



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

December 21, 2012

ALC File: 45630
Your File: 25822

McKimm & Lott
9830 – 4th Street
Sidney, BC
V8L 2Z3

Attention: Mr. Coll Gordon

Dear Mr. Gordon:

Re: Appeal – Order of the Chief Executive Officer

This is further to the appeal hearing held on November 19, 2012. As a result of the representations made by you and your clients, the Appeal Panel decided to refer the matter of the Order back to Chief Executive Officer with the directions to consider the evidence presented during the hearing.

After reviewing the matter further I have concluded as follows:

1. With regard to the property, legally identified as:

PID: 003-910-725

Lot 2, Section 1, Range 3 East, North Salt Spring Island, Cowichan District, Plan 17153
(Civic Address: 203-217 Rainbow Road, Salt Spring Island, BC)

(Hereinafter referred to as “Lot 2”)

Based on the evidence given, I accept that Lot 2 has never been used to store vehicles associated with your clients’ business. While Lot 2 is owned by your clients, it is occupied by a tenant and the photographic evidence that formed part of my October 2, 2012 report showing parked vehicles were vehicles owned by persons attending a gathering hosted by the tenant(s).

2. With regard to the property, legally identified as:

PID: 001-478-079

Lot 1, Section 1, Range 3 East, North Salt Spring Island, Cowichan District, Plan 28814
(Civic Address: 191 Rainbow Road, Salt Spring Island, BC)

(Hereinafter referred to as “Lot 1”)

Based on the evidence given, I accept that areas of Lot 1 have historically been used to store vehicles and the storage of vehicles is not an auto wrecking business. As explained by you and your clients, the vehicles are temporarily stored on Lot 1 until a sufficient number are amassed to warrant the expense of bringing a truck to Salt Spring Island to remove the vehicles off island for salvage. According to the evidence provided, the number

of vehicles historically stored on Lot 1 generally averaged no more than 50 at any one time except on rare occasions.

As to Attachment "A" to the July 19, 2012 Order which shows many vehicles stored on Lot 1, evidence was given that this was an anomalous situation caused in part by your clients re-directing their efforts following a fire which destroyed their home. I understand that while your clients were dealing with the aftermath of the fire and the construction of a new residence, vehicles continued to be brought onto Lot 1 but that efforts to remove the vehicles were not a priority.

Subsections 23(2) and (3) of the *Agricultural Land Commission Act* provide:

23(2) The restrictions on the use of agricultural land do not apply to land lawfully used for a non-farm use, established and carried on continuously for at least 6 months immediately before December 21, 1972, unless and until

- (a) the use is changed, other than to farm use, without the permission of the commission,
- (b) an enactment made after December 21, 1972, prohibits the use, or
- (c) permission for the use granted under an enactment is withdrawn or expires.

(3) For greater certainty, the exception in subsection (2) applies only to the land that was actually being used for a non-farm use and not to the entire parcel on which that use was being carried on.

While I accept that Lot 1 has been, and continues to be used, for a non-farm use (vehicle storage), established and carried on continuously for at least 6 months immediately before December 21, 1972, I do not accept that the entire area of Lot 1 has been used for the non-farm use. Photographic evidence shows that vehicle storage sites on Lot 1 varied from very generally defined storage areas to the sporadic siting of vehicles.

With reference to subsection 23(3), I am not convinced that the available evidence supports the conclusion that the entire area of Lot 1 is excepted from the restrictions on the non-farm use of land in the Agricultural Land Reserve (ALR).

I understand that during the hearing there was some discussion regarding the value of defining the area of non-farm use excepted by subsection 23(2). I also understand that a rough sketch was made of a potential area that I would generally described as being in the vicinity of the northwest corner of the property fronting Rainbow Road. I believe your clients felt this area would be suitable to allow for the storage of vehicles.

I have attached a more detailed sketch plan outlining the proposed excepted area calculated to be 0.96 ha. This area was calculated using dimensions obtained from Plan VIP28814. The east/west dimension is 173.6 feet (52.9132 metres) which is one half of the 347.16 feet dimension of the south boundary of Lot 1 identified on VIP28814. The north/south dimension is 240 feet (73.152 metres) which is two times the dimension of the northeast boundary of Lot 1 abutting Lot 11, Plan 5827. I have attached a copy of the rough sketch for comparison to the more detailed sketch.

Based on the foregoing, I am prepared to rescind the July 19, 2012 Order subject to the following:

1. Your clients providing written agreement that the area identified on the more detailed sketch will henceforth be the area of non-farm use excepted by subsection 23(2);
2. Your clients providing a written proposal outlining how they intend to demarcate the south and east boundaries of the excepted area. Please note that a simple method of distinguishing the excepted area from the non-excepted area is sufficient and can be done by constructing a fence, placing logs end to end, planting a hedgerow, etc.

