



November 14, 2016

**Agricultural Land Commission**  
133–4940 Canada Way  
Burnaby, British Columbia V5G 4K6  
Tel: 604 660-7000  
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www.alc.gov.bc.ca  
ALC File: #53789

Ulrich Vogel  
1460 Winchester Road  
Qualicum Beach, BC V9K 1Y2

Dear Mr. Vogel:

**Re: Reconsideration of Original Application to Subdivide Land in the Agricultural Land Reserve (ALR)**

Please find attached the Reasons for Decision of the Island Panel (Resolution #379/2016) as it relates to the above noted application.

**Reconsideration of a Decision as Directed by the ALC Chair**

Please note that pursuant to [s. 33.1 of the \*Agricultural Land Commission Act\*](#), the Chair may direct the executive committee to reconsider any 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 s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

**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.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Further correspondence with respect to this application is to be directed to Sara Huber at (sara.huber@gov.bc.ca).

Page 2 of 2

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to be 'Sara Huber', written in a cursive style.

Sara Huber, Land Use Planner

Enclosure: Reasons for Decision (Resolution #379/2016)

cc: Regional District of Nanaimo (File: PL2014-051)  
Davis Avis Randall #201 - 156 Morison Avenue, P.O. Box 1600, Parksville, BC  
V9P 2H5, Attention: Melanie Morris

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**AGRICULTURAL LAND COMMISSION FILE 53789**

**RECONSIDERATION OF PANEL DECISION  
REASONS FOR DECISION OF THE ISLAND PANEL**

**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:**

**Ulrich Vogel  
(the “Applicant”)**

**Application before the Island Regional Panel:**

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

**THE APPLICATION**

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

Parcel Identifier: 006-624-596

Lot 51, District Lot 8, Cameron District, Plan 1981, Except the Westerly 4.96 Chains  
(the "Property")

[2] The Property has a civic address of 2560 Grafton Avenue, Coombs, BC.

[3] The Property is 3.9 ha in area.

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

[5] The Property is located within Zone 1 as defined in subsection 4.2 of the *ALCA*.

[6] Pursuant to s. 21(2) of the *ALCA*, the Applicants applied to subdivide the Property along French Creek to create one 0.6 ha parcel and one 3.8 ha parcel (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".

[7] By Resolution #104/2015, dated May 7, 2015, the Island Panel refused the Proposal (the "Original Decision"). In reaching its decision, the Island concluded:

- *The Panel finds that the Property has agricultural capability and is suitable for agricultural use.*
- *The Panel does not find the creek to be an impediment to accessing the south side of the Property.*
- *The Panel does not find the singular argument to subdivide land based on the presence of a watercourse or other geographic feature compelling to justify subdivision, especially when there is an established access to both portions of the Property.*

[8] On April 28, 2016, the Agricultural Land Commission (the “Commission”) received the Applicant’s *Request for Reconsideration* of Resolution #104/2015.

### **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 Agricultural Land 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 (the "Executive Committee") of the Commission was held on May 24, 2016 as it relates to the *Request for Reconsideration of Application #53789*. All members of the Executive Committee were in attendance.

[13] As per paragraph 11(C) 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 Island Panel.

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

[15] In accordance with s. 11.1(3) of the *ALCA*, the Chair of the Commission referred the *Request for Reconsideration* of the Original Decision to the Island Panel.

### **EVIDENTIARY RECORD BEFORE THE ISLAND PANEL**

[16] The Island Panel considered the following evidence:

1. All the documents contained in the Application file from July 17, 2014, being the date the Application was received by the Commission, to the date of Resolution #104/2015;
2. The Commission's decision recorded as Resolution #104/2015 and dated May 7, 2015; and
3. The Applicants' request for reconsideration dated April 28, 2016.

All documentation noted herein has been disclosed to the applicant in advance of this decision.

