



**Agricultural Land Commission**  
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September 9, 2016

ALC File: 54599

T. Scott Rodway  
Rodway and Perry Barristers and Solicitors  
1-699 Beach Road  
PO Box 138  
Qualicum Beach, BC V9K 1S7

Dear Mr. Rodway:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #335/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

Your attention is drawn to s. 33(1) of the *Agricultural Land Commission Act* 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.

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

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #335/2016)

cc: Regional District of Nanaimo (File: PL2015-177)

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## **AGRICULTURAL LAND COMMISSION FILE 54599**

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

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

**Applicant:**

**Howard Fowler  
(the “Applicant”)**

**Agent:**

**T. Scott Rodway  
(the “Agent”)**

**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: 006-416-250

That Part of Lot 1, District Lot 141, Nanoose and Newcastle Districts, Plan 2273,  
Lying to the North of a Boundary Parallel to and Perpendicularly Distant 977 Feet  
from the Northerly Boundary of Said Lot 1  
(the "Property")

[2] The Property is 12.4 ha in area.

[3] The Property has the civic address 891 Virginia Road, Coombs.

[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 1 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 approximately 4.1 ha parcels (the "Proposal").

[7] The Applicant states the following purpose of the Proposal:

*"The purpose of the subdivision is to promote agricultural activity in the immediate area by creating viable and more manageable parcel sizes in keeping with the growing number of small farms in Lower mainland and coastal regions of British Columbia and with the immediate area of Virginia Estates AND to alleviate the applicant's huge financial burdens whereby currently his expences (sic) far exceed his income. The Applicant, for necessary financial reasons, would like to create a small farm with a small house and barn on one of the proposed ten acre parcels (sic). The Applicant has accumulated a large debt in purchasing and making costly improvements to land purchased for the purpose of growing hay and debts incurred in operating a horse*

*breeding farm by having to purchase large quantities of hay to feed his horses due to the fact that the property would not produce any harvestable hay or grazing vegetation for his horses. He has had to prematurely sell 41 of his horses and close down his horse breeding operation (sic) to assist in the payment and management of his debts.”*

[8] The Proposal along with supporting documentation is collectively (the “Application”).

[9] On April 11, 2016, the Chair of the Agricultural Land Commission (the “Commission”) referred the Application to the Island Regional Panel (the “Panel”).

### **RELEVANT STATUTORY PROVISIONS**

[10] 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.

[11] The Panel considered the Application within the context of s. 6 of the ALCA:

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**

[12] 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 Agent in advance of this decision.

[13] The Regional District of Nanaimo (the “RDN”) Board of Directors has a standing Board resolution for subdivision of lands within the Agricultural Land Reserve (ALR) as per Policy B1.8:

*As outlined in the Regional Growth Strategy, the Regional District of Nanaimo (RDN) fully supports the mandate of the Agricultural Land Commission (ALC) and the preservation of land within the ALR for agricultural use. The Regional District encourages the ALC to only consider subdivision where in the opinion of the ALC the proposal will not negatively impact the agricultural use of the land or adjacent ALR lands.*

[14] The Panel reviewed three previous applications involving the Property:

Application ID: 52581  
(Fowler 2011)

To exclude the property from the ALR to facilitate subdivision into rural lots of 2.0 ha or larger.

The Commission concluded as follows:

1. The proposal to exclude this land from the ALR has been considered and determined by the Commission in 2003 and 2009. On both prior occasions the Commission considered technical information and professional advice provided by the applicant. After considering the information the Commission refused both applications believing there was merit in retaining the property in the ALR as opportunities for

agricultural development of the property that may not exist today may exist in the future.

The Commission considered its 2009 comments in Resolution #1852/2009 to be as relevant today as they were five years ago. More specifically:

*The Commission concluded, based on its inspection of the site and a review of the various reports that the property has secondary unimproved agricultural capability. With regard to the possibility of it being improved the Commission acknowledged that, given cost considerations and the general state of the agricultural industry at this time, it is unlikely that improvements will be carried out in the near future. On the other hand having regard to the improvements made to the property to the north and the likelihood of significant changes to the agricultural industry in the longer term, an important consideration of the Commission, it considered that improvements in the longer term could not be ruled out. The Commission was cognizant of the fact that the area has a good growing climate compared with many parts of BC and that there are many examples on Vancouver Island of significant improvements being made to create successful farms.*

2. The Commission considered the current challenges to the agricultural improvement of the property very carefully and from a long term perspective; several generations out. The Commission did not believe the preservation of agricultural land for future generations

of British Columbians, and the land use decisions it is asked to make, should solely be viewed through the lens of the present day, or even 5 or 10 years from now. When land use is looked at from a much longer viewpoint it is reasonable to expect that agricultural opportunities may become available in the future which cannot be imagined today.

