



**Agricultural Land Commission**  
133-4940 Canada Way  
Burnaby, British Columbia V5G 4K6  
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Fax: 604-660-7033  
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October 31, 2005

Reply to the attention of Brandy Ridout

District of Summerland  
PO Box 159  
Summerland, BC V0H 1Z0

**Attention: Mr. Gordon Morley**

Dear Mr. Morley:

Re: Application #V-36099

The Provincial Agricultural Land Commission (the "Commission") has concluded its review of the District's application to exclude approximately 154.0 ha from the Agricultural Land Reserve (ALR).

The Commission encloses for your review Resolution #527/2005 outlining its decision along with an example covenant.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

cc: BC Assessment Penticton  
Urban Connections

#12 Dogwood Place, RR1, S95, C27, Osoyoos, BC V0H 1V0  
Attention: Mr. Brad Elenko

**MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION**

Minutes of a meeting held by the Provincial Agricultural Land Commission (the "Commission") on Friday, October 14, 2005 at the offices of the Ministry of Agriculture and Lands, located at 4607 - 23<sup>rd</sup> Street, Vernon, BC.

**PRESENT:** Sid Sidhu Commissioner  
Sharon McCoubrey Commissioner

**ABSENT:** Sue Irvine

**STAFF:** Brandy Ridout, Regional Research Officer  
Martin Collins, Planner  
Brian Underhill, Director – Strategic Planning & Corporate Policy

**For Consideration**

Application #V- 36099 (District of Summerland / Land and Water BC Inc.). The proposal is to exclude 154 ha from the Agricultural Land Reserve. The properties are legally described as:

1. PID: 012-072-842  
Lot 1, District Lot 2543, Osoyoos Division Yale District, Plan 787
2. PID: 012-072-851  
Lot 2, District Lot 2543, Osoyoos Division Yale District, Plan 787
3. PID: 012-072-869  
Lot 3, District Lot 2543, Osoyoos Division Yale District, Plan 787
4. Crown Land – No PID  
Lot "A", District Lot 3783, Osoyoos Division Yale District
5. Crown Land – No PID  
Lot "B", District Lot 3783, Osoyoos Division Yale District  
  
Crown Land – No PID
6. District Lot 3321, Osoyoos Division Yale District

**Site Inspection**

A site inspection was conducted on Friday, September 23, 2005. Those in attendance were:

- Commissioners Sidhu and McCoubrey
- Brandy Ridout, ALC Regional Research Officer
- Martin Collins, ALC Planner
- Brad Elenko of Urban Connections, Consultant on behalf of the applicants
- Gordon Morley, Planner – District of Summerland
- Robin Augur, Prospective Developer
- Paul Christie, Professional Agrologist – Talisman Land Resource Consultants Inc. on behalf of the applicants

The site inspection was conducted between 10:15 a.m. – 11:00 a.m.

### **Exclusion Meeting**

An exclusion meeting was convened on Friday, September 23, 2005 in the District of Summerland Council Chambers. Those in attendance were:

- Commissioners Sidhu and McCoubrey
- Brandy Ridout, ALC Regional Research Officer
- Martin Collins, ALC Planner
- Brad Elenko of Urban Connections, Consultant on behalf of the applicants
- Paul Christie, Professional Agrologist – Talisman Land Resource Consultants Inc. on behalf of the applicants
- Approximately 50 people were in the gallery. The individuals in the gallery observed the proceeding only – there was no direct participation.

The applicants' representatives emphasized the Commission's past support for the urbanization of the area under application dating back to its review of the current Official Community Plan.

The *Agricultural Capability Assessment* prepared by Talisman Land Resource Consultants Inc. identified the majority of the area under application as having very limited capability for agriculture, with the exception of approximately 34 ha of Class 1 – 3 land in scattered areas in the south east portion of the site (primarily on land owned by the District of Summerland).

The proposed development includes approximately 1,150 residential units with an estimated buildout of 20 – 25 years (approximately 50 units per year). Approximately 60% of the land under application will be green space by either leaving the area in a natural state or developing a golf course.

