



**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

February 8, 2006

Reply to the attention of Brandy Ridout  
ALC File #V-36406

Brad Elenko  
Urban Connections  
#12 Dogwood Place  
Osoyoos, BC V0H 1V1

Dear Mr. Elenko:

**Re: Application to Exclude land from the Agriculture Land Reserve**

Please find attached the Minutes of Resolution #16/2006 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a white background.

Erik Karlsen, Chair

pc: City of Penticton - ALR-05-7317

BR/lv/Encl.: Minutes  
36406d1

## MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on January 19, 2006 at the Ministry of Agriculture and Lands office located at 4607 - 23<sup>rd</sup> Street, Vernon, BC.

<b>PRESENT:</b>	Sue Irvine	Chair, Okanagan Panel
	Sharon McCoubrey	Commissioner
	Sid Sidhu	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

### For Consideration

Application # V-36406  
Applicant Mandy Morrison  
Proposal To exclude five properties (0.4 ha, 1.4 ha, 2 lots of 3.3 ha, and 4.7 ha) totalling 13.1 ha from the ALR.  
Legals  
1. PID: 007-470-185  
Lot 1, District Lot 188, Similkameen Division Yale District, Plan 21522  
2. PID: 002-387-361  
Lot B, District Lot 188, Similkameen Division Yale District, Plan 32182  
3. PID: 014-830-922  
Lot 4, District Lot 188, Similkameen Division Yale District, Plan 41789  
4. PID: 003-570-151  
Lot 1, District Lot 188, Similkameen Division Yale District, Plan 31902  
5. PID: 003-570-193  
Lot 2, District Lot 188, Similkameen Division Yale District, Plan 31902  
Location 31, 37, 45, 127 and 145 Middle Bench Road, Penticton

### Exclusion Meeting and Site Inspection

An exclusion meeting was held on January 17, 2006 at the Penticton Trade and Convention Centre. The meeting was open to the public and attended by approximately 25 members of the community. The meeting was immediately followed by a site inspection. Those in attendance at the meeting and site inspection were:

- Commissioners: Sue Irvine, Sharon McCoubrey, and Sid Sidhu
- Staff: Brandy Ridout and Martin Collins
- Agent: Brad Elenko
- Property owners: Paul John, Patricia and Ronald Fleming, and Desmond and Sharron Reigh
- Board of School Trustees, School District No. 67 Secretary/Treasurer: Frank Regehr

Mr. Elenko confirmed that he received the staff report dated January 4, 2006 and did not identify any errors.

Additional maps were provided at the exclusion meeting showing the location of the properties in relation to the town boundaries, the land ownership, and the proposed buffer area. Also, a copy of comments on letters submitted was provided to the Commission.

## Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

The Act provides processes for landowners, local governments and First Nation governments to apply to the Commission to include land into the ALR, remove land from the ALR, subdivide land in the ALR and use land in the ALR for non-farm purposes. The Commission makes decisions on applications with the objective of ensuring that lands suitable for agriculture are retained in the ALR and that non-farm development of ALR land is restricted.

## Discussion

### **Assessment of Agricultural Capability**

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The ratings are interpreted using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system, or the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system.

The improved agricultural capability ratings for the properties are identified as a mix of predominantly Class 2T, 3T, and 3NT. The one exception to the Class 2/3 rating is a portion of one of the properties that is Class 7TE. From the site visit it is evident that this portion of the property is a gully.

### Class

- 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.
- 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.
- 7 – Land in this class has no capability for arable or sustained natural grazing

### Subclass

- T topography
- N salinity
- E erosion

### **Assessment of Agricultural Suitability**

The Commission then assessed whether external factors have caused or will cause the land to become unsuitable for agriculture.

The Commission considered that the subject properties are in an area in which agriculture and residences are in close proximity. The two main areas of conflict identified by the landowners/applicants that have arisen between the adjacent residences/school and the subject properties were trespassing and spray drift.

With regard to the issue of trespassing through the applicants' orchards, the Commission noted that both the Fleming and the Morrison properties back onto residences. The Commission also noted that in the past an attempt had been made to accommodate concerns with regard to trespassing on an adjacent parcel by requiring that a piece be set aside as a buffer to mitigate against the effects of both development and trespass. While trespassing may be a nuisance to agricultural operations on several of the subject properties, the Commission believes that this issue can be mitigated, possibly through improved fencing or signage, and was not reason for exclusion.

With regard to the issue of spray drift affecting the adjacent school grounds and residences, the Commission noted that there are techniques to reduce the impact of spray drift, including carefully choosing spraying times and installing buffering. As was discussed during the site visit, the orchardists do currently carefully select spraying times so as to avoid spraying when children are in the adjacent fields. The Commission noted that the school has not been proactive in preventing the effects of spray drift. The installation of a vegetative buffer, the construction of a wooden fence, and switching the location of the parking lot and the playground would all reduce the effects of spray drift.

