

## ADMINISTRATIVE REPORT



**TO:** Advisory Planning Commission

**FROM:** B. Newell, Chief Administrative Officer

**DATE:** June 2, 2021

**RE:** Temporary Use Permit Application – Electoral Area “C”

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Purpose: To formalize an “eating and drinking establishment” through issuance of a TUP.

Owners: Michael Mulrooney, et al.                      Agent: Chris Van Hooydonk                      Folio: C-05854.010

Civic: 3692 Fruitvale Way                      Legal: Lot 2, Plan 19063, District Lot 2450s, SDYD

OCP: Agriculture (AG)                      Zoning: Agriculture One (AG1)

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### **Proposed Development:**

This application is seeking to formalize an eating and drinking establishment (“Backyard Farm Chef’s Table”) on the subject property through the issuance of a Temporary Use Permit (TUP).

In support of this proposal, the applicant has stated that “drawing from 25 years in the professional culinary industry, we have a unique ability to grow, cook and share the bounty of the property. Without the ability to use this experience as an asset, it would be nearly impossible to support a family of 4 from a 1 acre orchard property in produce sales. Our creative and experienced approach to hospitality allows for this to be a possibility”.

### **Site Context:**

The subject property is approximately 3,747.38 m<sup>2</sup> in area and is situated on the west side of Fruitvale Way and Highway 97, which run parallel to each other. It is understood that the parcel is comprised of a single detached dwelling that contains a business use (i.e. “eating and drinking establishment”) and an area for private use by the property owners, along with an accessory building and gardens/orchard.

The surrounding pattern of development is generally characterised by agricultural parcels containing active farming operations to the north and south, a residential parcel to the southwest and Highway 97 to the northeast.

### **Background:**

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on May 12, 1969, while available Regional District records indicate that building permits for an addition (1974) and interior renovations to a single detached dwelling (2015) have previously been issued for this property.

Under the Electoral Area “C” Official Community Plan (OCP) Bylaw No. 2452, 2008, the subject property is currently designated Agriculture (AG). Agriculture policies in the Electoral Area “C” OCP include that the Regional Board:

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- “preserve and protect the existing agricultural land base in rural Oliver” (Section 9.3.5);
  - “directs that the principal use of lands designated as ‘Agriculture’ ... shall be agriculture” (Section 9.3.9),
  - “encourages maximizing productive farm activity and minimizes non-farm use on farmland by limiting the footprint of non-farm uses” (Section 9.3.19); and
  - “on existing parcels, encourages agricultural use of all farm parcels regardless of size” (Section 9.3.22).

The bylaw further speaks to “encouraging secondary ‘value added’ uses such as agri-tourism for the purpose of diversifying and enhancing farm income, provided that these developments:

- are compatible with the agricultural character of the area
- remain incidental to the primary agricultural uses;
- remain subject to the provisions of the Zoning Bylaw, the Agricultural Land Reserve Act (if in the Agricultural Land Reserve) and other Provincial standards; and
- do not present a potential land use conflict with surrounding properties” (Section 9.3.14).

Under the Electoral Area “C” Zoning Bylaw No. 2453, 2008, the property is currently zoned Agriculture One (AG1) which allows for a single detached dwelling and agriculture, among other uses.

An “eating and drinking establishment”, which is defined as meaning “a development where prepared foods and beverages are offered for sale to the public for consumption within the premises or off the site...” is not permitted in the AG1 Zone.

Under the Regional Growth Strategy (RGS) Bylaw No. 2770, 2017, this area is not designated as a Rural Growth Area, is within the Agricultural Land Reserve (ALR) and has classified as “Residential” (Class 01) by BC Assessment.

While the subject property is located within the ALR, Section 23(1) (Exceptions) of the *Agricultural Land Commission Act*, states that restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the *Land Registry Act* (1960), less than 2.0 acres (0.81 ha) in area.

