



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

January 2, 2013

ALC File: #52894

Mike Malmberg and Sharon Mielnichuk
Box 10
Fort Steele, BC
V0B 1N0

Dear Mr. Malmberg and Ms. Mielnichuk:

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

Please find attached the Minutes of Resolution #398/2012 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 'Brian Underhill', is written over a horizontal line. The signature is fluid and cursive.

Brian Underhill, Executive Director

Enclosure: Minutes of Resolution #398/2012

cc: Regional District of East Kootenay (File: P 712 413)



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 #52894.

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 one 0.5 ha lot from the south end of the 6.8 ha property.
(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 two previous applications on the property:

Application #17801: Agri-tourism development on a 0.5 ha area of the subject property; allowed February 27, 2002.

Application #26409: To subdivide 0.2 ha from the property and consolidate this area with an adjacent lot; allowed May 22, 1980.

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 proposal indicated that subdivision would allow, "...the retiring farmers to be on the job and on site for a successful and sustainable successional [sic] transition to occur." The Commission referred to Section 3(1)(b) of BC Regulation 171/2002 (*Agricultural Land Reserve Use, Subdivision and Procedure Regulation*) which allows for a secondary temporary dwelling for immediate family. More specifically:

3(1) The following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government:

(b) for each parcel,

- (i) One secondary suite within a single family dwelling and
- (ii) One manufactured home, up to 9 m in width, for use by a member of the owner's immediate family.

Conclusion: The Commission believes the regulation provides an opportunity for succession without subdivision.

IT WAS

MOVED BY: Commissioner Miles
SECONDED BY: Commissioner Collins

THAT the request be refused.

CARRIED

Resolution #398/2012