



Agricultural Land Commission
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July 25, 2016

ALC File: 54748

(SENT VIA ELECTRONIC MAIL)

Mr. and Mrs. Johnson
726 Ogilvie Road
Nelson, BC V11 6P9

Dear Mr. and Mrs. Johnson:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #223/2016) 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 Laurel Eyton at (Laurel.Eyton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'C. Fry', written over a white background.

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #223/2016)
Sketch plan

cc: Regional District of Central Kootenay (File: A1601E) **(SENT VIA ELECTRONIC MAIL)**

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AGRICULTURAL LAND COMMISSION FILE 54748

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicants:

**David Johnson
Patricia Johnson
(the “Applicants”)**

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: 016-078-942

Lot E, District LLot 222, Plan 895

(the "Property")

[2] The Property is 3.6 ha in area.

[3] The Property has the civic address 726 Ogilvie Road, Harrop.

[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 Applicants are applying to subdivide the 3.6 ha Property into two parcels of 1.8 ha each (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. Evidence from any third parties of which disclosure was made to the Applicants
4. Previous application history
5. Agricultural capability map, ALR context map and satellite imagery

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

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

Application ID: 14453
Legacy File: 32859
(Johnson, 1999)

To use 0.8 ha of the 3.6 ha Property for a portable sawmill. Approved by Resolution #575/99.

SITE VISIT

[12] 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

[13] 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/11 for the mapping unit encompassing the Property is Class 2, Class 3 and Class 4; more specifically (6:4MP - 2:3M - 2:2X).

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.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), P (stoniness) and X (combination of soil factors).

[14] The Panel reviewed the CLI ratings and find that the less productive land is located on the eastern side of the Property where the sawmill is located.

[15] The Panel notes that the existing 0.8 ha non-farm use was approved by the Commission by Resolution #575/99.

[16] The Applicants report that they are growing on Proposed Lot 2: *“one acre of blueberries as U-pick operation, approx. one more acre in use as a bee yard (40 hives) and gardens used to grow produce for sale.”* The Applicants report that *“in 2015, we grew and sold about 3,000 pounds of blueberries, about 400 pounds of garlic and about 1300 pounds of honey.”*

[17] The Applicants report that the area occupied by the sawmill: *“has never been suitable for agriculture. Even during the early years of trying to manage it, it was not even suitable for pasture as it is old alluvial fan and is either rocky or very sandy with the thinnest of top soil.”*

[18] The Regional District of Central Kootenay (the “RDCK”), notes in its report that: *“staff have some concerns about the design of the proposed subdivision and potential impacts on the future agricultural use of the subject property. The proposed subdivision design will result in the existing agricultural uses on the proposed Lot 2 being further fragmented by the access for the proposed Lot 1. While staff recognises that the apiary and the vast majority of agricultural activities on the parcel are presently severed from the single family dwelling by the Ogilvie Road right of way, the further fragmentation of these agricultural uses is not a preferred outcome. Regional District staff recommends the applicants investigate the feasibility of a road closure for the northern portion of Ogilvie Road (between the single family dwelling and the apiary) to ensure that the proposed Lot 2 is not further fragmented through subdivision.”*

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

[19] In its letter of support, the Harrop-Procter Community Co-operative (HPCC), stated the following: *“It is important to understand that HPCC enjoys broad community support. Membership currently stands at 167 Harrop-Procter residents. The sawmill is a key reason for strong community support, as it provides wood products to a geographic area previously not serviced in this way, allows a discount on sales to HPCC members, and is creating new jobs in a community with limited employment opportunities.”*

[20] The RDCK notes in its report that: *“Planning staff recognise the importance of the Harrop Procter Forest Products sawmill to the local community in terms of local employment and the local economy and as such are generally supportive of this application. In addition, staff note that the Harrop Procter Community Cooperative (HPCC), the current operators of the saw mill, have provided a detailed letter of support for the proponent’s application for subdivision which seeks to address the economic, social and environmental values associated with the application.”*

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

[21] The RDCK notes in its report that: *“The subject property is not located within an area of the Regional District that is subject to zoning regulation. Accordingly, the Regional District does not regulate the use of land on the property by means of zoning.”*

[22] The RDCK notes in its report that: *“The subject property has a split land use designation of Agriculture (AG) and Industrial (M) under the Electoral Area ‘E’ Official Community Plan Bylaw No. 2260, 2013 (the OCP), to reflect the range of agricultural and industrial uses occurring on the property.”*

[23] The RDCK notes in its report that its Agriculture Policies include:

“Will permit varying parcel sizes depending on the respective land use designation, but generally, shall not be smaller than 4 hectares for lands within the ALR, or smaller than 2 hectares for lands outside of the ALR. Will consider supporting applications to subdivide parcels smaller than 4 hectares within the ALR, subject to approval of the ALC, in the following cases:

b. where the community interest in the subdivision of the land outweigh the community interest in the retention of the land in a larger parcel as identified in Section 5, Clause 8 above and as determined through public consultation; and

c. where the individual parcel sizes within the ‘Agriculture’ designation are subject to approval by the ALC and meet Provincial requirements for waste water disposal.”

[24] The Commission is in receipt of several letters of complaint from local residents concerned about perceived expansion of the sawmill. The Panel notes that the Application does not propose any expansion to the footprint of the sawmill, and that any further expansion of the sawmill will require a new application for non-farm use.

