

ADMINISTRATIVE REPORT



TO: Board of Directors

FROM: J. Zaffino, Chief Administrative Officer

DATE: June 13, 2024

RE: Temporary Use Permit Application – Electoral Area “C” (C2024.005-TUP)

Administrative Recommendation:

THAT Temporary Use Permit No. C2024.005-TUP, to allow for the residential use of a recreational vehicle at 5622 Sawmill Road be denied.

Proposed Development:

This application is seeking to allow the residential use of a recreational vehicle on the subject property through the issuance of a Temporary Use Permit (TUP).

In support of this proposal, the applicant has stated (amongst other things) that:

- *The practical request is to allow the temporary use of the RV as an accessory dwelling for the purpose of on-site security and management of the RV storage business.*
- *As the owner is making an application to the Agricultural Land Commission to allow for a previously approved subdivision and industrial use of the land, it is the intention that the temporary use of the RV as a dwelling for on-site security and management of the RV storage business only occur until the ALC renders a decision on the new application.*
- *If the ALR application is approved, the use of the RV as a dwelling for the on-site security and manager will be discontinued and the RV would be removed and replaced with an approved dwelling unit.*
- *If the application is denied, the use of the RV as a dwelling for the on-site security and manager would be discontinued as the use of the property for RV and boat storage may need to terminate.*

Site Context:

The subject property is approximately 2.5 ha in area and is situated on the west side of Sawmill Road, approximately 100 metres west from the Okanagan River and 400 metres southeast from the Town of Oliver.

It is understood that the parcel is comprised of various recreational vehicles, trailers and equipment associated with an outdoor storage operation. The surrounding pattern of development is generally characterised by agricultural land.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on February 11, 1948, while available Regional District records indicate that building permits have not previously been issued for this property.

BC Assessment has classified the property as Business and Other (Class 06).

Bylaw Enforcement

The Regional District has received written complaints regarding the use of the property for camping, the residential use of recreational vehicles, and noise related to these uses.

While the camping and noise aspects of this complaint have been resolved, an enforcement file from 2020 remains active on the property due to the residential use of one recreational vehicle, which is associated with security for the outdoor storage operation.

Building Inspection

New recreational vehicles in British Columbia are regulated under the *Motor Vehicle Act* and the *Safety Standards Act*, and not by the *Building Act*.

For this reason, the BC Building Code does not apply to recreational vehicles and long-term residential use of recreational vehicles is not subject to inspection or certification for health and safety.

Official Community Plan

Under the Electoral Area “C” Official Community Plan (OCP) Bylaw No. 2452, 2008, the subject property is currently designated Industrial (I).

Section 20.3.4 of Electoral Area “C” OCP Bylaw establishes the following criteria in evaluating a Temporary Use Permit application:

- The use must be clearly temporary or seasonal in nature;
- Compatibility of the proposal with adjacent uses;
- Impact of the proposed uses on the natural environment, including groundwater, wildlife, and all environmentally sensitive areas;
- Intensity of the proposed use;
- Opportunity to conduct the proposed use on land elsewhere in the community; and
- The remedial measures to be carried out to mitigate any damage to the natural environment as result of the temporary use.

Zoning Bylaw

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned General Industrial (I1) which lists a range of industrial uses, including outdoor storage, as permitted principal uses.

Under Section 8.0 (Floodplain Regulations) of the Zoning Bylaw, the subject property is within the floodplain associated with the Okanagan River, however floodplain regulations generally do not apply to recreational vehicles.

The Zoning Bylaw requires that “only recreational vehicles, to a maximum of one (1), belonging to the owner or occupier of a principal single detached dwelling on a parcel may be stored or parked on the same parcel. Stored recreational vehicles “shall not be connected to a sewage disposal system, water system or power source”.

The temporary placement of an RV on a property must be in relation to a building permit issued for the construction of a new dwelling. The residential use of an RV is otherwise prohibited in all zones.

Agricultural Land Commission

The property is within the Agricultural Land Reserve (ALR) and has been the subject of multiple applications to the ALC:

- Application #38525: In 2008, the Commission considered Application #38525 to exclude the property from the ALR for industrial development. This proposal was refused due to concerns of intensification of non-farm uses on the property.

As an alternative to the proposed exclusion, the Commission approved a two-lot subdivision and use of the property for industrial purposes by Resolution #763/2008. This decision was subject to conditions, including completion of the subdivision within three years from the date of approval (December 17, 2008). The proposed subdivision was not completed and the approval expired.

- Resolution #521/2020: In October 2019, the ALC Compliance and Enforcement department responded to a complaint regarding a commercial vehicle storage use on the property and determined that the use was not an approved non-farm use of the property.

A non-farm use application was submitted to the Regional District (File No. C2019.022-ALC) to formalize the existing outdoor storage use and to allow a future self-storage use. This proposal was seen to be consistent with the OCP and Zoning Bylaws and was forwarded to the ALC.

The Commission considered the application (Resolution #521/2020) and found that “the historic non-farm uses on the Property does not preclude the use of the Property for agriculture and that the Proposal would be more appropriately located outside of the ALR”. For this reason, the Commission refused the proposal.

Further, in making its decision, the Commission found that “the local government zoning and OCP designations on this Property are inconsistent with the ALCA” (*Agricultural Land Commission Act*).

