



Agricultural Land Commission
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November 5, 2015

ALC File: 54000

David Terrence Burnett
Fisherboy Enterprises Ltd.
1546 Sayward Road
Sayward, BC V0P 1R0

Dear Mr. Burnett

Re: Application to Exclude Land from the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #3112015) as it relates to the above noted application.

The Commission will advise the Registrar of Land Titles that the property has been excluded from the ALR when it has received confirmation that the conditions of approval have been met.

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

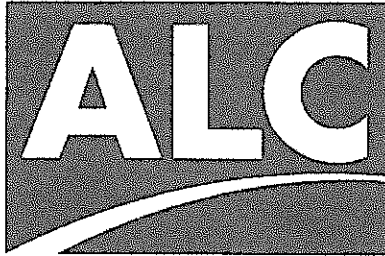
Colin J. Fry, Chief Tribunal Officer

Page 2 of 2

Enclosure: Reasons for Decision (Resolution #311/2015)

cc: Strathcona Regional District (File: J0540-20/ALR 1A 14)

54000d1



AGRICULTURAL LAND COMMISSION FILE 54000

REASONS FOR DECISION OF THE ISLAND PANEL

Application submitted pursuant to s. 30(1) of the *Agricultural Land Commission Act*

Applicant:

**Fisherboy Enterprises Ltd.,
Inc. No. 493513
(the "Applicant")**

Agent:

**David Terrence Burnett
(the "Agent")**

Application before the Island Regional Panel:

**Jennifer Dyson, Panel Chair
Honey Forbes
Clarke Gourlay**



THE APPLICATION

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

Parcel Identifier: 005-156-645

Lot 1, Section 8, Township 3, Sayward District, Plan 11172

(the "Property")

[2] The Property is 3.2 ha in area.

[3] The Property has the civic address 1546 Sayward Road, Sayward.

[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 1 as defined in s. 4.2 of the ALCA.

[6] Pursuant to s. 30(1) of the ALCA the Applicant is applying to exclude the Property from the ALR to facilitate expansion of commercial activities and recreational accommodations at Sayward Valley Resort (the "Application").

[7] On June 23, 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. 30(1) of the ALCA:

30 (1) An owner of land may apply to the commission to have their land excluded from an agricultural land reserve.

[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. Relevant 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] On January 7, 2015, the Strathcona Regional District (the "SRD") made the following resolution:

"That the Agricultural Land Commission be advised that the Strathcona Regional District Board supports the Agricultural Land Reserve Application ALR 1A 14 (Fisherboy Enterprises) for exclusion from the ALR of lands known as Lot 1, Plan VIP 11172, Section 8, Sayward District"

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

ALC ID: 3864
ALC Legacy File: 29846
(Fisherboy Enterprises Ltd.,

To construct a 12 unit motel, convenience store,
restaurant and gas bar on a portion of the 3.2 ha



1995)

property. The application was refused on the grounds that the Commission did not want to encourage commercial strip development in this area which has good agricultural potential. Resolution #553/95.

Note: At the time of the application there was a 20 pad mobile home park, 31 site campground, and a laundromat. The property has been used a campground and trailer park since 1975. There is no record of Commission approval for these uses either because the uses were established prior to the *Land Commission Act* in 1973 or subsequently developed without the Commission's approval. The Commission had recently refused an application for a 12 unit motel on the adjoining property to the south.

Reconsideration Request 1 To construct a two-storey structure between 7,000 ft² and 10,000 ft² in area, containing the applicant's new dwelling, a 12 unit motel, restaurant and convenience store with an adjoining gas bar. A new submission was provided which included a letter from the local area director indicating that the trailer park was established prior to 1973. In addition, the applicant noted that the land had no agricultural potential due to extensive filling for the trailer park and that the motel would merely replace an existing derelict structure. The request was allowed on the former site of the derelict Quonset hut. Resolution #702/95.

Reconsideration Request 2 To construct a mini-golf facility on the former site of a children's playground. The application was approved. Resolution #486/2003.



[13] The Panel reviewed two relevant applications involving a nearby property to the southeast of the Property (Lot 1, Section 5, Township 3, Sayward District, Plan 45197).

