



**Agricultural Land Commission**  
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November 8, 2016

ALC File: 53097

Michael and Anne Burdett  
4606 Razor Point Road  
Pender Island, BC V0N 2M1

Dear Mr. and Mrs. Burdett:

**Re: Reconsideration of original application 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 #368/2016) as it relates to the above noted application.

**Reconsideration of a Decision by an Affected Person**

We draw your attention 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.

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

A handwritten signature in black ink that reads 'Liz Sutton' in a cursive, flowing script.

Liz Sutton, Manager of Land Use Planning

Enclosure: Reasons for Decision (Resolution #368/2016)

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cc: Islands Trust (Victoria) (File: NP-ALR-2012.1)  
Bill Gannon  
Oliver Gannon  
Peter Gannon  
Ron Henshaw  
Elizabeth Montague  
Michael Sketch

53097d2



## **AGRICULTURAL LAND COMMISSION FILE 53097**

### **REQUEST FOR RECONSIDERATION REASONS FOR DECISION OF THE EXECUTIVE COMMITTEE**

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

Request for Reconsideration submitted pursuant to s. 33(1) of the *Agricultural Land Commission Act*

**Applicants:**

**Michael Burdett**

**Anne Burdett**

**Persons Requesting Reconsideration:**

**Bill Gannon**

**Oliver Gannon**

**Peter Gannon**

**Ron Henshaw**

**Elizabeth Montague**

**Michael Sketch**

**Interested Parties:**

**Islands Trust**

**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: 003-689-417

The Fractional North West  $\frac{1}{4}$  of Section 11, Pender Island, Cowichan District,  
Except the South 26.364 Chains, and Except Parcel A (DD 143808I), and Except  
Those Parts Shown Outlined Red on Plans 5632 and 262R, and Except Those Parts  
in Plan 5856, 7982 and 20898  
(the "Property")

[2] The Property has the civic address 4606 Razor Point Road, North Pender Island.

[3] The Property is 8.5 ha in area (7.9 ha in the ALR).

[4] The Property is located partially 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 applied to:

- 1) Construct and operate a waste transfer facility;
- 2) Construct and operate an in-vessel composting facility for the collection of commercial organic waste;
- 3) Approve the existing boat storage; and
- 4) Allow a 3-meter wide trail dedication.

(the "Proposal")

The Proposal along with supporting documentation is collectively the application (the "Application").

[7] By Resolution #413/2013, dated October 3, 2013, the Agricultural Land Commission (the “Commission”) partially approved the Proposal. In reaching its decision, the Commission concluded:

1. *There are approximately five parcels of industrially-zoned land on Pender Island of which all are in use except for the industrial portion of the subject property. The North Pender Land Use Bylaw does not permit WTFs in any zone and as such WTFs and associated uses have been permitted by way of temporary use permits.*

*The applicants currently operate a WTF at an industrial site on Otter Bay Road which they do not own. The applicants propose to relocate from the Otter Bay Road site to the subject property and to expand their operation to include in-vessel composting for organic waste. The applicants have applied for rezoning of the industrial portion of the subject property to allow for operation of the WTF without a temporary use permit.*

*The staff report prepared by the Islands Trust also states that the Hartland landfill which is operated by the Capital Regional District will no longer be accepting residential, commercial or institutional organic waste as of January 1, 2015.*

**Conclusion:**

*Based on the information provided by the Islands Trust, the Commission believes there is a limited amount of industrial land on North Pender Island and there is a need for community waste and compost facilities.*

2. *The subject property is split zoned: 7.32 ha for Agriculture (AG), 1.15 ha for Rural (R), and 0.46 ha for Industrial (I1(b))*

*The staff report prepared by the Islands Trust states that the subject property has had industrial zoning since the first zoning bylaw was adopted by the Capital Regional District in 1972. Subsequent to receiving the staff report, the Commission received further documentation from the public which showed minutes from a*

