



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

September 20, 2016

ALC File: #45009

Edmund Zielke
Via email

Dear Mr. Zielke:

Re: Reconsideration of original application to Subdivide Land in the Agricultural Land Reserve (ALR)

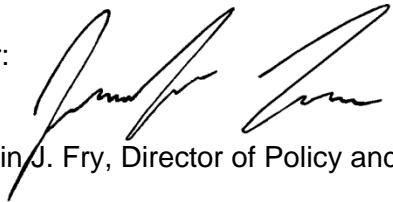
Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #323/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached.

Further correspondence with respect to this application is to be directed to Jennifer Carson at Jennifer.Carson@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:


Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #323/2016)
Sketch plan

cc: Thompson-Nicola Regional District (File: ALR-L-390)

45009d2



AGRICULTURAL LAND COMMISSION FILE 45009

REQUEST FOR RECONSIDERATION REASONS FOR DECISION OF THE EXECUTIVE COMMITTEE

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

Request for Reconsideration submitted pursuant to s. 33 of the *Agricultural Land Commission Act*

Applicant:

Edmund Zielke

Application before the Executive Committee:

Frank Leonard, Chair

William Zylmans

Jennifer Dyson

Sharon Meilnichuk

Dave Merz

Gerald Zimmermann



THE APPLICATION

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

Parcel Identifier: 003-641-431

The East ½ of the South West ¼ of Section 8, Township 17, Range 17, West of the 6th Meridian, Kamloops Division Yale District, Except The Land Covered By The Waters of Napier Lake at Time of Survey of Said Lake (the “Property”)

[2] The Property is generally described as being located on Highway No. 5A in the Napier Lake Area.

[3] The Property is 30.0 ha in area.

[4] The Property is located completely 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 Applicant applied to create a 2.0 ha lot from the 30 ha property for his son (the “Proposal”). The Proposal along with supporting documentation is collectively the application (the “Application”).

[7] By Resolution #374/2008, dated July 7, 2008, the Agricultural Land Commission (the “Commission”) allowed the Proposal (the “Original Decision”). In reaching its decision, the Commission concluded that it:

“did not believe that the proposed subdivision would have a negative impact on the potential or existing agricultural capability of surrounding lands as it was separated from the remainder by Highway 5A and from most of the surrounding grazing lands by Napier Lake. The portion of the property east of the highway has limited agricultural capability with an agricultural capability rating of 100% Class 6TP with limitations of topography and stoniness.”

[8] On July 15, 2016, the Commission received the Applicant's *Request for Reconsideration* of Resolution #374/2008. The Applicant indicated in his submissions that in order to follow through with the subdivision, Interior Health requires a viable location for a back-up septic field for the smaller lot in the event that the existing septic field fails. This would result in a hooked lot across the highway with an additional 0.7 ha being added to the proposed 2.0 ha parcel.

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 of the *ALCA* 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 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.*

[12] A meeting of the Executive Committee of the Commission was held on July 26, 2016 as it relates to the *Request for Reconsideration* of Application #45009. All members of the Executive Committee were in attendance except Lucille Dempsey.

[13] As per paragraph 11(D)(a) above, the Executive Committee considered the *Request for Reconsideration* pursuant to s. 33(1) of the *ALCA* and determined that the submission contains evidence that was not available at the time of the Original Decision, and the information would have been germane to the review of the Application by the Commission.

[14] The Executive Committee concluded that the *Request for Reconsideration* meets the requirements for reconsideration pursuant to s. 33(1) of the *ALCA* and the request is therefore granted.

[15] Pursuant to s. 33(2) of the *ALCA*, the Executive Committee did not consider that there were any persons affected by the reconsideration.

[16] As per paragraph 11(D)(b) above, the Executive Committee proceeded to reconsider the Original Decision 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

[17] The Executive Committee considered the following evidence:

1. All the documents contained in the Application file from May 1, 2008, being the date the Application was received by the Commission, to the date of Resolution #374/2008;
2. The Commission's decision recorded as Resolution #374/2008 and dated July 7, 2008;
3. Email and attachments (Zielke Soil Report, Letter to Ministry of Transportation and Infrastructure (MOTI), and MOTI June 20 preliminary review document) from Joan Brickwood of the Ministry of Transportation and Infrastructure on July 6, 2016;
4. Letter to MOTI from Interior Health dated June 20, 2016;
5. Report from Randy Hogg Wastewater Services dated March 26, 2016;
6. Correspondence from the Applicant, between May 11 and June 29, 2016; and

7. The Applicant's request for reconsideration by email dated July 15, 2016.

FINDINGS

[18] The Executive Committee noted that the Applicant has been working through the process of the previously approved subdivision for a substantial amount of time. In his submissions the Applicant demonstrates that Interior Health requires a viable location for a back-up septic field if the existing one should fail. Due to the topographic and soil constraints of the 2.0 ha originally approved for subdivision, the report accompanying the submission by Randy Hogg indicates that the only location for this alternate septic field is on an additional 0.7 ha across the highway. This proposal would create a hooked lot across the highway resulting in a 2.7 ha parcel rather than a 2.0 ha parcel as was previously approved.

[19] The Executive Committee discussed that while this new configuration of lots is not ideal, it is recommended by the Ministry of Transportation and Infrastructure Approving Officer, Joan Brickwood, to be the best possible solution. In her email she explains that the other possibility of resolving this issue is an easement, which is not ideal as there are often neighbour disputes which can only be settled in court. For this reason, the Executive Committee is willing to vary the previous decision.

