
MEETING TYPE: Regular Council Meeting
MEETING DATE: February 21, 2023
AUTHOR: Inonge Aliaga, Senior Planner
DEPARTMENT: Planning and Development
ITEM TITLE: ALR Application - ALR2021-008 (9823 Bottom Wood Lake Rd.)
DESCRIPTION: Application to allow the placement of fill

QUESTION

Does Council support an Agricultural Land Reserve (ALR) application to allow the placement of fill on this property?

OPTIONS

- A. THAT Fill Placement Application ALR2021-008 for property located at 9823 Bottom Wood Lake Road (Roll 10131000) to allow the placement of approximately 195 yd³/149 m³ of fill over an area of approximately 1.24 ac/0.5 ha be supported;
AND THAT ALR2021-008 be forwarded to the Agricultural Land Commission.
- B. THAT Fill Placement Application ALR2021-008 for property located at 9823 Bottom Wood Lake Road (Roll 10131000) to allow the placement of approximately 195 yd³/149 m³ of fill over an area of approximately 1.24 ac/0.5 ha not be supported;
AND THAT ALR2021-008 be forwarded to the Agricultural Land Commission.
- C. THAT Fill Placement Application ALR2021-008 for property located at 9823 Bottom Wood Lake Road (Roll 10131000) to allow the placement of approximately 195 yd³/149 m³ of fill over an area of approximately 1.24 ac/0.5 ha not be supported;
AND THAT ALR2021-008 not be forwarded to the Agricultural Land Commission.
- D. THAT Fill Placement Application ALR2021-008 for property located at 9823 Bottom Wood Lake Road (Roll 10131000) to allow the placement of approximately 195 yd³/149 m³ of fill over an area of approximately 1.24 ac/0.5 ha be deferred pending receipt of additional information as identified by Council.

EXECUTIVE SUMMARY

The subject property comprises 2.2 hectares (5.35 ac.) of land in the Agricultural Land Reserve (ALR) and is currently used as a residential lot. In 2021, the owner permitted soil from the property at 9950 Bottom Wood Lake Road to be deposited and spread on their residential property at 9823 Bottom Wood Lake Road. The property at 9950 Bottom Wood Lake Road was undergoing redevelopment, but the parcel had been used previously for agriculture. The District of Lake Country (DLC) and the Agricultural Land Commission (ALC) Compliance and Enforcement staff served the owners with Notices of Contravention. The Notices required the owners to submit an ALR application to the district with the request to bring the soil deposit into compliance with the ALC Act and the district bylaws.

The soil deposited at 9823 Bottom Wood Lake Road is local and appears to be clean fill. However, DLC staff identify potential impacts to local drainage. Additionally, the owners are required to bring the property into compliance with Acts and Bylaws.

Should Council and the ALC support the application, the DLC will require the owners to submit a Soil Deposit Permit application for Council review and approval. To comply with the Soil Regulation Bylaw 95-015 the district will require a Soil Deposit Application including, a deposit fee of \$74.50 (149 m³ x \$ 0.50) and a Stormwater

Management and Erosion Control Plan completed by a qualified engineer. If any remediation is required to restore drainage patterns, staff will recommend that the applicant be required to complete that work.

BACKGROUND/HISTORY

The owners/applicants are long-term residents of the farming community in Winfield and have owned the subject property since 1959. They were the previous owners of the former agricultural parcel at 9950 Bottom Wood Lake Road. Once sold, the property was slated for redevelopment. In 2021 the owners accepted soil from 9950 Bottom Wood Lake Road onto 9823 Bottom Lake Road to fill in low areas. The owners have stated that they were not aware of any requirement to seek permission or permits from the ALC or the District for the deposit of fill.

A community member contacted the DLC expressing concern that there may be a risk of localized flooding due to the placement of fill on the subject property.

