



**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

August 15, 2016

ALC File: 54938

Macdonald Thomas Law Office  
1018 7<sup>th</sup> Avenue  
PO Box 2400  
Invermere, BC V0A 1K0

Dear Mr. MacDonald:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #305/2016) 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 clients accordingly.

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 Fry', is written over a light blue circular stamp.

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #305/2016)  
Sketch plan

cc: Regional District of East Kootenay (File: P 716 505)

54938d1



## **AGRICULTURAL LAND COMMISSION FILE 54938**

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

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

**Applicants:**

**William Coy  
Robert Coy  
(the “Applicants”)**

**Agent:**

**William MacDonald  
(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: 016-408-047

Sublot 1, District Lot 344, Kootenay District, Except Parts included in Plans 4411, EPP29926 and EPP29927.

(the "Property")

[2] The Property is 54.9 ha in area.

[3] The Property is located at 4476 Columere Road in the Columbia Lake area.

[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 register a lease of 0.187 ha for residential purposes of establishing a modular home for one of the Applicants' daughter (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. 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.

[11] The Regional District of East Kootenay (the “RDEK”) resolved to forward the Application with support.

[12] The Panel reviewed five previous applications involving the Property:

Application ID: 25590  
Legacy File:15624

To subdivide the 64.5 ha property into two lots of 24.5 ha



(Coy, 1982)

and 40 ha, as divided by the highway. Approved in lieu of homesite severance. Resolution #2216/82.

**Note: This subdivision has not been undertaken.**

\*\*\*\*\*

Application ID: 25192  
Legacy File: 11142  
(Coy, 1982)

To exclude the 64.5 ha property for eventual subdivision into smaller parcels. Refused by Resolution #2217/82.

\*\*\*\*\*

Application ID: 39420  
Legacy File: 20873  
(Coy, 1987)

To use 6.0 ha of the 64.5 ha property to construct a 9-hole golf course. Approved by Resolution #192/87, subject to the operation of the golf course being limited to May 1 – September 30, and that no permanent buildings be constructed.

Reconsideration Request

The Commission received a request from the applicant to reconsider Resolution #192/87. The Applicant requested to build a clubhouse for the golf course. The Commission approved the request to build a 95 m<sup>2</sup> clubhouse in the south west corner of the Property. Resolution #13/92.

\*\*\*\*\*

Application ID: 1399  
Legacy File: 27578  
(Coy, 1992)

To subdivide the applicant's 0.48 ha homesite in order to allow the applicant's son to build a dwelling. Refused by Resolution #500/93.

\*\*\*\*\*



Application ID: 51651  
Legacy File: 20873  
(Coy, 1993)

To subdivide a 0.3 ha lot for the Applicants as a homesite severance. Approved by Resolution #2525/2010.

**Note: This subdivision was authorized for deposit at the Land Titles Office on July 9, 2014.**

### **SITE VISIT**

[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 82J/05 for the mapping units encompassing the Property are Class 2, 4, 5 and 6; more specifically (8:2X – 2:4T), (6TP) and (6:6TP – 3:5TP – 1:4T).

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 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 X (combination of soil factors), P (stoniness) and T (topographic limitations).

[15] The Panel reviewed the CLI ratings and find that the Property has moderate to good capability for agriculture. However, the Property has agricultural suitability limitations as it is bisected by Highway 93/95, Columere Road, and Columbia Lake Road.

[16] In his letter, the Mr. Robert Coy stated the following:

*"We are now the fourth generation on the farm, my father, myself, my daughter and grandson [...] this application to the ALC would very strongly let us continue to run our family farm, with our children having a small part for their home and raising their family. With the high costs of farming we are not able to do this without a mortgage."*

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

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

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

[18] The RDEK forwarded the Application with support and RDEK staff noted in their report that: *"the registration of a lease agreement would not create any additional parcels of land"* and that *"upon full payment of the mortgage the leasehold interest will revert back to the farm operation."*

Weighing the factors in priority

[19] The Panel believes that, given the temporary nature and small area of the lease, as well as the location of the lease area within the agricultural capability mapping unit of

6TP, there will be no significant negative impact to agriculture on the Property or in the area.

