



Agricultural Land Commission
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December 8, 2016

ALC File: 55402

Barrett Gervan
2433 29 Ave SW
Calgary, Alberta T2T 1P1

Dear Mr. Gervan:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #428/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client accordingly. A sketch plan depicting the decision has been attached.

Reconsideration of a Decision as Directed by the ALC Chair

Please note that pursuant to [s. 33.1 of the *Agricultural Land Commission Act*](#), the Chair may direct the executive committee to reconsider any 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 s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

Reconsideration of a Decision by an Affected Person

We draw your attention 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.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Further correspondence with respect to this application is to be directed to Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "Riccardo Peggi". The signature is written in a cursive, flowing style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #428/2016)
Sketch plan

cc: Regional District of East Kootenay (File: P 716 512)



AGRICULTURAL LAND COMMISSION FILE 55402

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant: 1129759 Alberta Ltd.
(the “Applicant”)

Agent: Barrett Gervan
(the “Agent”)

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: 016-809-939

Sublot 163, District Lot 4596, Kootenay District Plan X32, Except

(1) The Right-Of-Way Shown Outlined In Pink On Plan 1203,

(2) The Five Severed Portions, Which Lie Between The Said Right-Of-Way And The Waters Of Windermere Lake As Shown Outlined On Plan 1203 And

(3) Part Included In Plan 1232 And

(4) Part In Plan 11130

(5) Plan NEP88930

(the "Property")

[2] The Property is 287.6 ha in area.

[3] The Property is generally described as being located southwest of Invermere.

[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 the 287.6 ha Property into two parcels of approximately 70 ha and 217 ha. The Property is comprised of two areas which are physically separated from each other. The 70 ha portion is herein referred to as the Paddy Ryan Lakes Portion and the 217 ha portion is herein referred to as the Goldie Creek Access Portion (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 Agricultural Land Commission (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 applicant
4. Previous application history
5. Agricultural capability map, ALR context map, and satellite imagery
6. *Agricultural Capability and Soils Assessment of Land Contained in: South Leg of DL 347, REM. SL2 Plan 11, DL 4596 REM SL163 PLAN X32 (Goldie Creek), DL 4596 REM SL163 PLAN X32 (Paddy Ryan Lakes) near Invermere BC*, prepared for Grizzly Ridge Properties Ltd. By David W. Yole, MSc, PAg dated April 12, 2010 (the “Yole Report”)

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

[11] At its meeting of July 8, 2016, the Regional District of East Kootenay resolved to forward the Application to the Commission.

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

Application ID: 51915
(Grizzly Ridge, 2010)

To create a total of 5 lots from two subject properties. The subject properties are sized approximately 287 ha and 231 ha. They were proposed to be subdivided into 5 lots of approximately 70 ha, 104 ha, 113 ha, 112 ha, and 119 ha. The Commission concluded that the land under application has some agricultural capability limitations but that it is appropriately designated as ALR. The Commission also concluded that the land under application is more suitable for agricultural use at their current size, that the proposal will negatively impact agriculture, and that the proposal is inconsistent with the objective of the ALCA to preserve agricultural land. The application was refused by Resolution #2737/2010.

Reconsideration Request

In its reconsideration the Commission noted that a new development concept had been suggested in a document entitled *A New Perspective on Agriculture on the Columbia Valley*, prepared by T.J. Ross, P. Ag. The concept proposed



the creation of smaller parcels over the areas with higher capability soils with a view to encouraging more intensive agricultural activities in these areas, the net result being an overall increase in agricultural potential for the area as compared with its low potential if retained for grazing. The Commission considered that the concept was worthy of further consideration. However, until discussions with the Regional District and its steering committee for the new agricultural plan have taken place and the concept fully understood the Commission considered that it was premature to consider any form of subdivision of the subject properties. The Commission reconfirmed Resolution #2737/2010.

Application ID: 41947
Legacy File: 35965
(Grizzly Ridge, 2005)

To exclude 267 ha of Property from the ALR in order to develop approximately 600 units of recreational and residential homes. The Commission felt, after conducting a thorough inspection, that the site under application has no significant agricultural potential. The Commission therefore supported the proposed exclusion on the grounds of the site's limited agricultural potential and the opinion that its development for recreational and residential homes would take similar development pressure off other agricultural land in the area. The application was allowed by Resolution #248/2005.

Reconsideration Request

Mike Guthrie (acting on behalf of the Zehnder Farms Ltd.) requested reconsideration of the application as an affected person. The request for reconsideration was based on the view by Zehnder Farms Ltd. that the subject lands within the ALR have potential for farm use, as evidenced by the use of the subject property for grazing purposes by Zehnder for many years.