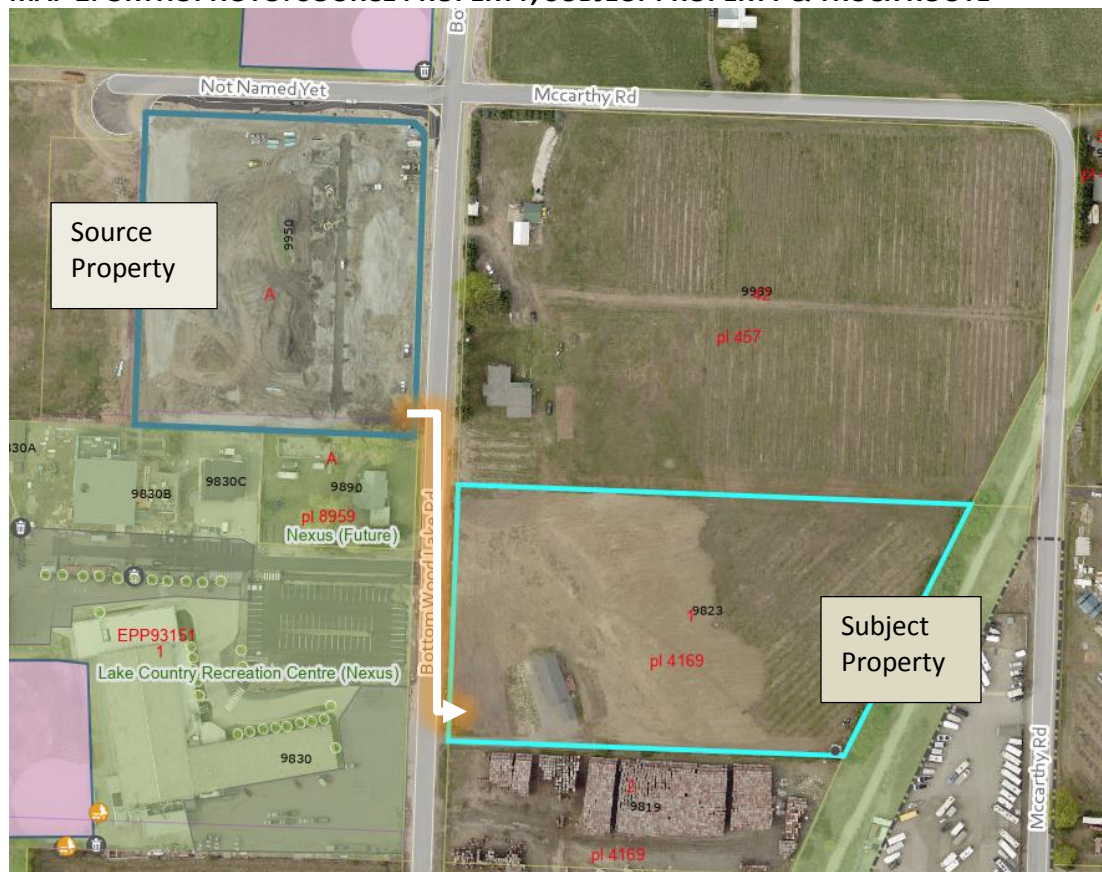
District bylaw enforcement staff talked to the contractor who moved the soil. The contractor reported that there were over 200 truckloads of fill imported onto 9823 Bottom Wood Lake Road to level out the land. The location is close to municipal facilities and DLC staff also witnessed the site activities. District bylaw enforcement staff talked to the owner and delivered a Notice of Contravention of the District Soil Regulation Bylaw.

The deposit was also reported to ALC Compliance and Enforcement. ALC Compliance and Enforcement sent a letter to the owners, requiring them to make an ALR application that would bring the placement of fill into compliance with the ALC Act and District bylaws. The owner submitted an ALR application in August 2021 (Attachment A).

PROPERTY INFORMATION			
Civic Address:	9823 Bottom Wood Lake Rd.		
Roll Number:	10131000		
Legal Description:	Lot 1 District Lot 118 Section 10 & 11 ODYD Plan KAP4169 Township 20		
Applicant:	Carol McCarthy	PID	010-608-214
OCP Designation:	Agricultural		
Existing Zoning Designation:	A1 Agriculture		
Proposed Zoning:	no change		
Land Use Contract:	no		
ALR:	yes		
Parcel Size:	2.2 hectares (5.35 ac.)		
DP Area(s):	none		
Water Supply:	Municipal		
Sewer:	Onsite		
Adjacent Properties:	Zoning:	Use:	
<i>North:</i>	A1 Agriculture (ALR)	Agriculture – Hay and Fruit Trees	
<i>East:</i>	P1 -Public Parks & Open Space, Industrial (Kelowna), and A1 Agriculture (ALR)	Rail Trail, Storage of Containers, Agriculture	
<i>South:</i>	I1 – General Industrial	BC Tree Fruits – fruit processing	
<i>West:</i>	RU1 – Single Family Housing, P2 – Admin., Public Service, & Assembly	Arena complex, SF house	

SITE CONTEXT

The site is located in the Winfield area near the Kelowna/Lake Country boundary. The subject property is ALR-designated, but it is not currently farmed. It does not have farm status for tax purposes. The site is relatively flat and has good road access. The surrounding land has a wide mix of uses including, industrial to the south, institutional and residential to the west, and a tree fruit farm to the north. The soil is deposited on the northwest quadrant of the property, adjacent to the tree fruit farm on 9989 Bottom Wood Lake Road.



