



**Staff Report**  
**Application # L – 37614**  
**Applicant: Richard and Shirley Mercier**

**DATE RECEIVED:** August 15, 2007

**DATE PREPARED:** October 11, 2007

**TO:** Chair and Commissioners – Kootenay Panel

**FROM:** Jennifer Carson, Land Use Planner

**PROPOSAL:** To exclude the 10.0 ha ALR portion of the 20.6 ha subject property because of the land altitude and non-productivity. This application is made pursuant to section 30(1) of the *Agricultural Land Commission Act*.

**BACKGROUND INFORMATION:**

The applicants also state that they would like to exclude their land in order to be able to subdivide two (2) .5 acre parcels for their children in the future.

**Local Government:**

Regional District of East Kootenay

**Legal Description of Property:**

PID: 013-237-161  
District Lot 12751, Kootenay District, Except The westerly 30 chains

**Purchase Date:**

May 1994

**Location of Property:**

751 Hartley Creek Road, Fernie Rural

**Size of Property:**

20.6 ha (Approximately 10.0 ha is in the ALR).

**Present use of the Property:**

Residential, shop, storage sheds, wood shed, guest cottage (bunkhouse) and powerhouse

**Surrounding Land Uses:**

**WEST:** Crown Land  
**SOUTH:** Residential and recreation  
**EAST:** Residential and motocross track  
**NORTH:** Crown Land

**Agricultural Capability:**

Data Source: Agricultural Capability Map # 82G/11  
The majority of the property is identified as having Mixed Prime and Secondary ratings.

**Official Community Plan and Designation:**

OCP: Elk Valley Land Use Strategy  
Designation: Agriculture

**Zoning Bylaw and Designation:**

Elk Valley Zoning Bylaw No. 829 (1990)  
Designation: RR-8 Rural Residential (Country) Zone  
Minimum Lot Size: 8 ha

**RELEVANT APPLICATIONS:**

**Application #36620-0**

**Applicant:** Lessard, Vaughn  
**Decision Date:** June 28, 2006  
**Proposal:** To subdivide the 28.3 ha property into one 8.7 ha lot a 12.5 and a 7.1 ha lot.  
**Decision:** Allowed the subdivision of the property into one 8.7 ha lot a 12.5 ha lot and 7.1 ha lot. The Commission felt the subject property was unsuitable for agricultural development due to steep topography and rocky soil conditions.

---

**Application #36683-0**

**Applicant:** Audia, John & Marcelle  
**Decision Date:** June 28, 2006  
**Proposal:** To subdivide a 2 ha lot off the north west corner of the property for the applicants' daughter to build a home.  
**Decision:** Refused subdivision on the grounds the property has good agricultural potential.

---

**Application #36683-1**

**Applicant:** Audia, John & Marcelle  
**Decision Date:** October 18, 2006  
**Proposal:** Applicant requests reconsideration on the basis that the Commission decision is unfair and unjustifiable.  
**Decision:** Refused subdivision- property size is consistent with adjacent lands and existing zoning. Property is an existing small farm unit.

---

**Application #37674-0**

**Applicant:** Burnett, Paul and Patricia  
**Decision Date:** n/a  
**Proposal:** To subdivide the 22.78 ha subject property as divided by Hosmer-Fernie Road (Dock Road) to create a 12 ha parcel on the west side and a 10 ha parcel on the east side.  
**Decision:** To be viewed during the same panel trip.

---

**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:**

**East Kootenay Regional District Board:**

The Regional Board forwarded the application with a recommendation of support.

**Staff:**

That the application be supported. The land is subject to zoning regulations and has limited development potential because of potential for avalanche hazards or slope failure.

**STAFF COMMENTS:**

It is recommended that the Commissioners consider the following:

- The Regional Board and local government staff support this application.
- The improved ratings for the Agricultural Capability of the property indicate Class 3, 5 and 6 with topographical limitations.
- Numerous subdivision applications in the area have been refused due to impact on agriculture.
- A site visit will help to determine whether or not this proposal will have an adverse impact on agriculture.

**ATTACHMENTS:**

1. ALC Context Map
2. Aerial Photograph
3. Agricultural Capability Map
4. Local Government Staff Report (5 pages)

**END OF REPORT**

  
\_\_\_\_\_  
Signature

Oct. 16, 2007  
Date