



Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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April 19, 2010

Reply to the attention of Brandy Ridout
ALC File 50145

Bill Coates
Okanagan Development Consultants Inc.
17007 Garnet Valley Road
Summerland, BC V0H 1Z3

Dear Mr. Coates:

Re: Request for Reconsideration

This is further to your agency's letter of November 18, 2009 in which the Provincial Agricultural Land Commission was requested to reconsider Resolution #944/2009.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #2413/2010 outlining its latest decision. As agent, it is your responsibility to notify your clients accordingly.

Please send two (2) paper prints of the final survey plans to this office. When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the plan. It will also confirm for the Registrar the area excluded from the ALR.

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 purple ink, appearing to read 'Erik', is written over the 'Per:' label.

Erik Karlsen, Chair

cc: District of Summerland (Johann and Erken Sessler)

Enclosure: Minutes

BR/
50145d2



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on March 16, 2010 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Gerry Zimmermann	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

For Consideration

A letter from Okanagan Development Consultants was received requesting that the Commission reconsider its decision recorded as Resolution #944/2009 on the grounds that the policies of the District of Summerland prohibit non-farm residential development within the ALR. Therefore, a subdivision within the ALR could not be approved under current regulations of the District of Summerland (i.e. with the land in the ALR). The applicants would be willing to enter into a restrictive covenant to deal with the concerns expressed by the Commission with respect to exclusion.

Application:	50145
Applicant:	Johann & Erken Sessler
Agent:	Bill Coates, Okanagan Development Consultants
Legal:	PID: 012-633-763 Lot 29 District Lot 454 Osoyoos Division Yale District Plan 160
Location:	18618 Whitfield Road, Summerland
Proposal:	To exclude a 1.3 ha portion of the 4 ha subject property.
Decision	Refused as proposed on the grounds that the Commission did not wish to see uncontrolled residential development adjacent to the agricultural remainder. However, the Commission would approve the subdivision of the 1.3 ha area from the 4 ha subject property on the grounds that would not have a negative impact on the remaining farm or surrounding agricultural operations.
Resolution	944/2009
Reconsideration	To allow the exclusion of the 1.3 ha portion of the property from the ALR with the registration of a covenant on its title limiting its residential development.

Site Inspection

A site inspection was not conducted for the application or the reconsideration.

Context

The proposal was considered under Section 33 of the Agricultural Land Commission Act (the "Act") which states:

S33(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, or
- (c) a recommendation by a facilitator under section 13 relating to a dispute warrants a reconsideration of the original decision.

The Commission believed that the applicant had provided evidence that was not available at the time of the original decision and so reconsidered the application.

Discussion

The Commission considered its discussion when considering the initial exclusion request. At that time, it was believed that the exclusion of the 1.3 ha portion of the property could have a negative impact on the remainder of the property and adjoining ALR lands to the south as the area would no longer be limited in its development by agricultural concerns. The Commission did not wish to see the proliferation of small residential lots close to agricultural land. Although the applicants indicated that there would be no conflict between the proposed exclusion area and the surrounding ALR as the 1.3 ha area is situated along a belt of rough, steep, rocky land that continues into the property to the south and is 60 feet higher than adjacent properties to the north, east, and west, the Commission was concerned with having a non-ALR area in the middle of an ALR area.

As the applicants indicated a willingness to register a covenant on title of the 1.3 ha area limiting its residential development, the Commission believed its concerns over residential density in the area could be alleviated. It would require that the covenant restrict the number of residential dwellings on the 1.3 ha excluded area to one.

IT WAS

MOVED BY: Commissioner Mayer
SECONDED BY: Commissioner Zimmermann

THAT for the purposes of Section 33(2) of the *Agricultural Land Commission Act*, there are no persons it considers affected by the reconsideration.

AND THAT the request to exclude the 1.3 ha area and register a covenant on its title limiting its residential development be approved subject to the following conditions:

- The restrictive covenant registered on the title of the 1.3 ha area limit the number of residential dwellings to one.
- The subdivision be in substantial compliance with the plan submitted with the original application.
- The subdivision be completed within three (3) years from the date of this decision.

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 #2413/2010