Commissioner McCoubrey asked if the development could proceed without excluding the land from the ALR. Mr. Augur was in the gallery and advised that the exclusion was needed to facilitate the overall development. Commissioner Sidhu inquired about road access to, and water supply for, the proposed development. Mr. Morley was in the gallery and advised that the District has confirmed Prairie Valley Road as the main access route and that access across Cartwright Mountain was impractical. Mr. Morley further advised that a water supply analysis would have to be undertaken by the developer and the District.

The exclusion meeting was conducted between 9:00 a.m. - 10:00 a.m.

Following the exclusion meeting and site inspection the Commission believed there was sufficient public interest in the proposal to warrant the holding of a public information meeting. In support of this position the Commission noted the numerous submissions received in opposition to the proposal citing potential impacts of the development on water resources and the agricultural capability of the area. Staff were directed to make the necessary arrangements to hold a public information meeting during its October 2005 schedule.

### **Public Information Meeting**

A public information meeting was held on Wednesday, October 12, 2005. Approximately 375 people were in attendance. Forty-seven people spoke to the proposal of which eighteen expressed opposition and twenty-nine expressed support for the application.

**Public Information Meeting (Continued)**

Those opposed to the proposal cited the following concerns:

- significant portions of the proposed exclusion area have good agricultural capability due to soils, south-facing slopes and an improving (i.e. warming) climate.
- There is sufficient vacant land in the community for residential development.
- Water allocation and supply were not sufficient in drought years – a water use plan should be completed before development occurs.
- An existing trout farm is at risk due to the uncertainty surrounding the impact of the proposed development on the aquifer and whether or not the trout farm will continue to have a sufficient water supply.
- Wildlife habitat will be lost.
- the Official Community Plan is not yet completed.
- Agricultural development is sustainable and results in jobs and benefits to the community.

Those in support of the proposal noted:

- The Commission has supported the exclusion of this area for the past decade.
- The majority of the land has very limited capability for agriculture because of poor soils and climate.
- The community would benefit economically from home construction, increased residents and the tourism draw of the resort facilities.

**Commission Discussion**

The Commission's past dealings involving this area figured prominently in its discussion. As pointed out in the staff report the Commission reviewed and endorsed the District's Official Community Plan in 1995/1996. At that time, the North Prairie Valley area was proposed to become an extension of the existing urban core and the Commission advised that it had previously agreed in principle to the urban development of the North Prairie Valley. Based on this direction the District subsequently designated District Lot 3321 and part of District Lot 2543 as Future Residential Reserve.

In 1998, the Commission initiated two applications to obtain public input on proposed ALR boundary amendments consistent with the earlier planning exercises. The two applications resulted in some land being excluded from the ALR while District Lots 3783 and 3321 were kept in the ALR. The decision to retain these two properties in the ALR was based on concerns about road access. However the Commission reconfirmed that it would support the urban development of District Lots 3783 and 3321 after road access and infrastructure have been developed on Cartwright Mountain.

Based on the advice given to the District over ten years ago the Commission believes it would be unreasonable to deviate from said advice at this time - especially since both the District and the developer have relied and acted on said advice.

**Commission Discussion (Continued)**

The Commission accepts that the basis for the 1998 exclusion applications was that the area had limited to poor agricultural potential. The Commission takes some comfort by the information provided in the *Agricultural Capability Assessment* prepared by Talisman Land Resource Consultants Inc. which identified the majority of the area under application as having very limited capability for agriculture as was previously thought. The Commission heard valid and important arguments at the public information meeting and in written submissions in favor of retaining some or all of the land within the ALR, noting that significant areas had reasonably good agricultural capability. Some better lands were identified in the assessment but they represented only a small portion of the proposed development area. While it is regrettable that some land with good agricultural capability may be lost, the Commission believes the long-term potential of these lands to support agriculture will be compromised by the level of development that is contemplated around, and in proximity to, these lands.

With regards to the better agricultural capability lands the Commission recalled Mr. Elenko's comments at the public information meeting indicating that his client is prepared to reserve the Class 1 and 2 land for agricultural development. If the proponents wish to amend the application to retain the Class 1 and 2 lands in the ALR the Commission would be amenable to such a request.

The Commission considered it prudent to establish a buffer zone between any lands to be excluded and active agricultural areas.

