



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

December 7, 2012

ALC File: # 52815

Jim and Pat Ryan
3499 Mission-Wycliffe Road
Cranbrook, BC
V1C 7E3

Dear Mr. and Mrs. Ryan:

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

Please find attached the Minutes of Resolution # 389/2012 as it relates to the above noted application. The Commission draws your attention to Section 33(1) of the *Agricultural Land Commission Act* which 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 evidence 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.

Further correspondence with respect to this application is to be directed to Lindsay McCoubrey.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Lindsay McCoubrey', is written over a horizontal line.

Brian Underhill, Executive Director

Enclosure: Minutes of Resolution #389/2012

cc: Regional District of East Kootenay (File: P 712 307)

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MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on November 20, 2012 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C. as it relates to Application #52815.

COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Gordon Gillette	Vice-Chair
Sylvia Pranger	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner
Jerry Thibeault	Commissioner
Lucille Dempsey	Commissioner
Denise Dowswell	Commissioner
Jim Collins	Commissioner

COMMISSION STAFF PRESENT:

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

PROPOSAL

To subdivide the 160.0 ha subject property into one 20.0 ha lot and one 140.0 ha lot.
(Submitted pursuant to section 21(2) of the *Agricultural Land Commission Act*)

LEGISLATIVE CONTEXT FOR COMMISSION CONSIDERATION

Section 6 (Purposes of the commission) of the *Agricultural Land Commission Act* states:

- 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; and
 - (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.
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COMMISSION CONSIDERATION

The Commission reviewed three previous applications involving the property:

Application #50993 (Ryan): To subdivide the property into one 80 ha lot and one 71 ha lot; refused March 23, 2010.

Application #43071 (Ryan): To subdivide one 7.9 ha parcel from the property as separated by Mission-Wycliffe Road; allowed June 27, 2006.

Application #40676 (Ryan): To subdivide by boundary line adjustment between two existing parcels of 127 ha and 53 ha, resulting in one 160 ha parcel and one 21 ha parcel located north of the Mission-Wycliffe Road; allowed October 29, 2003.

After considering the information the Commission concluded as follows:

1. The Commission noted the applicant 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 *Agricultural Land Commission Act* (ALCA) establishes primacy of the ALCA over other legislation. More specifically:
 - 2(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:

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

2. The mandate of the Commission is to preserve agricultural land and to encourage farming with the Agricultural Land Reserve. The proposed subdivision would parcelize an existing farm unit.

Conclusion: The proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve and encourage agriculture.

3. It is often argued that subdivision is warranted as a part of the property may have no agricultural use or may be considered the 'least productive' portion of the property. This argument is often predicated on the belief that the area has no value because soil bound agriculture or grazing of animals is either challenging or impractical. However, farms and ranches can often use these areas to support farm infrastructure such as building and

storage facilities. To site infrastructure on these areas maximizes the arable or grazing areas of a property. Put another way, if the less capable lands are routinely removed from the parent agricultural parcel, farm and ranch support infrastructure is pushed onto the arable or grazing land.

Conclusion: The proposed subdivision area is valuable to the farm unit.

IT WAS

MOVED BY: Commissioner Gillette
SECONDED BY: Commissioner Pranger

THAT the request be refused.

CARRIED

Resolution #389/2012