



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

November 23, 2015

ALC File: 53881

David Hardwicke
Dediluke Land Surveying Inc.
4801 Keith Avenue
Terrace, BC V8G 1K6

Dear Mr. Hardwicke:

Re: Reasons for Decision – North Panel, Resolution #324/2015

This is further to the Agricultural Land Commission (the "Commission") letter dated November 5, 2015 which forwarded the *Reasons for Decision of the North Panel*, recorded as Resolution #324/2015 (the "Decision"). In its covering letter to you, the Commission advised as follows:

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 or does not adequately take into account the considerations set out in s. 4.3.

In my capacity as Chief Tribunal Officer, I am writing to advise you that Commission Chair, Mr. Frank Leonard, has reviewed the *Reasons for Decision of the North Panel*, recorded as Resolution #324/2015 and has referred this matter to the Executive Committee of the Commission pursuant to s. 33.1 of the *Agricultural Land Commission Act* (the "ALCA") which provides the following:

Reconsideration of decisions of panel

- 33.1(1) The chair of the commission may, in writing, direct the executive committee to reconsider a decision made by a panel established under section 11(1) respecting an application or other matter allocated to the panel by the chair of the commission, including a panel's reconsideration of a decision under section 3(1), if
- (a) the chair considers that the decision
 - (i) may not fulfill the purposes of the commission as set out in section 6, or
 - (ii) does not adequately take into consideration the considerations set out in section 4.3, if applicable, and
 - (b) the chair makes the direction to the executive committee within 60 days of the decision being made.
- (2) If the chair of the commission directs the executive committee to reconsider a decision under subsection (1), the chair must give notice of the reconsideration to any person that the chair considers is affected by the reconsideration.

- (3) If the chair of the commission directs the executive committee to reconsider a decision under subsection (1), the executive committee must confirm, reverse or vary the decision.
- (4) For the purposes of subsection (3), the executive committee has all the powers, duties and functions of the commission.
- (5) A decision by the executive committee under subsection (3) is for all purposes a decision of the commission.

The Chair has directed the reconsideration on the basis that he considers that the Decision may not fulfill the purposes of the Commission as set out in s. 6 and that the decision does not adequately take into consideration the considerations set out in s. 4.3, the latter of which apply in Zone 2. The Chair has also directed me to make clear that this referral to the Executive Committee under s. 33.1(1) is just that, a referral, and does not represent the Chair's final conclusion on the proper outcome of the reconsideration. The final decision by the Executive Committee (consisting of the Chair and the 6 Vice-chairs of the Commission) will be made by the Executive Committee with each member being responsible for exercising their independent judgment as part of the Executive Committee as a decision-making body after deliberation, discussion and consideration of all the information, evidence and submissions.

The Chair has in his discretion directed that the Regional District of Kitimat-Stikine (the "Regional District"), while not entitled to notice under s. 33.1(2), should be given the opportunity to provide any information in addition to that it has already provided in connection with the application, which information is to be provided to the Commission and to yourselves no later than December 4, 2015.

The Chair has also determined that you and your clients are persons entitled to notice under s. 33.1(2), and has therefore directed me to notify you of the reconsideration and to give you the opportunity to provide the Commission with any additional evidence and submissions no later than December 4, 2015. The Executive Committee will be considering both the application of s. 6 and s. 4.3 to your application. While you are not required to provide additional evidence and submissions, you are invited to do so. In particular, you may wish to address the following issues:

- (a) The impact of your application on the purposes of the Commission as set out in section 6 of the *ALCA* ("to preserve agricultural land, to encourage farming on agricultural land in collaboration with other communities of interest, 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");
- (b) How s. 4.3 applies to your application, including whether and how your application is supported by any of the factors set out in ss. 4.3(b) and (c), and how those factors should properly be applied in this case "in descending order of priority" as required by s. 4.3:

4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;

- (b) economic, cultural and social values;
- (c) regional and community planning objectives;

Once the submission process is complete, the Executive Committee will consider the reconsideration at the first available meeting opportunity.

If you intend to respond, please direct your submission to Laurel Eyton, Land Use Planner at (Laurel.Eyton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION



Colin Fry, Chief Tribunal Officer

cc: Regional District of Kitimat-Stikine (File: 3370 20 #309)

David Merz, Chair, North Panel

Sandra Busche, Member, North Panel

Garry Scott, Member, North Panel

53881_Letter to Applicant_Reconsideration by Executive Committee



November 5, 2015

David Hardwicke
Dediluke Land Surveying Inc.
4801 Keith Avenue
Terrace, BC V8G 1K6

Dear Mr. Hardwicke:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #324/2015) as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly. A sketch plan depicting the decision is also attached.

