



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

December 15, 2015

ALC File: 54281

John and June DeDood
122 Monk Road
Box 247
Grindrod, BC V0E 1Y0

Re: Application to Conduct a Non-Farm Use of Land in the Agricultural Land Reserve

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution # 452/2015) as it relates to the above noted application. A sketch plan depicting the decision has been attached.

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 Ron Wallace at (Ron.Wallace@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'C. Fry', written over a white background.

Colin J. Fry, Chief Tribunal Officer

Enclosures: Reasons for Decision (Resolution #452/2015)

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cc: Regional District of North Okanagan (File: 15-0033-F-ALR)

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AGRICULTURAL LAND COMMISSION FILE 54281

**REASONS FOR DECISION
OF THE OKANAGAN PANEL**

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

Applicant:

**John and June deDood
(the "Applicants")**

Application before the Okanagan Regional Panel:

**Gerry Zimmermann, Panel Chair
Jim Johnson
Greg Norton**



THE APPLICATION

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

Parcel Identifier: 001-576-887

Amended Lot 41 (DD204435F) District Lot 526, K (Formerly O) Division of Yale
Land District, Plan 1010, Except Plan 42675

(the "Property")

[2] The Property is 12.2 ha in area.

[3] The Property has the civic address 15 Grandview Bench Road, Grindrod.

[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. 20(3) of the *ALCA*, the Applicants are applying to utilize a portion of an existing barn building for a 324 m² retail sales area with a 110 m² mezzanine area for agri-tourism use (the "Application"). The Applicants propose to utilize the retail sales area to sell products currently produced on properties which they own and lease, including milk, organically fed broilers, garlic, hay, sweet corn, berries, vegetable and other products which they plan to produce in the future. The Applicants also propose to use the retail space to sell products raised or produced from other farmers in the area. Also proposed is a food services facility consisting of an ice cream bar and coffee bar which would serve coffee, tea, pastries, soup and sandwiches.

It is proposed that a portion of the ground floor area would be allotted to agri-tourism uses including a viewing area into the dairy barn and displays presenting the history of the dairy industry and dairy memorabilia to promote the local dairy industry and to raise awareness of the importance of local food production and agriculture.

It is proposed that a mezzanine area over part of the store would serve (in part) as a space for agri-tourism uses such as cooking/food preparation demonstrations, wine and



cheese presentations, animal husbandry education, and agriculture oriented community events.

[7] On November 4, 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. Evidence from any third parties of which disclosure was made to the applicant
4. Previous application history



5. Agricultural capability map, ALR context map, and satellite imagery

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

[11] The Regional District of North Okanagan Board authorized the submission of the Application to the Commission subject to the following conditions:

- At least 50% of the total sales area must be limited to the sale of farm products produced on the farm on which the retail sales are taking place; and
- The total area, both indoors and outdoors, used for the retail sales of all products and for food services consisting of ice cream, coffee, tea, bakery items, soup and sandwiches, may not exceed 300 m².

In addition the RDNO Planning Department, the RDNO Area Advisory Committee and the RDNO Electoral Area "F" Advisory Planning Commission all authorized submission of the Application to the Commission with the same conditions as noted. The APC provided an amendment to the motion that the Department of Highways be approached regarding a stacking lane or left turn lane off of Highway 97 onto Grandview Bench Road.

The RDNO Agricultural Advisory Committee provided the following comments:

- Covenant for only that use – food service
- Only item produced onsite is unpasteurized milk, will not meet 50% threshold (reason for the application)
- Support local sales
- Concerns regarding how this sets precedent
- Cautious support

SITE VISIT

[12] On November 19, 2015, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

COMMISSION REPRESENTATIVES:



Gerry Zimmermann	Vice Chair, Okanagan Panel
Jim Johnson	Commissioner, Okanagan Panel
Greg Norton	Commissioner, Okanagan Panel
Ron Wallace	Land Use Planner

APPLICANTS:

June deDood
John deDood
Curtis deDood

The Commission representatives met the Applicants at the Property located at 15 Grandview Bench Road. There were a number of other participants at the Property in support of the Application including Herman Halvorson, Director, Electoral Area 'F' and Greg McCune, Mayor, City of Enderby. It was observed that the Property is a 'state of the art' 110 Holstein cow dairy farm with automated milking, feeding and grooming systems. The proposed retail sales and food service area is built into the main barn building and is comprised of a ± 324 m² area for this purpose with a ± 110 m² mezzanine area for agri-tourism use.

