



Agricultural Land Commission
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October 4, 2012

Reply to the Attention of Liz Sutton
ALC File: #52738

William & Sandra Pogue
PO Box 524
150 Mile House, BC V0K 2G0

Dear Mr. & Mrs. Pogue:

RE: Application to Subdivide Land in the Agricultural Land Reserve (ALR)

Please find attached the Minutes of Resolution #55/2012 outlining the Commission's decision as it relates to the above noted application. The Commission draws your attention to section 33(1) of the *Agricultural Land Commission Act*.

SECTION 33(1) - RECONSIDERATION OF DECISIONS

Section 33(1) of the *Agricultural Land Commission Act* provides an applicant with the opportunity to submit a request for reconsideration based on specific criteria.

- 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.

A revised proposal does not constitute new information and as such is not a basis for reconsideration. The time limit for submitting a request for reconsideration is one (1) year from the date of this letter.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Brian Underhill, Executive Director

Enclosure: Minutes
cc: Cariboo Regional District (File: 4035-20-F-20120008)

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PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on September 20, 2012 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C.

COMMISSION MEMBERS PRESENT:

Gordon Gillette	Vice-Chair
Jim Collins	Commissioner
Jerry Thibeault	Commissioner
Lucille Dempsey	Commissioner
Denise Dowswell	Commissioner

COMMISSION STAFF:

Lindsay McCoubrey	Land Use Planner
Liz Sutton	Land Use Planner
Colin Fry	Executive Director

APPLICATION ID: #52738

PROPOSAL: Subdivide the 30.6 ha property into two lots: one 2.4 ha lot with the main residence and one 28.2 ha lot with the rental house and outbuildings.
(Submitted pursuant to section 21(2) of the *Agricultural Land Commission Act*)

PROPERTY INFORMATION:

Parcel ID:	003-834-514
Legal Description:	The Fractional South East ¼ of District Lot 9044, Cariboo District, Except Plans 14372, 20414 and 32148
Civic Address:	3299 Horsefly Road, east of Williams Lake
Size (ha):	30.6
Area in ALR (ha):	30.6
Current Land Use:	Residential (two residences)
Farm Status:	No
Property Owners:	William & Sandra Pogue

BACKGROUND:

The purpose of the proposed subdivision is to legalize the second dwelling as it is contrary to the Regional District's zoning bylaw which prevents multiple residences on a single parcel.

Commissioner Gillette conducted a site inspection on November 3, 2010 with Sandra Pogue, while the subject property was previously under application for subdivision into two equal lots of 15.3 ha (ALC Application ID 51872).

LEGISLATIVE CONTEXT FOR CONSIDERATION:

Section 6 of the *Agricultural Land Commission Act* identifies the purposes of the Commission 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.

COMMISSION CONSIDERATION:

The Commission reviewed two previous applications on the property:

Application ID 51872: Application to subdivide the 30.6 ha property into two equal lots, refused November 10, 2010 (Pogue).

Application ID 36290: Application to subdivide the South East ¼ of District Lot 9044 except Plans 14372 and 20414 into two lots as divided by the Horsefly Road, allowed July 17, 1986 (Wood). This subdivision created the 30.6 ha lot currently under application.

After reviewing the file information and considering the previous applications on the property, the Commission has concluded the following:

1. The published CLI improved rating for the subject property is mixed prime and secondary with the following limitations: combination of soil factors (X), topography (T) and stoniness (P) (4:3X-4:4TP-2:6TP).

Conclusion: The subject property has agricultural capability as the ratings are similar to the property across the Horsefly Road, which is currently cultivated in hay.

2. The original 1986 application for subdivision along the Horsefly Road created the 30.6 ha subject property and the 23.5 ha remainder, currently cultivated in hay. The ALC Soil Capability Map and the Air Photo Map included in the Staff Report Package indicates that the lots are similar in size, capability and suitability.

Conclusion: The current configuration of lot sizes is appropriate for agricultural purposes. Further subdivision is not supported.

3. The Commission noted the Local Government Staff Report proposal referred to section 946 of the *Local Government Act* (LGA) as a factor in support of the request to subdivide the subject property. Section 2 of the ALCA establishes primacy of the ALCA over other legislation. More specifically:
 - (1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the *Interpretation Act*, the *Environment and Land Use Act* and the *Environmental Management Act* and as provided in this Act.

The LGA is subordinate to the ALCA and as such section 946 in no way compels the ALC to approve a subdivision involving ALR land. The ALC recognizes section 946 as a tool available to local government to accommodate a subdivision for a relative where the proposed lot is smaller than the minimum lot size specified in a zoning bylaw. If a subdivision for a relative

involves land in the ALR, the local government can only use section 946 if an ALR application for subdivision has first been approved by the ALC. The ALC's consideration of subdivision proposals will be done in accordance with the purposes of the ALCA provided in section 6:

Purposes of the commission

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) 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.

Conclusion: The consideration of Section 946 of the LGA in support of the subdivision proposal is inconsistent with the purposes of the ALC.

4. The Local Government Staff Report states:

"The property contains two dwellings which may have been conforming in the past, but the property does not have farm status at this time and is therefore an apparent non-conforming use."

Conclusion: Consideration for subdivision as it relates to 'an apparent non-conforming use' second dwelling is inconsistent with the purposes of the ALC. The Commission does not intend to act against the second dwelling. The Commission leaves the issue to be resolved between the Local Government and the applicant.

IT WAS

MOVED BY: Commissioner Collins

SECONDED BY: Commissioner Dowswell

THAT the application be refused.

CARRIED

Resolution #55/2012