Finally, the Commission heard genuine concern at the public information meeting about the unknown impact of development on the local water supply. While the Commission respects the concerns raised it believes the issues pertaining to water are more appropriately addressed through the municipal development review process and by other regulatory agencies having jurisdiction.

**IT WAS**

**MOVED BY:** Commissioner Sidhu  
**SECONDED BY:** Commissioner McCoubrey

THAT the staff report be received and the application to exclude 154 ha from the ALR be approved subject to the registration of a covenant against the titles of Lots 1, 2 and 3, District Lot 2543, Osoyoos Division Yale District, Plan 787. The covenant area is to be located along the entire south boundaries of Lots 1, 2 and 3 and be 30 metres wide as measured from the south boundaries of said lots. The purpose of the covenant is to prohibit the construction or placement of any type of building or structure as well as prohibiting the removal of natural vegetation.

The Commission will advise the Registrar of Land Titles that the lands under application have been excluded from the ALR upon confirmation that the covenant has been registered.

This approval is subject to compliance with any other enactment, legislation or decision of any agency having jurisdiction.

**CARRIED**

**LAND TITLE ACT  
FORM C  
(Section 219.9)  
Province of  
British Columbia  
GENERAL DOCUMENT**

**EXAMPLE ONLY  
Page 1 of 8**

*(This area for Land Title Office use)*

1. APPLICATION: *(Name, address, phone number and signature of applicant, applicant's solicitor or agent)*

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

*(PID) (LEGAL DESCRIPTION)*

See schedule

| <i>DESCRIPTION<br/>ENTITLED TO INTEREST</i>  | <i>DOCUMENT REFERENCE<br/>(page and paragraph)</i> | <i>PERSON</i> |
|--|--|---------------|
| Restrictive<br>Covenant<br>Pursuant to s.22 of the <u>Agricultural Land Commission Act</u> |  | Transferee    |

4. TERMS: Part 2 of this instrument consists of (select one only)

|     |                             |   |
|-----|-----------------------------|---|
| (a) | Filed Standard Charge Terms | _____ <i>D.F. No.</i>                       |
| (b) | Express Charge Terms        | <u>  X  </u> Annexed as Part 2              |
| (c) | Release                     | _____ There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):\*

6. TRANSFEREE(S): \*name(s), occupation(s), postal address(es), postal code(s)

Provincial Agricultural Land Commission, a corporation created by an act of the legislature of the Province of British Columbia, having an office at 4940 Canada Way, Burnaby, British Columbia, V5G 4K6.

7. ADDITIONAL OR MODIFIED TERMS:\*

8. EXECUTION(S):\*\*This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

**Execution Date**

**Officer Signature(s)**

**Party(ies) Signature(s)**

**Y M D**

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

\* If space insufficient, enter "SEE SCHEDULE" attach schedule in Form E.

\*\* If space insufficient, continue executions on additional page(s) in Form D.

**FORM D  
EXECUTIONS CONTINUED**

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| OFFICER SIGNATURE(S)          | EXECUTION DATE<br>(Y/M/D) | PART(IES) SIGNATURE(S)                  |
|-------------------------------|---------------------------|---|
| <hr/> Solicitor/Notary Public |                           | <hr/> (name)                            |
|                               |                           | <hr/> (name)                            |
|                               |                           | Provincial Agricultural Land Commission |
|                               |                           | <hr/> (name)                            |
|                               |                           | <hr/> (name)                            |

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**FORM E  
SCHEDULE**

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ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

**2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:**

**(PARCEL IDENTIFIER)            (LEGAL DESCRIPTION)**



**TERMS OF INSTRUMENT - PART 2**

WHEREAS:

- A. The Transferor is the registered and beneficial owner of certain lands and premises set forth in the schedule attached hereto as Form E (the "Lands");
- B. All of part of the Lands consist of agricultural land situated in the Agricultural Land Reserve of the \_\_\_\_\_ ("Regional District") and are subject to the provisions of the Agricultural Land Commission Act (the "Act") and the Regulations thereto;
- C. The Transferor wishes to exclude the Lands from the Agricultural Land Reserve
- D. The Transferor has applied to, or caused an application to be made to the Transferee for authorization to exclude the Lands from the Agricultural Land Reserve
- E. The Transferee is empowered to authorize the exclusion of the Lands from the Agricultural Land Reserve and to impose terms it considers advisable pursuant to the Act and Regulations thereto; and
- F. The Transferee, by execution of this Indenture, has confirmed for the Registrar of Titles, that the Lands have been excluded from the Agricultural Land Reserve thereby amending the Agricultural Land Reserve Plan of the Regional District of Okanagan Similkameen, upon terms and conditions considered advisable by the Transferee and which are set out below, and the Transferor and the Mortgagee have agreed below to the imposition of these terms and conditions and to the execution and registration of this Indenture:

