



Agricultural Land Commission
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July 11, 2016

ALC Application ID: 54330

DELIVERED VIA ELECTRONIC MAIL

Paul Kernan
3939 Malina Road
Nelson, BC V1L 6X6

Dear Mr. Kernan:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #255/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached.

Please send two (2) paper copies or one (1) electronic copy 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 Lindsay McCoubrey at (Lindsay.McCoubrey@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #255/2016)
Sketch plan

cc: Regional District of Central Kootenay (File: A1513)



AGRICULTURAL LAND COMMISSION FILE 54330

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant:

**Paul Kernan
(the “Applicant”)**

Application before the Kootenay Regional Panel:

**Sharon Mielnichuk, Panel Chair
Ian Knudsen**



THE APPLICATION

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

Parcel Identifier: 026-092-875

Lot A, District Lot 3931 and 7703, Kootenay Land District, Plan NEP76723

(the "Property")

[2] The Property is 4.8 ha in area of which 3.7 ha are within the ALR.

[3] The Property has the civic address 3939 Malina Road, Nelson, BC.

[4] The Property is located 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 Applicant is applying to subdivide the Property into three parcels being 1.0 ha, 1.8 ha and 2.0 ha in size (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".

[7] On February 5, 2016, 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

[12] The Panel reviewed two previous applications involving the Property:

Application ID: 2929
Legacy File: 29600
(Jeakins, 1995)

To subdivide 0.8 ha from the property leaving a
remainder of 4.4 ha. Approved by Resolution #237/95.



Application ID: 17035
Legacy File: 33822
(Jeakins, 2001)

To subdivide 1.0 ha from the northern portion of the property. Approved by Resolution #485/2001. Subdivision not completed.

[13] The Panel reviewed two relevant applications relating to the application:

Application ID: 53641
(Riegler, 2014)

Non-Farm use application to develop four cabins on the 3.3 ha property. Refused by Resolution #242/2014.

Application ID: 1018
Legacy File: 27190
(Cutler and Watkin, 1992)

To exclude a 6.8 ha property. Approved by Resolution #635/93. Commission decision minutes included the statement, "*...it can be anticipated that future decisions by the Commission regarding applications within the Blewett area will reflect the above noted Resolution*".

SITE VISIT

[14] The Panel, in the circumstances of the Application, did not consider it necessary to conduct a site visit to the Property based on the evidentiary record associated with the Application.

FINDINGS

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

[15] 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 rating identified on CLI map sheet 82F/6 for the mapping unit encompassing the Property is Class (4T).

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

The limiting subclass associated with this parcel of land is T (topographic limitations).

[16] The Panel reviewed the CLI rating and finds it comparable to the capability of surrounding ALR lands.

[17] The Local Government Report notes that Electoral Area “E” Director, Ramona Faust, *“[r]ecommends that if the proposal is approved, that a covenant be registered on title prohibiting further subdivision.*

[18] The Local Government Report notes that the Area “E” Advisory Planning Commission (APC) does not support the subdivision application.

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

[19] The Applicant did not provide any information specifically citing economic, cultural and social values that may be pertinent to the Proposal.

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

[20] The Applicant did not provide any information specifically citing regional and community planning objectives that may be pertinent to the Proposal.

[21] The Property and the surrounding area is known as Blewett. The Blewett area falls outside of the Electoral Area “E” Official Community Plan Bylaw No. 2260, (2013) and is not covered by a zoning bylaw.

[22] The Local Government Report notes that the Regional District of Central Kootenay (the “RDCK”) endorsed an Agricultural Area Plan for the region. The Local Government Report excerpted from their Agricultural Area Plan, Capability Recommendation #1, *“It is recommended that the RDCK continue to use land use planning tools to discourage subdivision of agricultural land and to encourage the consolidation of contiguous smaller agricultural lots provided they do not result in additional residences (resulting in higher land values for the farm)”*.

Weighing the factors in priority

[23] The Panel finds that the application history in the Blewett area has resulted in a highly parcelized ALR. Specifically, the Property has had two previous approved subdivisions that are generally in line with other approvals in the area and as such, the Panel finds that the proposed subdivision of the Property will have limited impact to agriculture in the area.

[24] In considering s. 4.3, while the RDCK Agricultural Area Plan was cited within the Local Government Report and the Application was not supported by the APC, the Panel finds that in the absence of zoning and community planning in the Blewett area, and given its current parcelized state, the proposed subdivision of the Property will have limited impact to agriculture in the area.

DECISION

[25] For the reasons given above, the Panel approves the Proposal to subdivide the Property into three parcels being 1.0 ha, 1.8 ha and 2.0 ha in size.

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

- a. the subdivision being in substantial compliance with the plan submitted with the Application; and
- b. the subdivision plan being completed within three (3) years from the date of release of this decision.

[27] 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.

[28] Panel Chair **Sharon Mielnichuk**, concurs with the decision.

Commissioner **Ian Knudsen**, concurs with the decision.

[29] Decision recorded as Resolution #255/2016.

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 #255/2016. The decision is effective upon release.



Colin J. Fry, Director of Policy and Planning

July 11, 2016

Date Released

Approved three lot subdivision



REFER TO PHOTO NO 02

**LOT 1 (1 HECTARE)
[2.47 ACRE]**

REFER TO PHOTO NO 01

APPROXIMATE AREA CLEARED AND ATTEMPTED USE AS FARM STATUS (2013 - 2015) TO BREED HORSES. GROUND TYPE DID NOT ALLOW FOR SUITABLE PASTURE. WATER FOR STOCK WATERING WAS NOT AVAILABLE ON SITE.

REFER TO PHOTO NO 04

REFER TO PHOTO NO 05

REFER TO PHOTO NO 03

**LOT 2 (1.8 HECTARE)
[4.4 ACRE]**

EXISTING HOUSE

APPROXIMATE AREA CLEARED AND ATTEMPTED USE AS FARM STATUS (2013 - 2015) TO BREED HORSES. GROUND TYPE DID NOT ALLOW FOR SUITABLE PASTURE. WATER FOR STOCK WATERING WAS NOT AVAILABLE ON SITE.

REFER TO PHOTO NO 06

SPRING RESURFACES

REFER TO PHOTO NO 07

**REMAINDER LOT A (2.0 HECTARE)
[4.94 ACRE]**

HEAVILY TREE'D
SLOPE 3-5%
SOIL TYPE -
VERY GRAVELLY SILT LOAM
WITH COBBLES AND BOULDERS (35%)
FRACTURED BED ROCK AT 22CM BGL

REFER TO PHOTO NO 12

TEST PIT 01

REFER TO PHOTO NO 08

HEAVILY TREE'D
SLOPE >25%
SOIL TYPE -
VERY GRAVELLY SILT LOAM
WITH COBBLES AND BOULDERS (35%)

REFER TO PHOTO NO 09

REFER TO PHOTO NO 10

SPRING SUBSURFACE UNDERGROUND

POWER LINE EASEMENT

REFER TO PHOTO NO 11

SPRING

BLEWETT ROAD

REV.	DESCRIPTION	DATE
	ISSUED	

SEAL

PROJECT TITLE
**3939 MALINA RD
SUBDIVISION**

DRAWING TITLE
LOCATION MAP

CLIENT NAME

SCALE:	SCALE	JOB No.	SD001
DRAWN:	PK	REVISION	A
CHECKED:	PK	DWG. No.	X01
DATE:	13/07/2015	FILE:	Drawing1.dwg
PLOT:	13/07/2015		

Map Modified July 11, 2016