SITE PHOTO 1

Looking south across the area where fill was placed (October 2022)

SITE PHOTO 2

Looking west towards Bottom Wood Lake Rd showing the edge of fill and adjacent farmland

TABLE 1: FILE CHRONOLOGY

Date	Event
2021-08-05	Application submission
2021-12-06	Internal and External Referrals Completed
2021-12-12	Committee consideration – Agricultural Advisory Committee
-	Previous Council consideration

DISCUSSION/ANALYSIS

Soil or Fill in the ALR - Effective February 22, 2019, the Province amended the ALC Act and created the ALR Use Regulation. There were significant changes to the regulation of fill placement in the ALR. Only in very limited circumstances can soil be removed from or placed on ALR-designated lands without interaction with the ALC. A person who places fill or removes soil from ALR land without permission may be subject to penalty, or be ordered to remediate the land, or remove the unauthorized fill.

Soil Deposit Permits, District of Lake Country - DLC Bylaw 95-015 sets out the requirements for depositing soil or fill on land in the District. A permit is not required for lots under 0.4 hectare (1 ac.) in size or for the construction of a building of 930m² (10,011ft²) in size or for the associated landscaping. In this case the subject property is 2.2 hectares (5.35 ac.) and the deposit is not associated with building construction.

Many of the requirements for a soil permit application do not apply to the file, because the fill has already been deposited. However, if the fill is permitted by the ALC, a DLC application for a soil deposit permit would be required, for review and approval by Council. This application will include a deposit fee of \$74.50 (149 m³ x \$ 0.50) and a Stormwater Management and Erosion Control Plan completed by a qualified engineer. If any remediation is required to restore pre-deposit drainage patterns, staff will recommend that the applicant be required to complete that work.

APPLICABLE LEGISLATION AND POLICIES

Agricultural Land Commission Act

Section 20.3(1) A person must not remove soil from, or place fill on agricultural land unless one of the following applies:

- (a) the removal or placement is permitted under section 25 or 45 and the removal or placement is done in accordance with the permission;
- (b) the removal or placement is permitted under the regulations and the removal or placement is done in accordance with the regulations;
- (c) the person
 - (i) is an owner of the agricultural land, or has a right of entry, granted under an enactment, to the agricultural land,
 - (ii) first submits to the chief executive officer the prescribed fee and notice of the person's intent, in the form and manner required by the chief executive officer, and
 - (iii) receives approval under subsection (2) (b) and removes the soil or places the fill in accordance with the approval or is a person to whom subsection (4) applies.

Agricultural Plan

Goal 1: Support agriculture throughout government process, policy, and regulation.

1.6 Enhance compliance and enforcement for farmland protection: Continue to work with the agricultural community to identify and prioritize enforcement issues. Continue to participate in regional efforts lead by the RDCO and in partnership with the ALC's Okanagan Compliance & Enforcement officers to develop and resource a coordinated joint compliance and enforcement strategy for land within the ALR.

Soil Regulation Bylaw 95-015

6. Removal and Deposit of Soil - Pursuant to Section 723 Local Government Act to regulate and issue permits

- (1) No person shall remove or deposit, or cause to be removed or deposited, any soil from or on any land in the District or any area of the District unless that person:
 - (a) has applied for and received a valid and subsisting Permit for such removal or deposit in the form set out in Schedule "A" attached to and forming part of this bylaw; and or
 - (b) carries out the removal or deposit in accordance with the terms and conditions set out in the Permit.

8. Offences and Penalties

(1) Any person who violates any provision of this bylaw or who permits any act or thing to be done in contravention of the bylaw, or who refuses or omits or neglects to fulfill, observe, carry out, or perform any duty or obligation imposed by this bylaw commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.00.

(2) Each day during which any violation of a provision of this bylaw is continued shall constitute a new and separate offence.

