



**Agricultural Land Commission**  
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December 14, 2015

ALC File: #53489

Deborah Kellogg, Dieter Dudy  
710 Dairy Road  
Kamloops, BC  
V2B 8N5

Dear Sir/Madam:

**Re: Reconsideration of original application to Conduct a Non-Farm Use in the Agricultural Land Reserve (ALR)**

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #453/2015) as it relates to the above noted application.

Your attention is drawn to s. 33(1) of the *Agricultural Land Commission Act (ALCA)* which provides a person affected the opportunity to submit a request for reconsideration.

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.

Please note that pursuant to s. 33.1 of the *ALCA*, the Chair may direct the executive committee to reconsider this panel decision if, within 60 days from the date of this decision, he considers that the decision may not fulfill the purposes of the commission as set out in s. 6 of the *ALCA* or does not adequately take into account the considerations set out in s. 4.3 of the *ALCA*. I can advise you that in this case, the Chair has already reviewed the decision and has instructed me to communicate to you that he does not intend to exercise that authority in this case.

Further correspondence with respect to this application is to be directed to Ron Wallace at [Ron.Wallace@gov.bc.ca](mailto:Ron.Wallace@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

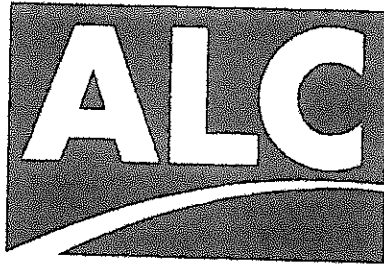
Colin J. Fry, Chief Tribunal Officer

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Enclosure(s): Reasons for Decision (Resolution #453/2015)

cc: City of Kamloops ( File #ALR00034)

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**AGRICULTURAL LAND COMMISSION FILE 53489**

**REQUEST FOR RECONSIDERATION  
REASONS FOR DECISION OF THE EXECUTIVE COMMITTEE**

*Application was submitted pursuant to s. 20(3) of the Agricultural Land Commission Act  
Request for Reconsideration submitted pursuant to s. 33 of the Agricultural Land  
Commission Act*

**Applicant:**

**Deborah Kellogg  
Dieter Dudy**

**Application before the Executive Committee:**

**Frank Leonard, Chair  
William Zylmans, South Coast Panel  
Lucille Dempsey, Interior Panel  
Jennifer Dyson, Island Panel  
Dave Merz, North Panel  
Gerald Zimmermann, Okanagan Panel**



**THE APPLICATION**

- [1] The legal description of the Property involved in the application is:  
Parcel Identifier: 011-902-361  
Lot 3, District Lot 313, Kamloops Division Yale District, Plan 919 (the "Property")
- [2] The Property has the civic address 710 Dairy Road in the City of Kamloops.
- [3] The Property is 4 ha in area.
- [4] The Property is located completely within a designated agricultural land reserve ("ALR") as defined in section 1 of the *Agricultural Land Commission Act* (the "ALCA").
- [5] The Property is located within Zone 2 as defined in subsection 4.2 of the ALCA.
- [6] Pursuant to s. 20(3) of the ALCA the Applicants applied for permission to conduct a variety of special events on the property:
- Farm tours for schools, Community Groups and the General public,
  - Agriculturally related workshops for community groups and the general public,
  - Assembly uses/gatherings (building for weddings, birthday parties and fundraisers,
  - A permanent commercial kitchen facility
  - Accessory dwelling unit for farm help and family members,
  - Seasonal farm markets,
  - Storefront and gift shop (for sales of processed food items); and
  - Storage facility and wash station.
- (the "Application").
- [7] By Resolution 169/2014, dated May 29, 2014, the Commission refused the application. In reaching its decision, the Commission concluded that although some of the proposed uses are permitted as per ALC policy and regulation (noted on page 3 in italics), frequent, large scale assembly uses for weddings, parties and fundraisers could reduce the agricultural potential of the property:



- a. Farm tours,
- b. An accessory dwelling for a family member
- c. Seasonal farm market (as outlined in Section 2(2) (a) of BC Regulation #171/2002,
- d. Storage facility for farm products and a wash station to wash farm products;

[8] On June 30, 2015 the Commission received the Applicant's request for reconsideration of Resolution #169/2014. The letter indicated that many of the complaints received regarding activities and non-farm uses on the property were incorrect or frivolous. The letter also provided an amended list for proposed agri-tourist facilities for the farm.

- Farm tours and farm demonstrations
- Pumpkin patch tours and related activities
- Farm related educational activities
- Seasonal promotional events
- Charity fund raising events where farm products from the farm are offered for sale and the majority of net proceeds are offered for charity
- Farm retail sales – as per ALC regulation
- License to operate a temporary food service – but no weddings

### **RELEVANT STATUTORY PROVISIONS**

[9] The reconsideration request was submitted pursuant to s. 33 of the ALCA which 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.

