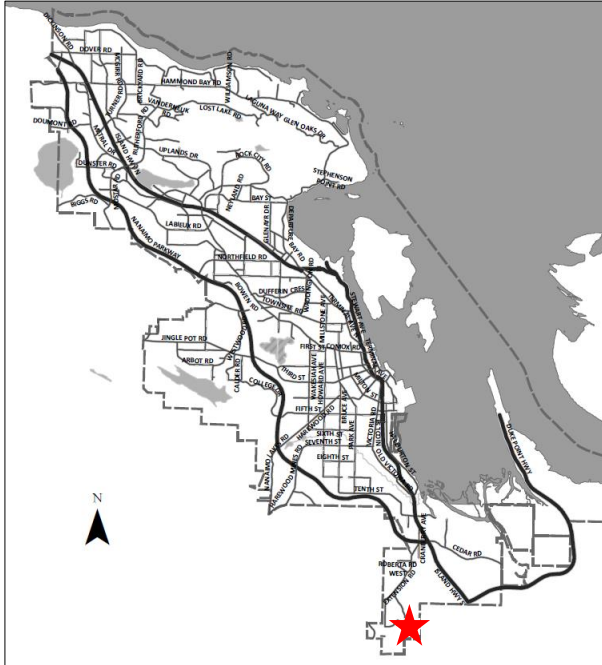


DATE OF MEETING | May 1, 2023

AUTHORED BY | KRISTINE MAYES, PLANNER, CURRENT PLANNING

SUBJECT | **ALC NON-FARM USE APPLICATION NO. LR000015 – 1980 RICHARDSON ROAD**



Proposal:

Consideration of an Agricultural Land Commission Non-Farm Use application to allow the extent of an existing non-conforming soil processing use.



Zoning:

AR1 – Rural Resource &
R1 – Single Dwelling Residential

City Plan Land Use Designation:

Resource Management

Lot Area:

9.37 ha



OVERVIEW

Purpose of Report

To present Council with an Agricultural Land Commission Non-Farm Use application to allow the extent of an existing non-conforming soil processing use at 1980 Richardson Road. |

Recommendation

That Council direct Staff to forward the application and the Staff Report dated 2023-MAY-01 for Non-Farm Use within the Agricultural Land Reserve at 1980 Richardson Road to the Agricultural Land Commission. |

BACKGROUND

The City of Nanaimo has received an Agricultural Land Commission (ALC) application (61331) from Cinnabar Valley Farms Ltd., to consider a Non-Farm Use within the Agricultural Land Reserve (ALR). The applicant is proposing to allow the extent of an existing non-conforming soil processing use located on 1980 Richardson Road, which has been in operation at some scale since the 1970s. The role of local governments for ALC applications is to provide information related to land use planning and zoning bylaws. Council’s role is to decide whether to forward the application to the ALC for decision as described in the Options section of this Staff Report.

Subject Property and Site Context

The subject property is located at the terminus of Richardson Road at the southern range of the City limits. The subject property currently contains a residential dwelling, and a number of farm buildings being used as part of the soil processing use. The subject property abuts a large agricultural lot located in the Regional District of Nanaimo (RDN) to the south, single-family residences to the north, agricultural uses to the east, and an agricultural property which is not located within the ALR used in conjunction with the subject property to support the soil processing use across the road to the west (1981 Richardson Road).

Zoning History and Extent of Topsoil Processing Use

The zoning regulations to allow a topsoil processing use on the subject property have changed over time as summarized in the table below:

Zoning Bylaw	Zone	Time Period	Topsoil Processing Use
No. 2000	Rural 2 (A-2)	1979-OCT-15 to 1982-JAN-18	Permitted
No. 2370	Rural 2 (A-2)	1982-JAN-18 to 1993-JUL-26	Not Permitted
No. 4000	Rural Agricultural/ Residential (A-2)	1993-JUL-26 to 1997-FEB-06	Permitted
No. 4000.171	Rural Agricultural/ Residential (A-2)	1997-FEB-06 to 2011-AUG-08	Not Permitted
No. 4500	Rural Resource (AR1)	2011-AUG-08 to Present	Not Permitted

Topsoil processing was a permitted use on the subject property between 1979 and 1982, and, between 1993 and 1997. Zoning amendment Bylaw No. 4000.171 removed what Council considered to be potentially problematic commercial uses in the A-2 zone including “peat and

topsoil processing”, and zoned the existing operation at 1981 Richardson Road (adjacent property) as a site specific use until the adoption of Zoning Bylaw No. 4500 on 2011-AUG-08 restricted topsoil processing to the Industrial (I4) zone.