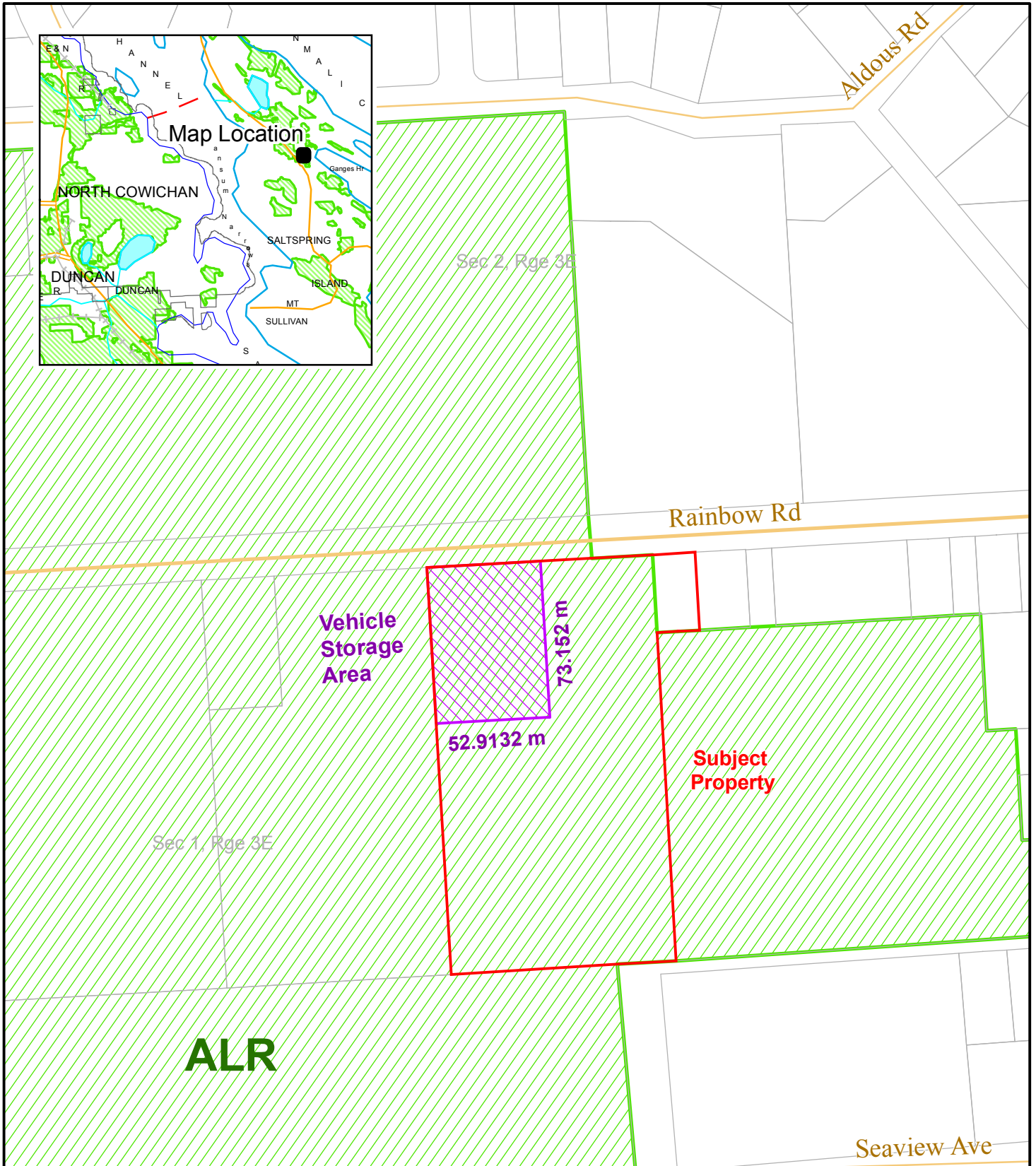
I await your advice.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

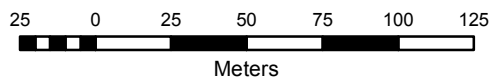
A handwritten signature in black ink, appearing to read "R. Bullock", is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Richard Bullock, Chief Executive Officer