The Commission gave careful and lengthy consideration to the submissions made by you on behalf of the Zehnders and was of the view that the new information confirmed its previous



opinion that the agricultural potential of the property was very limited. It recognized that while the Zehnder's ranching operations were helped by the ability to use the land under application for a limited amount of grazing, the subject property, by itself, had insignificant carrying capacity. The Commission also noted that the property was in private ownership and its use as grazing land was dependent more upon the willingness of the owner to make it available for such use than it was on its location within the Agricultural Land Reserve. Finally the Commission noted that the property was adjacent to Castle Rock and had value for recreational and residential development. While the Commission had considerable sympathy for the situation faced by your clients it concluded that the new information did not warrant a change in its decision.

The Commission reconfirmed Resolution #248/2005 by Resolution #678/2005.

Note: The excluded lands previously formed part of the Property. Once excluded from the ALR, the lands were subdivided from the Property.

SITE VISIT

[13] On September 21, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[14] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on October 5, 2016 (the "Site Visit Report").



FINDINGS

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

[15] 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 82K/08 for the mapping units encompassing the Paddy Ryan Lakes Portion are 40% (4TP), 25% (7:4PM – 3:7W), 15% (6:6TP – 4:5PT), 15% (4PM), and 5% (6:5PM – 4:6TP). The improved agricultural capability ratings identified on CLI map sheet 82K/08 for the mapping units encompassing the Goldie Creek Access Portion are 90% (6:5PT – 4:6T), 7% (6:4PM – 4:6T) and 3% (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 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.

Class 7 - land has no capability for soil bound agriculture.

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

[16] In addition, the Panel received the Yole Report, dated April 12, 2010. The Yole Report included the following tables summarizing the CLI mapping units and area summaries for the Paddy Ryan Lakes Portion and the Goldie Creek Access Portion.



Paddy Ryan Lakes Portion	
CLI Unit	Area (ha)
3P	1.1
7:3P – 3:5W	3P = 1.9; 5W = 0.8
5CP (4CP)	19.8
7:5P – 3:4P	5P = 16.2; 4P = 6.9
5-6PT	3.5
5-6T	6.3
6W	1.1
6T	0.8
5:6W – 5:5P	6W = 2.1; 5P = 2.2
7W (lake)	7.6
Subtotal (ha)	70.3
% Arable	9.9 ha = 14.1%
% Non-Arable	60.4 ha = 85.9%

Goldie Creek Access Portion	
CLI Unit	Area (ha)
3PT	6.5
3-4PT	24.9
4W	2.3
4P	8.0
5:5TC – 5:4T	5TC = 30.8; 4T = 30.8
5C (5C)	24.2
5CP (5C)	30.7
5CW (5C)	2.7
5T	20.5
6PA	7.0
6W	5.2
6T	3.4
6:6T – 4:5A (6T)	5.1



6-7T	13.7
6T	3.4
7T	16.0
Subtotal (ha)	237.7
% Arable	75.1 ha = 31.6%
% Non-Arable	162.7 ha = 68.4%

Note: There is a discrepancy in the Property size between Commission mapping and the Yole Report mapping.

[17] The Panel reviewed the CLI ratings and the Yole Report and find that the Property has limitations for soil-bound agriculture but is still suitable for ranching and could be managed for this purpose.

[18] The Panel notes that the Proposal is to separate the two portions of the Property that are separated by land onto separate certificates of title. The Panel finds that the subdivision of the two physically separated pieces of the Property would not have a negative impact on the potential agricultural use of the Property.

[19] The Panel considered the letters submitted to the Commission from David Zehnder and the Windermere District Farmers Institute in opposition to the Proposal. Dave Zehnder and the Windermere District Farmers Institute noted concerns that the Proposal would negatively impact neighbouring agricultural operations and that the Proposal is contrary to Regional District of East Kootenay policy regarding land use in the Windermere Lake area. While the Panel appreciates and carefully considers input from the agricultural community in the Windermere area, the Panel is not convinced that the Proposal will negatively impact agricultural uses in the area.

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

[20] The Applicant 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

[21] The Regional District of East Kootenay (RDEK) Zoning Bylaw designates the Paddy Ryan Lakes Portion as W-1, Watershed Protection Zone with a minimum parcel size of 125.0 ha and the Goldie Creek Access Portion is designated as A-1, Rural-Resource Zone with a minimum parcel size of 60.0 ha.

According to the RDEK Staff Report, Section 5.04(c) of RDEK Bylaw No. 900 permits a reduction in parcel area requirement when the subdivision involves a parcel of land that is divided by an existing parcel of land.

[22] The Panel gave consideration to regional and community planning objectives 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.

Weighing the factors in priority

[23] The Panel finds that the subdivision of the two physically separated pieces of the Property would have no negative impacts to the potential agricultural use of the Property.

[24] The Panel gave consideration to economic, social and cultural values and regional and community planning objectives 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

[25] For the reasons given above, the Panel approves the Proposal to subdivide the Property into a 70.0 ha parcel and 217.0 ha parcel.

