



August 12, 2016

Agricultural Land Commission
133–4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

ALC File: 54770

(SENT BY ELECTRONIC MAIL)

Roberta and Gerald Fenner
Box 96
2987 Wardner – Fort Steele Road
Fort Steele, BC V0B 1N0

Dear Mr. and Mrs. Fenner:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #295/2016) 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 Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Colin J. Fry', is written over a light blue horizontal line.

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #295/2016)
Sketch plan

cc: Regional District of East Kootenay (File: P 716 301) **(SENT BY ELECTRONIC MAIL)**

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AGRICULTURAL LAND COMMISSION FILE 54770

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicants:

**Roberta Fenner
Gerald Fenner
(the “Applicants”)**

Application before the Kootenay Regional Panel:

**Sharon Mielnichuk, Panel Chair
Harvey Bombardier**

THE APPLICATION

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

Parcel Identifier: 026-244-802

Lot 2, District Lot 313, Kootenay District, Plan NEP77788

(the “Property”)

[2] The Property is 32 ha in area.

[3] The Property has the civic address 2078 Wardner – Fort Steele Road, Fort Steele, 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 Applicants are applying to subdivide the Property into two parcels of 24 ha and 8 ha (the “Proposal”). The Proposal along with supporting documentation is collectively the application (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. Agricultural capability map, ALR context map and satellite imagery
4. Professional Agrologist Report – David Struthers, P.Ag. of VAST Resource Solutions (the “Struthers Report”)

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

SITE VISIT

[11] 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”).

[12] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Applicants on July 29, 2016 (the “Site Visit Report”).

[13] 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

[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, 4; 5 and 6 more specifically 80% (7:4MP – 3:3M), 15% (3M), and 5% (6:6T – 4:5TP).

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

Class 6 - land is important in its natural state as grazing land. These lands cannot be cultivated due to soil and/or climate limitations.

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

[15] In addition, the Panel reviewed the Struthers Report. The Struthers Report finds that:

“The Canada Land Inventory (CLI) agricultural capability classification for the property is 5MP (unimproved) and 4MP (improved) [...] The BC land capability classification system for agriculture assumes irrigation water is available to address soil moisture deficiencies and therefore agricultural capability can be improved by one class, from 5 to 4 in this instance. However, the system also recognizes that soils with low water holding capacity are somewhat limiting even when irrigated, and indicates that soils with predominantly gravelly sand textures in the upper 50 cm cannot be improved beyond a Class 5 classification.

A review of the BC water licenses database indicates you have a current water license (C107307) for irrigation from Norbury Creek. However, based on the current “first in time, first in right” rule under BC’s Water Act, there are several licensees with earlier priority dates who are entitled to take their full allocation of water prior to you. As a result, there is insufficient water available to support regular irrigation of your property and therefore, the agricultural capability cannot be improved.”

[16] The Panel reviewed the CLI ratings and the Struthers Report and find that the Property has moderate capability for agriculture but is currently limited by lack of access to water.

[17] In their letter, the Applicant stated the following:

“We valued and still value this land and have a strong desire to preserve and improve the soil and overall acreage as an agricultural land parcel. Over the years, we have cleared trees and removed the heavy underbrush. We have cultivated the soil by picking thousands of rocks and removing them from the soil and adding manure to enrich the soils productivity and capabilities. The soil has been disced, plowed and seeded several times over the years to enhance the grass growth. The acreage now contains 12 fruit trees, a large vegetable garden, and has an equestrian arena. The land is now producing feed for our 10 horses. The fencing is now rail to ensure that the horses have a safe field to roam and graze.”



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

[18] The Applicants did not provide any evidence or rationale regarding any economic, cultural and social values that may be pertinent to the Application.

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

[19] Regional District of East Kootenay (the “RDEK”) Staff, in their report note that:

“OCP policies permit support for Section 514 subdivisions if specified criteria are met. The proposal will meet the criteria if the proposed lot is reduced to between 1.0 and 2.0 ha and located where there would be no negative impact to the agricultural potential of the parent parcel.”

[20] The Property is designated in the RDEK’s Official Community Plan as RR, Rural Resource which supports rural residential and rural resource land uses with parcel sizes 8.0 ha and larger.

[21] The Property is zoned as RR-60, Rural Resource Zone, where the minimum parcel size is 60 ha. RDEK Staff notes that *“rezoning is not required where the subdivision complies with Section 514 of the Local Government Act.”*

[22] The RDEK Board resolved that:

“the RDEK supports the Fenner ALR subdivision application subject to the proposed lot being reduced to between 1 and 2 ha and located in an area with the least impact on the agricultural potential of the parent parcel.”

[23] The Applicants, in their letter, state that:

“We share the same goals and vision that the local community plan has developed. The Steeples Official Community Plan and Zoning Bylaws, in the Regional District of East Kootenay objectives are to support agricultural use, have a minimal footprint on the environment, and support natural and organic



farming/ranching and most importantly, continue to value the land as agricultural land and support generations of families working and maintaining the land.”

Weighing the factors in priority

[24] The Panel believes that in its current state, the Property has poor to moderate capability for agriculture. Therefore, subdividing the Property will not have a significant negative impact on the agricultural productivity of the Property.