*meeting of the local planning and zoning committee on August 18, 1976 in which Earl Hastings requested, and was approved for, rezoning of a portion of the subject property. Based on the information received it appears that a 0.46 ha portion of the property was rezoned from Rural II to Industrial I to accommodate the petroleum tank farm which was to be located outside of the ALR. The zoning bylaw was finally adopted on March 23, 1977 and the 0.46 ha industrially-zoned area now encompassed both ALR and non-ALR land.*

**Conclusion:**

*Regardless of how the 0.46 ha portion of the property became industrially-zoned, it has nonetheless been zoned as such for almost 37 years.*

- 3. The industrially-zoned portion of the property was later rezoned to the current zoning designation "Industrial 1(b)" to include site specific boat storage only on the subject property as per the North Pender Island Local Trust Committee Land Use Bylaw No. 103, 1996.*

**Conclusion:**

*The site specific zoning to Industrial 1(b) does not infer approval of an activity permitted by a bylaw but not permitted by the Agricultural Land Commission Act (ALCA) or Agricultural Land Reserve Use and Procedure Regulation (the "Regulation"). The ALCA and Regulation take primacy over uses permitted by bylaws if those lands fall within the ALR. Approval from the Commission should have been sought before storing boats on the subject property.*

- 4. The applicants have been storing boats on the property without permission from the Commission.*

**Conclusion:**

*The Commission is concerned about the proposal for multiple non-farm uses on the subject property and as such is not amenable to boat storage on the subject property.*

5. *Regardless of the zoning history on the subject property, the issue the Commission has been asked to address is whether or not the community need for waste and compost facilities is significant enough to allow 0.46 ha to be used for non-farm purposes within the ALR.*

*As the proposed non-farm use area has historically been used as a petroleum tank farm, the Commission believes the agricultural potential of this area may be compromised. The Commission was more concerned with how the waste and compost facility may affect the remainder of the subject property. The Commission believes potential impacts can be mitigated through fencing and buffering of the WTF to deter trespassing, prevent blowing of litter, and to visually screen the operation from the remainder of the subject property. Buffering in this manner will also physically define the areal extent of the WTF and will prevent expansion of the WTF onto the remainder of the subject property.*

**Conclusion:**

*The Commission has no objection to the development of a WTF on the area of the property zoned industrial with appropriate buffering to contain the facility and to protect the remainder of the subject property.*

6. *With regards to the concerns expressed by other property owners. The majority of opposition relates to the potential impact from the operation of the WTF on adjacent lands. The Commission noted that the subject property is bounded to the east, west and south by non-ALR lands.*

**Conclusion:**

*The Commission believes there will be minimal impact to agricultural land. In agreeing to the proposed non-farm use the Commission is not advocating development of a WTF in this area; it is simply approving a proposal after careful consideration of the agricultural issues. Therefore, the non-agricultural concerns*

*expressed by other property owners are more appropriately the responsibility of the Islands Trust.*

- 7. Islands Trust Staff have recommended that the application include a request for a 3-meter wide right-of-way along the southern boundary of the subject property.*

**Conclusion:**

*The proposal for a trail is pursuant to Section 6 of the Agricultural Land Reserve Use, Subdivision, and Procedure Regulation. The trail proposal should be made by way of a separate application.*

- [8] Resolution #413/2013 approved the request to use 0.46 ha of the Property for the purpose of a waste transfer and in-vessel compost facility subject to the following conditions:

- 1. The preparation of a surveyed posting plan to delineate the 0.46 ha area;*
- 2. That vehicular access to the waste and compost facility is to be from Hamilton Road. The Commission does not support vehicular traffic from Razor Point Road through the property;*
- 3. The construction of a fence along the entire length of the west and north boundaries of the surveyed and posted 0.46 ha area to prevent trespass or encroachment on the remainder of the subject property as well as visual screening. The applicants are to provide a proposed fencing plan to the Commission for review and approval;*
- 4. The planting of a vegetative buffer along the entire length of the west and north boundaries of the surveyed and posted 0.46 ha area to prevent trespass or encroachment on the remainder of the subject property as well as visual screening. The applicants are to provide a proposed vegetative buffering plan to the Commission for review and approval;*