The extent of the “peat and topsoil processing” use on the subject property (1980 Richardson Road) at the time of adoption of amending Bylaw No. 4000.171 on 1997-FEB-06 may be considered as a lawful non-conforming use of land under the *Local Government Act*; however, the non-conforming use of land cannot be continued on a scale or to an extent or degree greater than that at the time of the adoption of the land use regulation bylaw.

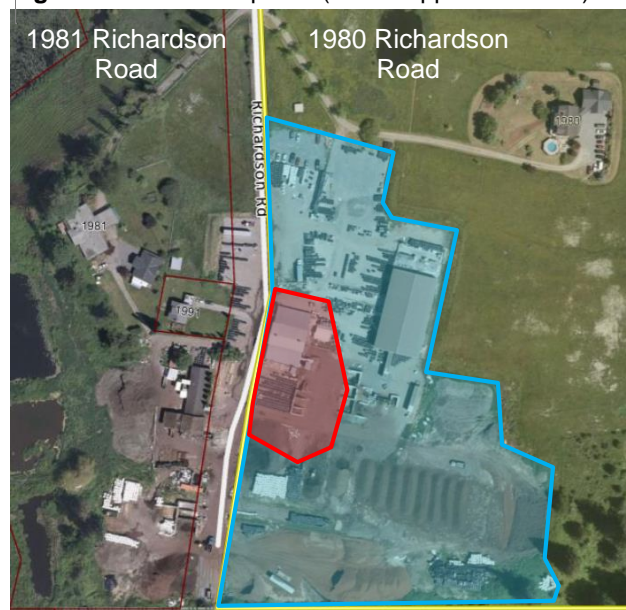
Orthophotos can provide context to estimate the scale and extent of the “peat and topsoil processing” use prior to the use no longer being permitted with the adoption of amending Bylaw 4000.171 on 1997-FEB-06. There are orthophotos available from 1996, when the use was permitted, and 1999, two years after the use was not permitted. The orthophotos indicate the extent of the operation did not change significantly between 1996 and 1999. A comparison between orthophotos from 1996 and 2022 illustrates how the extent of the non-conforming use has increased since the approximate time of the bylaw amendment in 1997. Staff note the extent of the operation on the subject property measured approximately 0.39 ha in 1996 (Figure 1) and measures approximately 3.10 ha in 2022 (Figure 2), an increase of approximately 2.71 ha in area.

The current extent of the soil processing use also occurs on a portion of 1981 Richardson Road (which is not in the ALR), as well as on the road dedication between the properties. The applicant advised that the soil processing use has historically relied on the proximity to 1981 Richardson Road for peat extraction and convenient access to a mechanic shop and equipment storage (Attachment B). The owner advised that the extraction of peat on 1981 Richardson Road ceased in the 2020s. City records show an active business licence for only 1980 Richardson Road for “farm; crop and soil manufacturing, distribution of horticultural products”.

Figure 1: 1996 Orthophoto (extent approx. 0.39 ha)



Figure 2: 2022 Orthophoto (extent approx. 3.10 ha)



Extent of Non-Farm Use

According to information provided in the ALC application (Attachment B), the area of the soil processing use has increased from approximately 2 acres (0.8 ha) to the current 10 acres (4.05 ha) in area. Currently, buildings used to support the non-farm use within the subject property include a fifty-year-old 790m² barn and a 1,115m² barn constructed between 2018 and 2019 without a Building Permit. Operations include topsoil processing, composting, storage, and shipping. Approximately 1.62 ha are open field where bulk organic materials are stored and composted onsite to await blending. Manufacturing and packaging occurs in the old barn with finished products packaged and stored outside on compacted gravel. Access to the site is via Richardson Road through a rural residential neighbourhood. The remainder of the property not used as part of the soil processing use is used for hay production and residential use.

POLICY REVIEW

Staff have reviewed ALC regulations, City Plan, and applicable land use regulations and provide the following summaries for discussion:

Agricultural Land Reserve

The subject property is in the ALR and this application is a result of ALC enforcement. Activities exceeding permitted uses in the ALR require a Non-Farm Use application to the ALC. The ALR is a provincial land designation intended to protect and preserve land that is best suited for agriculture. Farming is encouraged and supported through the regulation of non-farm uses. Both City of Nanaimo and ALR regulations apply to the property. Section 27(2) of the *Agricultural Land Reserve Use Regulation (ALR Use Regulation)*¹ permits the use of agricultural land for producing, storing, and applying compost classified as Class A compost under the Organic Matter Recycling Regulation provided 100% of the compost produced is used on the agricultural land on which it was produced. A local government may prohibit this use if at least 50% but less than 100% of the compost produced, stored, and applied is used on the agricultural land on which it was produced. The compost produced on the subject property is sold commercially. Additionally, the company sells a variety of other imported horticultural products not produced onsite.