[25] The Panel believes that the original proposal to subdivide an 8 ha parcel from the Property produces a viable agricultural unit and reduces the incursion of residential use-only lots within the ALR.

[26] While respectful of the RDEK’s current zoning as it pertains to the Property, the Panel finds that this alone, 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.

DECISION

[27] For the reasons given above, the Panel approves the Proposal to subdivide the Property into an 8 ha parcel and a 24 ha parcel.

[28] 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.

[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.

[31] Decision recorded as Resolution #295/2016.

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 #295/2016. The decision is effective upon release.

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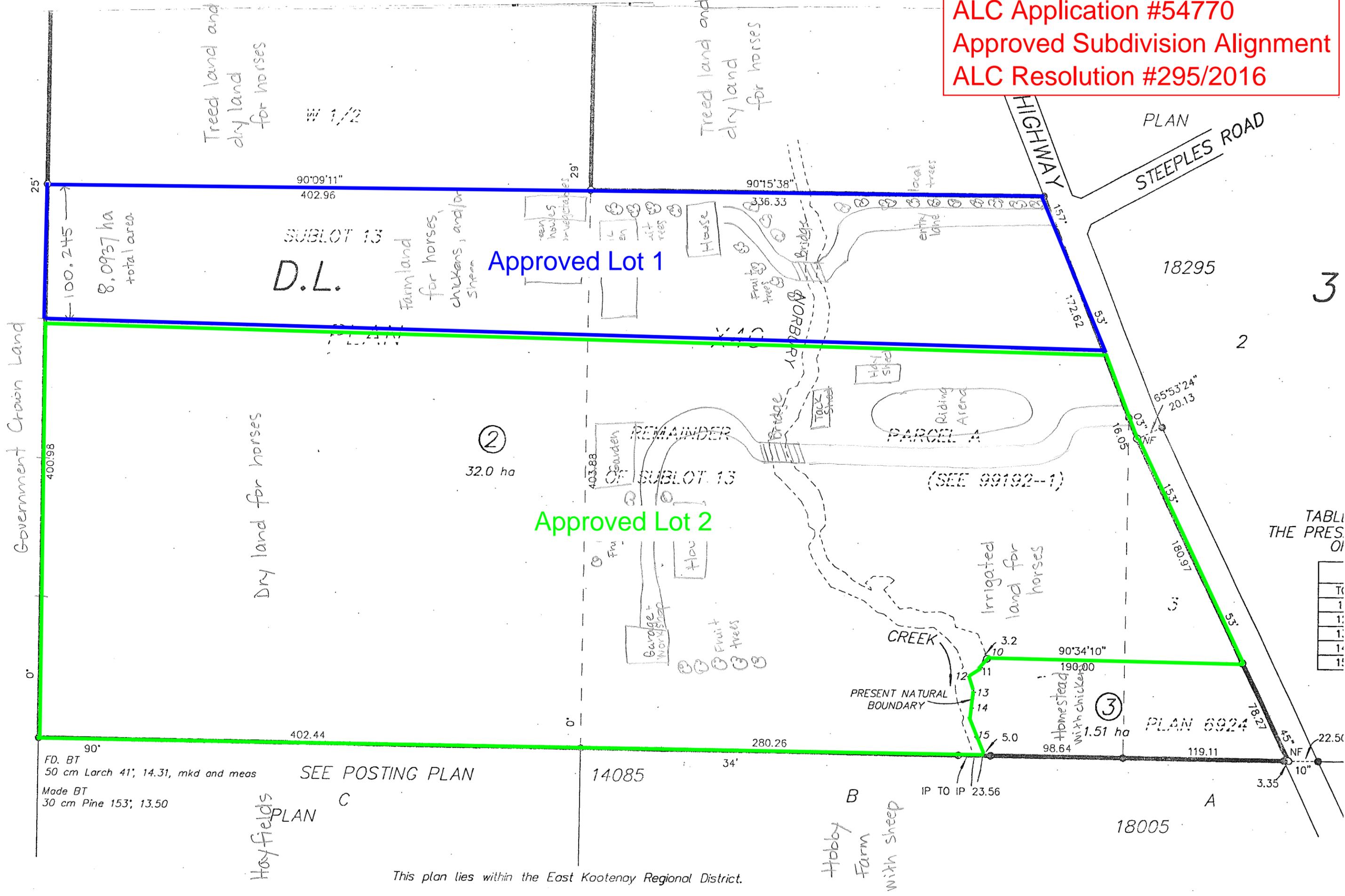
Colin J. Fry, Director of Policy and Planning

August 12, 2016

Date Released

ALC Application #54770
 Approved Subdivision Alignment
 ALC Resolution #295/2016

590



SUBLOT 13
 D.L.
 8.0937 ha total area

Approved Lot 1

Approved Lot 2

②

32.0 ha

③

1.51 ha

FD. BT
 50 cm Larch 41; 14.31, mkd and meas
 Made BT
 30 cm Pine 153; 13.50

SEE POSTING PLAN

Hayfields

Hobby Farm with sheep

This plan lies within the East Kootenay Regional District.

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