



Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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www.alc.gov.bc.ca

January 19, 2017

ALC File: 55729

Louelyn Varela
1063 Simmons Road
Creston, BC V0B 1G7

Dear Louelyn Varela:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #12/2017) as it relates to the above noted application. As agent, it is your responsibility to notify the applicants accordingly.

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).

Page 2 of 2

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "Riccardo Peggi". The signature is fluid and cursive, written over the printed name below.

Riccardo Peggi, Land Use Planner

Yours truly,

Enclosures: Reasons for Decision (Resolution #12/2017)
Sketch Plan

cc: Regional District of Central Kootenay (File: A1612C)

55729d1



AGRICULTURAL LAND COMMISSION FILE 55729

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant: **Gordon Mahon**
(the “Applicant”)

Agent: **Louelyn Varela**
(the “Agent”)

Application before the Kootenay Regional Panel: **Sharon Mielnichuk, Panel Chair**
Harvey Bombardier



THE APPLICATION

[1] The legal description of the properties involved in the application are:

Property 1

Parcel Identifier: 012-595-080

Lot 1, District Lot 14878, Kootenay District, Plan 12135

Area: 66.2 ha

Civic Address: 1680 Nicks Island Road, Creston

Property 2

Parcel Identifier: 007-812-540

Block D, District Lot 14878, Kootenay District, Plan 2255

Area: 80.0 ha

Civic Address: 1680 Nicks Island Road, Creston

(collectively the "Properties")

[2] The Properties are located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[3] The Properties are located within Zone 2 as defined in s. 4.2 of the *ALCA*.

[4] Pursuant to s. 21(2) of the *ALCA*, the Applicant is applying to adjust the boundaries between the 66.2 ha Property 1 and the 80.0 ha Property 2 resulting in a ±12 ha lot containing the home site and a ±134.2 ha remainder lot including the farm fields. The two Properties are owned by the Applicant who wishes to sell the remainder lot (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".



RELEVANT STATUTORY PROVISIONS

[5] 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.

[6] 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.

[7] 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

[8] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Agricultural capability map, ALR context map, and satellite imagery
4. Previous application history

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

[9] The Regional District of Central Kootenay (the "RDCK") Board of Directors delegates the duty, under the *ALCA*, to provide information and a resolution regarding ALR applications within the RDCK to the applicable Local Area Director in which the application is being made.

On October 18, 2016, the Area Director for Area C of the RDCK resolved to forward the Application to the Commission.

[10] The Panel reviewed three previous applications involving the Property:

Application ID: 24941
Legacy File: 02751
(Orde Creek Ranch, 1979)

To subdivide the portion of the property south of the highway into two 21 ha lots and a 16 ha lot leaving a 115 ha remainder north of the highway. The Commission was opposed to the subdivision of high capability, agricultural land, into at best "part time" farm units. The Commission recognized that the property could be divided into two units: one large unit of 115 ha north of the highway and one unit of 56 ha south of the highway. Refused as proposed but allowed the alternate subdivision by Resolution #5713/77.

Note: Property 1 is a resulting lot of Resolution #5713/77.



Application ID: 3929
Legacy File: 22276
(Galloway, 1988)

To establish a millwork business on the farm property. The applicants recently purchased the property and had constructed several farm buildings. They owned a millwork business which specifically builds wooden cabinets for the Liquor Distribution Branch. The applicants proposed a concrete block building to house the millwork business. The building would be constructed in such a manner that would enable its future use as a farm workshop.

The Creston Flats have been recognized as the best agricultural lands in the Creston valley and the Commission was loath to permit the introduction of an industrial use that could set a negative precedent for agriculture. Past experience had shown that industrial operations often grow and expand to the detriment of the larger agricultural community. Refused by Resolution #604/88.

Application ID: 5501
Legacy File: 30655
(Galloway, 1997)

To continue the operation of the millwork business on a portion of the farmed property. The business was previously refused by Resolution #604/88 but was continued illegally. The Commission found that the business was better suited to an industrial site rather than agricultural land. Refused by Resolution #932/96.

SITE VISIT

[11] 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

[12] 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 82F/02 for the mapping units encompassing the Properties are approximately 60% (8:1 – 2:2W), 25% (8:1 – 2:2T), 10% (1), and 5% (2T).

Class 1 - land is capable of producing the very widest range of crops. Soil and climate conditions are optimum, resulting in easy management.

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.

The limiting subclasses associated with this parcel of land are W (excess water) and T (topographic limitations).

