



**Agricultural Land Commission**  
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July 28, 2016

ALC File: 54368

**(SENT VIA ELECTRONIC MAIL)**

R.G. (Bob) Holtby  
2533 Copper Ridge Drive  
West Kelowna, BC V4T 2X6

Dear Mr. Holtby:

**Re: Application to Exclude Land from the Agricultural Land Reserve (ALR)**

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #289/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached. As agent, it is your responsibility to notify your client accordingly.

The Commission will advise the Registrar of Land Titles that the property has been excluded from the ALR when it has received confirmation that the conditions of approval have been met.

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 Laurel Eyton at (Laurel.Eyton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Colin Fry', is written over the printed name. The signature is fluid and cursive.

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #289/2016)  
Sketch plan

cc: Regional District of Kootenay Boundary (File: #E-1250-04687.000)  
**(SENT VIA ELECTRONIC MAIL)**

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## **AGRICULTURAL LAND COMMISSION FILE 54368**

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

**Application submitted pursuant to s. 30(1) of the *Agricultural Land Commission Act***

**Applicant:** 0472164 B.C. Ltd.  
(the "Applicant")

**Agent:** Bob Holtby  
(the "Agent")

**Application before the Kootenay Regional Panel:** Sharon Mielnichuk, Panel Chair  
Harvey Bombardier  
Ian Knudsen



## **THE APPLICATION**

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

Parcel Identifier: 014-990-016

That Part of District Lot 1250, Lying West of the Westerly Boundary of the 66 foot Road as Shown on Plan 13939; Similkameen Division, Yale District, Except Plan H16203

(the "Property")

[2] The Property is 27.6 ha in area. There are 11.6 ha of the Property within the ALR.

[3] The Property is generally described as being located on Highway 33, near Beaverdell.

[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. 30(1) of the *ALCA*, the Applicant is applying to exclude approximately 2.0 ha along the highway frontage (the "Application").

[7] On January 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. 30(1) of the *ALCA*:

30 (1) An owner of land may apply to the commission to have their land excluded from an agricultural land reserve.

[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 and relevant application history
4. Agricultural capability map, ALR context map and satellite imagery
5. A report titled, *A Report on an Application to Exclude Land from and Subdivide within the ARL* (sic) prepared by Mr. Bob Holtby and dated April 9, 2015 (the “Holtby Report”).

**Note: The Holtby Report also contains information regarding a proposed subdivision that is being considered under Application ID: 54367.**



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

[12] The Panel reviewed a previous application involving the Property:

Application ID: 52710 (0472165 BC Ltd - 2012)	To subdivide the Property into six lots and to exclude approximately 2 ha along the highway frontage. Refused by Resolution #474/2012.
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Reconsideration Request	The reconsideration request was the same as initially proposed. The Commission refused to reconsider as the request it did not meet the criteria for reconsideration.
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[13] The Panel reviewed a relevant applications relating to the application:

Application ID: 51631 (Wolf & Fochler, 2010)	To subdivide the 8.8 ha property into two lots as separated by Beaver Creek. The Commission decided to refuse the application by Resolution #2513/2010.
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Reconsideration Request	A reconsideration request was received in 2011. The request was to subdivide the property into two parcels; one parcel would be sold to a neighbor. The Commission decided to reconsider the application and then allowed the revised proposal on the condition that the parcel to be sold to the neighbour be consolidated with neighbour's property. Resolution #100/2011.
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### **SITE VISIT**

[14] On May 26, 2016, 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, 2016 (the "Site Visit Report").

[16] The Applicant's exclusion meeting was held concurrently with the Site Visit.

## **FINDINGS**

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

[17] 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 82E/6 for the mapping unit encompassing the Property is Class 5; more specifically (5PM).

Class 5 - land is capable of production of cultivated perennial forage crops and specially adapted crops. Soil and/or climate conditions severely limit capability.

The limiting subclasses associated with this parcel of land are M (moisture deficiency) and P (stoniness).

[18] In addition, the Panel reviewed the Holtby Report which indicates:

*"[the Agent] could not find any change in the landform on the lower area that might have caused the pedologists to draw the ALR boundary where they did. Indeed [...] the appropriate line should have probably been drawn along the escarpment, where the applicant now proposes to have the line drawn."*

[19] The Holtby Report further notes that:

*"native vegetation is poor which is understandable given the lack of farm practices or irrigation. While there is some native vegetation on the upper bench, vegetation on the lower bench is spotty at best...the native productivity of the area proposed for exclusion is low. Consequently, I assume that the productivity of that land would be low."*

[20] The Panel reviewed the CLI ratings and the Holtby Report and find that the portion of the Property proposed for exclusion has poor capability for agriculture.

[21] The Panel viewed the Property on the Site Visit and found that the portions of the Property proposed for exclusion had the same capability as those portions that fall outside of the ALR.

[22] The Panel viewed the Property on the Site Visit and found that the portions of the Property on the upper bench that are outside of the ALR had the same capability as those portions that fall inside of the ALR.

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

[23] In the Holtby Report, the Agent stated the following in regards to section 4.3(b):  
*“the 30 foot lot size in Beaverdell prohibits the assembly of land for the proposed development. Consequently, allowing the proposal will allow for economic development which will benefit the community.”*

[24] On the Site Visit, the Applicant stated that:

*“[he] would like to exclude the entire lower portion of the Property in order to develop it as a service station/convenience store or possibly an RV park; [he] will never farm because it is too rocky, but it is a good spot for people to pull off of the Highway.”*

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

[25] The Regional District of Kootenay Boundary (the “RDKB”) does not have zoning or an Official Community Plan (OCP) for this area. However, the RDKB notes that the Boundary Area Agricultural Plan (2011) includes the strategic objective of:  
*“to create long term planning policies and regulations for Area ‘E’ which foster respect of agricultural land within the ALR and otherwise.”*

[26] The RDKB resolved to forward the Application to the Commission without a recommendation.