[10] The purposes of the Commission set out in s. 6 are as follows:

- 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.

### **DELEGATION TO EXECUTIVE COMMITTEE**

[11] On October 29, 2014, the Agricultural Land Commission met and by Resolution #029N/2014 decided to delegate certain reconsideration requests to the Executive Committee. The following is an excerpt from the resolution:

- A. The Agricultural Land Commission (the Commission) may, pursuant to s. 10(3) of the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36, as amended (*ALCA*), delegate any of the Commission's functions to the Executive Committee.
- B. The Executive Committee is a standing committee of the Commission established under s. 10(1) of the *ALCA*, consisting of the Commission Chair and Vice Chairs.
- C. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to decide under s. 33 whether to reconsider an application decision made by a regional panel (following which, if the decision is to reconsider, the Commission Chair must under s. 11.1(3) of the *ALCA* refer the matter to the regional panel who made the decision).
- D. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to:
  - (a) decide under s. 33 whether to reconsider a decision made prior to September 5, 2014 (transitional application); and
  - (b) if the decision is to reconsider, decide under s. 33 to confirm, reverse or vary a decision with respect to a transitional application, on the grounds that such reconsiderations are not subject to referral to a regional panel under s. 11.1(3) of the *ALCA*.

### **EVIDENTIARY RECORD BEFORE THE EXECUTIVE COMMITTEE**

- [12] The Executive Committee considered the following evidence:
1. All the documents contained in the Application file from the



- date the Application was received by the Commission (November 13, 2013), to the date of Resolution #169/2014.
2. The Commission's decision recorded as Resolution #169/2014 and dated May 29, 2014; and
  3. The Applicants' request for reconsideration dated June 29, 2015, received by the Commission on June 30, 2015.

All documentation noted herein has been disclosed to the applicant in advance of this decision.

### **FINDINGS**

- [13] The Executive Committee reviewed the file material and found there to be evidence which was not available at the time of the original decision and/or was in error and/or false, and as such finds it appropriate to reconsider the Application; and more particularly Resolution #169/2014.
- [14] Pursuant to s. 33(2) The Executive Committee did not find any persons to be affected by the reconsideration request.
- [15] The Executive Committee noted that most of the proposed uses outlined in the June 29, 2015 letter are permitted by ALR regulation or ALC policy, such as farm tours, farm market sales (Reg. #171/2002 Section 2(2)(a)), and agri-educational workshops (Reg. #171/2002 Section 3(1)(i)).
- [16] The Executive Committee primary concern is with the potential large "assembly" use for activities such as charity fundraisers and seasonal promotional events, where hundreds of people might attend. The Committee is not supportive of providing approval for frequent large assemblies, or approving "facilities" designed to accommodate large assemblies.
- [17] The Executive Committee considered the potential impacts of frequent large assemblies on the agricultural capability of the property. The Committee believed that



frequent large assemblies of persons not directly associated with farm tours or farm sales is inconsistent with its Section 6 of the ALC Act mandate to preserve farmland and encourage farming.

[18] However, the Executive Committee believed that relatively infrequent (four per year) "assembly" uses of less than 100 people that are not associated with farm activities could be accommodated. Therefore it is prepared to allow up to four events per year for this activity. The existing kitchen in the farm building may be used to cater such events.

### DECISION

[19] For the reasons given above, the executive committee approves the request for non-farm "assembly" uses on the 4 ha property subject to the following conditions.

[20] The approved application is subject to the following conditions:

- a. that no permanent structures be constructed or improved to accommodate assembly uses;
- b. the limiting of assembly uses to groups no larger than 100 person at a single event;
- c. the limiting of frequency of assembly uses to no more than four per year;
- d. issuance of a "Temporary Use Permit" by the City of Kamloops and compliance with any other regulatory requirements,
- e. all parking for assembly uses are to be accommodated on the farm parcel, but is not to exceed space for 30 vehicles;
- f. the approval is for three years only;
- g. approval for non-farm use is granted for the sole benefit of the applicant and is non-transferable.

[21] Frank Leonard, Commission Chair, concurs with the decision.

Lucille Dempsey, Interior Panel Vice Chair, concurs with the decision.

Jennifer Dyson, Island Panel Vice Chair, concurs with the decision.

Dave Merz, North Panel Vice Chair, concurs with the decision.

Gerald Zimmerman, Okanagan Panel Vice Chair, concurs with the decision.

William Zylmans, South Coast Panel Vice Chair, concurs with the decision.

[22] Decision recorded as Resolution #453/2015.





A decision of the Executive Committee is a decision of the Commission pursuant to s. 10(3) of the *Agricultural Land Commission Act*.

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Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #453/2015. The decision is effective upon release.

A handwritten signature in black ink, appearing to read 'Colin J. Fry', is written over a horizontal line. The signature is fluid and cursive.

**Colin J. Fry, Chief Tribunal Officer**

**December 14, 2015**

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**Date Released**