



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

November 1, 2013

ALC File: # 52665

Donald and Sheila Siebert
5955 Postill Lake Road
RR #2, S. 114A, C. H5
Kelowna, BC
V1Y 7R1

Dear Sir/Madam:

Re: Application for the Deposit of Fill in the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 308/2013 as it relates to the above noted application.

Other approvals may be necessary. Prior to proceeding, the Commission suggests you contact the Regional District of Central Okanagan.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in blue ink, appearing to read 'Brian Underhill', is written over a horizontal line.

Brian Underhill, Executive Director

Enclosure: Minutes of Resolution #308/2013

cc: Regional District of Central Okanagan (File: A-12-01)



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on October 2, 2013 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C. as it relates to the Request for Reconsideration of Application #52665.

COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Sylvia Pranger	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner

COMMISSION STAFF PRESENT:

Ron Wallace	Land Use Planner
Brian Underhill	Executive Director

BASIS FOR RECONSIDERATION

The Commission advised in its initial decision by Resolution #242/2012 that to further advance the proposed filling project, more information would be required to assess its potential agricultural benefits, and mitigate its potential negative impacts (such as weed and erosion control) on surrounding and nearby ALR parcels. The Commission advised that although it refused the application at the time, it was prepared to reconsider the application upon receipt of the following:

- An agrologist report prepared by a soils specialist which clarifies what, if any, agricultural benefits will result from the fill project, and
- Confirmation that the Regional District's concerns about slope stability and weed control are addressed.

In response to the Commission's decision, a site specific report was prepared by Golder Associates entitled '*Agricultural and Geotechnical Assessment*', dated June 24, 2013 (hereafter referred to as the "P.Ag. Report").

A letter dated July 22, 2013 was received from the Regional District of Central Okanagan indicating that it had reviewed the P.Ag. Report and concurs with its recommendations.

Owner:	Donald and Sheila Siebert
Original Proposal:	(Submitted pursuant to section 20(3) of the <i>Agricultural Land Commission Act</i>) To approve the proposed placement and the unauthorized placement of an unspecified amount of fill on a 0.8 ha portion of the subject property in order to improve the land for agriculture. A significant amount of fill has already been deposited on the property.
Original Decision:	Refused as proposed. The Commission indicated that it might be prepared to review additional information describing the agricultural benefits of the project, provided the information was submitted by a soils agrologist, and if confirmation is provided that the Regional District's concerns about slope stability and weed control are addressed. It was suggested that a single report might address all of these concerns.

Current Request: To review the P.Ag. Report and comments from the Regional District of Central Okanagan regarding recommendations for improving the proposed site for agricultural use.
Legal: PID: 016-120-035
Location: Lot A District Lot 1 Osoyoos Division Yale District Plan 43192
5955 Postill Lake Road, Kelowna

LEGISLATIVE CONTEXT FOR COMMISSION RECONSIDERATION

Section 33 (Reconsideration of decisions) of the *Agricultural Land Commission Act* states:

- 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.
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DECISION REGARDING THE REQUEST FOR RECONSIDERATION

The Commission believes the submission of the P.Ag. Report and the comments from the Regional District (i.e., letter dated July 22, 2013) constitute sufficient new information that was not available at the time of the previous decision.

As a result, it was moved by Commissioner Pranger and seconded by Commissioner Dyson that there were no persons affected by the reconsideration and that the Commission reconsider Resolution # 242/2012. The motion was carried unanimously.

COMMISSION CONSIDERATION

After considering the new information the Commission concluded as follows:

1. The Commission considered the P.Ag. Report received regarding the subject property. In addition, the Commission considered the comments and recommendations from the Regional District of Central Okanagan as outlined in the July 22, 2013 letter.

Conclusion:

The Commission supports the procedures and recommendations as outlined in this report for reclamation of the subject property for improved agricultural use. The Commission also generally supports the comments and recommendations from the RDCO with the exception of registering a Section 219 covenant with the ALC and the land owner on title of the subject property to ensure compliance with the "Report recommendations for reclamation to agricultural use and for slope remediation". The Commission believes that full reclamation of the subject property can be achieved via the conditions outlined below.

IT WAS

MOVED BY: Commissioner Pranger
SECONDED BY: Commissioner Dyson

THAT the application be approved.

AND THAT the approval is subject to the following conditions:

1. That the proposed fill material and slope remediation plan must be in substantial compliance with the P.Ag Report submitted with the application;
2. Filling and associated activities must be restricted to the area(s) designated in the P.Ag. Report submitted with the application;
3. Fill material must be of a good agricultural quality and be free of contaminates;
4. The project area must be reclaimed in an appropriate manner consistent with the P.Ag. Report submitted with the application;
5. That weed management be undertaken in accordance with the recommendations of the P.Ag. Report and that prior to any herbicide use, the land owner obtain advice from the local Ministry of Agriculture office on weed management, herbicide use, and environmental protection;
6. No soil material will be removed from the subject property;
7. That permission be obtained by FortisBC prior to any grading activities on the Statutory Right of Way;
8. The submission of a closure report prepared by a Qualified Professional upon completion of the project, and;
9. The posting of a financial security in the form of an Irrevocable Letter of Credit (the "ILOC") with the Commission, the amount of the ILOC should be submitted by a Qualified Professional and approved by the Commission prior to proceeding with any aspect of the fill deposition. The security is required to ensure compliance with the terms and conditions of this approval and to provide funds to reclaim the land in the event the applicant does not fulfill their obligations as set forth herein.

AND THAT approval to deposit soil on the subject property is granted for the sole benefit of the applicant and is non-transferable.

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 #308/2013