



**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

September 23, 2009

Reply to the attention of Brandy Ridout  
ALC File: F-38946 (45909)

Richard and Anthea Newton  
6405 Erindale Road  
Nelson, B.C.  
V1L 6P8

Dear Sir/Madam:

**Re: Application to release a covenant within the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 834/2009 outlining the Commission's decision as it relates to the above noted application.

Please send three copies of the release of covenant document to this office. The Commission will then authorize the Registrar of Land Titles to release covenant XJ20963 .

Other approvals may be necessary. Prior to proceeding, the Commission suggests you contact your Local Government.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a white background.

Erik Karlsen, Chair

Enclosure: Minutes

cc: Regional District of Central Kootenay File: 4035-20-A0906E-06735.910

MC/1/38946d1



**A meeting was held by the Provincial Agricultural Land Commission on Thursday, September 17, 2009 by telephone conference call.**

<b>PRESENT:</b>	Barry Minor	Chair, Kootenay Panel
	Carmen Purdy	Commissioner
	Jerry Thibeault	Commissioner
	Martin Collins	Staff

**For Consideration**

Application: F-38946 (45909)  
Applicant: Richard and Anthea Newton  
Proposal: To release the covenant binding titles between an adjoining 1.1 ha lot and a 0.2 ha lot.  
Legal: PID 023-192-038 Lot 1, DL 4395, KD, NEP22459  
PID 023-192-381 Lot 3, DL 4395, KD, NEP22459  
Location: Harrop, east of Nelson

**Site Inspection**

No site inspection was conducted.

**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**

**Assessment of Agricultural Capability**

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The ratings are interpreted using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system.

The improved agricultural capability of the soil of the subject property is;

Class 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both:

Class 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.

Class 4 – Land in this class has limitations that require special management practices or severely restrict the range of crops, or both.

The limiting subclasses are moisture deficiency (M) and stoniness (P). The CLI ratings noted above can only be achieved through irrigation.

### **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 noted that two 0.2 ha residential lots adjoined the 1.1 ha agricultural parcel to the west, but did not believe, that the presence of the two lots rendered the 1.1 ha property unsuitable for agricultural use. Other adjoining parcels to the north and east are larger than 1 ha are cleared and appear to be used for pasture. A railway and road right of way separates the 1.1 ha property from the non ALR land to the south.

### **Assessment of Impact on Agriculture**

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. The Commission recalled its previous decision to require the covenant was a compromise reached to ensure that the landowner would not lose his home if his new agricultural enterprise (angora rabbits) failed. However, the Commission does not believe the release of the covenant would substantively affect the existing or potential agricultural use of the 1.1 ha farm property or surrounding lands because a dwelling currently exists on both properties. If the covenant is released it is likely that a new permanent dwelling will be constructed on the 1.1 ha lot, replacing the mobile home, but maintaining the current residential density.

### **Conclusions**

1. That the land under application has agricultural capability and is suitable for agricultural use.
2. That the release of the covenant prohibiting the separate sale of the subject properties will not impact agriculture.

### **IT WAS**

**MOVED BY:** Commissioner J. Thibeault

**SECONDED BY:** Commissioner C. Purdy

THAT the application to release the restrictive covenant prohibiting the separate sale of the two subject properties be allowed

AND THAT the approval is subject to the following condition:

- the covenant must be released within three (3) years from the date of this decision.

### **CARRIED**

**Resolution # 834/2009**