



**Agricultural Land Commission**  
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Burnaby, British Columbia V5G 4K6  
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January 5, 2011

Reply to the attention of Martin Collins  
ALC File 50160

Tom Smithwick  
Porter Ramsay LLP  
#200 - 1465 Ellis St.  
Kelowna, B.C.  
V1Y 2A3

Dear Sir:

**Re: Request for Reconsideration**

**Your File: 67231-1-44**

This is further to your letter of October 8<sup>th</sup>, 2010 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #1052/2009.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #2/2011 outlining its latest decision. As agent it is your responsibility to contact the landowner(s).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Brian Underhill', is written over a white background.

Brian Underhill, Executive Director

cc: District of West Kelowna

Enclosure: Minutes

MC/d2



A meeting was held by the Provincial Agricultural Land Commission on November 23, 2010.

<b>PRESENT:</b>	Roger Mayer	Chair
	Sylvia Pranger	Commissioner
	Martin Collins	Staff
	Brandy Ridout	Staff

**For Consideration**

An October 8, 2010 letter from Tom Smithwick of Porter Ramsay LLP was received requesting that the Commission reconsider its decision to refuse the exclusion and strata titling of the 0.2 ha property as recorded by Resolution #1052/2009. The Smithwick letter references a Catherine Orban (P. Ag) report dated October 7, 2010 which provides information about the agricultural potential of the subject property and assesses the potential impacts of exclusion.

Application:	50160
Applicant:	Ed Chu and Scot Adams
Agent:	Marni Adams/ Tom Smithwick
Original proposal:	To exclude the 0.2 ha lot from the ALR
Original decision:	Refuse as proposed
Current proposal:	To exclude the 0.2 ha lot from the ALR
Legal:	PID 027-278-026 Lot A, DL 486, ODYD, Plan KAP85189
Location:	3555 Paynter Road

**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.

**Commissioner Eligible to Vote**

Commissioner S. Pranger was not present at the original decision. It was confirmed that a summary of the file material was provided thus establishing the Commissioner's eligibility to vote on the application.

**Discussion**

The Commission considered Catherine Orban's arguments provided in favour of exclusion, concurring that the land had limited potential for agriculture due to its small size and long standing residential uses. That being said, the Commission did not concur with Catherine Orban's assessment that the potential owners of a strata will be more compatible neighbours to agriculture than renters. It is the Commission's experience that home ownership and investment results in aspirations to ensure that adjoining land uses are compatible with the quiet enjoyment of, and maintain the highest potential value of, a property. While it is likely that owners will be more likely to improve and maintain a property, it does not necessarily follow that they will be flexible and reasonable about offensive noises and smells of adjoining farm activity. In contrast resident renters may complain less, or find it easier to move if they find the conditions difficult or intolerable since they are not owners.

In some circumstances complaints about noises and smells or normal farm activities can result in the curtailment or cessation of agricultural activity and increase pressures to convert farmland to residential uses. In view of this, the Commission does not wish to increase the number of resident landowners in this farm area.

While the current adjoining farm activity ( a vineyard) is relatively compatible with residential uses, it is possible that farming activity could change to something is offensive to residents, due to noise or smells.

The Commission is also concerned that exclusion may result in the redevelopment of the residences, increasing potential negative impacts on surrounding farmland.

**IT WAS**

**MOVED BY:** Commissioner R. Mayer  
**SECONDED BY:** Commissioner S. Pranger

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 the exclude the 0.2 ha lot be refused.

As it has now been over a year since the Commission's original decision the Commission considers this application to be closed. Any further proposals involving the subject property must be made by way of a new application.

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 # 2/2011**