THEREFORE in consideration of the premises and of the sum of one dollar (\$1.00) of lawful money of Canada, now paid by the Transferee to the Transferor and the Mortgagee, the receipt of which is hereby acknowledged, and other good and valuable consideration the parties covenant and agree as follows:

*(Delete reference to mortgagee if not applicable).*

1. In this Indenture the following definitions shall apply where the context allows:
  - (a) "enactment" means an enactment as defined in the Interpretation Act of Canada and an enactment as defined in the Interpretation Act of British Columbia;
  - (b) "transfer" includes a conveyance, a grant, an assignment and a grant of a leasehold interest;
  - (c) "transferee" includes a grantee, an assignee and a lessee.
  
2. The Transferor shall not build, erect or place and shall not allow to be built, erected or placed any building or structure, including any residential dwelling of any kind whatsoever on, nor shall the Transferor remove any natural vegetation from:
  - (i) that part of the Lands shown on the \_\_\_\_\_ Plan attached hereto as the second schedule.
  
3. The covenants in this Indenture shall be covenants running with the Lands and shall be binding on the successors in title and assignees of the Lands.
  
4. None of the covenants herein shall be personal or binding upon the Transferor, save and except during the Transferor's seisin or ownership of any interest in the Lands.
  
5. The Transferor covenants with the Transferee that the Transferor has done no acts to charge or encumber the Lands, save the charges or encumbrances set forth in the first schedule attached thereto.

7. The Mortgagee as mortgagee of the Lands by virtue of the Mortgage registered in the Land Title Office aforesaid on \_\_\_\_\_ under number \_\_\_\_\_ (the "Mortgage") joins herein for the purpose of consenting to the covenants given by the Transferor to the Transferee, and further the Mortgagee hereby grants to the Transferee, in respect of this Indenture and such covenants, priority over the interests of the Mortgagee in the Lands by virtue of the Mortgage and hereby postpones the Mortgage and all the Mortgagee's right, title and interest thereunder in and to the Lands with the intent that the interests of the Mortgagee in the Lands shall be wholly subject to the rights and interests of the Transferee under this Indenture to the same effect and extent as if this Indenture had been dated, executed, delivered and registered before the Mortgage. *(Delete if not applicable)*
8. The Transferee hereby authorizes the Registrar of Titles to remove the Agricultural Land Reserve notations from the Certificates of Titles applicable to the Lands.
9. The authorization given by the Transferee to the Registrar of Titles shall in no way relieve the Transferor, his successors in title and assigns of the Lands, or any user or occupier thereof, from complying fully with any law or enactment or the decisions, directions, rulings or orders of the Transferee or of any other body, commission, tribunal or authority whatsoever which may apply to the Lands.
10. The Transferor and the Mortgagee will, upon the request of the Transferee, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, documents, and assurances whatsoever as may be necessary or desirable for the better and more perfect and absolute performance of the grants, covenants, provisos and agreements herein. *(Delete if not applicable)*.
11. This Indenture shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.
12. Words importing the male gender include the female gender and either includes the neuter and vice versa and words importing the singular number include the plural number and vice versa.

First Schedule

Charges Against Lands

This is the first schedule to a certain Indenture dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, made between \_\_\_\_\_ and the Provincial Agricultural Land Commission and \_\_\_\_\_ as "Mortgagee". (*Delete reference to mortgagee if not applicable*)

*(Insert Charges Against Lands)*

Second Schedule

Subdivision Plan

This is the second schedule to a certain Indenture dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, made between \_\_\_\_\_ and the Provincial Agricultural Land Commission and \_\_\_\_\_ as "Mortgagee".  
*(Delete reference to mortgagee if not applicable)*

*(Insert Charges Against Lands)*

END OF DOCUMENT