### **Analysis:**

In considering this proposal, Administration acknowledges that there is a balance needed between competing objectives of Agricultural lands, namely preserving an agricultural land base, which is a central tenet of the Electoral Area “C” OCP Bylaw, and encouraging and supporting “agri-tourism” or “value-added” agricultural activities that improve farm economic viability.

Although an “eating and drinking establishment” like the one proposed can serve to promote agriculture in the region through education (culinary presentations and farm tours), and encourage food production on a parcel that would otherwise not be utilized as such, Administration has concerns with permitting dining facilities in a remote, agricultural area and encouraging business outside of Growth Areas.

When expanding any “value added” use on Agricultural lands, due consideration should be made for the cumulative impact of eroding the agricultural land base through the commercial use of

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agricultural lands, in addition to the introduction of potential land use conflicts between farming and non-farming interests.

Allowing a broader range of uses on Agricultural designated land can also contribute to land speculation, especially when the primary use of the parcel is for a tourist commercial use (i.e. an “eating and drinking establishment”) that can be easily disassociated from a hobby farm.

From a land use perspective, there is no distinction between a private dining experience “bringing the table to the farm” and from any other type of restaurant (e.g. take-out restaurant, café, deli, dining room, etc.).

Land use controls are not well suited to regulate the types of foods prepared or sold on a premises (i.e. whether such foods are grown on-site, or purchased from local farmers).

An “eating and drinking establishment” is viewed as a commercial use that should be directed to a commercially designated property, in accordance with the OCP Bylaw (Section 12.3.3).

It is noted that the OCP Bylaw further seeks to limit highway commercial development along Highway 97 and supports directing new commercial uses to the Town of Oliver, which has the necessary infrastructure and support services (Section 12.3.5).

Historically, allowances for “eating and drinking establishments” within agricultural lands has been limited to lounges associated with wineries, breweries and distilleries, to align with ALR regulations.

Conversely, the “eating and drinking establishment” is contained within the existing building and proposed outdoor patio area, and promotes local agriculture through education.

Further, the subject parcel pre-dates the establishment of the ALR (and is believed to be exempted from its regulations) and has been historically residential (i.e. a single detached dwelling).

As such, the “eating and drinking establishment” is contained within the existing dwelling building and proposed patio area and does not contribute to the deterioration of farmland, as this parcel has not been utilized for this purpose and is more residential in nature.

However, as an “eating and drinking establishment” is not considered consistent with Electoral Area “C” OCP bylaw policies for agriculture-designated lands, it is recommended that this permit be denied.

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**Administrative Recommendation:**

**THAT the APC recommends to the RDOS Board of Directors that the proposed temporary use be denied.**


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**Options:**

1. THAT the APC recommends to the RDOS Board of Directors that the proposed temporary use be approved.
2. THAT the APC recommends to the RDOS Board of Directors that the proposed temporary use be approved with the following conditions:
  - i) *TBD*

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3. THAT the APC recommends to the RDOS Board of Directors that the proposed temporary use be denied.

**Respectfully submitted:**

  
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JoAnn Peachey, Planner I

**Endorsed By:**

  
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C. Garrish, Planning Manager

