



Agricultural Land Commission
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January 20, 2009

Reply to the attention of Simone Rivers
ALC File: ZZ-37941

Brian French
4383 Happy Valley Road
Victoria, BC V9C3Z3

Dear Mr. French:

Re: Application to Exclude land from the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 738/2008 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink that reads 'Simone Rivers'. The signature is written in a cursive, flowing style.

Erik Karlsen, Chair

Enclosure: Minutes/

cc: Thompson-Nicola Regional District (ALR-N-86)

SBR/
I/37941d1



A meeting was held by the Provincial Agricultural Land Commission on November 20, 2008 at the Morris Wosk Centre for Dialogue, Vancouver, B.C.

PRESENT:	Grant Huffman	Chair, Interior Panel
	Holly Campbell	Commissioner
	Gordon Gillette	Commissioner
	Simone Rivers	Staff
	Martin Collins ¹	Staff
	Colin Fry	Staff

For Consideration

Application: #ZZ- 37941
 Applicant: Active Mountain Entertainment Corp.
 Agent: Brian French
 Proposal: To exclude from the ALR approximately 201.6 ha property to facilitate the development of an entertainment complex including the previously approved music festival, golf course and recreation vehicle park, plus residential housing in conjunction with the golf course.

Location: Merritt

Properties:

1. PID: 012-950-602
 District Lot 166, Kamloops Division Yale District, Except: (1) Part Lying South and East of Plan A215; (2) Plans A215, 10584, 23191, 25206, 25510, 26688, KAP59518, KAP84526 and KAP84527
2. PID: 013-002-023
 The Northwest ¼ Section 3, Township 91, Kamloops Division Yale District, Except: (1) Part Lying South and East of the Kettle Valley Railway Company R/W shown on Plan A215; (2) Plan A215
3. PID: 013-003-569
 The North ½ Section 4, Township 91, Kamloops Division Yale District, Except: (1) Part Lying South and East of the Kettle Valley Railway Company R/W shown on Plan A215; (2) Plans A215, KAP59518 and KAP84526

Site Inspection

A site inspection was conducted on June 25, 2008. Those in attendance were:

- Grant Huffman Chair, Interior Panel
- Holly Campbell Commissioner
- Gordon Gillette Commissioner
- Simone Rivers ALC Staff
- Brian French Applicant's Agent
- Claude LeLievre Applicant
- Dave Milne Joint Venture Partner
- Glenn Richardson Joint Venture Partner
- Gary Richardson Joint Venture Partner

The Commission met the proponents at the site of the festival and toured the property. The areas used for music festival purposes were viewed as well as those areas where

conditional approval for non-farm uses had been granted in the past. The Commission noted that the upper portions of the property had not been the subject of much development. The areas of the property adjacent to the Coldwater River have been developed into campgrounds using gravel to denote each RV site.

The proponents described their proposed inclusion of lands near Prince George into the Agricultural Land Reserve. They stated that this land was currently being used for farming and could be subdivided if it were not included into the ALR.

Brian French confirmed that the staff report dated June 9, 2008 was received and no errors were identified.

Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. 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.

Discussion

The Commission reviewed its previous approvals and the history of the Merritt Mountain Music Festival in reviewing the current exclusion proposal. It recalled that initially permission to run the festival was granted on a year-to-year basis (1993-1998). In 1998 permission to run the festival for five years was granted. Approval from 1993 on was subject to clean-up of the festival site and the submission of a bond to ensure the property was reclaimed. In 2004 the Commission waived the requirement to post a bond each year for clean-up and for the applicant to submit a closure report after each festival. Initially the festival site was leased from the property owners for a single event each summer. Later, the property was sold to the concert promoter, who has subsequently applied for selected non-farm uses on the property as well as for exclusion.

Lands Near Prince George

The Commission discussed the proposal to include land near Prince George into the ALR. It noted that as the Commission is set up based on regional panels that the Interior Panel did not have the ability to approve or reject an inclusion application for land in the North Panel's jurisdiction. The Commission therefore confined its review to the subject properties within its jurisdiction considering the appropriateness of excluding these lands from the ALR.

Assessment of Agricultural Capability

The Commission noted that some portions of the land have limitations for agriculture while others have been used for grazing and hay production for many years. Overall,

the Commission believes that the property has agricultural capability and is correctly designated as ALR. It further believes that exclusion of the property would permanently eliminate future agricultural options for the property. It was further observed that the music festival might be a temporary use and if the festival is discontinued, retention of the land within the ALR would maintain agriculture as an option. Throughout the history of the Merritt Mountain Music Festival, the Commission has been of this belief and has consistently stated that the land should remain within the ALR.

Assessment of Agricultural Suitability

The Commission assessed whether external factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission does not believe there are external factors that render the land unsuitable for agricultural use.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. Exclusion of the land will remove any future agricultural potential from the property. Since 1993, the Commission has consistently made decisions in aid of the Merritt Mountain Music Festival while weighing its decisions against its mandate to protect agricultural land. When allowing non-farm use separate from the festival it has been because of commitments made to enhance the agricultural use of the remainder of the property. Following a review of past decisions, the Commission is satisfied that previous decisions were not intended to be made at the expense of the long term agricultural use of the land. Therefore, the Commission believes the proposal would impact existing or potential agricultural use of the subject property and of surrounding lands.