City Plan (Official Community Plan)

The subject property is designated Resource Management, which is not intended for urban development and instead should be preserved for agricultural, resource, environmental, and recreational purposes. The subject property is also within the Green Network, which encourages natural areas and supports adaptation to a changing climate. Relevant City Plan policies for this land use designation are as follows:

- D4.8.12 Include in the Resource Management designation, Agricultural Land Reserve (ALR) and other lands of resource, environmental, and open space value. Uses within the Agricultural Land Reserve are subject to the *Agricultural Land Commission Act (ALCA)* and Regulations.
- D4.8.13 Support agricultural and resource uses, including farm use or agriculture; forestry, wood lots, and silviculture; as well as park and open space uses, including natural parks, passive recreation uses, protected areas, and environmentally sensitive areas in the Resource Management designation.

¹ Agricultural Land Reserve Use Regulation [B.C. Reg. 36/2022]: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/30_2019#section27

City of Nanaimo Zoning Bylaw No. 4500

The portion of the property where the soil processing use is occurring is zoned AR1 in Zoning Bylaw No. 4500. The list of permitted land uses in the AR1 zone generally support agriculture as well as farm uses that are permitted in the ALR. Agriculture as defined in the Zoning Bylaw does not permit topsoil processing. Additionally, the operation now includes commercial composting, storage, shipping and retail sales, none of which are permitted uses in the AR1 zone. Topsoil processing is permitted only in the Industrial (I4) zone, which supports heavy industrial development not compatible with residential uses.

DISCUSSION

Staff note that the use occurring on the property does not comply with zoning regulations or the City Plan land use designation. To legalize the current extent of the soil processing use on both properties, a City Plan (OCP) amendment and Zoning Bylaw amendment (rezoning) would be required. Staff note that City Plan policies are not supportive of the use on the subject property (and adjacent 1981 Richardson Road) as the operation is industrial in scale and primarily occurs outdoors with truck traffic generated by the operation impacting surrounding rural residential areas.

At this time, the role of the City as the local government is to determine whether or not the Non-Farm Use application should be forwarded to the ALC for consideration. It should be noted that a decision to forward the application for consideration by the ALC does not constitute approval by Council. Should Council forward the Non-Farm Use application to the ALC for consideration, Council's involvement going forward will be dependant on the ALC's decision and decisions of the property owner, but could include building bylaw compliance and enforcement, an Official Community Plan and Zoning Bylaw amendment (rezoning), or Temporary Use Permit application.

Council can respond to the application for Non-Farm Use with one of following options. Staff recommend that Council proceed with Option 1.

OPTIONS

1. That Council direct Staff to forward the application and the Staff Report dated 2023-MAY-01 for Non-Farm Use within the Agricultural Land Reserve at 1980 Richardson Road to the Agricultural Land Commission.
 - The advantages of this option: This option would forward the application "without comment". Staff would indicate that the proposal is not consistent with the Zoning Bylaw or City Plan land use designation and include a copy of the Staff Report. This option allows the ALC to consider the application with respect to its mandate.
 - The disadvantages of this option: the current use of the property and the application is not consistent with the Zoning Bylaw and City Plan.
2. That Council direct Staff to:
 - a) forward the application and the Staff Report dated 2023-MAY-01 for Non-Farm Use within the Agricultural Land Reserve at 1980 Richardson Road to the Agricultural Land Commission; and,

b) provide the following comments: [*comments per Council's resolution*].

- The advantages of this option: should Council choose to provide comment, the ALC may consider these comments in its decision.
- The disadvantages of this option: the current use of the property and the application is not consistent with the Zoning Bylaw and City Plan. Providing comment on the application may impact the ALC's decision as well as the business.

3. That Council direct Staff to refuse to authorize the application to proceed to the ALC.

- The advantages of this option: None identified.
- The disadvantages of this option: The application would proceed no further and ALC bylaw enforcement on the subject property may recommence at the ALC's discretion, which may impact the business.

SUMMARY POINTS

- The City has received a Non-Farm Use application in the ALR to allow the extent of an existing non-conforming soil processing use at 1980 Richardson Road.
- The Non-Farm Use is not consistent with the Zoning Bylaw or City Plan land use designation for the subject property.
- Staff recommend that Council forward the Non-Farm Use application and Staff Report dated 2023-MAY-01 to the ALC without comment.

ATTACHMENTS

ATTACHMENT A: Location Plan
ATTACHMENT B: ALC Application

Submitted by:

Lainya Rowett
Manager, Current Planning

Concurrence by:

Jeremy Holm
Director, Development Approvals

Dale Lindsay
General Manager, Development Services /
Deputy CAO