



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

2nd November, 2010

Reply to the attention of Roger Cheetham
ALC File: 37947

Lower Kootenay Band
830 Simon Road
Creston, BC
V0B 4K6
Att. Joe Pierre

Dear Mr. Pierre:

Re: Application for Exclude land from the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 2532/2010 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.

Other approvals may be necessary. Prior to proceeding, the Commission suggests you contact your Local Government.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Brian Underhill', is written over the printed name.

Brian Underhill, Executive Director

Enclosure: Minutes/Draft Covenant

cc: Integrated Land Management Bureau, 1902 Theatre Road, Cranbrook, BC
V1C7G1 (11000-04L)
Indian and Northern Affairs Canada, 600-1138 Melville Street, Vancouver, B.C.,
V6E 4S3
Regional District of Central Kootenay (A0731B-06631-000)

rc/
/37947d2

- The subject properties are adjacent to the Band's existing community facilities and residential development and accordingly there are strong locational advantages to the Band in developing the subject properties.
- The Professional Agrologist's report indicates that the soils have capability ratings ranging from Class 3 through to Class 6, the bulk (77.5%) comprising Classes 3 and 4 with undesirable soil structure and topography limitations.
- The Band is seeking land that will be adequate to cater for its long term needs, it being estimated that 30 – 40 residential units will be required over the next 40 - 50 years.
- The Band recognizes that it will be some time before all of the subject property is required for housing development and it is willing to develop the areas of the property not needed in the short term for such purposes for agriculture until required for residential purposes.
- At present the Band leases its land to 5 farmers who mainly grow timothy and cereal crops. It is working with the Creston Valley Development Authority with a view to increasing the agricultural productivity of its lands by growing other crops including fruit trees and berries. It is also considering the possibility of building a processing plant. It would be willing to agree to an agricultural covenant being placed over some of its agricultural lands at least equal in area to that excluded from the ALR.
- The Band has the capacity to pump water to increase the water supply to Lister for irrigation and fire protection and is willing to work with an appropriate organization to explore this option.

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

The Commission noted that the agricultural capability assessment prepared by T.J. Ross dated November 2009 confirms that the subject property has good agricultural capability with 21.4 ha (77.5%) of the soils being rated as Class 3 and 4 and the remaining 6.2 ha. as Class 5 and 6. However, in the light of the points raised at the meeting and in the application documents, the Commission also recognized that the arguments in support of the development of the subject property by the Lower Kootenay

Band for residential purposes are strong. It accepted that few other options appear to be available and that, rather than use the Band's other land, which is being used at present for agriculture and had higher agricultural potential, it was preferable that the subject property be developed for residential purposes. The Commission noted that the long term housing needs of the Band are difficult to predict. Further, while it appeared possible for the new development to achieve a greater density of development than that achieved in the existing development it was difficult to determine how much land might be needed to cater for long term needs. The Commission concluded in view of this difficulty that it was preferable for it to agree to the exclusion of the entire subject property rather than a portion, as envisaged in its previous decision, provided that the Band commits to the development of the bulk of the property for agriculture until there is a need for it to be used for residential development.

The Commission was also interested to learn that the Band has the capability of pumping water to the Lister area and noted that this could help alleviate the water shortages in this area, thereby providing a benefit for agriculture.

Finally the Commission noted that the Band is endeavoring to diversify and increase agricultural production on its lands and that it was willing to accept an agricultural covenant for a portion of the Band's land equal to that excluded from the reserve.

IT WAS

MOVED BY: Commissioner B. Minor
SECONDED BY: Commissioner J. Thibeault

THAT the previous decision under Resolution Number 619/2008 be rescinded and that the application to exclude 27.6 ha of land from the Agricultural Land Reserve be approved subject to the following conditions:

- Receipt of commitments from the Lower Kootenay Band, acceptable to the Commission, to prepare a development plan for the property providing for the agricultural development of the areas not required for the first phase (first 10 years) of residential development. The plan is to be developed in conjunction with an agricultural organization or consultant acceptable to the Commission.
- The entering into by the Band of a restrictive covenant to be held by the Commission requiring that at least 30 ha of Band owned land be used for agricultural purposes.

AND THAT the applicant be advised of the provisions of Section 33 of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration.

- S.33 (1) *On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that*
- (a) *evidence not available at the time of the original decision has become available,*
 - (b) *all or part of the original decision was based on evidence that was in error or was false.*
- (2) *The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the*

reconsideration.

AND THAT the applicant be advised that a revised proposal does not constitute new information and will not be considered as a basis for reconsideration and the time limit for submitting a request for reconsideration is one (1) year from the date of the decision letter.

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government. This includes zoning, subdivision, or other land use bylaws, and decisions of any authorities that have jurisdiction under an enactment.

CARRIED
Resolution # 2532/2010

LAND TITLE ACT
FORM C
 (Section 219)
Province of
British Columbia
GENERAL DOCUMENT

RESTRICT USE
 Page 1 of 9

(This area for Land Title Office use)

1. APPLICANT: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*
 (PID) (LEGAL DESCRIPTION)
 See schedule

3. NATURE OF INTEREST:* DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Restrictive Covenant Pursuant to s.22 Of the <u>Agricultural Land Commission Act</u>		Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms	<u> </u>	D.F. No.
(b) Express Charge Terms	<u> X </u>	Annexed as Part 2
(c) Release	<u> </u>	There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

6. TRANSFEREE(S): *name(s), occupation(s), postal address(es), postal code(s)

Provincial Agricultural Land Commission, a corporation created by an act of the legislature of the Province of British Columbia, having an office at 133-4940 Canada Way, Burnaby, British Columbia, V5G 4K6.