3. The Commission understood the proposal and the present day challenges to agricultural management of the property; nonetheless, the Commission remained of the belief that the land has agricultural potential beyond its current level of agricultural use and development.
4. It was the Commission's position that it had not been provided with substantively new evidence that would give it cause to depart from the findings of its 2003 and 2009 decisions.

A site visit was conducted on August 27, 2012. The application was refused by Resolution #100/2013 dated July 17, 2013.

Reconsideration Request

The Commission received correspondence dated January 2, 2015 requesting reconsideration of its decision recorded as Resolution #100/2013. The Commission did not believe that the applicant provided evidence that was not available at the time of the previous decision nor demonstrated that all or part of the original decision was based on evidence that was in error or was false. The Commission concluded that the request



for reconsideration did not meet the requirements for reconsideration pursuant to section 33 of the *Agricultural Land Commission Act*.

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Application ID: 50663  
(Fowler, 2009)

To exclude the property from the ALR, or alternatively, to subdivide the property into five (5) approximately 2.0 ha parcels with associate road dedication(s). A site inspection was conducted on December 17, 2009.

The application was refused as the Commission considered the property to have agricultural capability and the subdivision of the property would reduce agricultural potential. Resolution #1852/2009 dated December 17, 2009.

Reconsideration Request

The applicant retained Rodway & Perry, Barristers and Solicitors who submitted a request for reconsideration of Resolution #1852/2009 on behalf of the applicant. The Commission determined that the submission did not contain new evidence that was unavailable at the time of the original decision; nor was evidence provided that all or part of the original decision was based on evidence that was in error or false. As such, the request did not meet the legislative requirements for reconsideration.

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Application ID: 18094  
Legacy File: 34255  
(Fowler, 2002)

To exclude the property from the ALR to facilitate subdivision into 2 ha rural residential parcels. A site inspection was conducted on June 26, 2002.



The application was refused as the Commission believed the land could be effectively managed for agriculture. Resolution #103/2003 dated February 25, 2003.

### **SITE VISIT**

[15] On April 20, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[16] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on May 19, 2016 (the “Site Visit Report”). On May 31, 2016, the Agent confirmed that the Site Visit Report accurately reflects the observations and discussions that occurred on April 20, 2016.

### **FINDINGS**

[17] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), ‘Land Capability Classification for Agriculture in B.C.’ system. The improved agricultural capability ratings identified on BCLI map sheet 92F.038 for the mapping units encompassing the Property are approximately 80% Class 2AD, 10% 3TP, 5% (7:4P – 3:3A) and 5% 7T.

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

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.

Class 7 - land has no capability for soil bound agriculture.

The limiting subclasses associated with this parcel of land are A (soil moisture deficiency – modified), D (undesirable soil structure), P (stoniness) and T (topographic limitations).

[18] In addition to the above CLI ratings, the Panel received three professional Agrologist reports:

1. Agrologist Report: Application to the Land Reserve Commission to Exclude Land from the Agricultural Land Reserve, Parcel Northerly 977 Feet of Lot 1 D.L 141 near Coombs BC, prepared by Fitzpatrick Land Resource Consultants, dated August 31, 2001 (the “Fitzpatrick Report”). With respect to agricultural capability, the Fitzpatrick Report found that:

*Most of the soil profiles are gleysols, with three Cowichan and five Parksville in a total of ten described. Sites near the west edge were identified as Brigantine (Gleyed Dystric Brunisol) and Fairbridge (Gleyed Eluviated Dystric Brunisol). Much of the parcel has an agricultural capability rating of 5W, which masks several limitations at the Class 2-3 level, including low fertility (F), complex topography (T), undesirable soil structure (D), and aridity (A).*

*Cowichan and Parksville soils generally are poorly drained and have perched water tables for much of the year. Soil pH is reported to be in the range of 4.6 to 5.7 Typical organic matter content for the surface 20 cm is around 9% in Cowichan and 5% in Parksville. These soils require drainage for optimum agricultural use, and in the case of Cowichan, tiles must be closely spaced. They are used for hay and pasture. For annual crops, spring planting is delayed by the wet soil conditions. (Jungen et al, 1989)*

*Silty clay loam is the dominant texture of the Cowichan profiles on this parcel. The thickness of the Ah horizon found on the parcel is typical for this soil series.*

