



Agricultural Land Commission
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August 8, 2016

ALC File: 54961

Gerald Friesen
3368 Henry Road
Chemainus, BC V0R 1K4

Dear Mr. Friesen:

Re: Application to Conduct a Non-Farm Use in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #298/2016) as it relates to the above noted application. As agent, it is your responsibility to notify the applicants 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.

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". 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 Liz Sutton at (Elizabeth.Sutton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

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Enclosures: Reasons for Decision (Resolution #296/2016)

cc: District of North Cowichan (File: 3025-20 16.04)

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AGRICULTURAL LAND COMMISSION FILE 54961

REASONS FOR DECISION OF THE ISLAND PANEL

Application submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act*

Applicants:

**Gerald Friesen
Sandra Friesen
Clinton Morrison
Stacy Morrison
(the “Applicants”)**

Agent:

**Gerald Friesen
(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: 006-660-819

Lot 23, Section 11, Range 5, Chemainus District, Plan 2051, Except Part In Plan
17347 and VIP 61433

(the "Property")

[2] The Property is 2.1 ha in area.

[3] The Property has the civic address 3368 Henry Road, Chemainus.

[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. 20(3) of the *ALCA*, the Applicants are applying to approve a pre-existing 600 ft² suite which was converted from a garage (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".

RELEVANT STATUTORY PROVISIONS

[7] The Application was made pursuant to s. 20(3) of the *ALCA*:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[8] 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

[9] 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.

[10] At its meeting of April 20, 2016, the District of North Cowichan Council resolved to forward the Application to the Agricultural Land Commission for its decision.

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

Application ID: 18467 Legacy File: 18667 (O'Driscoll, 1987)	To subdivide a 0.8 hectare lot from the 2.5 ha property. The owners would retain the proposed lot and build a new home. The remaining parcel with the existing structures would be sold. The application was refused by ALC Resolution #1727/84.
Reconsideration Request 1	To reconsider the original proposal for subdivision. The Commission discussed that the surrounding area is changing and that the agricultural potential of this lot is



limited. The request for reconsideration was approved by ALC Resolution #452/86.

Reconsideration Request 2 The original application requested subdivision of a 0.8 ha lot along the northern boundary of the property to contain the dwelling. The request for reconsideration asked that the lot be moved to the southern boundary where there were no houses. The request for reconsideration was approved by ALC Resolution #255/94.

Note: The subdivision was authorized for deposit with the Registrar of Land Titles by the ALC on May 30, 1995.

Application ID: 18464
Legacy File: 00887
(O'Driscoll, 1977)

To subdivide a 0.8 ha lot from the 2.5 ha property. The Application was refused by ALC Resolution #4116/76.

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

[13] The Applicants provides the following rationale for the Application:

A permit was taken out sometime in the 1990s by the previous owner allowing them to build a garage. At some point in time before we moved in, part of the original building was turned into a grandparent suite. Prior to purchasing the property in 2004 we received verbal assurance from the municipality that since the building had been there for so long, and we are all family members, not using it as a rental property, it would be "grandfathered in" and we could buy it without any problems.

The Panel has been put in a difficult position whereby the proposed suite has already been constructed. While the garage was not converted by the Applicants, the Panel finds that the conversion of a portion of the garage to a dwelling was in contravention of the *ALCA* and Regulation 171/2002 (*Agricultural Land Reserve Use, Subdivision and Procedure Regulation*).

[14] In a situation where the Panel must retroactively consider a non-farm use, the Panel must give consideration as to whether or not it would have allowed the proposed use if the contravention had not taken place. In this circumstance, the Panel cannot find an agricultural argument which would support the necessity of an additional permanent dwelling.

[15] As the second dwelling has already been constructed, the Panel will allow the dwelling to remain in its current size and location, provided that no additional dwellings are permitted. In addition, the Panel wishes to make it clear that approval is only for the 600 ft² suite within the converted garage, and this decision is not to be extrapolated as permission to construct a new residence should the garage cease to be a dwelling.

DECISION

[16] For the reasons given above, the Panel approves the Proposal to retain the existing 600 ft² suite within the garage.

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

- a. No additional dwellings may be placed or constructed on the Property;
- b. The garage suite not be expanded beyond its current 600 ft² footprint; and
- c. In the event either dwelling is completely destroyed by whatever means, or is considered by the District of North Cowichan to be completely destroyed, by whatever means, the dwelling can only be replaced as may be permitted by the *ALCA* and regulation in effect at the time one of the dwellings is destroyed or

considered destroyed. Alternatively, the landowner may make application for a non-farm use to replace the dwelling.

[18] 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.

[19] Panel Chair Jennifer Dyson concurs with the decision.
Commissioner Honey Forbes concurs with the decision.
Commissioner Clarke Gourlay concurs with the decision.

[20] Decision recorded as Resolution #298/2016.

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 #298/2016. The decision is effective upon release.



Colin J. Fry, Director of Policy and Planning

August 8, 2016

Date Released