5. *The operation must be in substantial compliance with the facilities described in the application. The applicants are to provide the Commission with a final site development plan before commencing operation for review and approval;*
6. *Approval for non-farm use is granted for the sole benefit of the applicant and is non-transferable unless authorized by the Commission; and*
7. *The approval of the waste transfer facility and in-vessel composting is for a term of five (5) years. Extension of the approval will be contingent upon satisfactory review of the operation by the Commission;*

*AND THAT the request to continue using a portion of the subject property for boat storage be refused;*

*AND THAT the request for a trail dedication be submitted by way of an application pursuant to Section 6 of the Agricultural Land Reserve Use, Subdivision, and Procedure Regulation.*

[9] Subsequent to Resolution #413/2013, the Commission received six individual requests for reconsideration:

- Michael Sketch, request dated and received January 29, 2015;
- Elizabeth Montague, request dated and received January 30, 2015;
- Ron Henshaw, request dated February 10, 2015 (received February 9, 2015);
- Peter Gannon, request dated February 11, 2015 (received February 12, 2015);
- Oliver Gannon, request dated February 12, 2015 (received February 13, 2015);  
and
- Bill Gannon, request dated and received February 14, 2015.

(the “Persons Requesting Reconsideration”)

[10] The Persons Requesting Reconsideration seek to have the Commission reverse Resolution #413/2013 and refuse the use of 0.46 ha area for the purpose of a waste

transfer and in-vessel compost facility. The individual requests are collectively (the “Reconsideration Requests”).

[11] A meeting of the Executive Committee was held on March 25, 2015 to review the Reconsideration Requests. All members of the Executive Committee were in attendance. After considering the Reconsideration Requests, the Executive Committee concluded that the requests met the requirements for reconsideration pursuant to s. 33(1) of the *ALCA*. Section 33(2) of the *ALCA*, provides that the Commission must notify any person(s) that may be affected by reconsideration of Resolution #413/2013 prior to reconsidering the Application. The Executive Committee identified the Applicants and the Islands Trust as affected parties.

[12] By way of a letter dated April 14, 2015, the Commission notified the Persons Requesting Reconsideration, the Applicants, and the Islands Trust that the Executive Committee would be reconsidering Resolution #413/2013 at a future date and location to be determined.

[13] By way of a letter dated November 2, 2015 the Commission advised the Persons Requesting Reconsideration, the Applicants, and the Islands Trust that a reconsideration meeting will be convened on December 8, 2015.

[14] On December 8, 2015 the Executive Committee held a reconsideration meeting (the “Reconsideration Meeting”) in Burnaby, BC. Those persons in attendance were:

- a. All members of the Executive Committee, save and except Vice Chair Sharon Meilnichuk;
- b. Elizabeth Sutton, Commission Land Use Planner;
- c. Colin Fry, Commission Director of Policy and Planning
- d. The Applicants;
- e. Mandeep Kalan, legal counsel representing the Applicants;
- f. The Persons Requesting Reconsideration, save and except Peter Gannon;
- g. Bill Andrews, legal counsel representing Michael Sketch; and
- h. Islands Trust representative, Robert Kojima (Regional Planning Manager), participating via telephone.

[15] The Executive Committee informed all persons present at the Reconsideration Meeting that following the meeting the Executive Committee will reconvene at a later date to deliberate “*in camera*” on the Reconsideration Requests and the evidentiary record pertaining to the Application and reconsideration that was gathered prior to, and at, the Reconsideration Meeting. No further submissions from any persons were accepted subsequent to the Reconsideration Meeting except at the request of the Commission to which the submissions were disclosed to the Persons Requesting Reconsideration, the Applicants, and the Islands Trust.

### **RELEVANT STATUTORY PROVISIONS**

[16] The Reconsideration Request were submitted pursuant to s. 33(1) 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.