Assessment of Other Factors

The Commission notes that (as mentioned above) in addition to approval for the music festival since 1993, it has given conditional approvals for limited non-farm use and other improvements of the subject properties, including the development of a golf course and amphitheatre in 2001. In evaluating the current exclusion request the Commission took the time to review its previous decisions in order to determine what conditions had been set and if they could still be met.

The Commission noted that Resolution # 316/2001 stated the following:

- *The irrigation system for the hayfields must be in place and the fields seeded for hay production prior to any golf course development*

The Commission subsequently approved *additional infrastructure complimentary(sic) to the festival* by Resolution # 394/2004. At the site visit on June 25, 2008, the Commission observed that almost the entire area adjacent to the Coldwater River, the area that was to be irrigated hayfields, had been improved for campground use by the addition of gravel RV sites. In its current state this area is unavailable for agricultural purposes, therefore, the Commission believes that the applicant, by his subsequent actions, has chosen to develop the property in such a way that this condition can no longer be fulfilled.

Resolution 316/2001 goes on to say that:

- *The Commission requires a detailed feasibility report from a professional Agrologist specializing in grape production regarding the proposed vineyard. The planting of the vineyard must be substantially completed prior to the Amphitheatre being constructed. The Commission requires a detailed site plan of the proposed winery including the size of the footprint, a detailed business plan and all proposed facilities related to the winery.*

The Commission recalls that at its site visit the issue of the vineyard and winery was discussed. It was mentioned by one of the proponents that wine grapes could not be successfully grown in the Merritt area. Based on this discussion and the fact that none of the required reports or business plans have been submitted, the Commission considers that the conditions of approval for the amphitheatre can not be achieved

The Commission further notes that permission to create separate titles for the winery (15 ha) and the golf course (65 ha) was given in 2005 on the basis that the proposed subdivisions were to facilitate the development of the winery and golf course. As it has been determined that the approval for these uses are no longer achievable, the Commission believes that Resolution 39/2005 may be no longer actionable.

At its site visit in June 2008, the Commission was dismayed to see that the entire area of bottomlands adjacent to the Coldwater River had been developed for campground use. As noted above, it had been the Commission's understanding that this area would be irrigated and improved for hay production in order to meet the conditions of approval of Resolution # 316/2001.

The Commission's subsequent Resolution (# 394/2004) outlined that the *permitted uses include, but are not limited to the following: permanent washroom facilities, paved roads for access to and within campgrounds, water and power infrastructure to campground facilities, temporary and permanent building structures necessary for the festival and other ancillary/complimentary events*". Although the Commission approved the placement of the infrastructure as outlined above, in its subsequent Resolution (#39/2005) it refused the subdivision of an 8 ha lot for an RV park "*because the area had good agricultural capability and should the festival use cease, could potentially be used in conjunction with other low land areas adjacent to the Coldwater River*" The Commission's intent in allowing infrastructure for the festival to remain in place from year to year, was to allow for the smooth and efficient running of the festival. It was not the Commission's intent to allow for permanent infrastructure to be developed that would remain and permanently compromise the agricultural capability of the property should the festival be discontinued.

Conclusions

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the proposal will impact agriculture.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.
5. That past approvals have been made in aid of the Merritt Mountain Music Festival and in recognition of its importance to the City of Merritt. Commission decisions have consistently required agricultural commitments and improvements to be made

- by the proponents. The Commission has always envisioned a future in which agricultural use would resume on the property if the festival were discontinued.
6. That the Commission's intent in allowing infrastructure for the festival to remain in place from year to year, was to allow for the smooth and efficient running of the festival. It was not the Commission's intent to allow for permanent infrastructure to be developed that would remain and permanently compromise the agricultural capability of the property should the festival be discontinued. Any apparent and subsequent debilitation of the land associated with festival activities is not an argument in support of exclusion of the lands from the ALR.

IT WAS

MOVED BY: Commissioner Campbell

SECONDED BY: Commissioner Huffman

THAT the application to exclude the subject properties from the ALR be refused.

AND THAT the Commission believes that portions of Resolution # 316/2001 that allowed the development of a golf course and amphitheatre are no longer actionable

AND THAT Resolution # 39/2005 which allowed the subdivision of a 15 ha property for the winery and a 65 ha lot for the golf course is no longer actionable

AND THAT none of the foregoing compromises the ability of Active Mountain Entertainment to operate the Merritt Mountain Music Festival on the property under the terms of its existing approvals.

AND THAT the applicant be advised of the provisions of Section 33 of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration.

- S.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.*
- (2) *The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the reconsideration.*

AND FINALLY THAT the applicant be advised that a revised proposal does not constitute new information and will not be considered as a basis for reconsideration and the time limit for submitting a request for reconsideration is one (1) year from the date of the decision letter.

CARRIED

Resolution # 738/2008