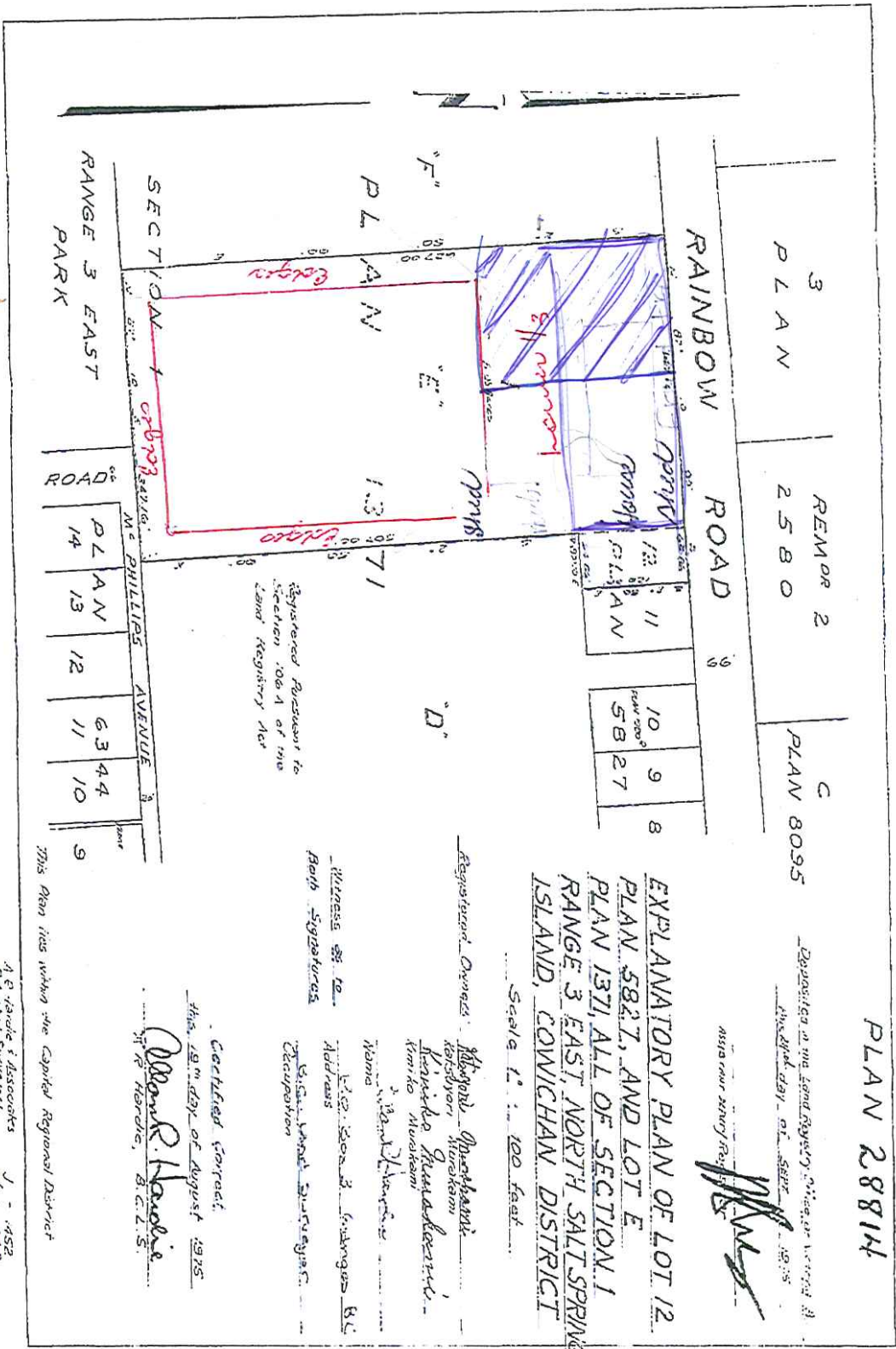
ALR Context Map

Map Scale: 1:2,500



ALC File #:	45630
Mapsheet #:	92B.083
Map Produced:	Dec 20, 2012
Regional District:	Capital

[Handwritten signature]



3 PLAN

REMO 2 2580

C PLAN 8095

PLAN 28814

Deposited in the Land Registry Office on the 1st day of SEP 1995

ASSIGNMENT BY REGISTERED OWNER

EXPLANATORY PLAN OF LOT 12
PLAN 5827, AND LOT E
PLAN 1371, ALL OF SECTION 1
RANGE 3 EAST, NORTH SALTSPRING
ISLAND, COWICHAN DISTRICT

Scale 1" = 100 feet

Registered Owner: Margaret Oshabank
 Kersyok Wuxokem
 Kaniho Kumiakawic
 Kaniho Muxokem
 Name: Margaret Oshabank
 Address: 152, Soa 3, Sanguas B.C.
 Witness Signature: _____
 Date: _____
 Occupation: _____

Certified Correct
 This 19th day of August 1925
David R. Hardie
 M.R. Hardie, B.C.L.S.

A.P. Jancic & Associates
 555 and Spanglers
 45 - 452
 45 - 469

This Plan lies within the Capital Regional District