The Panel reviewed the CLI ratings and find that the Properties are located in an area of prime agricultural capability.

[13] While the Panel is hesitant to create a 12 ha lot with two single family homes in the midst of the ALR, the Panel believes that the consolidation of agricultural land into one larger lot would increase the overall agricultural utility of the Properties.

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

[14] There were no comments specifying any economic, cultural or social values in the Application.



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

[15] Both Properties are zoned Agriculture 3 (AG3) by the Electoral Area C Comprehensive Land Use Bylaw (the “Zoning Bylaw”). The minimum lot size in this zone for a parcel in the ALR is 60 ha. However, creating a 12 ha “homesite” would be permitted under Section 17(11) of the _____ “Reduction of Minimum Site Areas,”

11. Where it is not possible to create a lot that has minimum site area required for a zone, the minimum site area requirement may be reduced where the proposed subdivision involves any one of the following and meets local health authority requirements:

a. a boundary adjustment that does not create, or make it possible to create additional lots to those that exist at the time of application.

[16] The Properties are designated as “Agriculture” by the RDCK’s Official Community Plan (OCP). The “Agriculture” designation permits varying parcel sizes depending on the respective agricultural designation, but generally shall range between 4 ha and 60 ha for land within the ALR.

[17] The Panel finds that no amendments to the Official Community Plan or the Zoning Bylaw are required for this proposal to proceed.

[18] The Panel notes that the Proposal is supported by the Creston Valley Agricultural Advisory Committee and the Electoral Area C Director.

Weighing the factors in priority

[19] Although the Proposal would result in two single family homes on a single 12 ha lot, the Panel finds that the creation of a larger lot of prime agriculturally capable land would increase the agricultural opportunities available on the Properties overall. The Panel further notes the Proposal is supported by the Creston Valley Agricultural Advisory



Committee and the Electoral Area C Director and does not require amendments to the RDCK Zoning Bylaw or OCP.

DECISION

[20] For the reasons given above, the Panel approves the Proposal to adjust the boundaries between the 66.2 ha Property 1 and the 80.0 ha Property 2 resulting in a ±12 ha lot containing the home site and a ±134.2 ha remainder lot including the farm fields.

[21] 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. submission of two (2) paper copies or one (1) electronic copy of the final survey plan to the Commission; and
- c. the subdivision plan being completed within three (3) years from the date of release of this decision.

[22] 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.

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

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

[26] This decision is recorded as Resolution #12/2017 and is released on January 19, 2017.



CERTIFICATION OF DECISION

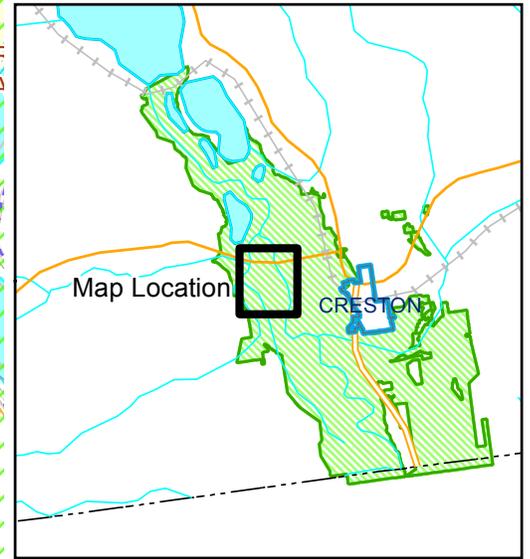
A handwritten signature in black ink, reading 'Sharon Mielnichuk', written in a cursive style.

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

END OF DOCUMENT

116°36'0"W

ALC Application 55729
Conditionally Approved Boundary Adjustment
ALC Resolution #12/2017



ALR

LOWER KOOTENAY

49°8'0"N

Lougheed Rd

Island North Rd

DL 14878

Conditionally Approved Lot
~12 ha

LOWER KOOTENAY 2

Hwy.3

Conditionally Approved Lot
~134.2 ha

DL 10800
R 2 LOWER KOOTENAY

Nicks Island South Rd

ALR

West Creston Rd

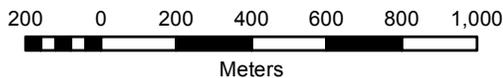
DL 9558

DL 1005



ALR Context Map

Map Scale: 1:20,000



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|--------------------|-------------------|
| ALC File #: | 55729 |
| Mapsheet #: | 82F.017 & 82F.018 |
| Map Produced: | January 16, 2017 |
| Regional District: | Central Kootenay |