- Resolution #111/2023: In December 2021, a second non-farm use application to formalize the outdoor storage use was submitted to the Regional District (C2021.025) and was forwarded to the ALC.

Although the Commission noted that the application was “for essentially the same non-farm storage use” considered in the previous application, it found that the proposal included new evidence (a professional report indicating the property is unsuitable for agricultural use) and considered the application (Resolution #111/2023).

The Commission found that its previous decision “did not turn on the Property’s capability for soil-bound agriculture” and reaffirmed that “previous industrial uses do not preclude the possibility of agricultural use of the Property”. For this reason, the Commission refused the proposal.

In making its decision, the Commission also reaffirmed that “per s. 46(4) of the ALCA, a local government bylaw that is inconsistent with the ALCA or an order of the Commission has, to the extent of the inconsistency, no force or effect”.

While the non-farm use was refused, the Commission also considered the matter of the residential use of the RV on the property. The Commission confirmed that “a vehicle used to

provide accommodation is considered by the Commission to be a residential structure” and that “[t]he Panel has no objections to a residential use that conforms to the permissions set out in the ALR Use Regulation”.

However, the Commission also noted that “local governments have the authority to regulate residential structures on ALR lands within their jurisdiction, including placing restrictions on the type of structures permitted for residential use”.

Public Process:

Adjacent property owners will have received notification of this application with written comments being accepted up until one (1) week prior to the Board’s regular meeting at which the application is to be considered. All comments received are included as a separate item on the Board’s Agenda.

Analysis:

In considering this proposal, Administration notes that the zoning bylaw’s prohibition on the residential use of recreational vehicles is in recognition that recreational vehicles are not subject to health and safety standards that apply to residential structures under the Building Code.

For this reason, RVs are seen to be unsuitable and unhealthy for long term occupancy and are limited to short-term occupancy.

Health and Safety

Administration maintains its previous position that residential uses authorized by a local government should uphold the public interest by maintaining standards for the health and safety of occupants (e.g. adequate ventilation, heating, etc.).

ALC Consistency

While the proposed use is the residential use of an RV as the principal use of the property, the applicant has variously stated that “the practical request is to allow the temporary use of the RV as an accessory dwelling for the purpose of on-site security and management of the RV storage business”.

For this reason, Administration has concerns that the request is to allow a *de facto* accessory use to an unlawful principal use of the property that has been previously refused by the ALC.

While ALC Resolution #111/2023 considered the matter of residential use of an RV, Administration notes that the Commission prefaced this consideration by stating “the Panel refuses the proposed storage use and so notes that an onsite caretaker may no longer be necessary”.

Administration supports the following referral comments received from ALC staff in relation to this application:

... as the purpose of the TUP is to permit a caretaker to oversee an illegal “storage” use of the property, the ALC does not support the issuance of a TUP at this time.

ALC Compliance and Enforcement actions may be undertaken to ensure the activities on the Property are consistent with ALC regulations and decisions.

Evaluation Criteria

In considering the TUP evaluation criteria under the Electoral Area “C” OCP, Administration notes that the proposed use appears subordinate, incidental and exclusively devoted to the outdoor storage use on this property.

Further, Administration notes that the related outdoor storage use is the subject of enforcement complaints to both the Regional District and the ALC, which have not been rectified over the past five years.

For this reason, Administration considers that the proposed use is not temporary in nature and *may* not be compatible with adjacent agricultural uses.

Alternative

Conversely, Administration recognises that the proposed use does not involve any permanent structures, is not intensive, and is unlikely to adversely impact the natural environment.

Summary

In summary, Administration is concerned that the proposal does not uphold health and safety standards, and is not consistent with previous ALC decisions or the Electoral Area “C” OCP criteria.

For these reasons, Administration does not support the proposed temporary use and is recommending denial.

Alternatives:

1. THAT the Board of Directors approve Temporary Use Permit No. C2024.005-TUP

Respectfully submitted:

Ben Kent

Ben Kent, Planner II

Endorsed By:



C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Agency Referral List

No. 2 – Aerial Photo

No. 3 – Site Photo

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies as highlighted with a , regarding Temporary Use Permit No. C2024.005-TUP:

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input type="checkbox"/>	District of Summerland
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input type="checkbox"/>	Town of Osoyoos
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section)	<input type="checkbox"/>	Town of Princeton
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input type="checkbox"/>	Okanagan Nation Alliance (ONA)
<input type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Penticton Indian Band (PIB)
<input type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Osoyoos Indian Band (OIB)
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Upper Similkameen Indian Band (USIB)
<input type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input type="checkbox"/>	Lower Similkameen Indian Band (LSIB)
<input type="checkbox"/>	School District #58 (Area H)	<input type="checkbox"/>	Environment Canada
<input type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	Central Okanagan Regional District	<input type="checkbox"/>	Canadian Wildlife Services
<input type="checkbox"/>	Kootenay Boundary Regional District	<input type="checkbox"/>	OK Falls Irrigation District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Kaleden Irrigation District
<input type="checkbox"/>	Fraser Valley Regional District	<input type="checkbox"/>	Irrigation District / improvement Districts / etc.
<input checked="" type="checkbox"/>	Oliver Fire Department	<input type="checkbox"/>	

Attachment No. 2 – Aerial Photo



Attachment No. 3 – Site Photo (Google Street View – 2023)

