



Agricultural Land Commission
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Reply to the attention of Terra Kaethler
ALC File: Q-37426

December 3, 2007

Peter and Carol Penner
Box 580
Cache Creek, BC V0K1H0

Dear Sir/Madam:

Re: Application to Subdivide land in the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 637/2007 outlining the Commission's decision as it relates to the above noted application.

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

cc: Regional District of Kootenay-Boundary (C-348-02632-180)

Enclosure: Minutes/Sketch Plan

TK/37426d1.doc



A meeting was held by the Provincial Agricultural Land Commission on November 15, 2007 in Vancouver, B.C.

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

For Consideration

Application: # Q- 37426
 Applicant: Peter and Carol Penner
 Proposal: To subdivide the 27 ha subject property to create one (1) lot of approximately 15 ha and one remainder of 12 ha.
 Legal: PID: 004-128-273
 Lot 16, District Lot 348 and 349, Similkameen Division Yale District, Plan 29935
 Location: Ponderosa Drive, Christina Lake

Site Inspection

A site inspection was conducted on July 10, 2007. Those in attendance were:

- Monika Marshall Chair, Kootenay Panel
- Carmen Purdy Commissioner
- D. Grant Griffin Commissioner
- Terra Kaethler Staff
- Peter Penner Applicant

The Commission met with the applicant and discussed the proposal. The Commission noted that the land was partially cleared and mostly flat, with a slight slope on the northern edge of the property. The Commission drove around the property edge to view the sloped area. There were no buildings on the property.

At the on-site meeting, the applicant informed the Commission that a statutory building scheme was registered on the property, restricting the clearing of trees. The Commission asked for a copy of the building scheme to be submitted. The document was received on August 24, 2007.

Upon review of the building scheme, the Commission noted that the following statement under Section B:

2. " No standing live trees shall be removed from the property without the consent of approval of a Committee of lot owners within the subdivision or the approval of the Promoter or its agent. This clause, however, shall be subject to the following provisions:

(d) With the approval of the Committee of the Promoter, the owner may selectively remove trees from an area that the owner wishes to farm".

The Commission asked for the submission of further clarification regarding the status of the above mentioned Committee; and the provision of Section 2(d), which would allow a land owner to remove trees for the purpose of farming upon approval of the Committee. On November 14, 2007, ALC staff discussed the building scheme with a Committee member by phone, and further received written correspondence by email on November 16, 2007.

The Commission reviewed the submitted information and believed it had sufficient information to proceed with a decision.

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.

Discussion

Assessment of Agricultural Capability

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The agricultural capability of the soil of the subject property is rated improvable to 20% Class 3, 30% Class 4, and 50% Class 5 with limitations of stoniness and soil moisture deficiency:

- Class 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.
- Class 4 – Land in this class has limitations that require special management practices or severely restrict the range of crops, or both.
- Class 5 – Land in this class has limitations that restrict its capability to producing perennial forage crops or other specially adapted crops.

Although the Commission recognized that the agricultural capability of the subject property has some limitations, the Commission considered that subdivision of the property would not enhance the agricultural capability of the property or enhance agriculture in the area.

Assessment of Agricultural Suitability

The Commission assessed whether the external factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission does not believe there are external factors that render the land unsuitable for agricultural use.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. In the Commission's view, the parcel has more agricultural value as a single unit than as two separate parcels. In the Commission's experience, the reduction of parcel size is seen to reduce the available options for agricultural use. The Commission believed that subdivision would negatively impact the agricultural opportunities available to the subject property in the long-term.

Further, the Commission believed that subdivision of the subject parcel would encourage further parcelization of properties within agricultural areas and may impact existing or potential agricultural use of surrounding lands.

Assessment of Other Factors

In regards to the registered building scheme on the property, the Commission noted that the building scheme does restrict the clearing of trees. However, the building scheme suggests that with the approval of the Committee, the owner of the property would be allowed to clear the land for the purpose of farming. The Commission did not believe that the building scheme was a significant barrier for the owner and therefore it was not considered sufficient to warrant subdivision of the property.

Further, please be advised that Section 22(2) of the *Agricultural Land Commission Act* states that:

A covenant that prohibits the use of agricultural land for farm purposes has no effect until approved by the Commission.

The Commission has concerns that the registered building scheme could result in the prohibition of agriculture at the discretion of the Committee. As the building scheme was registered in 1979, after the ALR was created, the Commission intends to review the document to determine if it is consistent with the *Agricultural Land Commission Act (ALCA)*.

Conclusions

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land is suitable for agriculture.
3. That the proposal will impact agriculture.
4. That the registered building scheme restricting the clearance of trees does not in itself warrant subdivision and may in any event be found to be contrary to the regulations of the *ALCA*.

IT WAS

MOVED BY: Commissioner Marshall

SECONDED BY: Commissioner Purdy

THAT the application be refused.

CARRIED

Resolution # 637/2007