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 or does not adequately take into account the considerations set out in section 4.3". I will follow up with you in this regard once I have received instructions from the Chair.

Further correspondence with respect to this application is to be directed to Laurel Eyton at (Laurel.Eyton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Colin J. Fry, Chief Tribunal Officer

Enclosures: Reasons for Decision (Resolution #324/2015)
Sketch plan

cc: Regional District of Kitimat-Stikine (File: 3370 20 #309)
Regional Agrologist John Stevenson, Ministry of Agriculture – Smithers Office

53881d1

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
ALC File: 53881



AGRICULTURAL LAND COMMISSION FILE 53881

REASONS FOR DECISION OF THE NORTH PANEL

Application submitted pursuant to s. 21(2) of the *Agricultural Land Commission Act*

Applicants:

**Jim Zondanos
Hollie Zondanos
(the "Applicants")**

Agent:

**David Hardwicke
Dediluke Land Surveying Inc.
(the "Agent")**

Application before the North Regional Panel:

**Dave Merz, Panel Chair
Sandra Busche
Garry Scott**



THE APPLICATION

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

Parcel Identifier: 009-247-947

Lot 5, District Lot 366, Range 5, Coast District, Plan 1955, Except Plan 3052

(the "Property")

[2] The Property is 8.7 ha in area.

[3] The Property is located at 742 Kitselas Road, east of the City of Terrace.

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

[5] The Property is located within Zone 2 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 21(2) of the *ALCA*, the Applicants are applying to subdivide the Property into one 4.2 ha parcel and one 4.5 ha parcel (the "Application").

[7] On February 5, 2015, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the North Regional Panel (the "Panel").

RELEVANT STATUTORY PROVISIONS

[8] The Application was made pursuant to s. 21(2) of the *ALCA*:

21(2) An owner of agricultural land may apply to the commission to subdivide agricultural land.

[9] The Panel considered the Application pursuant to its mandate in s. 4.3 of the *ALCA*:



4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;
- (b) economic, cultural and social values;
- (c) regional and community planning objectives;
- (d) other prescribed considerations.

[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.

EVIDENTIARY RECORD BEFORE THE PANEL

[11] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Agricultural capability map, ALR context map and satellite imagery
4. Email dated January 15, 2015 from the Agent

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

[12] The Regional District of Kitimat-Stikine (the "RDKS") resolved to forward the Application with no objections provided that the Commission determines that the subdivision is in the best interest of agriculture.



SITE VISIT

[13] On August 20, 2015, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[14] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on October 14, 2015 (the "Site Visit Report") and the Agent confirmed it as correct on October 20, 2015.

FINDINGS

Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture

[15] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The agricultural capability ratings identified on CLI map sheet 103I/10(a) for the mapping units encompassing the Property are Class 3 and Class 5; more specifically (7:3W - 3:5PM).

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 5 - land is capable of production of cultivated perennial forage crops and specially adapted crops. Soil and/or climate conditions severely limit capability.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), P (stoniness) and W (excess water).

[16] The Panel reviewed the CLI ratings and the Site Visit Report find that the Property has limited capability for agriculture.

[17] The Panel noted in the Site Visit Report that the soil on the Property is very sandy.



- [18] The Panel noted in the Site Visit Report that the majority of the Property is treed.
- [19] As noted in the Site Visit Report, the Applicants report they are not able to grow much on the Property.
- [20] The RDKS noted in the *Local Government Report* that: "There are no agricultural operations in this area that would be impacted by subdivision."
- [21] On the Site Visit, the Panel did not view any other agricultural operations in the area.

Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values

- [22] The Agent was provided the opportunity to submit information pursuant to s. 4.3 of the ALCA. The Agent sent an email dated January 15, 2015 to the Commission discussing an article from "*The Scrivener*" (Vol. 23, No. 4), published by the Society of Notaries Public of British Columbia. The Agent argues that the "pertinent observations in the article [the Agent] would like the Commission to consider are:

1) "Almost one third of the wineries...own less than five acres..." (top page 31) and immediately following:

2) "In the long run, BC's wine-grape industry will always rely on quality lands (Class 1-2) to support VQA wines.

