



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

August 21, 2007

Reply to the attention of Terra Kaethler
ALC File: # L - 37121

Marcer Ranching Ltd
RR #1
Elko, BC V0B 1J0

Dear Sir/Madam:

Re: Application to Exclude land from the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 366/2007 outlining the Commission's decision as it relates to the above noted application.

The Commission will advise the Registrar of Land Titles that the property has been excluded from the ALR when it has received confirmation that the conditions of approval have been met.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik/Karlsen, Chair

cc: Regional District of East Kootenay (#P-705-220)
Ministry of Agriculture and Lands – Cranbrook
Attention: Mr. Darrell Smith, Resource Stewardship Agrologist,

Enclosure: Minutes

TK/iv
37121d1



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on 13th July 2007 at the offices of the Integrated Land Management Bureau, Ministry of Agriculture and Lands, Cranbrook, B.C.

PRESENT:

Monika Marshall	Chair, Kootenay Panel
Carmen Purdy	Commissioner
D. Grant Griffin	Commissioner
Roger Cheetham	Staff
Terra Kaethler	Staff

For Consideration

Application: # L - 37121
Applicant: Marcer Ranching Ltd.
Proposal: To exclude the subject property for future recreational and residential development and the expansion of facilities relating to the recreational use of Lake Koocanusa.
Legal: PID: 013-359-517
Location: Lot 2, District Lot 10348, Kootenay District, Plan 8226
9790 Marcer Road, Lake Koocanusa

Site Inspection

A site inspection was conducted on 22nd March 2007. Those in attendance were:

- Monika Marshall Chair, Kootenay Panel
- Carmen Purdy Commissioner
- D. Grant Griffin Commissioner
- Roger Cheetham Staff
- Terra Kaethler Staff
- Bill Tanner Applicant
- Craig McMorran Applicant
- Lance Marcer Applicant
- Bob Marcer Applicant
- Mike Malmberg Consulting Soils Agrologist on behalf the applicant
- Keith Eckman Surveyor
- Andrew McLeod Regional District of East Kootenay Staff
- Karen Higgins Regional District of East Kootenay Staff
- Heath Slee Regional District of East Kootenay,
Director – Electoral Area "B"
- Tony Pagan Regional District of East Kootenay,
Chair, Agricultural Advisory Committee
- David Wilks Mayor, District of Sparwood
- Randal Macnair Mayor, City of Fernie
- Tammy Monsell Realtor
- Doug Martin Ministry of Environment

Prior to the on-site presentations by the applicant's representatives the Commissioners and staff were taken on a helicopter tour of the property. The applicant's representatives pointed out the location of the subject property and the ranch to the south where agricultural improvements are proposed.

At the site meeting Bill Tanner pointed out that the property is almost entirely surrounded by Crown land and impacts from the development would therefore be limited to the grazing tenures over this land. Mr. Tanner advised of the applicant's intention to restrict the use of all-terrain vehicles in the development. Mr. Tanner also pointed out that the property is one of the few opportunities for residential development on Lake Koochanusa. He indicated that the details of the development need to be worked out with the Regional District and that a land use bylaw will be drawn up to control the development.

Mike Malmberg spoke to his report. He drew attention to the uniqueness of the soil structure of the irrigated lands and the low agricultural capability ratings of these soils.

Heath Slee questioned these ratings, drawing attention to the fact that the lands had been irrigated and produced hay over many years. Mr. Malmberg in reply emphasized the low soil capability ratings of the property and the impracticality of improving them. This point was supported by Lance and Bob Marcer.

Doug Martin explained that Crown land planning for this area was not proceeding at present in part due to First Nations issues.

The meeting lasted from approximately 11:00 a.m. – 1:30 p.m.

Meeting To help the Commission to gain a better understanding of the issues relating to the application, in particular, the perspectives of the ranchers farming the land adjacent to and in the vicinity of the application site, a meeting was held on 11th July 2007 at the Prestige Rocky Mountain Resort and Conference Centre in Cranbrook.