Weighing the factors in priority

[25] The Panel believes that the Application, as proposed, does not have any additional negative impact on agriculture as the footprint of the sawmill already exists on the Property.

[26] The Panel agrees with the RDCK that it would be preferable if the Property were not bisected by both the proposed panhandle and the Ogilvie Road right of way. The Panel suggests that the Applicant investigate ways to alleviate this. The Panel identifies the possibilities of: locating the panhandle for proposed Lot 1 on the southern boundary of the Property; or deleting the northern ½ of the Ogilvie Road Right of Way on the Property; or, locating the panhandle for Proposed Lot 1 on the northern boundary of the Property.

DECISION

[27] For the reasons given above, the Panel approves the Proposal to subdivide the 3.6 ha Property into two parcels of 1.8 ha each.

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

- a. the preparation of a subdivision plan to delineate the area to be subdivided that minimizes the fragmentation of proposed Lot 2; to be approved by the Commission;
- b. the subdivided boundaries of proposed Lot 1 abutting Lot 2 are to be fenced to clearly separate the farm and non-farm uses; and,
- c. the subdivision 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.
Commissioner **Ian Knudsen** concurs with the decision.

[31] Decision recorded as Resolution #223/2016.

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 #223/2016. The decision is effective upon release.



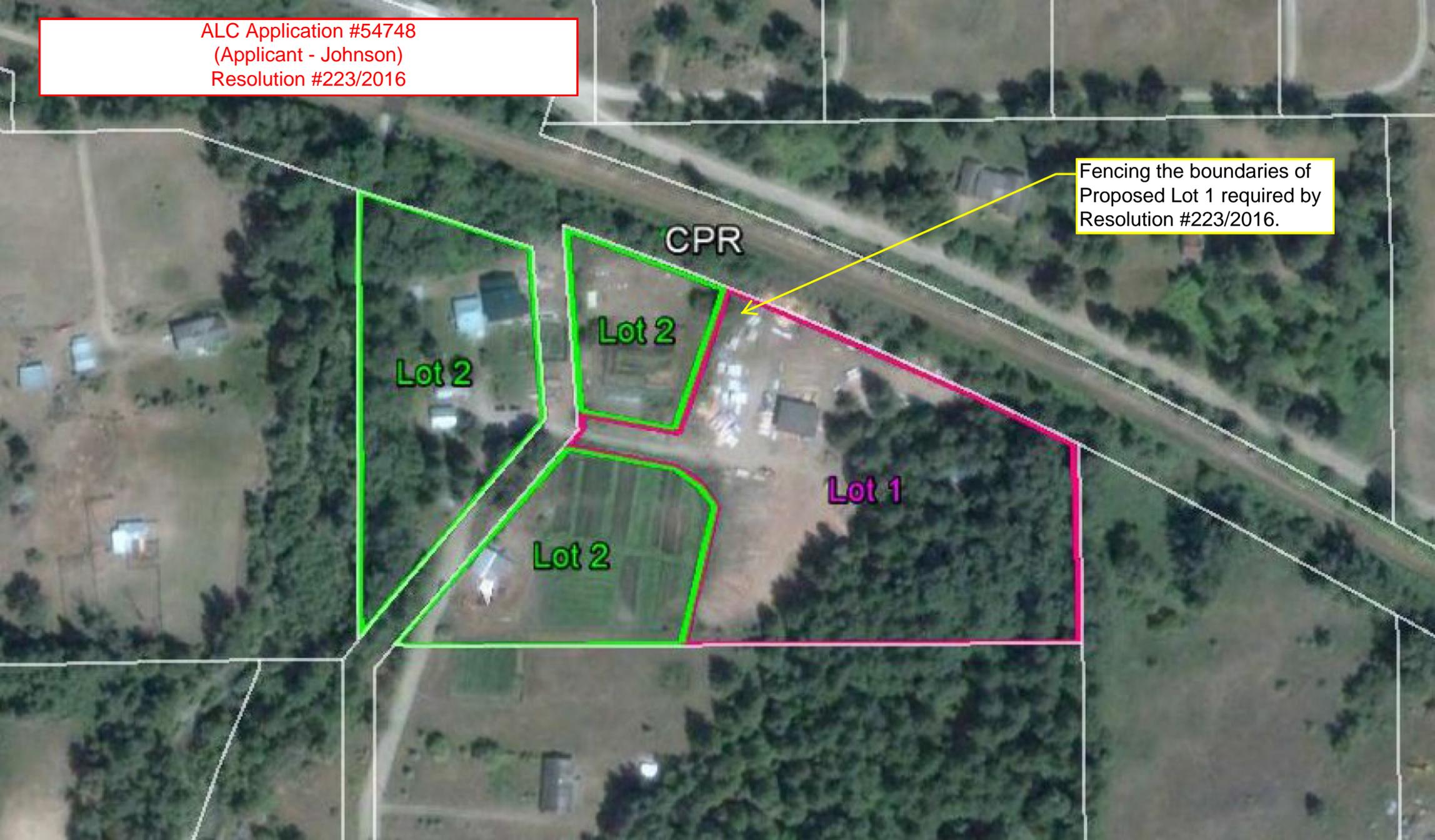
Colin J. Fry, Director of Policy and Planning

July 25, 2016

Date Released

ALC Application #54748
(Applicant - Johnson)
Resolution #223/2016

Fencing the boundaries of Proposed Lot 1 required by Resolution #223/2016.



CPR

Lot 2

Lot 2

Lot 2

Lot 1