Stormwater Management Bylaw 1127-2020

1.3 All installations of, or changes to, any part of a stormwater drainage system shall be designed and constructed in accordance with the provisions of this Bylaw.

1.4 This Bylaw is enacted for the purpose of avoiding, preventing or reducing the risk of:

- (b) interference with the proper functioning of the District's stormwater drainage system, including the introduction of pollution; and
- (c) harm to the public or to private or public property.

IMPACT ON INFRASTRUCTURE OR MUNICIPAL SERVICES

The fill is placed on relatively flat land with the intent of filling in low spots on the parcel. However, there is some indication that the fill placement might affect the functioning of the ditch along Bottom Wood Lake Road and the adjacent property to the north.

IMPACT ON STAFF CAPACITY AND FINANCIAL RESOURCES

If Council and the ALC approves the application, DLC bylaw enforcement and engineering staff would be required to ensure compliance with ALC and district requirements.

COMMENTS FROM EXTERNAL AGENCIES, COMMITTEES AND STAKEHOLDERS

The Ministry of Agriculture and Food did not comment on the application as there is no current agricultural activity on the parcel.

The ALC Senior Agrologist noted that the ALC would, when evaluating the application, consider comments from district staff regarding the review of flooding risks resulting from the placement of fill. If required, district staff could request additional information from the owners in the form of a report prepared by an agrologist, hydrologist or engineer. If the DLC believes there is risk of flooding, Council could refuse the application (deny the application and not forward the file to the ALC for consideration).

If the DLC refuses the application, the file would revert to the ALC Compliance and Enforcement department staff to determine the best course of action, which could potentially be the removal of the fill material from the subject property. If the application is forwarded to the ALC, the Commission may ask for additional drainage information from the applicant prior to making a decision.

Please note that reports prepared by agrologists in favour of fill applications do not necessarily mean that a fill placement proposal will be approved by the ALC, particularly in a case where the material was not intended for any agricultural use.

The Agricultural Advisory Committee discussed the application at the December 12, 2022, meeting. The committee resolution is included as Attachment B.

CONSULTATION AND COMMUNICATION

No public consultation or communication is required for this application.

ANALYSIS OF OPTIONS FOR CONSIDERATION

The ALR application process requires joint approval of the application both at the Local Government and at the Provincial Commission levels.

Options A or B: Council has the option to support or not to support the proposal, and forward the application to the ALC. The ALC will take Council's recommendation into consideration; however, the ALC will have the authority to approve or deny the application. If the ALC approves the application, the applicant would need to apply to the District of Lake Country to authorize the placement of existing fill.

Option C: Council has the option to not support the application, and not forward the application to the ALC. This would terminate the file without the review of the ALC. Instead, District staff will work with ALC Compliance and Enforcement personnel to ensure that the fill is removed.

Option D: If Council requires additional information before making a decision regarding the application, staff will work with the applicant and the ALC staff to obtain the required information. Once the information is received, staff will bring the application back to Council for consideration.

Respectfully Submitted,
Inonge Aliaga, Senior Planner

Report Approval Details

Document Title:	RFCD-ALR2021-008 - 9823 Bottom Wood Lake Road - To Allow Placement of Fill.docx
Attachments:	- Attachment A: ALR Application 2021-08-04.pdf - Attachment B: Agricultural Advisory Committee Resolution 2022-12-12
Final Approval Date:	

This report and all of its attachments were approved and signed as outlined below:

Name:	Date approved:

Report Approval Details

Document Title:	RFCD- ALR2021-0089823 Bottom Wood Lake Rd.- To Allow Placement of Fill.docx
Attachments:	- Attachment A - ALR Application 2021-08-05 .pdf - Attachment B - Agricultural Advisory Committee Resolution 2022-12-12.pdf
Final Approval Date:	Feb 14, 2023

This report and all of its attachments were approved and signed as outlined below:

Brian Zurek, Manager of Planning - Feb 8, 2023 - 9:01 AM

Steven Gubbels, Manager of Development - Feb 8, 2023 - 9:43 AM

Matthew Salmon, Director of Engineering and Environmental Services - Feb 8, 2023 - 11:14 AM

Jared Kassel, Director of Planning & Development - Feb 9, 2023 - 10:03 AM

Reyna Seabrook, Director of Corporate Services - Feb 13, 2023 - 5:15 PM

Tanya Garost, Chief Administrative Officer - Feb 14, 2023 - 3:33 PM