While the article laments certain business challenges of the wine industry, it does make an interesting point which drives home my point made in our application, being: large parcel size does not equate with highest and best use of land. That is, if Class 1 and 2 lands in warm weather (steppe) climates are being used to their full potential on parcels less than 5 acres, then how can one argue that 10 acre parcels in a coastal interior rainforest climate with Class 2-5 soils could not support its fullest potential relative to that climate?"

Section 4.3(c) of the ALCA: third priority to regional and community planning objectives

- [23] The Property does not fall within an area that has an Official Community Plan. However, the RDKS notes in the *Local Government Report* that:



“There is a history of agriculture in this area including market gardens/vegetable production on alluvial soils on adjacent Schremp Island. The Greater Terrace Official Settlement Plan Background Studies recognizes the agricultural potential of this area and also recommends that the Kitselas subarea remain as large rural acreages due to lack of basic services as well as terrain restrictions.”

[24] The Property is zoned as R2 (Low Density Rural) in the RKS Greater Terrace Zoning Bylaw No. 27, which requires a 4 ha minimum parcel size for subdivision. The proposed lot and remainder will meet parcel size requirements.

[25] RDKS Staff notes in the *Local Government Report* that “most of the subject property is within the 1 in 200 year flood level of the Skeena River” and that “the bylaw requires that any area used for habitation of storage of goods damageable by floodwater must be built with the underside of the floor system above the 1 in 200 year flood level.”

Weighing the factors in priority

[26] The Panel believes that the Property has limited agricultural capability and suitability. The Panel is of the opinion that the subdivision of the Property will not have any impact on agriculture.

[27] The Panel gave consideration to economic, social and cultural values and regional and community planning objectives planning as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel’s finding following its review of the agricultural considerations.

DECISION

[28] For the reasons given above, the Panel approves the Application to subdivide the Property into one 4.2 ha parcel and one 4.5 ha parcel.

[29] The Application is approved subject to the following conditions:



- a. the subdivision being in substantial compliance with the plan submitted with the Application; and
- b. the subdivision plan must be completed within three (3) years from the date of release of this decision.

[30] 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.

[31] Commissioner **Sandra Busche** concurs with the decision.
Commissioner **Garry Scott** concurs with the decision.

[32] Panel Chair **Dave Merz** opposes the decision.

[33] I, Dave Merz, oppose the above decision for the following reasons: "The land is Class 3 and 5 with moisture deficiency, stoniness and excess moisture being the main problems along with climate. Irrigation can be readily available as the Property is located adjacent to the Skeena River. There is a history of vegetable and market gardening on nearby Schremp Island. I believe that the Property has agricultural potential, and this potential will be limited by subdivision. I concur with the Greater Terrace Settlement Plan that recognizes that the area has agricultural potential and that parcels should remain large in order to maintain agricultural options. The majority of the Property being located within the 1 in 200 year flood level does not constitute a significant impediment to agriculture."

[34] The decision to approve the Application by majority vote is recorded as Resolution #324/2015.

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 #324/2015. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

November 5, 2015

Date Released

PART REM DL 371

PLAN 9850

CMR PLAN 1176

10.1 M ROAD TO BANK

DL 366

A
4.50 ha
PART LOT 3

REM LOT 5
PLAN 1955
4.07 ha

LOT 1
PLAN 3052

SLOUGH OF SKEENA RIVER

ALC Application #538871
 (Applicants - Jim and Hollie Zondanos)
 (Agent - Dedluke Land Surveying Inc.)
 Resolution #324/2015

PLAN OF PROPOSED SUBDIVISION OF
 PART OF LOT 5, DISTRICT LOT 366,
 RANGE 5, COAST DISTRICT,
 PLAN 1955 EXCEPT PLAN 3052.

SCALE 1 : 1250 BCGS 1031.058
 0 10 20 30 40 50 100 METRES

LEGEND
 EMBARKS ARE ASTROGNOMIC DERIVED FROM P.L.M. 1955.
 ⊕ DEVIATES STANDARDS FROM BEST FOUND
 DIMENSIONS TO WATER EDGEBARY SUBJECT TO SURVEY.

Subdivision of 4.5 ha from
 Property approved by
 Resolution #324/2015.

REGULINE LAND SURVEYING INC.
 2233/173
 2233/173
 2233/173