[17] 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**

[18] 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 excerpted from the Resolution #029N/2014:

- 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.*



**EVIDENTIARY RECORD BEFORE THE EXECUTIVE COMMITTEE**

[19] The Executive Committee considered the following evidence:

- A. 53097 (Burdett) Staff Report Package (all the documents contained in the Application file from February 14, 2013, being the date the Application was received by the Commission, to the date of Resolution #413/2013)
- B. 53097 (Burdett) Email Correspondence Feb 23, 2013 and July 11, 2013
- C. 53097 (Burdett) Additional Information provided by the Applicants, dated July 11, 2013
- D. 53097 (Burdett) Public Correspondence received between November 18, 2012 and October 3, 2013
- E. 53097 (Burdett) Decision dated October 3, 2013
- F. 53097 (Burdett) Reconsideration Request Michael Sketch, dated January 29, 2015
- G. 53097 (Burdett) Reconsideration Request Elizabeth Montague, dated January 30, 2015
- H. 53097 (Burdett) Reconsideration Request Ron Henshaw, dated February 10, 2015 (received February 9, 2015 )
- I. 53097 (Burdett) Reconsideration Request Peter Gannon, dated February 11, 2015 (received February 12, 2015)
- J. 53097 (Burdett) Reconsideration Request Oliver Gannon, dated February 12, 2015 (received February 13, 2015)
- K. 53097 (Burdett) Reconsideration Request Bill Gannon, dated and received February 14, 2015
- L. 53097 (Burdett) Reconsideration Request Additional Bill Gannon, dated November 23, 2015
- M. 53097 (Burdett) Affect Parties Notification Letter dated April 14, 2015
- N. 53097 (Burdett) Reconsideration Meeting Letter dated November 2, 2015
- O. 53097 (Burdett) Applicant's Response to Reconsideration Requests dated November 25, 2015
- P. 53097 (Burdett) Islands Trust Submission dated November 25, 2015



Documents A through P inclusive were provided to the Persons Requesting Reconsideration, the Applicants and the Islands Trust on November 27, 2015.

- Q. 53097 (Burdett) Reconsideration Meeting Submission Bill Gannon, submitted December 8, 2015
- R. 53097 (Burdett) Reconsideration Meeting Submission Ron Henshaw, submitted December 8, 2015
- S. 53097 (Burdett) Reconsideration Meeting Submission Elizabeth Montague, submitted December 8, 2015
- T. 53097 (Burdett) Reconsideration Meeting Submission Oliver Gannon, submitted December 8, 2015
- U. 53097 (Burdett) Reconsideration Meeting Submission Peter Gannon, submitted by Bill Gannon on behalf of Peter Gannon on December 8, 2015
- V. 53097 (Burdett) Reconsideration Meeting Submission Michael Sketch, submitted December 8, 2015
- W. 53097 (Burdett) Reconsideration Meeting Transcript
- X. 53097 (Burdett) Reconsideration Meeting Submission Michael and Anne Burdett, submitted December 8, 2015
- Y. 53097 (Burdett) Additional information the Executive Committee requested from the Islands Trust, received May 27, 2016

Documents Q through X inclusive were provided to the Persons Requesting Reconsideration, the Applicants and the Islands Trust on December 18, 2015.

Document Y was provided to the Persons Requesting Reconsideration, the Applicants and the Islands Trust on July 18, 2016.

## **FINDINGS**

[20] As the Executive Committee received six separate requests for reconsideration, with multiple arguments duplicated among the submissions, the Executive Committee

considered the Reconsideration Requests in their entirety rather than address each request individually. While a plethora of arguments and information was provided to the Commission, the Executive Committee will address only those arguments which are germane to the conclusions reached by the Commission specified in Resolution #413/2013, s. 33(1) of the *ALCA*, and s. 6 of the *ALCA*.

[21] The Executive Committee reviewed the evidentiary record and found that the Reconsideration Request contained evidence which was not available at the time of the original decision as well as information which was in error.