Those in attendance were:

- Monika Marshall Chair, Kootenay Panel
- Carmen Purdy Commissioner
- D. Grant Griffin Commissioner
- Roger Cheetham Staff
- Terra Kaethler Staff
- Bill Tanner Applicant
- Craig McMorran Applicant
- Lance Marcer Applicant
- Bob Marcer Applicant
- Mike Malmberg Consulting Soils Agrologist on behalf the applicant
- Barry Bonton Rancher
- Karen Bonton Rancher
- Dennis Diltz Rancher
- Noreen Phelan Rancher
- Randy Reay Rancher
- Andrew McLeod Regional District of East Kootenay Staff
- Heath Slee Regional District of East Kootenay,
Director – Electoral Area "B"
- Norman Walter Regional District of East Kootenay,
Director – Electoral Area "E"

- Rob Gay Regional District of East Kootenay,
Director – Electoral Area “C”
- Doug Martin Ministry of Environment
- Darrell Smith Ministry of Agriculture and Lands
- Jodie Kekula Ministry of Forests
- Rae Haddow Ministry of Forests

The main points raised at the meeting were:

Impact on agriculture

Off - road vehicular use on Crown lands

Several ranchers spoke to the difficulties caused by these vehicles with regard to ranching activities on their own land and on Crown land. Others pointed out that the lack of any provincial legislation and the lack of enforcement greatly exacerbates the situation. There was general agreement that action needs to be taken to control this activity, such actions to include the education of the public, legislation to control the use and enforcement to ensure that the legislation is observed. Bill Tanner explained that the applicant intends to restrict the use of ATV's in the development but it would not be able to control what people did outside the development. He suggested that the proposed development might not attract many ATV users.

Access

The ranchers emphasized the need to ensure that they have access to water and to Crown land grazing. Concern was expressed with regard to the general effect of development in the area. The area is at present relatively free of development other than a few campgrounds. The introduction of more people will result in more urban/rural conflicts in the areas surrounding the development.

Land use planning

Representatives from the Regional District explained that the Board recently resolved to support the exclusion of the bench portion of the property subject to a bylaw for the property. More recently, it had resolved to approach the provincial government with a request that it restart the land use planning process for the Lake Koochanusa area to provide context and complement a similar land use planning process to be embarked upon by the Regional District. If the application is approved by the Commission it was generally agreed and understood that the property should be subject to a land use bylaw. The representatives from the Regional District suggested that a land use bylaw for the property should only be undertaken in the context of the Lake Koochanusa land use planning process.

Agricultural capability of the subject property

Further information was provided by Mike Malmberg with regard to the agricultural capability of the property and its uniqueness as compared with other surrounding lands. Representatives from the Regional District and some of the ranchers continued to question the agricultural capability assessment. They suggested that most of the irrigated agricultural areas in the region suffer from similar difficulties and the irrigated areas of the subject property were not much different than many other properties in the area. It was suggested that a second soils capability analysis be undertaken, to which the applicants had no objection.

Need for resort development.

Several attendees acknowledged the pressure on the region for resort development and the need for appropriate land use planning processes to determine how that need could be accommodated. Many believed that an approval of this proposal would set a precedent for other development in the region.

Perspective of the ranchers farming in the vicinity of the proposed development

While few ranchers expressed any major concern with regard to the development of the application site, per se, the majority expressed concern about the potential of the development to give rise to negative impacts on their ranching operations in the vicinity of the development. Some emphasized the need to protect all potentially productive agricultural land and several made the point that most of the farmed areas had involved significant efforts to clear rocks. Most were particularly concerned about the development of the bottom, irrigated areas believing them to be no worse than many others that have been farmed in the region. Several mentioned their concern that the approval of this application will create a precedent that will result in increased pressure for the release of more areas with farming potential. All expressed concern about the impact of off-road vehicles and the lack of control over these vehicles. One rancher supported the development believing that the economic activity would benefit the area by creating employment opportunities.

Applicant's response to the discussion

Concern was expressed with regard to the land use planning process for the Lake Koochanusa area now suggested by the Regional District as it was believed the process might not get underway in a reasonable time frame. There was support for a land use bylaw confined to the subject property and there was a willingness to work with the Regional District in this regard. The uniqueness of the irrigated areas of the property from the point of view of its stoniness limitations was emphasized. It was pointed out that the thin veneer of fine surface soil which overlies the glacial river boulder beds makes this site unique and different from almost all farms in East Kootenay.

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.