The Commission did not believe that external factors render the land under application unsuitable for agricultural use. The Commission believes that problems that arise at the agricultural/urban edges, such as trespassing and spray drift, can be mitigated by proper management techniques and are not grounds for exclusion in this case.

### **Assessment of Impact on Agriculture**

The Commission also assessed the impact of the proposal against the long-term goal of preserving agricultural land. In this analysis, the Commission considered the impact the exclusion of the five properties from the ALR would have on agriculture on the surrounding area.

It was noted that the exclusion of these properties would shift the ALR boundary further to the north and, despite the proposed buffer, would also shift the urban/rural conflict to the north. The Commission also noted that the properties to the east of the proposed exclusion area are in the ALR and are only separated from the proposed exclusion area by a road. The Commission believed the development of the subject properties for residences would have a negative impact on agriculture on those properties as well.

In addition, although the applicants state that the proposed buffer would be a defensible and sustainable ALR boundary and eliminate the agriculture/urban conflict that currently exists, the Commission believed that the properties under application were too valuable from an agricultural perspective to be excluded from the ALR. Further, it believed that amending the ALR boundary would potentially destabilize the ALR boundary rather than decrease the problem. The Commission believed that in this case the present ALR boundary would be best retained in its current location and that the landowners and the school co-operate to mitigate the conflicts of the rural/urban edge.

### **Assessment of Other Factors**

The Commission also considered previous applications in the area, noting that several of the properties have consistently been refused in the past. Also, as recently as February 11, 2005, the Commission commented on the future of the five subject properties; indicating that it had no objection to the designation of the school property for institutional uses as just over half was developed as a school. It did not support a residential designation of the remaining subject properties.

### **Conclusions**

1. The majority of the land under application has prime agricultural capability ratings and is appropriately designated as ALR.
2. Despite its location at the rural/urban interface, the land under application is suitable for agricultural use. Fencing and buffering could mitigate most, if not all, of the conflicts identified by the applicants.
3. The proposal would have a negative impact on agriculture in the surrounding area.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

### **IT WAS**

**MOVED BY:** Commissioner McCoubrey

**SECONDED BY:** Commissioner Sidhu

THAT the application be refused

### **CARRIED**

**RESOLUTION #16/2006**



**Staff Report**  
**Application # V – 36406**  
**Applicant: Mary Morrison**  
**Agent: Urban Connections**  
**Location: Penticton**

**DATE RECEIVED:** December 8, 2005

**DATE PREPARED:** January 4, 2006

**TO:** Chair and Commissioners – Okanagan Panel

**FROM:** Brandy Ridout, Regional Research Officer

**PROPOSAL:** To exclude five properties (0.4 ha, 1.4 ha, 2 lots of 3.3 ha, and 4.7 ha) totalling 13.1 ha from the ALR.

This application is made pursuant to section 30(1) of the *Agricultural Land Commission Act*.

**BACKGROUND INFORMATION:**

As recently as February 11, 2005, in a response to the City of Penticton's Official Community Plan (OCP) Review, the Commission commented on the future of the five subject properties. With regard to the Uplands School Elementary property (Lot 2, Plan 31902), the Commission noted that it had no objection to the designation of the property for institutional uses as just over half was developed as a school. With regard to the four subject properties north of the school, it noted that it did not support a non-agricultural designation.

It is important to note that the statement in the application that the Commission has previously consented to exclude the Uplands School property from the ALR is incorrect. While the Commission had no objection to an institutional designation for the property, it did not consent to exclusion. In addition, application #74-218 (1974) refused exclusion of the school property but allowed subdivision of two lots.

A 15-metre "mega buffer" is planned to be located on the northern boundary of the proposed exclusion area. This buffer would be maintained either by the new development or the City. The applicant presents the idea that this buffer will be a defensible and sustainable ALR boundary and remove the agriculture/urban conflict that currently exists. It is also noted that if 15-metres is inadequate, the landowners are willing to discuss the Commission's buffering requirements.

The Commission has historically acknowledged the surrounding non-farm uses in the area but has noted that problems that arise at the agricultural/urban edges can decrease by proper management techniques and are not grounds for exclusion.

**Local Government:**

The City of Penticton

**BACKGROUND INFORMATION (continued):**

**Legal Description of Properties:**

1. PID: 007-470-185  
Lot 1, District Lot 188, Similkameen Division Yale District, Plan 21522
2. PID: 002-387-361  
Lot B, District Lot 188, Similkameen Division Yale District, Plan 32182
3. PID: 014-830-922  
Lot 4, District Lot 188, Similkameen Division Yale District, Plan 41789
4. PID: 003-570-151  
Lot 1, District Lot 188, Similkameen Division Yale District, Plan 31902
5. PID: 003-570-193  
Lot 2, District Lot 188, Similkameen Division Yale District, Plan 31902

**Purchase Dates:**

1. Lot 1 – November 1992
2. Lot B – April 1993
3. Lot 4 – August 1989
4. Lot 1 – July 1975
5. Lot 2 - 1960

**Location of Properties:**

31, 37, 45, 127 and 145 Middle Bench Road, Penticton

**Size of Properties:**

13.1 ha (The properties are entirely in the ALR).

