



September 9, 2016

Agricultural Land Commission
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ALC File: 54626

Brian Schmidt
Schmidt Consulting Services Ltd.
P.O. Box 1267, 102 – 35 Rivermount Place
Fernie, BC V0B 1M0

Dear Mr. Schmidt:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #334/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly. 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 Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #334/2016)
Sketch plan

cc: Regional District of East Kootenay (File: P 715 127)

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AGRICULTURAL LAND COMMISSION FILE 54626

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant: **William Salekin**
(the “Applicant”)

Agent: **Brian Schmidt**
(the “Agent”)

Application before the Kootenay Regional Panel: **Harvey Bombardier**
Ian Knudsen

THE APPLICATION

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

Parcel Identifier: 015-823-458

Lot 3, Plan 1411, District Lot 3048, Kootenay District

(the “Property”)

[2] The Property is 29.3 ha in area.

[3] The Property has the civic address 1316 Dicken Road, north of Fernie.

[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 a 2 ha parcel from the 29.3 ha Property for residential purposes (the “Proposal”). The Proposal along with supporting documentation is collectively (the “Application”).

RELEVANT STATUTORY PROVISIONS

[7] 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.

[8] 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.

[9] 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

[10] 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
5. Agrologist Report prepared by Mike Malmberg, P.Ag.
6. Agrologist Report prepared by David Struthers, P.Ag., dated June 2014

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

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

Application ID: 53868
(Salekin, 2015)

To subdivide a 2.0 ha parcel from the 29.3 ha Property.
Refused, by Resolution #54/2015.



Application ID: 52509
(Salekin, 2011)

Regional District of East Kootenay (the “RDEK”) Delegation Decision - To subdivide a 2.2 ha lot for a family member from a 29.2 ha parent parcel, leaving a remainder of 27 ha. Approved by the RDEK by Resolution #42631; Recorded as Commission Resolution #329/2011.

Note: The RDEK approved the application on October 7, 2011 on the condition that the, “*approval shall be valid for a period of three years.*” The subdivision was never completed and the Delegation Agreement under which the decision was made has now lapsed. There is no outstanding approval for subdivision.

SITE VISIT

[12] On June 23, 2016, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[13] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on August 3, 2016 (the “Site Visit Report”).

FINDINGS

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

[14] 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 82G/11 for the mapping units encompassing the Property are Class 3 and Class 4; more specifically (3M) and (6:3X - 3:4MP - 1:4W).

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), P (stoniness), W (excess water), and X (combination of soil factors).

[15] In addition, the Panel received a professional Agrologist report, prepared by Mike Malmberg, P.Ag., dated August 2011 (the "Malmberg Report"). The Malmberg Report finds that the Property has good agricultural capability and suitability.

[16] In addition, the Panel received a professional Agrologist report, prepared by David Struthers, P.Ag., dated June 2014 (the "Struthers Report"). The Struthers Report finds that the upper bench portion of the parcel proposed for subdivision has the improved agricultural capability classification of 4MP with limitations due to low water holding capacity and stoniness (high proportion of gravels and cobbles in the subsoil. The remainder of the proposed subdivision area has an agricultural capability of 6T due to topographic limitations.

[17] The Panel reviewed the CLI ratings, the Site Visit Report, the Malmberg Report and the Struthers Report and find that the proposed subdivision is separated from the remainder of the Property by creeks and gullies. The Panel notes that only a portion of proposed subdivision is located within the mapping unit with the improved agricultural capability rating of (3M). The Panel further notes that the application for subdivision of a 2 ha parcel in the northwestern corner of the Property is entirely located within the mapping unit with improved agricultural rating of (3M).

[18] In his letter, the Applicant stated the following: "Due to topography, there would be no agricultural use anytime" of the parcel proposed for subdivision and that it is of "no agricultural value."

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

[19] The Malmberg Report stated the following:

“The proposed subdivision supports the Fernie Land Use Strategy in a number of ways, including:

- Protects and enhances agricultural operations and adjacent lands*
- Encourages enhanced utilization of land in the rural area*
- Supports economic diversification and development*
- Proposed subdivision works to conserve existing agricultural land*
- Proposed subdivision is compatible with the rural character of the surrounding land.*
- Provides rural single-family development that provides open space contributing to the agricultural ambiance of the area and protecting farmland*
- Provides an additional opportunity for development of agriculture through small scale farming with a reduced farm capital expenditure requirement.”*

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

[20] The Regional District of East Kootenay (the “RDEK”) resolved:

“that the Agricultural Land Commission be advised the RDEK supports the Salekin ALR subdivision application for property located at 1316 Dicken Road north of Fernie and further, that the Agricultural Land Commission be encouraged to conduct a site visit of the property.”

[21] The RDEK Planning Staff recommended that the Application be refused, as:

“the proposal is not supported by the OCP policies for the area. The subdivision is not pursuant to Section 514 of the Local Government Act and the agricultural capability for the entire property is improvable to Class 4 or better. Additionally, the proposed new lot is in an area with better agricultural capability than the remainder.”

[22] The Property is zoned as RR-8, Rural Residential (Country) Zone by the RDEK, with a minimum parcel size of 8 ha. The Property is designated in the RDEK’s OCP as RR,

Rural Resource which supports agricultural, rural residential and rural resource land uses with parcel sizes 8.0 ha and larger.

Weighing the factors in priority

[23] The Panel believes that the majority of the Property has moderate to good capability for agriculture, and that the 2 ha proposed for subdivision has agricultural suitability limitations as it is separated from the remainder of the parcel by gullies and topography.

[24] The Panel notes that a Commission decision made by the RDEK through a delegation agreement approved a 2 ha parcel on land with better agricultural capability and suitability than the parcel currently proposed for subdivision. The Panel notes that the subdivision was never completed and the Delegation Agreement under which the decision was made has now lapsed. There is no outstanding approval for subdivision.

[25] While respectful of the personal benefits that would accrue to the Applicants and their family members if the proposed subdivision is approved, the Panel finds that the Applicants' comments with regard to economic, cultural and social values whether considered individually or collectively, would be insufficient to outweigh the first priority that must be given to agriculture relative to land that is both capable and suitable for agricultural use.

[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 approves the Proposal to subdivide a 2 ha parcel from the 29.3 ha Property for residential purposes.

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



- a. the preparation of a subdivision plan to delineate the area to be subdivided per the decision sketch attached to this decision; and,
- b. the subdivision plan must be completed within three (3) years from the date 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] Commissioner **Harvey Bombardier**, concurs with the decision.
Commissioner **Ian Knudsen**, concurs with the decision.

[31] Decision recorded as Resolution #334/2016.

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 #334/2016. 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

September 9, 2016

Date Released

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