



Agricultural Land Commission
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July 25, 2016

ALC File: 53790

William and Joanne Bakker
2792 Panell Road
Duncan BC, V9L 6N3

Dear Mr. and Mrs. Bakker:

Re: Reconsideration of original application to Subdivide Land in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #273/2016) as it relates to the above noted application. A sketch plan depicting the decision has been attached.

Your attention is drawn to s. 33(1) of the *Agricultural Land Commission Act (ALCA)* which provides a person affected the opportunity to submit a request for reconsideration.

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.

Please note that pursuant to s. 33.1 of the *ALCA*, the Chair may direct the executive committee to reconsider this panel decision if, within 60 days from the date of this decision, he considers that the decision may not fulfill the purposes of the commission as set out in s. 6 of the *ALCA* or does not adequately take into account the considerations set out in s. 4.3 of the *ALCA*. I can advise you that in this case, the Chair has already reviewed the decision and has instructed me to communicate to you that he does not intend to exercise that authority in this case.

Further correspondence with respect to this application is to be directed to Liz Sutton at Elizabeth.Sutton@gov.bc.ca).

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosure: Reasons for Decision (Resolution #273/2016)
Sketch plan

cc: Cowichan Valley Regional District (File: 1-B-ALR)

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AGRICULTURAL LAND COMMISSION FILE 53790

**RECONSIDERATION OF PANEL DECISION
REASONS FOR DECISION OF THE ISLAND PANEL**

Application was submitted pursuant to s. 21(2) of the *Agricultural Land Commission Act*

Request for Reconsideration submitted pursuant to s. 33 of the *Agricultural Land Commission Act*

Applicants:

**William Bakker
Joanne Bakker
(the “Applicants”)**

Application before the Island Regional Panel:

**Jennifer Dyson, Panel Chair
Honey Forbes
Clarke Gourlay**



THE APPLICATION

[1] The legal description of the property involved in the application is:

Parcel Identifier: 000-230-774

Lot 4, District Lot 23, Helmcken District, Plan 33208

(the "Property")

[2] The Property is 4.0 ha in area of which, 2.1 ha is within the ALR.

[3] The Property has the civic address 2792 Pannell Road, Duncan.

[4] The Property is located partially within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Property is located within Zone 1 as defined in subsection 4.2 of the *ALCA*.

[6] Pursuant to s. 21(2) of the *ALCA*, the Applicants are applying to subdivide the 4.0 ha lot into an approximate 2.1 ha parcel within the ALR and a 1.8 ha parcel partially within the ALR which would be accessed by a panhandle through the ALR (the "Application").

[7] By Resolution #121/2015, dated May 13, 2015, the Island Panel refused the Proposal (the "Original Decision"). In reaching its decision, the Island Panel concluded:

There are currently two dwellings on the Property. The Panel does not find that there is justification to create a panhandle and subdivide the Property in order to provide another residence when there are already two residences on the Property.

While the Panel understands that there are areas of the proposed ALR lot with low agricultural capability, the Panel is concerned with creating a smaller lot and losing additional agriculturally capable lands for the siting of a proposed house and residential infrastructure.



[8] On January 25, 2016, the Agricultural Land Commission (the “Commission”) received the Applicant’s *Request for Reconsideration* of Resolution #121/2015.

RELEVANT STATUTORY PROVISIONS

[9] The reconsideration request was submitted pursuant to s. 33 of the *ALCA* which 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.

[10] The purposes of the commission set out in s. 6 of the *ALCA* are as follows:

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.

DELEGATION TO EXECUTIVE COMMITTEE

[11] On October 29, 2014, the Agricultural Land Commission met and by Resolution #029N/2014 decided to delegate certain reconsideration requests to the Executive Committee. The following is an excerpt from the resolution:

- A. The Agricultural Land Commission (the Commission) may, pursuant to s. 10(3) of the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36, as amended (*ALCA*), delegate any of the Commission's functions to the Executive Committee.

