



**Agricultural Land Commission**  
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January 20, 2014

ALC File: #52944

Reed Pope, LLP  
200 – 848 Courtenay Street  
Victoria, BC V8W 1C4

**Attention: Mark Rappaport**

Dear Mr. Rappaport:

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

Please find attached the Minutes of Resolution #402/2013 as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

Further correspondence with respect to this application should be directed to Liz Sutton.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Liz Sutton', is written over the printed name.

Brian Underhill, Executive Director

Enclosure: Minutes of Resolution #402/2013

cc: Islands Trust (File; SA-ALR-2012.1 (Sewell))  
Allen and Gayle Sewell  
101 Church Bay Road, PO Box 31, Saturna Island BC V0N 2Y0

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## MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on October 2, 2013 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C. as it relates to the Request for Reconsideration of Application #52944.

### COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Sylvia Pranger	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner

### COMMISSION STAFF PRESENT:

Liz Sutton	Planner
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### REQUEST FOR RECONSIDERATION

The Commission received a letter received September 10, 2012 requesting reconsideration of its decision recorded as Resolution #16/2013, by which, the proposal to subdivide the 4.2 ha parcel into a 0.7 ha lot and a 3.5 ha remainder was refused.

**Owner:** Allen and Gayle Sewell

**Original Proposal:** (Submitted pursuant to section 21(2) of the *Agricultural Land Commission Act*)  
To subdivide the 4.2 ha parcel into a 0.7 ha lot and a 3.5 ha remainder.

**Original Decision:** Refused as the proposal was inconsistent with Resolution #382/2005 in which the applicant included into the ALR, that part of the property which is currently being proposed for subdivision, and that consideration of s. 946 of the *Local Government Act* in support of the subdivision proposal is inconsistent with the purposes of the *Agricultural Land Commission Act*.

**Current Request:** The applicant has requested that the Commission consider one of the following options:

1. Allow subdivision as originally proposed;
2. Allow the subdivision and include land across Church Bay Road into the ALR; or
3. Exclude the entire property.

**Legal:** PID: 000-355-445  
That Part of the North ½ of Section 18, Saturna Island, Cowichan District, as shown outlined in Red on Plan 749R, Except Parts in Plans 16929, 24256, 37639, 49442, VIP53810 and VIP63614

**Location:** Saturna Island

**Size:** 4.2 ha (3.7 ha ALR)

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#### LEGISLATIVE CONTEXT FOR COMMISSION RECONSIDERATION

Section 33 (Reconsideration of decisions) of the *Agricultural Land Commission Act* states:

- 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.
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#### DECISION REGARDING THE REQUEST FOR RECONSIDERATION

The Commission believes that the applicant has provided evidence that was not available at the time of the previous decision.

As a result, it was moved by Commissioner Miles and seconded by Commissioner Pranger that there were no persons affected by the reconsideration and that the Commission reconsider Resolution #16/2013. The motion was carried unanimously.

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#### COMMISSION CONSIDERATION

The Commission reviewed two previous applications involving the subject property:

- |  |   |
|--|---|
| Application #25661<br>(Church Bay Farms Corp,<br>1991) | To exclude a 0.4 ha portion of the 7.2 ha property (3.0 ha in the ALR) to facilitate the subdivision and sale of the small lot. Allowed by Resolution #670/1991 dated September 10, 1991.   |
| Application #36016<br>(Sewell, 2005)                   | To include the remainder (2.2 ha) of a 4.8 parcel in the ALR on Saturna Island. The applicants have stated that their reason for wanting to put the land in the ALR is because the land is used for grazing and having the land in the ALR will reinforce the chance of a small family farm continuing while discouraging further building on the property. The applicants have had a restrictive covenant registered on the land prohibiting further subdivision. Allowed by Resolution #382/2005 dated July 5, 2005 |

After considering the new information the Commission concluded as follows:

1. The applicant included the remainder of the subject property in 2005 stating that inclusion would *"reinforce the chance of a small family farm continuing while discouraging further building on the property"*. Despite the applicant's proposal, the applicant has provided no evidence that they have pursued agriculture after the inclusion. In addition, a second dwelling was constructed after the land was included into the ALR. An application for the second dwelling was not submitted to the ALC.

**Conclusion:**

The applicant constructed a second dwelling without permission from the ALC after stating that he wished to restrict additional residences on the property. It is unclear how the applicant obtained permission for the second dwelling.

2. Although the applicant previously stated that the area of the proposed subdivision (referred to as "Lot A") was to be included into the ALR for grazing, review of air photos, photographs, and the reconsideration request indicate that the area included into the ALR is predominantly a shale waterfront area. The rationale for the applicant's desire to include land which has limited agricultural utility is clarified in their current reconsideration request, which states:

*"The reason Lot A was applied for inclusion previously was purely a property and capital gain tax planning device."*

With respect to inclusion of land into the ALR, s. 17(3) of the *Agricultural Land Commission Act* states:

17(3) *On application by an owner of land, the commission may designate all or part of the land described in the application as part of an agricultural land reserve if the commission considers that the designation carries out the intent of this Act.*

**Conclusion:**

Based on the applicant's admission, the Commission concluded that the previous rationale provided by the applicant for inclusion under Resolution #382/2005 did not accurately reflect the applicant's true motivation for inclusion. Including land into the ALR solely for taxation purposes is inconsistent with intent of the *Agricultural Land Commission Act* to preserve agricultural land or encourage farming.

**IT WAS**

**MOVED BY:** Commissioner Miles  
**SECONDED BY:** Commissioner Pranger

THAT the request for subdivision be refused.

AND THAT the Commission believes this matter is more appropriately addressed by way of its consideration of an exclusion application pursuant to s. 30(1) of the *Agricultural Land Commission Act* which proposes to exclude from the ALR the area referred to as Lot A.

**CARRIED**

**Resolution #402/2013**