[20] The Executive Committee believes that a restrictive covenant placed over the 0.7 ha portion of the proposed parcel lying south of the highway would ensure that the area is only used for agriculture or, in the event that it is needed, for sewerage.

DECISION

[21] For the reasons given above, the Executive Committee approves the Proposal to subdivide 2.7 ha from the Property and create a hooked parcel.

[22] The Proposal is approved subject to the following conditions:



- a. the preparation of a subdivision plan to delineate the area to be subdivided per the drawing submitted with the request for reconsideration;
- b. the registration of a restrictive covenant for the 0.7 ha south of the road for the purpose of ensuring only agricultural or sewerage use; and
- c. the subdivision plan being completed within one (1) year from the date of release of this decision.

[23] Frank Leonard, Commission 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.

Sharon Mielnichuk, Kootenay 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.

[24] Decision recorded as Resolution #323/2016.

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

Upon instruction of the Executive Committee, I have been authorized to release the Reasons for Decision by Resolution #323/2016. The decision is effective upon release.

A handwritten signature in black ink, appearing to be 'CJF', is located on the left side of the page.

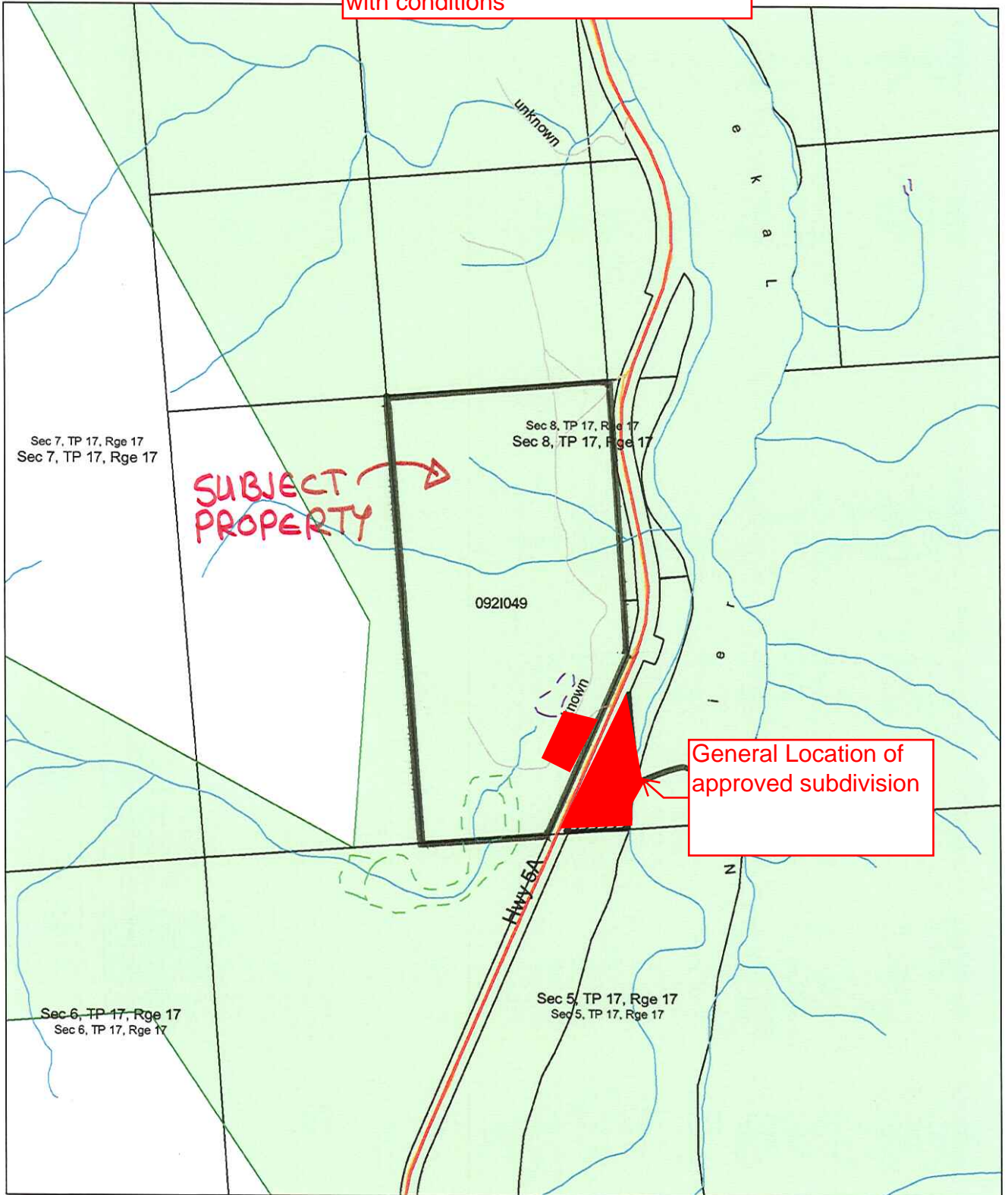
Colin J. Fry, Director of Policy and Planning

September 12, 2016

Date Release

ALC Application #45009
Subdivision of a 2.7 ha parcel
approved by Resolution # 323/2016
with conditions

File No.: ZZ-38145



Scale: 1: 10,000

BCGS Mapsheet(s): 92I.049



