



Agricultural Land Commission
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www.alc.gov.bc.ca

February 26, 2013

ALC File: #52944

Reed Pope, LLP
200 – 848 Courtenay Street
Victoria, BC V8W 1C4

Attention: Mark Rappaport

Dear Mr. Rappaport:

Re: Application to Subdivide Land in the Agricultural Land Reserve (ALR)

Please find attached the Minutes of Resolution #16/2013 as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

The Commission draws your attention to Section 33(1) of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration based on specific criteria.

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.

A revised proposal does not constitute new evidence and as such is not a basis for reconsideration. The time limit for submitting a request for reconsideration is one (1) year from the date of this letter.

Further correspondence with respect to this application is to be directed to Liz Sutton.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Liz Sutton', is written over a light blue horizontal line.

Brian Underhill, Executive Director

Enclosures: Minutes of Resolution #16/2013

cc: Islands Trust (SA-ALR-2012.1 (Sewell))

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MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on January 22, 2013 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C. as it relates to Application #52944.

COMMISSION MEMBERS PRESENT:

Gordon Gillette	Vice-Chair (Acting Chair)
Jennifer Dyson	Vice-Chair
Sylvia Pranger	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner
Jerry Thibeault	Commissioner
Lucille Dempsey	Commissioner
Denise Dowswell	Commissioner
Jim Collins	Commissioner

COMMISSION STAFF PRESENT:

Liz Sutton	Land Use Planner
Colin Fry	Executive Director

PROPOSAL: To subdivide the 4.2 ha parcel into a 0.7 ha lot and a 3.5 ha remainder.
(Submitted pursuant to section 21(2) of the *Agricultural Land Commission Act*)

PROPERTY INFORMATION:

Owner: Allen and Gayle Sewell

Legal: PID: 000-355-445

That Part of the North ½ of Section 18, Saturna Island, Cowichan District, As Shown Outlined In Red On Plan 749R, Except Parts In Plans 16929, 24256, 37639, 49442, VIP53810 and VIP63614

Location: Saturna Island

Size: 4.2 ha (3.7 ha ALR)

LEGISLATIVE CONTEXT FOR COMMISSION CONSIDERATION

Section 6 (Purposes of the commission) of the *Agricultural Land Commission Act* states:

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest; and

- (c) 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.

COMMISSION CONSIDERATION

After considering the information the Commission concluded as follows:

1. The Commission notes that there are two previous ALC applications on the property. In 1991, the Commission approved the exclusion of 0.4 ha of the northern portion of the subject property to facilitate the subdivision and sale of a small lot (Resolution #670/1991). In 2005, the Commission approved inclusion of a 2.2 ha portion of the subject property into the ALR (Resolution #382/2005). A portion of the area included under Resolution #382/2005 is now currently under application for subdivision.

Within the inclusion application, the applicants stated that they wished to include the remainder of the subject property into the ALR as the non-ALR portion was currently being used for grazing and that by including the area it will “reinforce chances of a small family farm to continue, as it will discourage further building on this property”. In addition, shortly before making application to the ALC for inclusion, the applicants placed a Section 219 covenant on the subject property to restrict further subdivision.

Conclusion:

The proposal is inconsistent with Resolution #382/2005.

2. The Commission noted the applicant referred to section 946 of the *Local Government Act* (LGA) as a factor in support of the request to subdivide the subject property. Section 2 of the *Agricultural Land Commission Act* (ALCA) establishes primacy of the ALCA over other legislation. More specifically:

- 2(1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the *Interpretation Act*, the *Environment and Land Use Act* and the *Environmental Management Act* and as provided in this Act.

The LGA is subordinate to the ALCA and as such section 946 in no way compels the ALC to approve a subdivision involving ALR land. The ALC recognizes section 946 as a tool available to local government to accommodate a subdivision for a relative where the proposed lot is smaller than the minimum lot size specified in a zoning bylaw. If a subdivision for a relative involves land in the ALR, the local government can only use section 946 if an ALR application for subdivision has first been approved by the ALC. The ALC’s consideration of subdivision proposals will be done in accordance with the purposes of the ALCA provided in section 6.

Conclusion:

The consideration of Section 946 of the LGA in support of the subdivision proposal is inconsistent with the purposes of the ALC.

IT WAS
MOVED BY: Commissioner Miles
SECONDED BY: Commissioner Pranger

THAT the proposal to subdivide the 4.2 ha parcel into a 0.7 ha lot and a 3.5 ha remainder be refused.

CARRIED
Resolution #16/2013