[20] 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**

[21] For the reasons given above, the Panel approves the Proposal to register a lease for 0.187 ha on the Property for residential use by one of the Applicants' daughter.

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

- a. the lease area being in substantial compliance with the plan submitted with the Application;
- b. the registration of the lease being completed within three (3) years from the date of release of this decision.

[23] 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.

[24] Panel Chair Sharon Mielnichuk concurs with the decision.  
Commissioner Harvey Bombardier concurs with the decision.  
Commissioner Ian Knudsen concurs with the decision.

[25] Decision recorded as Resolution #305/2016.

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 #305/2016. The decision is effective upon release.

A handwritten signature in black ink, appearing to be 'CJF', is written over a horizontal line.

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

**August 15, 2016**

---

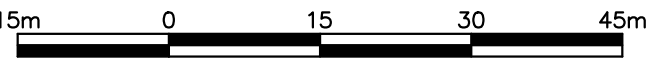
**Date Released**

**REFERENCE PLAN TO ACCOMPANY A LEASE OF PART OF SUBLLOT 1, DISTRICT LOT 344, KOOTENAY DISTRICT EXCEPT PARTS INCLUDED IN PLANS 4411, EPP29926 AND EPP29927**

**PLAN EPP56390**

ALC Application 54938  
Approved Lease  
ALC Resolution #/2016

Pursuant to Section 99(1)(b) of the Land Title Act  
BCGS 82J.021



The intended plot size of this plan is 280mm in width by 432mm in height (B size) when plotted at a scale of 1:750

**LEGEND**

Grid bearings are derived from differential carrier phase GNSS observations and are referred to the central meridian of Zone 11.