*The Parksville soils at this parcel share traits of the imperfectly drained profiles. They differ from the Brigantine in drainage and taxonomy, but the textures are similar. Concretions were found in most Parksville pits, a trait of Fairbridge soil. The Ah horizon is thinner than is typical for Parksville.*

*There are several factors which may be restricting drainage:*

- 1. The subsoil has a fairly dense, massive structure, hence low porosity and hydraulic conductivity.*
- 2. There may be cemented layers lower in the profile. None were detected within the sampling depth, but cementation was found in a road cut near the creek (Site #5).*
- 3. Bedrock is thought to be present within 3 metres of the surface.*

*For most of this field, soil drainage is not feasible. Tile drains would have to be installed at a close spacing. The water would be carried to the lowest point, which is in the southeast corner. But from there, there is nowhere for the water to go. Proper drainage would require a regional effort and good coordination between governments and neighbours, which is unlikely to be achieved given the fact that this parcel is isolated from large, agricultural parcels. For this reason, drainage improvement ratings are not shown with the agricultural capability in the pit descriptions.*

*The average Climatic Moisture Deficit is estimated to be approximately 220 mm from which the Climatic Capability for Agriculture was determined to be 4A(1) (Coligado, 1981). For most of the field there is a soil Agricultural Capability Subclass 3A for aridity, though three small mounds with Subclass 5A were observed. Irrigation water is unavailable: wells in the area have low flow rates, and French Creek is salmon-bearing, so gaining water rights is unlikely.*

*The field would benefit from improvements in soil fertility, including the addition of organic amendments, liming and fertilization. Organic amendments would also help to improve soil structure. However, this would not affect the Agricultural*

*Capability Class unless the drainage can be improved.*

*There is 2T-3T complex topography throughout most of the field, though in the northwest corner it is classified at 4T.*

*Results of this site inspection may be compared to Jungen et al, 1989, the highest intensity soil survey to be performed in this area. An average inspection density of one pit per 8 hectares was reported. However, neither the subject parcel nor D.L. 23 (then not subdivided) were inspected in the survey though at the reported survey intensity they would have received one or two, and eight inspections respectively. The presence of Cowichan and Brigantine soils was correctly identified. However, the main component of the largest map unit, where Parksville was found was labelled McLean Creek, silt loam marine deposits over gravelly moraine. The area in the northeast corner, identified as Trincomali, is in fact Cowichan, a very different soil. A ridge in the southwest was identified as a Qualicum - Beddis complex, which is reasonable for the map unit, though on the parcel only a small amount was found.*

2. *Professional Agrologist Review of: Agricultural Capability and Soil Classification of the: Northerly 977 Feet of Lot 1, District Lot 141, Nanoose and Newcastle District Coombs, BC*, prepared by Whiskeyjack Land Management Corp, dated March 20, 2006 (the "Whiskeyjack Report"). With respect to agricultural capability, the Whiskeyjack Report found that:

*Mr. Fitzpatrick classified the agricultural capability of the soils on the subject property as mainly Class 5W. He also identified an aridity deficiency range of Class 3A - 5A. However, the combination of these two capability subclasses on the soils on the same parcel can be so limiting that improvements may not be practical and/or economical. Mr. Fitzpatrick describes in his report that installing a drainage system on such a relatively small parcel is not practical. He states "For most of this field, soil drainage is not feasible. Tile drains would have to be installed at a close spacing. The water would be carried to the lowest point, which*

*is in the northeast corner. But from there, there is nowhere for the water to go" (Fitzpatrick Land Resource Consultants Report, 2001, page 3; paragraph 6). In regard to the soil moisture deficit, he goes on to state "Irrigation water is unavailable: wells in the area have low flow rates, and French Creek is salmon-bearing, so gaining water rights is unlikely" (Fitzpatrick Land Resource Consultants Report, 2001, page 4; paragraph 1 ). The fact of the low water well flow rates was confirmed by Mr. Fowler, in that he has drilled multiple wells in the area, but they do not provide adequate water for his household and livestock watering, let alone irrigation of hay crops. In fact, as of November, 2005 Mr. Fowler has advised that the well supplying water to his house has now run dry, and the well depth will have to be extended at considerable expense.*

*Given that the dominant soil associations classified on the subject property are Cowichan and Fairbridge, it is important to note the limitations also identified in the 1989, Soil Survey Report #57. These comments are as follows:*

*"Cowichan soils contain excess moisture during the spring which causes trafficability" problems and planting delays. Winter ponding often kills or injures perennial crops as well. Both these limitations have historically restricted agricultural use to hay production or pasture. Many farms have increased the range and production of crops by installing artificial drainage. Drainage lines must be closely spaced due to the slow soil permeability" (Report #57, Page 84, Paragraph 2).*