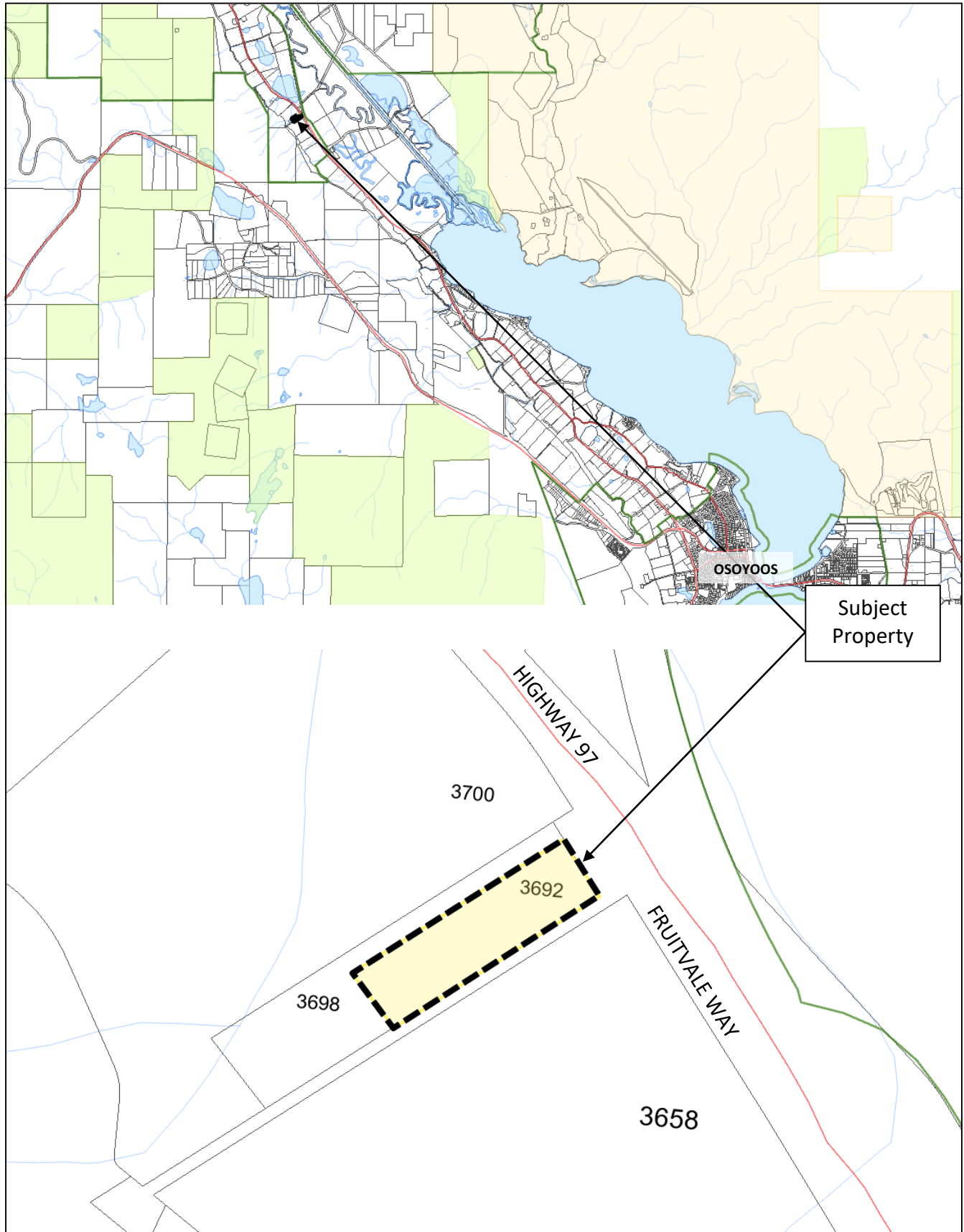
Attachments: No. 1 – Context Maps

No. 2 – Applicant's Site Plan

No. 3 – Applicant's Floor Plan

No. 4 – Site Photo (Google Streetview)

