



August 8, 2016

**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

ALC File: 54285

Peter and Lisa Demski  
9385 Granby Road  
Grand Forks, BC V0H 1H0

Dear Mr. and Mrs. Demski:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #300/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached.

Please send two (2) copies of the final survey plan 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.

Please note that pursuant to s. 33.1 of the *Agricultural Land Commission Act*, 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 section 6 or does not adequately take into account the considerations set out in section 4.3". 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 Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #300/2016)  
Sketch plan

cc: Regional District of Kootenay Boundary (File: D-1357-04740.130)



## **AGRICULTURAL LAND COMMISSION FILE 54285**

### **REASONS FOR DECISION OF THE KOOTENAY PANEL**

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

**Applicants:**

**Peter Demski  
Lisa Demski  
(the “Applicants”)**

**Application before the Kootenay Regional Panel:**

**Sharon Mielnichuk, Panel Chair  
Harvey Bombardier**



## **THE APPLICATION**

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

Parcel Identifier: 002-924-170

Lot A, District Lots 1357, 1359, 1738, and 2007 Similkameen Division Yale District,

Plan 34983

(the "Property")

[2] The Property is 54.3 ha in area (48.9 ha ALR).

[3] The Property has the civic address 9385 Granby Road, Grand Forks.

[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 2 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 21(2) of the *ALCA*, the Applicants are applying to subdivide the Property into two approximately equal parcels of 27 ha as divided by Sand Creek (the "Application").

[7] On November 18, 2015, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Kootenay Regional Panel (the "Panel").

## **RELEVANT STATUTORY PROVISIONS**

[8] The Application was made pursuant to s. 21(2) of the *ALCA*:

21(2) An owner of agricultural land may apply to the commission to subdivide agricultural land.

[9] The Panel considered the Application pursuant to its mandate in s. 4.3 of the *ALCA*:

- 4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:
- (a) the purposes of the commission set out in section 6;
  - (b) economic, cultural and social values;
  - (c) regional and community planning objectives;
  - (d) other prescribed considerations.

[10] The purposes of the Commission set out in s. 6 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.

### **EVIDENTIARY RECORD BEFORE THE PANEL**

[11] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history
4. Agricultural capability map, ALR context map and satellite imagery

All documentation noted above was disclosed to the Applicants in advance of this decision.

[12] At its meeting of June 18, 2015 the Regional District of Kootenay Boundary (the “RDKB”) resolved to forward the Application to the Commission with a recommendation of support.



[13] The Panel reviewed previous applications involving the Property:

Application ID: 43445  
Legacy File: 36944  
(Demski, 2006)

To subdivide the 53.4 ha property into two (2) approximately equal sized parcels. The Commission did not see an impediment to the land being farmed as a single unit. The application was refused based on the property having agricultural capability; the land being suitable for agriculture; the proposal would impact agriculture; and that the proposal was inconsistent with the objectives of the *ALCA*. Resolution #537/2006.

\*\*\*\*\*

Application ID: 13905  
Legacy File: 32601  
(Demski, 1999)

To subdivide the 53.4 ha property into two (2) approximately equal sized parcels. The applicant stated that due to physical features, the land would be impossible to farm. The Commission felt that accessibility was not an impediment in the use of the property for agricultural purposes. The application was refused. Resolution #462/99.

Reconsideration Request 1

The request for reconsideration was based on a letter which indicated that the subdivision was necessary to legitimize the building of a second dwelling. The Planning Director for the RDKB, visited the property to get information regarding the terrain along the proposed subdivision boundary. He indicated that this area is very steep and would be very difficult to provide vehicular access between the northerly and southerly portion of the parcel. The Commission reconfirmed its original decision on the grounds that it felt accessibility was not an impediment in the use of the property for agricultural purposes as Granby Road runs adjacent to the subject



property. Resolution #379/2000.

Reconsideration Request 2    The Commission reviewed correspondence from agent Arild Engen Peter Demski requesting reconsideration of the Commission's original decision by Resolution #462/99. Following review of the correspondence and the application file material, and viewing the subject property, the Commission was of the opinion that there was no evidence which was not available at the time of the original decision and that the original decision was not based on evidence that was in error or false. Subsequently, the Commission determined not to reconsider its original decision. Resolution #643/2001.

