



**Agricultural Land Commission**  
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June 16, 2016

ALC File: 54089

Michelle and Roger Willems  
6241 Todd Road  
Courtenay, BC V9J 1P4

Dear Mr. and Mrs. Willems:

**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 #209/2016) as it relates to the above noted application.

Your attention is drawn to s. 33(1) of the *Agricultural Land Commission Act (ALCA)* 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 *ALCA*, 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 s. 6 of the *ALCA* or does not adequately take into account the considerations set out in s. 4.3 of the *ALCA*. 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: 

Colin J. Fry, Director of Policy and Planning

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Enclosure: Reasons for Decision (Resolution #209/2016)

cc: Comox Valley Regional District (File: # 3110-20/ALR 1C 15)

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**AGRICULTURAL LAND COMMISSION FILE 54089**

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

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

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

**Applicants:**

**Michelle Willems  
Roger Willems  
(the “Applicants”)**

**Application before the Island Regional Panel:**

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



## **THE APPLICATION**

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

Parcel Identifier: 006-418-902

Lot 33, Block 29, Comox District, Plan 2281

(the "Property")

[2] The Property is 21.6 ha in area.

[3] The Property has the civic address 6241 Todd Road, Courtenay, BC.

[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 applied to construct a second single detached dwelling for farm help (the "Proposal"). The Proposal along with supporting documentation was collectively (the "Application").

[7] By Resolution #260/2015, dated August 31, 2015, the Island Panel (the "Panel") refused the Proposal (the "Original Decision"). In reaching its decision, the Panel concluded:

- The Panel found that the Property is comprised of land with good agricultural capability;
- The Panel found that the Regulation provides for opportunities to accommodate residential uses without the necessity to construct a second permanent single-family residence on the Property; and
- Based on information provided, the Panel did not believe the present level of agricultural activity on the Property was sufficient to warrant an additional dwelling for farm help.

[8] On December 11, 2015, the Agricultural Land Commission (the "Commission") received the Applicants' *Request for Reconsideration* of Resolution #260/2015.



**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 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 February 24, 2016 as it relates to the *Request for Reconsideration* of Application 54089. 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] 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] 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 PANEL**

[17] The Island Panel considered the following evidence:

1. All the documents contained in the Application file from May 11, 2015, being the date the Application was received by the Commission, to the date of Resolution #260/2015;
2. The Original Decision recorded as Resolution #260/2015 and dated August 31, 2015;
3. The Applicants' *Request for Reconsideration* dated December 10, 2015 and received by the Commission on December 11, 2015;
4. The site visit report prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Applicants on March 16, 2016 (the "Site Visit Report") and certified correct by the Applicants on April 15, 2016;
5. All additional information provided by the Applicants between the date of the *Request for Reconsideration* and the date of the release of this decision.

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

## **FINDINGS**

[18] In the overview of the *Request for Reconsideration*, the Applicants states:

*The grounds on which the Willems's urge the Commission to reconsider its decision are:*

- 1. the scope and size of the farm was not fully described in the evidence submitted to the Commission and the farm's size has increased significantly since the Commission viewed the Todd Road farm in 2013.*
- 2. evidence of the scope of work required to manage the farm's retail operations was not presented to the Commission;*
- 3. there is new and additional evidence concerning the short term and long term plans for the farm. The Willems did not provide full information about their plans with the Application because the CVRD planning department advised them to not 'complicate' the Application with discussions of future plans;*
- 4. a relevant historical decision of the Commission was not included in the considerations by the Commission; and*
- 5. three irrelevant decisions of the Commission were included in the analysis by the Commission.*

[19] With respect to items 1, 2, and 3 of the overview of the *Request for Reconsideration* outlined in paragraph 18, the Island Panel considered the new information provided in the request. The Island Panel believes that the residential situation should reflect the current level of agricultural development on the Property. Based on the *Request for Reconsideration*, the Island Panel reconfirms its position that the present level of agricultural activity on the Property is not sufficient to warrant an additional dwelling for farm help.

[20] The Island Panel then considered the proposal to retain the original dwelling as a second dwelling to be used for agri-tourism accommodations. The Island Panel is not amenable to a single family dwelling to be retained for agri-tourism accommodations. In the eventuality of a transfer of ownership, the Property would then retain two single-family dwellings which may or may not be used for agricultural or agri-tourism purposes. Regulation 171/2002 (*Agricultural Land Reserve Use, Subdivision and Procedure*



Regulation) (the "Regulation") provides for agri-tourism accommodations without the necessity to retain a single family dwelling. Section 3(1)(a) states:

*3 (1) The following non-farm uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government:*

*(a) accommodation for agri-tourism on a farm if*

*(i) all or part of the parcel on which the accommodation is located is classified as a farm under the Assessment Act,*

*(ii) the accommodation is limited to 10 sleeping units in total of seasonal campsites, seasonal cabins or short term use of bedrooms including bed and breakfast bedrooms under paragraph (d), and*

*(iii) the total developed area for buildings, landscaping and access for the accommodation is less than 5% of the parcel;*

[21] With respect to item 4 of paragraph 18 above, a summary of Commission Resolution #230/2003 is outlined in ALC Resolution #418/2013 (Application #53143) which was provided to the Island Panel at the time of the Original Decision.

[22] With respect to item 5 of paragraph 18 above, the previous and relevant applications referenced in the Commission Resolution #260/2015 provide a factual historical record of applications having taken place on the Property since the establishment of the ALR.

## **DECISION**

[23] For the reasons given above, the Island Panel refuses the Proposal for a second dwelling.

- [24] Panel Chair Jennifer Dyson concurs with the decision.  
Commissioner Honey Forbes concurs with the decision.  
Commissioner Clarke Gourlay concurs with the decision.

- [25] Decision recorded as Resolution #209/2016.

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

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Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #209/2016. The decision is effective upon release.



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**Colin J. Fry, Director of Policy and Planning**

**June 14, 2016**

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**Date Released**