### **FINDINGS**

[17] The Panel received a *Request for Reconsideration* on April 28, 2016 from David Avis M<sup>ac</sup>Ewen Barristers and Solicitors, representing the Applicant. The reasons for reconsideration stated in the *Request for Reconsideration* are:

- *"In deciding the 2014 Application, the Commission has found, as a fact, that the property has agricultural capability and is suitable for agricultural use. While that conclusion is reasonably supported by the soil characteristics identified in both the BCLI map and the Madrone Report, the decision does not appear to*

*sufficiently address the impact of limiting factors and the costs which would necessarily be incurred to overcome limiting factors.”*

- *“It is unlikely that any cost effective bridge structure could be constructed between the Northerly and Southerly portions of Lot 51 having regard for fisheries issues and volatility of flow.”*
- *“It is the applicant's position that the Southerly portion of the Property is much more likely to be developed for agricultural purposes if the subdivision is approved, and, less likely to be developed for agricultural purposes if left unsubdivided.”*

[18] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), ‘Land Capability Classification for Agriculture in B.C.’ system. The improved agricultural capability ratings identified on BCLI map sheet 92F.028 for the mapping units encompassing the Property are approximately 40% (7:5PA 3:4PA), 20% (6:2D 4:3W), 20% 5W (along French Creek), and 20% (2A).

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.

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 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

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 P (stoniness), A (soil moisture deficiency- modified), D (undesirable soil structure), and W (excess water).



[19] In addition, the Panel received a professional agrologist report in the *Request for Reconsideration*, prepared by Madrone Environmental Services, dated January 25, 2016 (the “Madrone Report”). The Madrone Report maps the soil capability areas at a scale of 1:1,100 versus BCLI at 1:20,000. For this reason, the Panel referred to the Madrone Report for assessment of agricultural capability. The Madrone Report finds that approximately 2.7 ha (69.7%) of the Property is improvable to Class 2, 1.07 ha (27.8%) is improvable to Class 2 or 3, and that the remaining 0.9 ha (2.4%) of the Property is Class 5 to 7 or anthropic.

[20] Based on the agricultural capability ratings identified by the Madrone Report, the Panel finds that the Property has predominantly good agricultural capability and is appropriately designated as ALR.

[21] The Property is bisected by French Creek. The Applicant argued in the Application that access across the creek was an impediment to farming the Property as a whole. The *Request for Reconsideration* states:

*The Ministry of Environment has invested substantial funds improving habitat at various locations within the creek system including those improvements now found in Lot 51. Despite work to improve the creek as a salmon habitat, the creek is subject to extreme flow variability. It is unlikely that any cost effective bridge structure could be constructed between the Northerly and Southerly portions of Lot 51 having regard for fisheries.*

Regardless of whether or not construction of a bridge is a feasible option, the Panel maintains that there is road access via Tintern Road and as such, the Panel does not find French Creek to be an impediment to access the south side of the Property.

[22] With respect to agricultural development of the portion of the Property south of French Creek, the *Request for Reconsideration* states:

*It is the applicant's position that the Southerly portion of the Property is much more likely to be developed for agricultural purposes if the subdivision is approved, and, less likely to be developed for agricultural purposes if left unsubdivided.*

The *Request for Reconsideration* further states that improvements to drainage and fencing are more likely to be invested in by a resident landowner of the proposed southerly parcel. In addition, the *Request for Reconsideration* argues that an agricultural development on the southerly portion would require security for crops. The Panel considered the Applicant's rationale for subdivision based on the arguments of a resident landowner being more likely to invest in the agricultural improvement of the southerly portion of the Property and find that subdivision is not a pre-requisite to improve the Property for agriculture.

## **DECISION**

[23] For the reasons given above, the Island Panel refuses the Proposal.

[24] These are the unanimous reasons of the Island Panel of the Agricultural Land Commission.

[25] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

[26] This decision is recorded as Resolution #379/2016 and is released on November 14, 2016.

## **CERTIFICATION OF DECISION**



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Jennifer Dyson, Panel Chair, on behalf of the Island Panel

**END OF DOCUMENT**