- [26] 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 drawing submitted with the Application;
 - b. the subdivision being in substantial compliance with the plan submitted with the Application;
 - c. submission of two (2) paper copies or one (1) electronic copy of the final survey plan to the Commission; and
 - d. the subdivision plan being completed within three (3) years from the date of release of this decision.

[27] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan.

[28] 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.

[29] These are the unanimous reasons of the Kootenay Panel of the Agricultural Land Commission.

[30] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

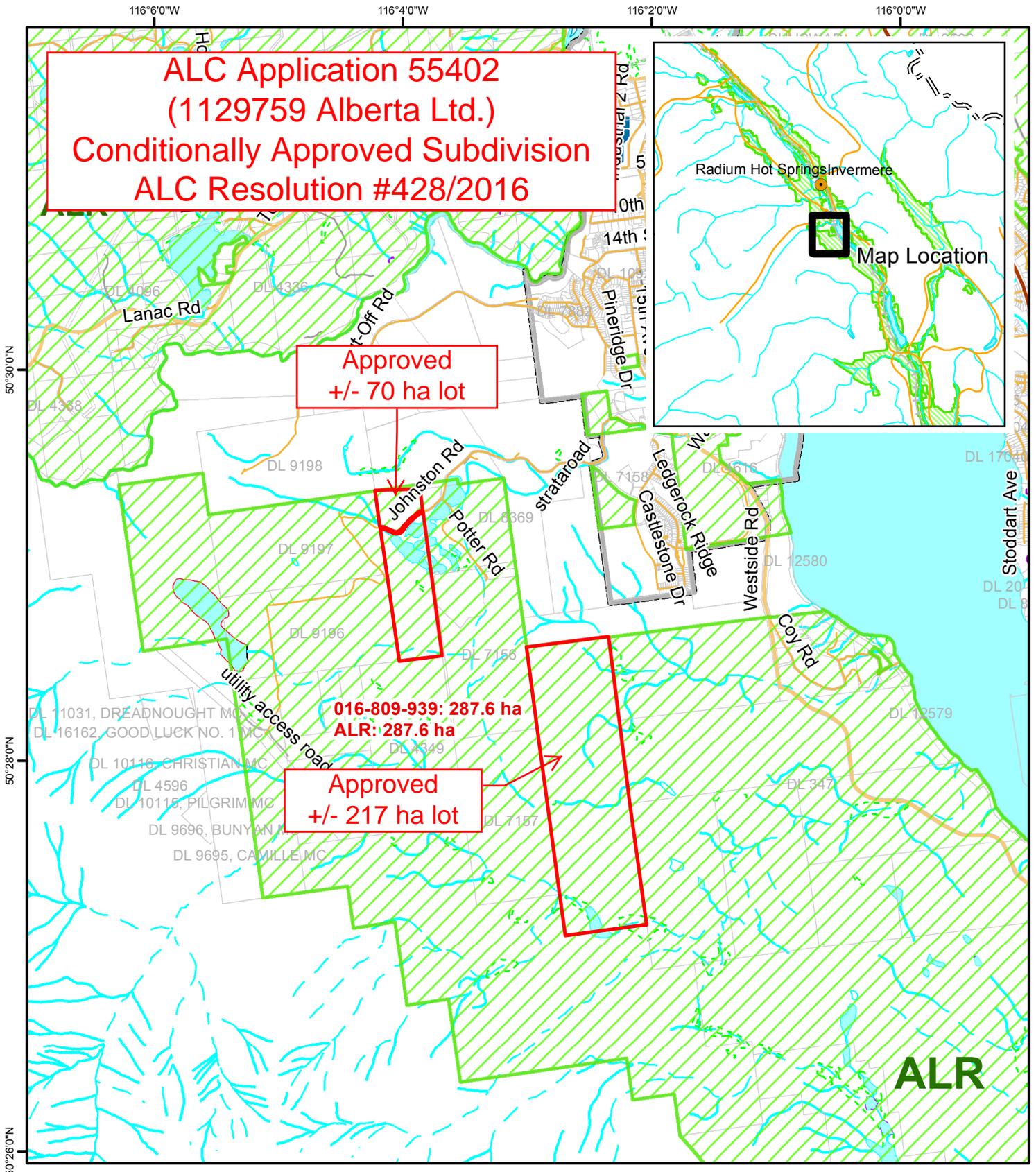
[31] This decision is recorded as Resolution #428/2016 and is released on December 8, 2016.

CERTIFICATION OF DECISION



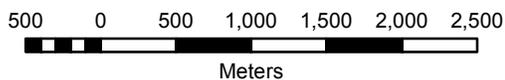
Sharon Mielnichuk, Panel Chair, on behalf of the Kootenay Panel

END OF DOCUMENT



ALR Context Map

Map Scale: 1:50,000



ALC File #:	55402
Mapsheet #:	82K/08
Map Produced:	
Regional District:	East Kootenay