## **SITE VISIT**

[14]    On May 25, 2015, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[15]    A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the applicant on June 27, 2015 (the "Site Visit Report").

## **FINDINGS**

### **Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture**

[16]    In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The improved agricultural capability ratings identified on CLI map sheet 82E/1 for the mapping units encompassing the Property are approximately 75% Class (3MW) and 25% Class (4M).



Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

Class 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), and W (excess water).

[17] The Panel viewed the agricultural capability ratings and note that the Property has moderate capability for agriculture.

[18] During the Site Visit, the Panel noted that the northern portion of the Property was a relatively flat field with potential for hay cultivation.

[19] The Panel noted that the southern portion of the Property was entirely alienated from the northern portion of the Property by the continual erosion of the Kettle River's eastern bank.

[20] The Panel noted that the southern portion of the Property is suitable for pasture for horses or other grazing.

Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values

[21] The Applicants state that "*The new Zone II mandate of the ALR calls for smaller more affordable farming parcels, so this proposal also falls within those guidelines*".

[22] The Applicants state that subdivision would provide revenue with which to work the southern portion of the farm where the Applicants reside.



Section 4.3(c) of the ALCA: third priority to regional and community planning objectives

[23] The RDKB staff report states “As far as regional and community planning objectives, the OCP objective for ‘Extensive Agriculture’ lands is a recognition that a large land base is required and to protect the integrity of lands used for land-extensive agriculture from intrusion of incompatible land uses and subdivision. Along those lines, the OCP suggests and the zoning bylaw requires a minimum parcel area for subdivision of 20 hectares, which this proposal satisfies”.

Weighing the factors in priority

[24] The Panel believes that the Property is comprised of two very different agricultural units with their own conditions and that there will be no detriment to agriculture by subdividing the Property into two units.

[25] However, the Panel notes that the Property is already naturally split by the Kettle River eroding away its east bank on the Property; and that subdivision along this natural boundary makes more sense than as proposed along Sand Creek.

[26] The Panel gave consideration to economic, social and cultural values and regional and community planning objectives planning as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel’s finding following its review of the agricultural considerations.

**DECISION**

[27] For the reasons given above, the Panel refuses as proposed the Application to subdivide the Property into two approximately equal sized parcels as divided by Sand Creek; but approves the subdivision of the Property as divided by the Kettle River and directs Commission staff to prepare a decision sketch.

[28] The approved Application is subject to the following conditions:





- a. the subdivision being in substantial compliance with the decision sketch prepared by Commission staff; and
- b. the subdivision plan being completed within three (3) years from the date of release of this decision.

[29] 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.

[30] Panel Chair **Sharon Mielnichuk** concurs with the decision.  
Commissioner **Harvey Bombardier** concurs with the decision.

[31] Decision recorded as Resolution #300/2016.

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 #300/2015. The decision is effective upon release.

A handwritten signature in black ink, appearing to be 'CJF', is located on the left side of the page.

---

**Colin J. Fry, Director of Policy and Planning**

**August 8, 2016**

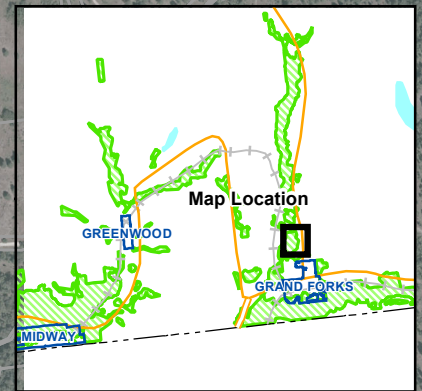
---

**Date Released**

118°28'0"W

49°40'N

# ALC Resolution # 300/2016 Approved Subdivision



Approved  
Subdivision  
Line

Subject Property

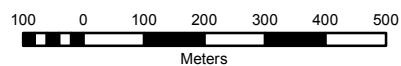
ALR



## Orthophoto Map

2005 Natural Colour - Ortho

Map Scale: 1:12,500



ALC File #: 54285

Mapsheet #: 82E.008

Map Produced: Sept 22, 2015

Regional District: Kootenay-Boundary