  
Land Use Management

TEL 250 469-8586  
FAX 250 862-3320

City of Kelowna 1435 Water Street, Kelowna, BC V1Y 1J4 [kelowna.ca/environment](http://kelowna.ca/environment)

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## Poltorak, Brenna AGRI:EX

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**From:** Greg Sauer <gsauer@kelowna.ca>  
**Sent:** Thursday, February 28, 2013 1:12 PM  
**To:** Withler, Carl AGRI:EX  
**Cc:** Greg Sauer  
**Subject:** 982 Old Vernon Road (Proposed Exclusion)  
**Attachments:** A13-0004 AAC Report Scan.pdf

Hey Carl nice work yesterday.

Please note that I have attached my AAC report and which contains the Agricultural Impact Assessment for the proposed exclusion at 982 Old Vernon Road. As noted, I am reasonably happy with the product and it reflects that the TOR we developed are having an immediate impact in terms of being able to better evaluate the merit of the proposal. That said, my only real concern is found on page 15/20 of the report (33/80) which is the agricultural suitability section. The consultant has determined that for the four types of agriculture considered that *"it would not be feasible to rehabilitate this area...due to the prohibitive costs of such improvements"*.

Just wondering if you have any thoughts on this (i.e. accuracy)?

Thanks Carl.

Greg Sauer, Environment & Land Use Planner  
Land Use Management

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Join the conversation:   

## **Poltorak, Brenna AGRI:EX**

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**From:** Loo, Thomas ALC:EX  
**Sent:** Thursday, June 28, 2012 10:59 AM  
**To:** 'betterearthprod@gmail.com'  
**Cc:** ' (sgambacort@kelowna.ca)'; Withler, Carl AGRI:EX; 'Birte Decloux'; 'Greg Sauer'; 'Al Dixon (adixon@kelowna.ca)'; MacLeod, Ron ALC:EX  
**Subject:** Compliance Assessment of Better Earth Products at 1649 KLO Road

Good Morning John,

As per our previous telephone conversation on June 22, 2012

Our office has received some complaints alleging that Better Earth is operating a "soil" manufacturing process on 1649 KLO Road. In our conversation you advised that your current operation was similar to that which I had previously inspected and reviewed at Old Vernon Road, on the Kandola's property.

I'd like to remind you of our previous conversations on the Old Vernon Rd site. I previously advised that your topsoil / soil nutrient manufacturing operation was considered a non-farm use. You had asked if you could remain at the Kandola property and I advised that it will require a non-farm use application and that you would need specific approval of the Commission. I've taken the liberty to attach an email from Greg Sauer from the City of Kelowna to you which sums up the activities of a soil manufacturing process and how it relates to our perspective land use regulations. (See Below) In short, the operation was allowed to operate in non-compliance as it facilitated the rehabilitation of the Kandola property.

When I spoke with you on June 22, 2012 to discuss your current situation on 1649 KLO Road, you advised that in short, the operation was very similar to what was happening previously at the Kandola Property. Essentially, you advised that you were importing feedstock material and mixing it to create a few different finished products. From your website, you advertise the finished products as Mulch, Top Soil Blends, and Organic Soil amendments. You also advised that for the most part you sell up to 100% of the finished product.

Further to this conversation you have advised that you spoke with Mr. Carl Withler of the Ministry of Agriculture at the Kelowna Office. I have a copy of a letter dated June 5, 2012 from his office providing his observations and how it relates to the ALC Act & Regulations. IN short his finding was that your operation was in his opinion consistent with the ALC Act & Regulations.

With respect to Mr. Withler's assessment, I would like to request information from you in order for the Commission, the agency with the responsibility for the administration and enforcement of the ALC Act. Please note that at this time I have not issued any orders or made a determination as to the compliance of your operation. It is my understanding that you have a valid business licence with the City of Kelowna. Until I have confirmed compliance, we will not object to any licence that has already been issued.

I would like a submit a statement of your full operations. Please detail all the activities that you are engaged in on the activities, for example but not limited to the following;

Soil or material importation - volumes per month Finished products manufactured on site - volumes of each product and the final destination of those products - ie sold off site, used on site?

Any farming activity that you / your company is engaged in and the nature of your relationship with that farming activity - ie are you leasing a portion of land, paying for the farm labour or merely supplying soil amendments to the farm, types of crops etc.

Volumes of products being used on the farm In Mr. Withler's letter dated June 5th 2012, he mentions that some portions of the property need to be rehabilitate. I would like to know what your timeline is and how you plan to rehabilitate those areas.