Application ID: 39781
Legacy File: 34834
(Dyson Holdings, 2003)

To exclude 12 ha of land from the ALR in order to facilitate the development of a multi-use commercial facility, including campground, gas bar and store, information center, 10 – 20 unit motel, and a 65 seat pub. The balance of the land would be commercially developed according to market demand. There was no specific development plan for the property beyond a diagram attached to the application showing approximately 50% of the land as proposed above, and the remainder as either vacant, setback along the creek, or landscaped. The application to exclude was refused as presented. However, the Commission allowed the development of the first phase of the proposal gas bar, convenience store, visitors information center, and RV/campground site. Resolution #618/2003.

Reconsideration Request 1 To increase the number of campsites from 24 to 40, and to construct a building for indoor storage of 30 RV units. The Commission considered that the request for additional campsites could be accommodated without additional impact on the agricultural utility of the property, if located in the 6 ha western portion of the property previously allowed for non-farm activities. Regarding the RV storage building, the Commission preferred to await the development of local area planning to ensure that other proposed non-farm uses of the property are considered in the context of community planning. Resolution #428/2003.



Reconsideration Request 2 To reconsider a decision to refuse an application to exclude land from the ALR. While having some sympathy with Mr. Dyson's situation, the Commission considered that it was the prime responsibility of the Regional District to establish community need in the context of a community planning process. The Commission was not satisfied in the absence of this process that a sufficiently strong case had been made to justify the exclusion of the property. Resolution #468/2006.

Application ID: 3094
Legacy File: 29749
(High River Holdings, 1995)

To construct a 12 unit motel on 2.3 ha of the 11.7 ha property. Refused on basis of good agricultural capability and the Commission did not wish to heighten expectations that further non-farm development would be considered in this area. The Commission felt that while the site was a favorable location for a motel, urban type development should be directed to the designated urban area rather than on lands with high agricultural potential adjacent to the highway. Resolution #463/1995.

APPLICANT MEETING

[14] On June 29, 2015, the Panel conducted a meeting with the Applicant (the "Applicant Meeting") in accordance with s. 22(1) of BC Regulation 171/2002 (Agricultural Land Reserve Use, Subdivision and Procedure Regulation). The Applicant Meeting was held at Tigh Na Mara Resort, 1155 Resort Drive, Parksville. Those in attendance were:

Jennifer Dyson	Chair, Island Panel
Honey Forbes	Commissioner, Island Panel
Clarke Gourlay	Commissioner, Island Panel
Liz Sutton	Land Use Planner
Jessica Daniels	Land Use Planning Assistant
David Terrence Burnett	Agent



- Mr. Burnett described the Sayward Community. He noted that it is difficult to make a profit catering only to local residents; 350 to 400 people reside in Sayward and 1,200 people live in the surrounding area.
- Mr. Burnett described the business that he is currently running on the Property. He took over Sayward Valley Resort (formerly Fisherboy Resort) four years ago (March 31, 2011). The Property currently includes a motel and three (3) duplex cabins that were built 20 years ago. The Property also includes a trailer park and 42 campsites (30 of which are serviced). Mr. Burnett described the improvements that he has made to the run-down resort. The Property also includes a store, motel and a main residence.
- Mr. Burnett discussed the history of the Property in relation to its suitability for agriculture. He does not believe that land should have been included into the ALR. He noted that the commercial activities on the Property pre-date the ALR and identified that garbage and fill has been disposed of on the Property.
- Mr. Burnett expressed that he has long-term plans for the Property that do not involve agriculture. He is seeking exclusion, as the ALR status is restricting his business. He wishes to invest in the business; this includes renovating the motel and building additional cabins. He requires the ability to park heavy equipment on the Property as the business provides accommodation for construction and road crew workers.
- Mr. Burnett explained how his business positively contributes to the local economy and tourism industry of Sayward. Sayward Valley Resort provides the opportunity for local jobs. He explained how the business aligns with the Strathcona Tourism Plan. He noted that SRD is supportive of the business and has committed to providing two heavy signs.