Attachment No. 1 – Context Maps



Attachment No. 2 – Applicant's Site Plan



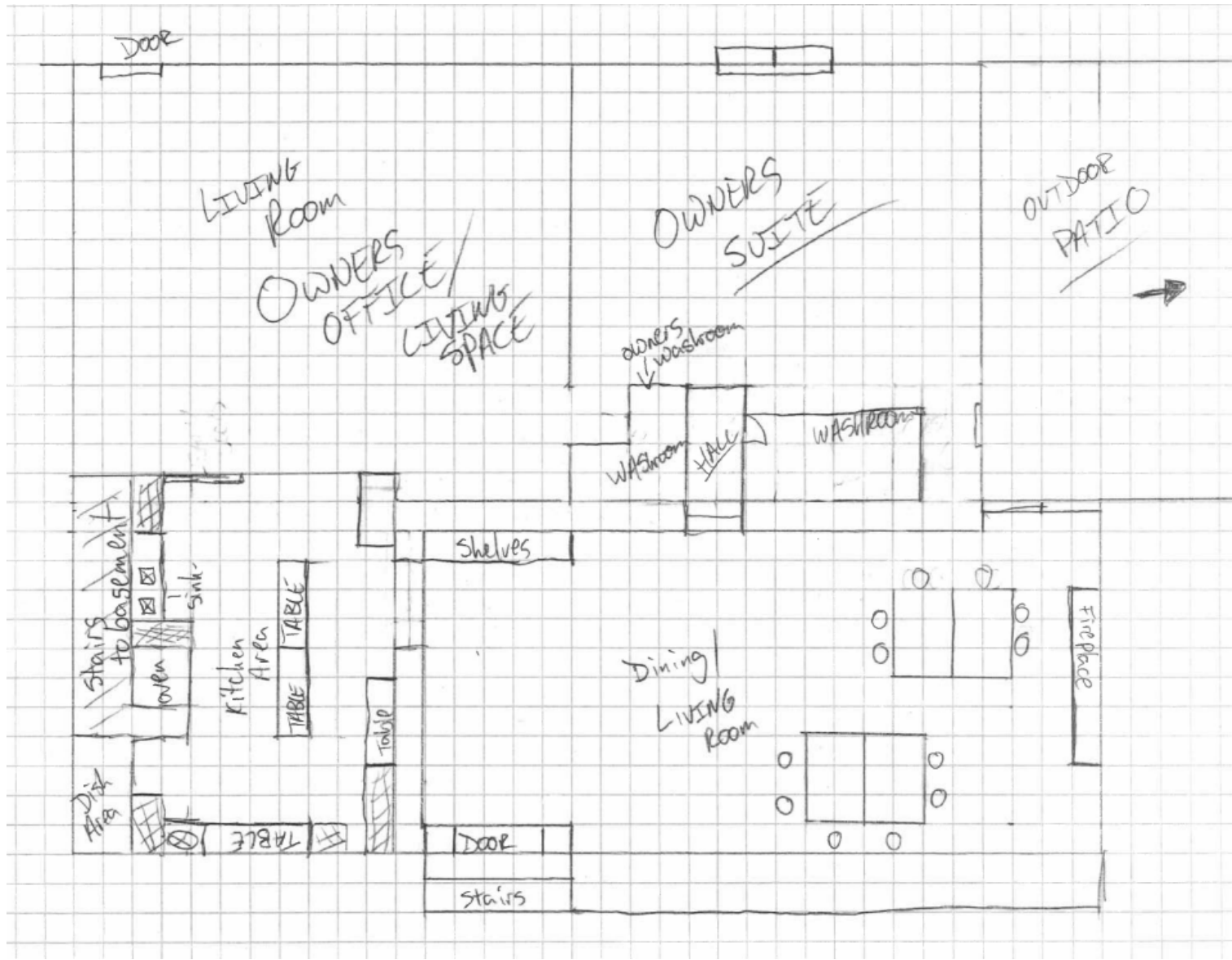
- SITE PLAN - PROPOSED COVERED PATIO  
- 18 ft wide x 39 ft length.  
- covered to not be weather dependent.

20m  
119.55349.090 Degrees  
<https://ndos.maps.arcgis.com/apps/webappviewer/index.html?id=2090895ca47744bc8891e0f7f20f06e4>

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Attachment No. 2 – Applicant's Floor Plan



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Attachment No. 4 – Site Photo (Google Streetview)