Commission Discussion

Assessment of Agricultural Capability

The Commission noted the significant comment and disagreement expressed during the consultation process with regard to the agricultural capability of the bottom land and paid careful attention to the information provided in the application with regard to this issue. It noted that according to Mike Malmberg, P.Ag., a combination of features makes these soils very different to those found on almost all other farms in the East Kootenay area. The Commission considered the merits of seeking a second opinion as suggested by a number of persons at the 11th July meeting but considered that given Mr. Malmberg's extensive knowledge and experience there was little reason to doubt his conclusions. The Commission believed little would be served by requiring a second study. With this in mind, the Commission accepted the conclusions of Mr. Malmberg's report - that the soils of the irrigated bottom lands have low capability and limited agricultural potential. The Commission also paid particular attention to the note in Mr. Malmberg's report which states, *"This combination of circumstances place the Marcer property in a very unique situation compared to any other ranch property that I am aware of in the East Kootenays"*.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. Concern was expressed regarding the impact on ranching activities caused by the use of off-road vehicles on the surrounding Crown land. While not falling under its mandate the Commission considered it prudent to convey the difficulties discussed at the 11th July 2007 meeting to the appropriate authorities with a request that action be taken to improve the situation. The Commission considered whether the development of the property as a resort would exacerbate the situation and noted the applicant had indicated that the use of ATV's in the development will be restricted. The Commission considered that an outright ban on the admission of off-road vehicles to the development would not be unreasonable given the potential impact of these vehicles on the ranching activities on surrounding lands, particularly in the absence of any effective measures being in place to control these vehicles. While these measures are likely to significantly reduce the number and hence the impact of off-road vehicles on adjoining ranching operations, there does not appear to be any practical way of ensuring that visitors and residents do not park these vehicles outside the development. The Commission believed it was almost inevitable that some impact would be caused on adjoining ranching operations but the Commission considered that it would be unreasonable for it to withhold approval of the development solely for this reason. The Commission did not consider that the generation of more traffic and people in the area in itself would have a material impact on the farming activities, nor did it consider that the situation relating to the availability of water would be significantly changed. It also noted that the ranchers at the 11th July 2007 meeting did not express any major concern with regard to the proposed development per se.

Planning

While there is clearly a significant demand for resort facilities in this area, in the absence of any land use strategies it was difficult for the Commission to assess the need to locate such facilities in this, as opposed to other, areas.

The Commission was pleased to learn from the meeting on the 11th July that the Regional District intends approaching the provincial government with a view to restarting the Crown land planning process in the area as part of a land use planning exercise undertaken jointly by the Regional District and the Province. This will be very helpful to the Commission in indicating the strength of the demand for this form of development and where it should be located. The Commission spent a considerable time debating whether or not it should table a decision pending the outcome of these important land use planning processes. In assessing the merits of so doing it took note of the following:

- That land use planning processes are generally time consuming. Given the fact that two processes are involved in this case it is unlikely that any plan will be finalized in less than 2 years.
- That the subject property has limited agricultural capability.
- That it should be possible to limit the impacts of the development on the adjoining ranching areas by banning off-road vehicles from the development.
- That the development will be carefully designed and developed in accordance with land use bylaws drawn up between the developer and the Regional District.
- That the Regional District would prefer that a land use plan for the whole Lake Koochanusa area, including the Crown land, be finalized before an approval be granted for this development.

The Commission concluded that, given it was possible to address the other issues raised by the application, it would be unreasonable to defer a decision on the application pending the completion of land use bylaws for the Lake Koochanusa area.

Assessment of Other Factors

The application offers to put into production other land owned by the Marcer family in the Newgate area to the south of the application site. The Commission considered that this offer would help offset the losses to agriculture, albeit limited, resulting from the approval of the application. It noted that few particulars had been provided in the application with regard to these proposed improvements and considered that more details were required and that the improvements needed to provide significant benefits to agriculture.

With regard to the concerns expressed at the 11th July 2007 meeting the Commission did not consider that an approval of this application would set a precedent. All applications are reviewed according to the specific circumstances relating to that application in the context of the Commission's mandate. The Commission noted the somewhat unique circumstances relating to this application, in particular the soil capability ratings for the bottom lands as indicated in Mr. Malmberg's report to the 11th July meeting and was doubtful if similar circumstances existed relative to other properties within the ALR in this region.

Conclusions

The Commission concluded that the property under application has very limited agricultural capability. It was sympathetic to the position taken by the Regional District but on balance and after considerable deliberation it concluded that, subject to the imposition of appropriate conditions to limit the impact of the development on adjoining areas and requiring agricultural improvements to the Newgate property, the application could be approved.

IT WAS

MOVED BY: Commissioner Griffin

SECONDED BY: Commissioner Purdy

THAT the application be approved

AND THAT the approval is subject to the following conditions:

- The preparation and adoption of a land use plan approved by the Commission for the property providing for the development of the property as generally shown in the application for resort and residential development to include the expansion of the RV park, the provision of recreation/country residential on the irrigated bottom lands and country estate residential on the upper bench.
- The entering into of a covenant between the owner of the property and the Commission to prohibit off-road vehicles and trailers designed to carry off-road vehicles from the property.
- The submission of a farm plan for the Newgate property providing for significant agricultural improvements to the satisfaction of the Commission. The plan must include a time table for the implementation of the improvements which shall be completed before any sale of units in the development.

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

CARRIED

Resolution # 366/2007

Commissioner Marshall wished to be recorded as opposed to the decision.