7. ADDITIONAL OR MODIFIED TERMS:*

8. EXECUTION(S):**This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date	Party(ies) Signature(s)
	Y M D	

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**FORM D
EXECUTIONS CONTINUED**

OFFICER SIGNATURE(S)	EXECUTION DATE (Y/M/D)	PART(IES) SIGNATURE(S) Provincial Agricultural Land Commission
<hr/> Solicitor/Notary Public		<hr/> (signature)
		<hr/> (name)
		<hr/> (signature)
		<hr/> (name)

OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**FORM E
SCHEDULE**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:

(PARCEL IDENTIFIER)	(LEGAL DESCRIPTION)
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TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor is the registered and beneficial owner of certain lands and premises set forth in the schedule attached hereto as Form E (the "Lands");
- B. All of part of the Lands consist of agricultural land situated in the Agricultural Land Reserve of the _____ ("Regional District") and are subject to the provisions of the Agricultural Land Commission Act (the "Act") and the Regulations thereto;
- C. The Transferor wishes to subdivide the Lands by depositing in the Land Title Office a subdivision plan (the "Subdivision Plan"), a true copy of which is attached hereto as the second schedule;
(Delete as required)
- D. The Transferor has applied to, or caused an application to be made to the Transferee for authorization to deposit the Subdivision Plan; *(Delete as required)*
- E. The Transferee is empowered to authorize the deposit of the Subdivision Plan and to impose terms it considers advisable pursuant to the Act and Regulations thereto; and
(Delete as required)
- F. The Transferee, by execution of this indenture, has authorized the Registrar of Titles to accept the deposit of the Subdivision Plan in the Land Title Office at _____, British Columbia, upon terms and conditions considered advisable by the Transferee and which are set out below, and the Transferor and the Mortgagee have agreed below to the imposition of these terms and conditions and to the execution and registration of this Indenture:
(Delete reference to mortgagee if not applicable).

THEREFORE in consideration of the premises and of the sum of one dollar (\$1.00) of lawful money of Canada, now paid by the Transferee to the Transferor and the Mortgagee, the receipt of which is hereby acknowledged, and other good and valuable consideration the parties covenant and agree as follows:

(Delete reference to mortgagee if not applicable).

1. In this Indenture the following definitions shall apply where the context allows:

- (a) "enactment" means an enactment as defined in the Interpretation Act of Canada and an enactment as defined in the Interpretation Act of British Columbia;
- (b) "transfer" includes a conveyance, a grant, an assignment and a grant of a leasehold interest;
- (c) "transferee" includes a grantee, an assignee and a lessee.

2. The Transferor shall _____

_____ whatsoever on:

(i) the Lands;

(ii) that part of the Lands [being Lot(s) _____, Plan _____] shown hatched on the Subdivision Plan attached hereto as the second schedule.

(Strike out & initial whichever of (i) or (ii) is applicable)

3. The covenants in this Indenture shall be covenants running with the Lands and shall be binding on the successors in title and assignees of the Lands.

4. None of the covenants herein shall be personal or binding upon the Transferor, save and except during the Transferor's seisin or ownership of any interest in the Lands.

5. The Transferor covenants with the Transferee that the Transferor has done no acts to charge or encumber the Lands, save the charges or encumbrances set forth in the first schedule attached thereto.

6. The Lands shall remain in the Agricultural Land Reserve of the Regional District and remain subject to the provisions of the Act and the Regulations thereto.

7. The Mortgagee as mortgagee of the Lands by virtue of the Mortgage registered in the Land Title Office aforesaid on _____ under number _____ (the "Mortgage") joins herein for the purpose of consenting to the covenants given by the Transferor to the Transferee, and further the Mortgagee hereby grants to the Transferee, in respect of this Indenture and such covenants, priority over the interests of the Mortgagee in the Lands by virtue of the Mortgage and hereby postpones the Mortgage and all the Mortgagee's right, title and interest thereunder in and to the Lands with the intent that the interests of the Mortgagee in the Lands shall be wholly subject to the rights and interests of the Transferee under this Indenture to the same effect and extent as if this Indenture had been dated, executed, delivered and registered before the Mortgage. *(Delete if not applicable)*

8. The Transferee hereby authorizes the Registrar of Titles to accept an application for deposit of the Subdivision Plan.

9. The authorization given by the Transferee to the Registrar of Titles to accept an application for deposit of the Subdivision Plan shall in no way relieve the Transferor, his successors in title and assigns of the Lands, or any user or occupier thereof, from complying fully with any law or enactment or the decisions, directions, rulings or orders of the Transferee or of any other body, commission, tribunal or authority whatsoever which may apply to the Lands.
(Delete as required)

10. The Transferor and the Mortgagee will, upon the request of the Transferee, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, documents, and assurances whatsoever as may be necessary or desirable for the better and more perfect and absolute performance of the grants, covenants, provisos and agreements herein. *(Delete if not applicable)*.

11. This Indenture shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.

12. Words importing the male gender include the female gender and either includes the neuter and vice versa and words importing the singular number include the plural number and vice versa.

First Schedule

Charges Against Lands

This is the first schedule to a certain Indenture dated for reference the _____ day of _____, 20____, made between _____ and the Agricultural Land Commission and _____ as "Mortgagee". (*Delete reference to mortgagee if not applicable*)

(Insert Charges Against Lands)

Second Schedule

Subdivision Plan

This is the second schedule to a certain Indenture dated for reference the _____ day of _____, 20____, made between _____ and the Agricultural Land Commission and _____ as "Mortgagee". (*Delete reference to mortgagee if not applicable*)

(Insert Charges Against Lands)

END OF DOCUMENT