*For the Parksville soil association the same report states:*

*"Present land use is mainly hay and pasture as spring planting of other crops is often impractical due to wet soil conditions. With irrigation and drainage Parksville soils can be used for growing a wide range of crops" (Report #57, Page 141, Paragraph 3).*

*The comments from that report mirror very closely Mr. Fitzpatrick's comments regarding the soils within the subject parcel, as well as Mr. Walmsley's comments for much of the soils within the adjacent D. L. 23. Given my recent investigation of the soils within the subject parcel, I would concur with all previous comments in their respective reports, and reinforce statements by Mr. Fitzpatrick and Mr. Walmsley alluding to the non-arable nature of the soils in this area.*

*Given my extensive experience in farming and related cultivation practices, I also concur with Mr. Fowler that regular cultivation to control weeds and manage crops is virtually impossible. In the case of weed control, this forces the land owner to resort to chemicals which harm the environment, potentially migrate into the adjacent Salmon bearing stream (French Creek), and adjacent properties, and possibly harm the livestock that would normally benefit from the control of weeds.*

*In the case of the drainage limitation, and as per previous comments by my Agrologist colleagues, installing a drainage and water containment system is impractical and very cost prohibitive. Drainage systems would have to be spaced very close together at a high cost. Bedrock depth in the area recommended for the detention pond is within 3.0 meters, so blasting of the dugout would be required and it would have to be lined with an impermeable tarp, all at high cost. The ditch required to drain excess runoff from the detention pond would have to be dug to a depth of -13.0 meters at its western exit point, also requiring blasting. The ditch itself would be nearly 450 meters long and -3 - 5 meters wide, therefore requiring additional fencing and/or installation of a culvert or large drainage pipe and backfilling. As well, a permit from the Federal Department of Fisheries and Oceans would be required to allow pond runoff to enter the adjacent French Creek.*

*In regard to the climatic moisture deficit, the area is incapable of producing a single cut of hay on a regular basis. As discussed earlier, the application of irrigation water is virtually impossible due to the lack of subsurface water or*

*underground aquifers. The result is having to purchase hay from outside sources. Given the nature of the agribusiness conducted on this parcel, high quality hay from outside the region is required for the purebred Morgan horse operation, and Mr. Fowler has spent considerable sums of money over the years as a result of this limitation alone.*

3. *Soil and Agricultural Capability Assessment of the Northerly 977 Feet of Lot 1 District Lot 141, Nannose (sic) and Newcastle District Coombs, B.C.*, prepared by Ron Emerson, dated July 14, 2011 (the "Emerson Report"). The Emerson Report concluded that:

*The descriptions of soils completed for the current study were similar to those completed by Joe Fitzpatrick, P.Ag. Differences in profile descriptions were consistent with the natural variability of soils expected within the landscapes described and were generally attributed to differences in soil drainage because of landscape position.*

*The predominant limitations for agriculture observed were resulting from excessive wetness in the spring, heavy soil textures causing root restriction and soil moisture deficits occurring within the growing season. As a regional drainage and irrigation strategy is not forthcoming these soils are not improvable.*

*The subject parcel is not well suited for commercial agriculture based on the current observations and those reported in the two separate reports by Joe Fitzpatrick, P.Ag. and Robert Hinkley, P.Ag. As has been concluded in these two reports, the subject property is better suited to smaller hobby farms.*

[19] The Panel considers not only agricultural capability but also suitability when assessing the agricultural potential of a parcel. Not all agricultural lands are created equal and not all agricultural lands are capable or suitable for producing all forms of agricultural or supporting all land uses. Depending upon their properties and characteristics, certain soils may be appropriate for supporting certain agricultural uses (soil bound or non-soil bound), but not

others. In addition, the appropriate form and management of the agriculture endeavour factors into the parcel's ability to support agriculture. That said, the Panel came to the same conclusions as the previous Commission in that they believe that the Property can be managed for agricultural uses in its current size.

[20] While recognizing that the current application is for subdivision of fewer proposed lots than the previous applications for subdivision or exclusion, the submissions and arguments are substantially the same. In light of the similarities to the rationale and the desired outcomes of the previous applications, the Panel concurs with Commission's findings of its 2003, 2009, and 2011 decisions.

### **DECISION**

[21] For the reasons given above, the Panel refuses the Proposal.

[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 #335/2016.

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 #335/2016. The decision is effective upon release.



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

**September 9, 2016**

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**Date Released**