



**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

June 19, 2015

ALC File: 53877

Doug DeMarzo  
Comox Valley Regional District  
600 Comox Road  
Courtenay, BC V9N 3P6

Dear Mr. DeMarzo:

**Re: Application for a Conservation Covenant and 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 #175/2015) as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

Your attention is drawn to s. 33(1) of the *Agricultural Land Commission Act* 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 *Agricultural Land Commission Act*, 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 section 6". 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 Liz Sutton at (Elizabeth.Sutton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink that reads "Liz Sutton". The signature is written in a cursive, flowing style.

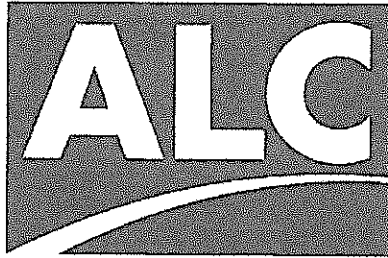
Colin J. Fry, Chief Tribunal Officer

Page 2 of 2

Enclosure: Reasons for Decision (Resolution #175/2015)

cc: Comox Valley Regional District (File: 6130-20 Ware Conservation Area)

53877d1



**AGRICULTURAL LAND COMMISSION FILE 53877**

**REASONS FOR DECISION OF THE ISLAND PANEL**

**Application submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act***

**Applicants:**

**Randy Enns  
Sharon Enns  
(the "Applicants")**

**Agent:**

**Comox Valley Regional District  
c/o Doug DeMarzo**

**Application before the Island Regional Panel:**

**Jennifer Dyson, Panel Chair  
Clarke Gourlay**



## **THE APPLICATION**

[1] The legal description of the property involved in the application is:

Parcel Identifier: 005-794-412

Lot A, Section 27, Township 9, Comox District, Plan 6780, Except Part in Plan  
VIP86984

(the "Property")

[2] The Property has the civic address 4287 Dove Creek Road, Courtenay.

[3] The Property is 23.1 ha in area.

[4] The Property is located within a designated agricultural land reserve ("ALR") as defined 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Property is located within Zone 1 as defined in s. 4.2 of the ALCA.

[6] Pursuant to s. 20(3) of the ALCA, the Applicants are applying to protect an area of approximately 0.2 ha of mature Douglas-fir trees and associated ecosystem under a conservation covenant. This aspect of the proposal requires a non-farm use application as s. 22(2) of the ALCA stipulates:

22(2) A covenant that restricts or prohibits the use of agricultural land for farm purposes has no effect until approved by the commission.

The Commission takes the position that a proposal to prohibit the use of land for farm purposes is by its very nature a non-farm use of land in the ALR.

Also pursuant to s. 20(3) of the ALCA, the Applicants are applying to establish a statutory right-of-way over a 1 metre wide and approximately 160 metre long (160 m<sup>2</sup>) footpath to allow for limited public pedestrian access through the proposed covenant area.

(the "Application")



[7] On May 1, 2015, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Island Regional Panel (the "Panel").

### **RELEVANT STATUTORY PROVISIONS**

[8] The Application was made pursuant to s. 20(3) of the *ALCA*:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land

[9] The Panel considered the Application within the context of s. 6 of the *ALCA*:

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.

### **EVIDENTIARY RECORD BEFORE THE PANEL**

[10] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history
4. Agricultural capability map, ALR context map and satellite imagery



All documentation noted above was disclosed to the Agent in advance of this decision.

[11] In May 2014, the Comox Valley Regional District (the "CVRD") resolved that the Application to protect an area of 0.2 ha through a conservation covenant be supported, and that CVRD staff explore a land use agreement or statutory right-of-way with the Enns family.

[12] The Panel reviewed a previous application involving the Property:

Application ID: 12373  
Legacy File: 32375  
(Enns & Ware, 1998)

To subdivide 2.0 ha from the subject property to provide a home for the retiring owners. The application was allowed by Resolution #782/1998.

**Note: The subdivision was authorized for deposit with the Registrar of Land Titles on June 18, 2009 by ALC Order #782/1998.**

[13] The Panel reviewed two relevant applications relating to the Application:

Application ID: 53143  
(CVRD, 2013)

To extend the 8 kilometer long One Spot Trail both to the north and south by a total of 12 kilometers. The application was approved with conditions by Resolution #418/2013.

\*\*\*\*\*

Application ID: 52535  
(McMullen and Holvenstot, 2011)

To construct a trail that is 725 meters in length and which will affect approximately 1.0 ha of land in the ALR. The application was approved with conditions by Resolution #310/2012.

**Note: The trail runs along the southern boundary of the Property. The proposed trail on the Property would be accessed from the trail approved by Resolution #310/2012.**

## SITE VISIT

[14] The Panel, in the circumstances of this Application, did not consider it necessary to conduct a site visit to the Property based on the evidentiary record associated with the Application.



## **FINDINGS**

[15] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on BCLI map sheet 92F.075 for the mapping units encompassing the Property are Class 3 and Class 4, more specifically 3DP, 3AC, 8:4C – 3AP, 3CA, 8:4P – 2:3AP, 3DW and 4PC.

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

Class 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

The limiting subclasses associated with this parcel of land are D (undesirable soil structure), P (stoniness), A (soil moisture deficiency), C (climate), and W (excess water).

[16] While the proposed conservation covenant would prohibit the use of the covenant area from being used for agriculture, the Panel finds that the 0.2 ha covenant area to be small and subsequently would not impair the agricultural use of the remainder of the Property.

[17] As proposed, the trail will be accessed from the Wildwood Connector Trail and would follow the perimeter of the 0.2 ha covenant area. The Panel is amenable to the trail following the perimeter of the covenant area provided that fencing is established around the covenant area to prevent trespass onto the remainder of the Property.



**DECISION**

- [18] For the reasons given above, the Panel approves, the Application to protect an area of approximately 0.2 ha of mature Douglas-fir trees and associated ecosystem under a conservation covenant.
- [19] For the reasons given above, the Panel also approves the Application to establish a footpath within the covenant area to allow for public pedestrian access.
- [20] The Application is approved subject to the following condition:
- a. the covenant terms and area must be in substantial compliance with the draft covenant submitted with the Application;
  - b. a surveyed site (posting) plan consistent with the proposed covenant area identified in the application, must accompany, and be referenced in, the covenant;
  - c. that the Applicants prepare the conservation covenant in registrable form and submit it to the Commission for execution.
  - d. registration of the covenant must be completed within three (3) years from the date of release of this decision; and
  - e. the construction of a fence around the perimeter of the covenant area that interfaces with the remainder of the Property. Photographic proof that the fence has been constructed is a prerequisite to the Commission's execution of the covenant.
- [21] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.
- [22] Panel Chair **Jennifer Dyson** concurs with the decision.  
Commissioner **Clarke Gourlay** concurs with the decision.
- [23] Decision recorded as Resolution #175/2015.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.





\*\*\*\*\*

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #175/2015. The decision is effective upon release.

A large, stylized handwritten signature in black ink, consisting of several loops and a long tail stroke.

---

Colin J. Fry, Chief Tribunal Officer

June 19, 2015

---

Date Released