**Present use of the Property:**

Various - including orchard, horse pasture, single-family dwelling, and school.

**Surrounding Land Uses:**

**WEST:** non-ALR, residential subdivision

**SOUTH:** non-ALR, residential subdivision

**EAST:** ALR, orchards

**NORTH:** Three lots in the ALR (fruit production, pasture, residence), one lot non-ALR.

**Agricultural Capability:**

Data Source: Agricultural Capability Map # 82E.053

The majority of the property is identified as having predominantly Prime ratings.

**Official Community Plan and Designation:**

City of Penticton OCP Bylaw No. 2002-20

Designation: Agriculture and Low Density Residential

**Zoning Bylaw and Designation:**

Zoning Bylaw No. 87-65

Designation: Agriculture and Public Institution

**PREVIOUS APPLICATIONS:**

Lot 1, Plan 21522:

**Application #26650-0**

**Applicant:** Fisher/Morrison  
**Decision Date:** May 14, 1992  
**Proposal:** To exclude the 3.3 orchard in order to pursue residential development.  
**Decision:** Refused.

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**Application #27424-0**

**Applicant:** Mary Fisher  
**Decision Date:** April 30, 1993  
**Proposal:** Permission to deposit approximately 50,000 m<sup>3</sup> of fill on a 1.3 ha portion of the property in order to fill a ravine and expand the orchard.  
**Decision:** Allowed subject to fulfilment of various conditions.

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**Application #32286-0**

**Applicant:** Jim Fleming  
**Decision Date:** November 23, 1998  
**Proposal:** To exclude the subject properties as fruit production is not financially viable, vandalism, conflict issues relating to Uplands school, and develop residential lots.  
**Decision:** Refused due to reasons of impact and agricultural capability.

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**Application #32286-1**

**Applicant:** Jim Fleming  
**Decision Date:** January 26, 2000  
**Proposal:** To exclude the subject properties based on comments contained in the subject correspondence.  
**Decision:** Reconfirmed original decision to refuse the request.

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Lot B, Plan 32182:

**Application #07587-0**

**Applicant:** AG & EG Smith  
**Decision Date:** November 26, 1979  
**Proposal:** To subdivide a 0.3 ha lot from the 1.9 ha subject property pursuant to the *Homesite Severance Policy*.  
**Decision:** Allowed - subject to the registration of a covenant against the remainder restricting the construction of an additional or replacement buildings.

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**Application #27914-0**

**Applicant:** EBNER  
**Decision Date:** September 16, 1993  
**Proposal:** To exclude the 1.4 ha orchard in order to pursue residential development.  
**Decision:** Refused due to reasons of agricultural capability and impact.

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Lot 4, Plan 41789:

**Application #20863-0**

**Applicant:** Thomas F. Parmley  
**Decision Date:** March 18, 1987  
**Proposal:** To remove 3000 m<sup>3</sup> of soil from Lot 1, Plan 26294 and deposit on Lot 2, Plan 21522.  
**Decision:** Allowed with conditions.



**PREVIOUS APPLICATIONS (continued):**

Lot B, Plan 32182 (continued):

**Application #27413-0**

**Applicant:** Patricia Joan Fleming  
**Decision Date:** March 12, 1993  
**Proposal:** To exclude the 3.3 ha orchard property in order to pursue residential development.  
**Decision:** Refused due to agricultural capability and impact.

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Lot 2, Plan 31902:

**Application #74-218**

**Applicant:** New Port West Properties Ltd.  
**Decision Date:** September 19, 1974  
**Proposal:** To exclude the 4 ha subject property from the ALR.  
**Decision:** Refused exclusion. Allowed subdivision of a 1.2 ha lot for Uplands Elementary School and subdivision of a 0.2 ha lot for the existing dwelling.

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**Application #14158-0**

**Applicant:** School District #15  
**Decision Date:** July 7, 1982  
**Proposal:** To fill with clean fill and topsoil on school grounds.  
**Decision:** Allowed.

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**RELEVANT APPLICATIONS:**

**Application #11891-0**

**Applicant:** J. Kozic  
**Decision Date:** July 28, 1981  
**Proposal:** To exclude the 2.8 ha subject parcel from the ALR.  
**Decision:** Refused - on the grounds that the subject property is suitable for agriculture as indicated by its agricultural capability rating of Class 1 and 2.  
**Recon.:** To reconsider on the basis of reports prepared showing Penticton's requirements to meet its short-term urban development and Penticton's Long Range Development plans (in connection with applications #12358 and #12372).  
**Decision:** Allowed - the Commission expects the land will be developed to the highest possible density.