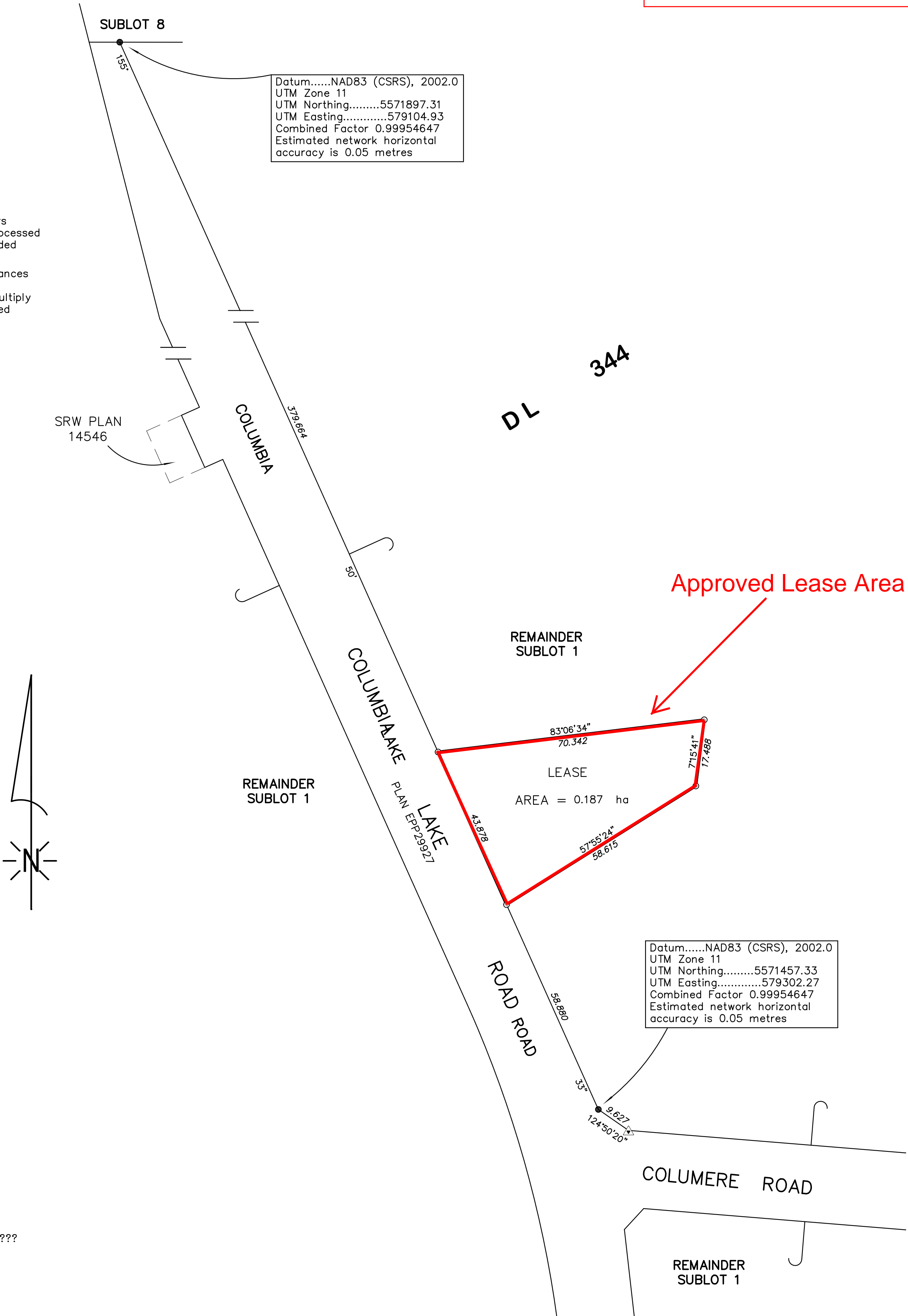
The UTM coordinates and estimated network horizontal accuracy are derived using 9 hours of GNSS dual frequency observations and processed using the CSRS-PPP online processing provided by Natural Resources Canada

This plan shows horizontal ground-level distances based on a mean ellipsoidal elevation of 836 metres. To compute grid distances, multiply ground-level distances by the mean combined factor of 0.99954647

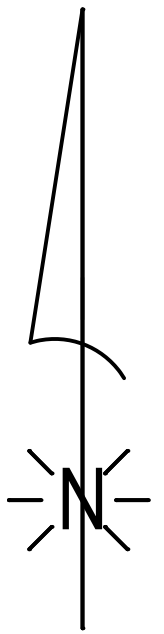
All distances are in metres

- STANDARD IRON POST FOUND
- STANDARD IRON POST PLACED
- △ ANGLE IRON FOUND

Datum.....NAD83 (CSRS), 2002.0  
UTM Zone 11  
UTM Northing.....5571897.31  
UTM Easting.....579104.93  
Combined Factor 0.99954647  
Estimated network horizontal accuracy is 0.05 metres



Approved Lease Area



Datum.....NAD83 (CSRS), 2002.0  
UTM Zone 11  
UTM Northing.....5571457.33  
UTM Easting.....579302.27  
Combined Factor 0.99954647  
Estimated network horizontal accuracy is 0.05 metres

This plan lies within the jurisdiction of the Provincial Approving Officer for the Ministry of Transportation and Infrastructure, Rocky Mountain District. BCMoT File No. 20??-????

GARRETT WINKEL LAND SURVEYING LTD.  
125 KOOTENAY STREET NORTH  
CRANBROOK BC VIC 3T5  
PHONE: (250) 489-1182  
**13-003-LEASE**

This plan lies within the Agricultural Land Reserve  
This plan lies within the Regional District of East Kootenay

The field survey represented by this plan was completed on the 14th day of October, 2015. Garrett M. L. Winkel, BCLS 796