FINDINGS

[13] 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 ratings identified on CLI map sheet 82L/11 for the mapping unit encompassing the Property is Class 1.

Class 1 - land is capable of producing the very widest range of crops. Soil and climate conditions are optimum, resulting in easy management.

[14] The Panel reviewed the CLI ratings and concurs that the Property is located on prime agricultural land. It was noted that the Property is primarily used for the operation of a 110 Holstein cow and calf dairy farm with automated milking, feeding and grooming systems.



The Property together with other leased land holdings provides for the growing of crops and pasture for the dairy farm operation. In addition and in association with the proposed farm retail sales facility, the Applicants propose to sell products currently produced on their properties including milk, broilers, garlic, hay, sweet corn, berries and vegetables; with future products including raspberries, strawberries, hascap berries, eggs and beef. The Applicants also propose to use the retail space to sell products raised or produced from other farmers in the area. Upon review the Panel believes the “farm retail sales” component has the potential of being consistent with a permitted use within the ALR. Section 2(2)(a) and (c) of Part 2 of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* (BC Reg. 171/2002) states that farm retail sales are considered a farm use that may be regulated but must not be prohibited by any local government if it complies with the following criteria:

- i. all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or
- ii. at least 50% of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m².

Further the Panel considers the proposed agri-tourism uses to be within reasonable compliance to Section 2(2)(e) of BC Reg. 171/2002 as the Property is assessed as a ‘farm’ under the *Assessment Act* and given that the proposed activities (i.e., viewing area into the dairy barn and displays presenting the history of the dairy industry and dairy memorabilia to promote the local dairy industry and to raise awareness of the importance of local food production and agriculture) are believed to meet the objectives of this regulation.

Lastly the proposed food services facility was believed to be an acceptable non-farm use given the objectives of the whole Application – (in part) to diversify the farm products grown on the farm; to provide a retail market for other farm operations in the local area; and to promote greater awareness and understanding of the local agricultural community. Provided the Applicants do not exceed the proposed 324 m² retail sales area with a 110 m² mezzanine area for agri-tourism use, both indoors and outdoors, the Panel is supportive of the Application.



[15] The Panel acknowledges the comments and concerns raised by a third party in a letter dated October 8, 2015. In this letter, they believe the commercial facility was built into the dairy barn without first attaining approval for the 'non-farm use' component of the proposed use and also that the proposed 'non-farm use' is inappropriate on ALR land. The Panel concurs with the comment that approval for a 'non-farm use' should be attained prior to construction of a facility for this purpose. However, for the reasons outlined the Panel is supportive of the Application.

DECISION

[16] For the reasons given above, the Panel approves the Application to utilize a portion of an existing barn building for a 324 m² retail sales area with a 110 m² mezzanine area for agri-tourism use.

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

- a. the proposed use be in substantial compliance with the outline submitted with the Application;
- b. at least 50% of the total sales area must be limited to the sale of farm products produced on the farm on which the retail sales are taking place; and
- c. the total area, both indoors and outdoors, used for the retail sales of all products and for food services consisting of ice cream, coffee tea, bakery items, soup and sandwiches, may not exceed ±324 m².

[18] 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.

[19] Panel Chair **Gerry Zimmermann**, concurs with the decision.

Commissioner **Jim Johnson**, concurs with the decision.

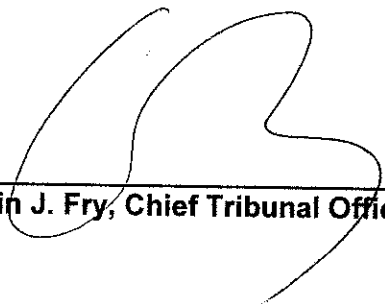
Commissioner **Greg Norton**, concurs with the decision.



[20] Decision recorded as Resolution #452/2015.

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 #452/2015. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

December 15, 2015

Date Released