*Weighing the factors in priority*

[27] The Panel believes that the portion of the Property proposed for exclusion has extremely limited capability for agriculture and is not appropriately designated as ALR.

[28] The Panel believes that the portion of the upper bench that is not within the ALR has approximately the same capability as the remainder of the upper bench and is not appropriately designated as non-ALR lands.

[29] 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**

[30] For the reasons given above, the Panel approves the Application to exclude approximately 2.0 ha along the highway frontage.

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

- a. the preparation of a posting plan, site plan or subdivision plan to delineate the area to be excluded per the drawing submitted with the Application; and
- b. the submission of an application for inclusion into the ALR of the portion of the Property on the upper bench that is not within the ALR. Staff is directed to prepare a sketch that delineates the required inclusion area.

[32] 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.

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

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

Commissioner **Harvey Bombardier** concurs with the decision.

[34] Decision recorded as Resolution #289/2016.

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

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Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #289/2016. The decision is effective upon release.



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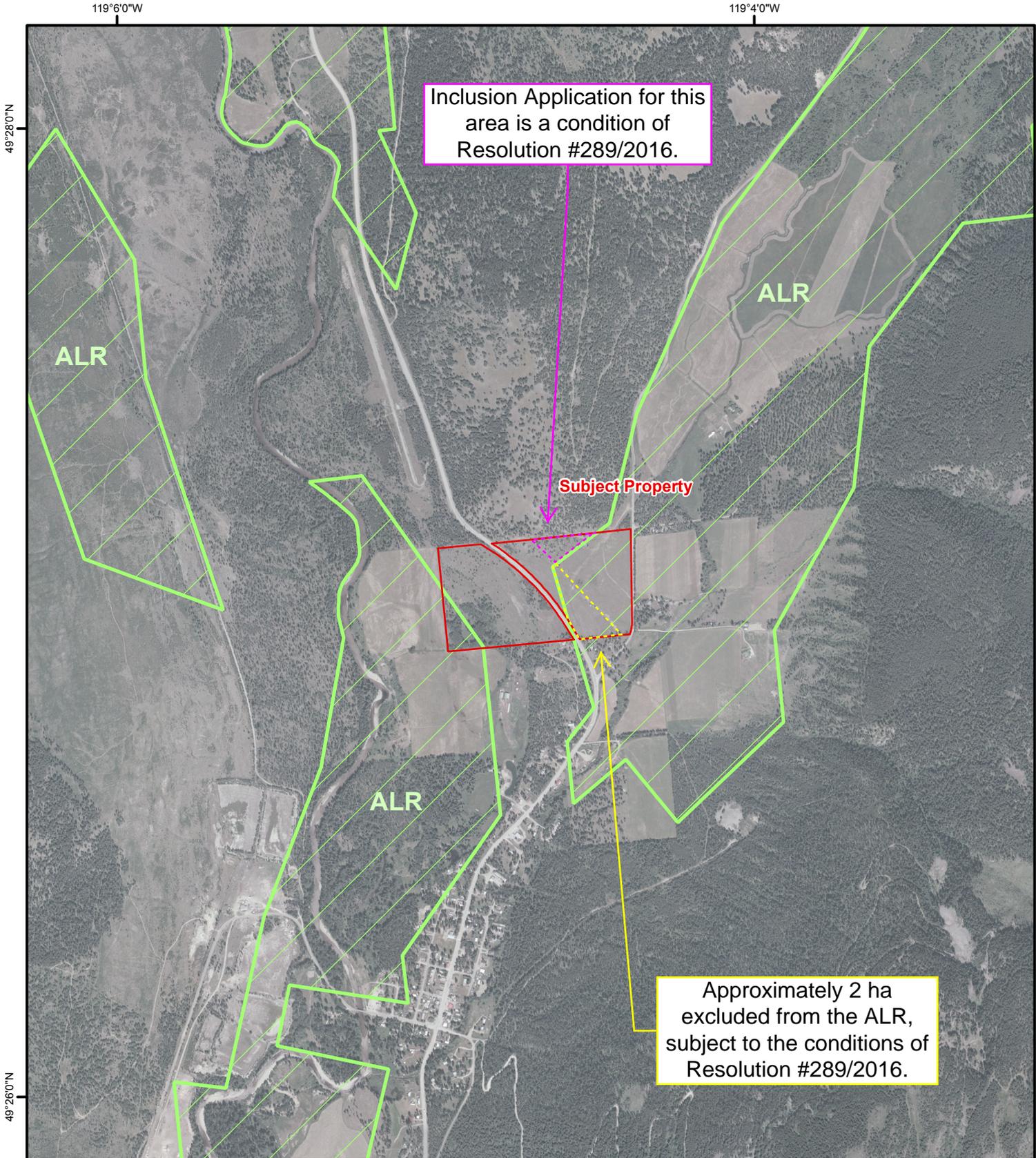
**Colin J. Fry, Director of Policy and Planning**

**July 28, 2016**

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**Date Released**

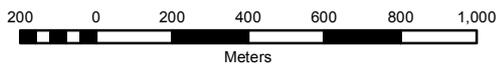
ALC Application 54368  
(Applicant - 0472164 BC Ltd.)  
Resolution #289/2016



**Orthophoto Map**

2005 Natural Colour - Ortho

Map Scale: 1:20,000



ALC File #:	54368
Mapsheet #:	82E.045
Map Produced:	Jan 21, 2016
Regional District:	Kootenay-Boundary