- B. The Executive Committee is a standing committee of the Commission established under s. 10(1) of the *ALCA*, consisting of the Commission Chair and Vice Chairs.

- C. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to decide under s. 33 whether to reconsider an application decision made by a regional panel (following which, if the decision is to reconsider, the Commission Chair must under s. 11.1(3) of the *ALCA* refer the matter to the regional panel who made the decision).

- D. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to:
 - (a) decide under s. 33 whether to reconsider a decision made prior to September 5, 2014 (transitional application); and

 - (b) if the decision is to reconsider, decide under s. 33 to confirm, reverse or vary a decision with respect to a transitional application, on the grounds that such reconsiderations are not subject to referral to a regional panel under s. 11.1(3) of the *ALCA*.

[12] A meeting of the Executive Committee (the "Executive Committee") of the Commission was held on February 24, 2016 as it relates to the *Request for Reconsideration of Application 53790*. All members of the Executive Committee were in attendance.

[13] As per paragraph 11(C) above, the Executive Committee considered the *Request for Reconsideration* pursuant to s. 33(1) of the *ALCA* and determined that the submission contains evidence that was not available at the time of the Original Decision, and the



information would have been germane to the review of the Application by the Island Panel.

[14] The Executive Committee concluded that the *Request for Reconsideration* meets the requirements for reconsideration pursuant to s. 33(1) of the *ALCA* and the request is therefore granted.

[15] Pursuant to s. 33(2) of the *ALCA*, the Executive Committee did not consider that there were any persons affected by the reconsideration.

[16] In accordance with s. 11.1(3) of the *ALCA*, the Chair of the Commission referred the *Request for Reconsideration* of the Original Decision to the Island Panel.

EVIDENTIARY RECORD BEFORE THE PANEL

[17] The Panel considered the following evidence:

1. All the documents contained in the Application file from July 21, 2014, being the date the Application was received by the Commission, to the date of Resolution #121/2015;
2. The Commission's decision recorded as Resolution #121/2015 and dated May 13, 2015; and
3. The Applicants' request for reconsideration dated January 25, 2016.

All documentation noted herein has been disclosed to the applicant in advance of this decision.

FINDINGS

[18] The Applicants provided the following rationale for the revised subdivision proposal:

We are proposing a request that A.L.R. boundary be adjusted in order to avoid the property line going through the main dwelling.

We would like to adjust the line so that it goes behind the main dwelling. This would create the main dwelling to be on the A.L.R. portion of the property.

With this adjustment we would be able to keep 2.1 ha. in the A.L.R. and not do any changes to the A.L.R. land.

Our daughter would be able to live in the main dwelling. This would cause no need to build a new dwelling thus not using any land for a new build.

We would be able to use the existing driveway to access the non-A.L.R. portion of the property and adjust the size of the A.L.R. to accommodate that.

[19] The Panel was amenable to the revised subdivision proposal as it would now place the existing main dwelling on the proposed northern lot and would not require a new area for a residence to be built on that lot.

DECISION

[20] For the reasons given above, the Panel approves the revised Proposal to subdivide the Property in accordance with the sketch plan provided with this decision.

[21] The Proposal is approved subject to the following conditions:

- a. Proposed Lot 1 is accessed via an easement over the panhandle which contains the driveway to Lot 2 to avoid construction of a second driveway to access the dwelling on Lot 1;
- b. the preparation of a subdivision plan to delineate the area to be subdivided per the drawing submitted with the application;
- c. the subdivision be in substantial compliance with the plan submitted with the application; and

d. the subdivision plan must be completed within three (3) years from the date of this decision.

[22] Panel Chair Jennifer Dyson, concurs with the decision.
Commissioner Honey Forbes, concurs with the decision.
Commissioner Clarke Gourlay, concurs with the decision.

[23] Decision recorded as Resolution #273/2016.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #273/2016. The decision is effective upon release.



Colin J. Fry, Director of Policy and Planning

July 25, 2016

Date Released