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**Application #12358-0**

**Applicant:** Linsey/Blue Jay Investment  
**Decision Date:** July 28, 1981  
**Proposal:** To exclude the 2.6 ha subject property from the ALR.  
**Decision:** Refused - the property is suitable for agriculture as indicated by its improved agricultural capability rating of predominantly Class 1 and 2.  
**Recon.:** To reconsider on the basis of reports prepared showing Penticton's requirements to meet its short-term urban development and Penticton's Long Range Development plans (in connection with applications #11891 and #12372).  
**Decision:** Allowed - the Commission expects the land will be developed to the highest possible density.

**RELEVANT APPLICATIONS (continued):**

**Application #12372-0**

**Applicant:** J&H Killins  
**Decision Date:** July 28, 1981  
**Proposal:** To exclude the 2.1 ha subject property from the ALR.  
**Decision:** Refused - the property is suitable for agriculture as indicated by its agricultural capability rating of Class 1 and 2.  
**Recon.:** To reconsider on the basis of reports prepared showing Penticton's requirements to meet its short-term urban development and Penticton's Long Range Development plans (in connection with applications #11891 and #12358).  
**Decision:** Allowed - the Commission expects the land will be developed to the highest possible density.

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**Application #21284-0**

**Applicant:** Patricia Joan Fleming  
**Decision Date:** July 28, 1987  
**Proposal:** To exclude 1.3 ha of the 1.7 ha ALR portion of the 2 ha property. A 0.4 ha buffer area would be left to protect the adjacent orchard.  
**Decision:** Refused as proposed - but allow exclusion of the area required for Grandview Road extension plus four residential lots to the east.

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**Application #21284-1**

**Applicant:** Patricia Joan Fleming  
**Decision Date:** December 14, 1987  
**Proposal:** To exclude a sloping portion of the property and consolidate an upper portion with an adjacent orchard as this will reduce pedestrian traffic through the orchard.  
**Decision:** Refused.

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**Application #22450-0**

**Applicant:** Patricia Joan Fleming  
**Decision Date:** October 17, 1988  
**Proposal:** To exclude 1.0 ha and leave 0.5 ha as a buffer between the subject property and the property to the east  
**Decision:** Allowed subject to a buffer zone to be consolidated with the adjacent orchard and the installation of chain link fencing along the residential lots.

**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:**

**City of Penticton Council:** Supported.

**Agricultural Advisory Committee:** Recommended to Council that the application not be supported for the following reasons:

- Removal of the ALR lands is not the only way to solve the spray drift issue.
- The lands are rated as high quality farmland.
- It would relocate the spray drift issue to the north.
- School District No. 67 has the capability to deal with the spray drift issue itself.

**City of Penticton Parks, Recreation and Culture Advisory Committee:** Recommended that if the lands are excluded from the ALR and a buffer zone is required at the north boundary of the excluded property, that the buffer lands remain under the ownership of the private property owner or Strata Council. If the Commission requires that the buffer lands be under public ownership, that acceptance of the buffer land and its maintenance be subject to conditions.

**OTHER COMMENTS:**

**Board of School Trustees, School District No. 67:** Supports the application due to concerns over spray drift from the adjacent orchards.

As a result of notification and posting of the application, letters were received from **interested parties**.

Comments in support of the application included:

- Concern about spray drift.
- Penticton's need for more building lots.

Comments in opposition to the application included:

- The properties have good soil and the possibility to grow various crops.
- Agricultural land is irreplaceable.
- The 15-metre buffer is not adequate –a 45-metre buffer would be more suitable.
- Exclusion applications on the properties have been refused in the past.
- Future housing would be better located in the hills around the city.
- The present ALR boundary is defensible and effective.
- Concern over the lack of information available and notification of affected parties.

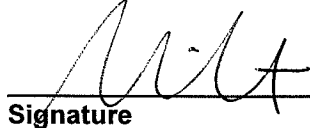
**STAFF COMMENTS:**

Staff suggests the Commission consider the following:

- The majority of the land has prime agricultural capability ratings.
- The Commission has recently noted that it does not support a non-agricultural designation for the four subject properties north of Uplands Elementary School.
- The Commission has not previously consented to the exclusion of the Uplands School property.
- The current ALR boundary, even considering the proposed "mega buffer", is better defended in its current position than if it was shifted further north.
- The potential benefits of retaining public institutional lands in the ALR, including that they act as buffer zones and reduce the number of residences adjacent to the ALR when located on the ALR boundary. In addition, if they are excluded from the ALR, the possibility of future development exists.

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**END OF REPORT**

  
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Signature

Jan 11, 06  
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Date