[22] The Executive Committee wishes to address item 5 outlined in paragraph 7 of Resolution #413/2013; more specifically, the statement "*As the proposed non-farm use area has historically been used as a petroleum tank farm, the Commission believes the agricultural potential of this area may be compromised*". The Reconsideration Request asserted that a report submitted by the Applicants with the Application, "*Phase II Environmental Site Assessment, 4606 Razor Point Road, Pender Island BC, Prepared for: John Wood and Jim Cosh, Executors of the State of Earl Hastings, Deceased*", prepared by Terrawest Environmental Inc., dated December 8, 2011 (the "Terrawest Report") provided evidence stating that the Property is not contaminated. The Terrawest Report provided an assessment of the fenced area of the industrial portion of the Property containing the above ground fuel tank farm which existed at the time of the report. The Terrawest Report did not include an assessment of the area east or southeast of the fuel tank farm. The Terrawest Report concluded that :

- *Soils and soil vapour testing within APEC 1 (i.e. tank farm and fuel distribution) on the Subject Property reported trace to non-delectable values for all tested parameters, below applicable CSR criteria; and*
- *Available groundwater samples reported trace to non-delectable values for all tested parameters, below applicable CSR criteria.*

*Based on the findings of the Phase II ESA, no further environmental assessment works are recommended at this time.*

Based on the information provided in the Terrawest Report the Executive Committee wishes to clarify that evidence was provided to demonstrate that the area assessed in the Terrawest Report did not reveal substantive environmental risks for the tested parameters outlined in the report. The Executive Committee also wishes to clarify that the Terrawest Report was conducted for the purpose of environmental assessment prior to a potential sale of the Property by the previous landowner.

[23] The Reconsideration Requests assert that the Commission who made the original decision was led to believe that the Property was the only possible location for a waste transfer facility. The Reconsideration Requests further assert that since the date of passing Resolution #413/2013, the Waste and Resource Management Commission (WRMC) was established by the Islands Trust Local Trust Committee (the "LTC") in June 2015, and was at the time of the Reconsideration Meeting, assessing a potential site(s) for waste management facilities on Pender Island. On May 18, 2016 the Commission requested information from the Islands Trust with respect to the anticipated timeline for completing a study of potential waste management sites on Pender Island by the WRMC. The Commission was advised by Islands Trust that the WRMC was dissolved by resolution of the LTC on January 28, 2016. In addition, the LTC directed that the process to study potential waste management sites on Pender Island be conducted by Islands Trust planning staff and consultants through a project charter which was subsequently endorsed on February 25, 2016 (the "Study"). The timeline for the Study identifies that the consulting stage is to be completed by the end of 2016, and that any necessary bylaw amendments proceed in 2017.

[24] As the Islands Trust is currently conducting its own consultation and evaluation of possible sites for a waste transfer facility on Pender Island, the Executive Committee finds that if the Original Decision is not reversed or varied as a result of the Requests for Reconsideration, Resolution #413/2013 will be actionable if the Islands Trust consultation process determines the Property is a suitable site for a waste transfer and in-vessel compost facility.





[25] The Executive Committee finds the new information and the evidence indicating the information pertaining to the environmental status of a portion of the Property was in error, but is not substantive to change the Commission's fundamental understanding regarding the agricultural issues associated with the Application.

**DECISION**

[26] For the reasons given above, the Executive Committee refuses the reconsideration request to reverse Resolution #413/2013.

[27] The Executive Committee modifies the conditions of approval under Resolution #413/2013 by adding:

- a. the Commission receive documentation of the final findings of the Study; and
- b. that should the Study not identify the Property as the selected site for a waste transfer facility, that the approval expire immediately.

[28] These are the unanimous reasons of the Executive Committee of the Agricultural Land Commission.

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

[30] This decision is recorded as Resolution #368/2016 and is released on November 8, 2016.

**CERTIFICATION OF DECISION**

A handwritten signature in black ink that reads "Frank Leonard".

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Frank Leonard, Chair, on behalf of the Executive Committee

**END OF DOCUMENT**