FINDINGS

[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 improved agricultural capability rating



identified on CLI map sheet 92K/5 for the mapping unit encompassing the Property is Class 2X.

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

The limiting subclass associated with the Property is X (combination of soil factors).

Based on the CLI rating, the Property has good agricultural capability. However, despite the CLI rating, the Property has historically been used for recreational and commercial purposes; uses that either predate the ALR or were subsequently approved by the Commission through the application process.

[16] With respect to exclusion applications, the Panel prefers to consider changes to the ALR land base within the context of local zoning and an Official Community Plan (OCP). There has been no zoning or OCP for the Property throughout the history of the Commission's application considerations. The Panel finds that in the absence of zoning or an OCP, it is difficult to assess the community's position regarding such proposals.

[17] In light of paragraph 16, the Panel considered the current use of the Property (Sayward Valley Resort Motel and RV Park) and the previous application history involving the Property and other parcels in proximity to the junction of Highway 19 and Sayward Road. Non-farm use activities on the Property pre-dated the ALR and have been expanded by multiple approvals of the Commission. Likewise, the Panel recognizes that this particular highway junction has had a pattern of previous recreational and commercial non-farm use approvals. For this reason, the Panel is amenable to excluding the Property for the purpose of continuing and expanding the non-farm uses currently taking place on the Property. In the absence of zoning or an OCP, the Panel requires a covenant in favour of the SRD be registered against the Certificate of Title of the Property, which stipulates that upon exclusion, the Property will be restricted to commercial and recreational purposes, with the exception of the Applicant's dwelling for residential purposes.



[18] The Panel also encourages the SRD to consider pursuing zoning or an OCP in the Sayward area, to ensure the long-term planning for agricultural land within the community and surrounding area. The Panel and Commission staff would be pleased to provide assistance with the process, should the opportunity arise.

DECISION

[19] For the reasons given above, the Panel approves the Application to exclude 3.2 ha Property from the ALR for commercial and recreational purposes.

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

- a. Registration of a covenant in favour of the SRD which stipulates that upon exclusion, the Property will be restricted to commercial and recreational purposes with the exception of retention of Applicant's dwelling for residential purposes;
- b. Although not a signatory to the covenant, please forward a copy of draft restrictive covenant for review and approval prior to the covenant being executed and registered on the Certificate of Title; and
- c. Registration of the covenant must be completed within three (3) years from the date of this decision.

[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 Honey Forbes concurs with the decision.
Commissioner Clarke Gourlay concurs with the decision.

[23] Decision recorded as Resolution #311/2015.

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 #311//2015. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

November 5, 2015

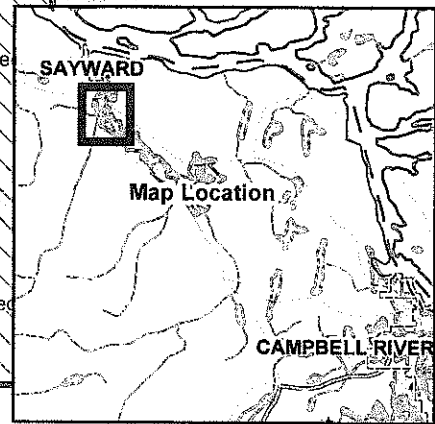
Date Released

125°58'0"W

125°56'0"W

125°54'0"W

ALC #54000 (Fisherboy Ent. Ltd)
ALC Resolution #311/2015
Approved Exclusion



50°20'0"N

Sec 18, TP 3

Sec 17, TP 3

DL 997

Sec 7, TP 3

Sec 8, TP 3

Subject Property
Area = 3.2 ha

DL 1682

DL 1435

DL 1687

Sec 9, TP 3

Conditionally
Approved Exclusion

Sec 5, TP 3

Sec 4, TP 3

Sec 3, TP 3

ALR

50°18'0"N

Sec 32, TP 6

Sec 33, TP 6

Sec 34, TP 6

DL 540

DL 1436 Sec 27, TP 6



ALC Context Map

Map Scale: 1:35,000



ALC File #:	54000
Mapsheet #:	92K/5
Map Produced:	Jun 2, 2015
Regional District:	Strathcona