Your attention to this matter is appreciated.

Thomas

Thomas Loo  
Compliance and Enforcement Officer  
Provincial Agricultural Land Commission  
Suite 133 - 4940 Canada Way  
Burnaby, British Columbia, V5G 4K6  
Phone #: (604) 660-7000  
Fax #: (604) 660-7033

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----- email from Greg Sauer - City of Kelowna -----

Hi Jon and Del,

Thanks for your inquiry with respect to the property at 982 Old Vernon Road where you currently operate Better Earth Products. As a participant on the Agricultural Tour it was great to see what you have done with this site in terms of removing the wood waste and producing a growing medium/soil amendment that can be used in the Okanagan. These initiatives are seen as a great synergy and City staff are encouraged to see this type of innovation and hopefully a benefit to agriculture if and when this land is returned to production.

Based on my understanding of the business that you conduct and the products that you are producing, the use of the land does not conform to "Activities designated for farm use" in the ALR Use, Subdivision & Procedure Regulation ([http://www.alc.gov.bc.ca/legislation/Reg/ALR\\_Use-Subd-Proc\\_Reg.htm#sec2](http://www.alc.gov.bc.ca/legislation/Reg/ALR_Use-Subd-Proc_Reg.htm#sec2)). As such, to continue the current activities would require the legalization of the existing non-conforming use by way of an application to the ALC for a "Non-Farm Use". As you are probably aware, while the City does have input into the ALC's decision-making, at the end of the day the ALC makes the final decision on applications for Non-Farm Use in the ALR. Given our understanding of what you have done and are proposing, staff may be able to support your application for non-farm use to the ALC. I say may for a couple of reasons, which I will detail below.

Assuming that the application for "Non-Farm Use" was successful, it would be necessary for you to also meet the requirements of the City's Zoning Bylaw. As the existing zoning is A1 - Agriculture, the use would need to conform to this zone, the land rezoned to conform to the new use, or a Temporary Use Permit (TUP) granted. The City's definition of agriculture is "the development or use for the primary production of farm products such as dairy products, poultry products, cattle, hogs, sheep or other animals, wheat or other grains, and vegetables, orchards or other field crops. This use is limited to one dwelling, and the processing and marketing of the products of the farm and those off-farm products permitted by the Land Reserve Commission" and thus this activities currently being conducted and proposed again do not conform to the Zoning Bylaw. Further no other permitted uses are consistent with what you have proposed.



In terms of rezoning to an appropriate zoning classification that supports your intended use, the appropriate zone is an industrial use (i.e. I2 or I3) category. Unfortunately rezoning this property to an industrial zoning is not a direction that staff could support for a number of reasons. It is also my understanding that rezoning would require that you incur some very significant servicing costs that almost certainly make your proposal unviable.

While I am not promoting this avenue, or providing you any certainty through it, one potential option may be a Temporary Use Permit. The TUP would be concurrent with an Official Community Plan text amendment to temporarily amend the future land use to support this activity on a temporary basis (p. 19-12 of the OCP). A TUP can be authorized by Council for a period of three years and can be extended once. Thus, the maximum duration that you would be able to operate your business at this site would be six (6) years. While there is no certainty to either the ALC application, or the TUP being issued by the City, staff would reserve our position of support/non-support to a proposal and business plan for the parcel which demonstrated a net benefit. While the details would be yours to flesh out, things that we would be looking for include:

1. No alteration to traffic demand in the area. That is to say that the retail sale of the composted material would have to occur from retailers offsite and not from this site on Old Vernon Road.
2. That the majority of this property be returned to some form of primary agriculture (i.e. growing something which meets the definition of "farm product"). Perhaps Carl Withler (MAL) would be able to assist you in terms of a crop/use that would be appropriate for this location and the soils and conditions that occur thereon.
3. Securing an agreement whereby you are able to remediate the adjacent property (1040 Old Vernon Road) by removing and processing the wood waste.

You should also be aware that the City may require some "upgrades" or in-lieu contributions despite this being for a temporary use. I cannot speculate the outcome of a circulation, but the impacts to the roadway would certainly be a consideration for our engineering department.

I understand that this is not the ideal response for you and does not provide any certainty for you in terms of future planning and your ability to continue to operate at this location. Should you require clarification on any of the above, you may wish to contact either Todd or Shelley for clarification as I will be away for much of December.

Best regards,

Greg Sauer, Environment & Land Use Planner Land Use Management

TEL 250 469-8586

FAX 250 862-3320