



Agricultural Land Commission
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www.alc.gov.bc.ca

May 5, 2016

ALC File: 54094

Delta Law Office
4873 Delta Street
Ladner, BC V4K 2T9

Attention: Graham Buchanan and Murray Lott

Dear Messrs. Buchanan and Lott:

Re: Application to Subdivide Land in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #141/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client accordingly. A sketch plan depicting the decision has been attached.

Please send one (1) electronic copy or two (2) paper prints of the final survey plan to this office. When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the plan.

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". 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 should be directed to Eamonn Watson at (Eamonn.Watson@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Colin J. Ery, Chief Tribunal Officer

Enclosures: Reasons for Decision (Resolution #141/2016)
Sketch plan

cc: Corporation of Delta – Attention: Jimmy Ho (File: LU007343), via electronic mail

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AGRICULTURAL LAND COMMISSION FILE 54094

**REASONS FOR DECISION
OF THE SOUTH COAST PANEL**

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

Applicant:

**Dennis Mahoney Kamlah
(the "Applicant")**

Agent:

**Murray Lott
Delta Law Office
(the "Agent")**

Application before the South Coast Regional Panel:

**William Zylmans, Panel Chair
Gordon McCallum
Satwinder Bains**

THE APPLICATION

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

Parcel Identifier: 009-570-390

Lot 3, Except: Parcel "A" (Explanatory Plan 15248); District Lot 101A, Group 2, New Westminster District, Plan 11723

(the "Property")

[2] The Property is 14.3 ha in area.

[3] The Property has the civic addresses 2888 and 2950 Westham Island Road, Delta.

[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. 21(2) of the ALCA, the Applicant is applying to subdivide the Property in accordance with the Agricultural Land Commission (the "Commission") Policy #11, *Homesite Severance on ALR Lands* (the "Policy"). More specifically, the Applicant is applying to subdivide a Homesite lot approximately 0.4 ha in size, creating a Remainder lot approximately 13.9 ha in size (the "Proposal"). The Proposal along with supporting documentation is collectively referred to hereafter as the "Application".

[7] On January 29, 2016, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the South Coast Regional Panel (the "Panel").



RELEVANT STATUTORY PROVISIONS

[8] The Application was made pursuant to s. 21(2) of the *ALCA*:

21(2) An owner of agricultural land may apply to the commission to subdivide 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. Agricultural capability map, ALR context map, and satellite imagery
4. Correspondence between Eamonn Watson (Commission Land Use Planner) and Graham Buchanan (Delta Law Office) from January 18, 2016 to February 15, 2016

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

[11] The Corporation of Delta resolved to forward the Application to the Commission and noted "that the Corporation of Delta has no objection to the proposed subdivision



provided that the Provincial Agricultural Land Commission determines that the proposal qualifies as a homesite severance in accordance with the established Provincial Agricultural Land Commission policy.”

SITE VISIT

[12] The Panel, in the circumstances of the Application, did not consider it necessary to conduct a site visit to the Property based on the evidentiary record associated with the Application.

FINDINGS

[13] The Panel considered the Application within the context of the Policy. Based on the documentation provided, the Applicant qualifies for consideration pursuant to Policy with respect to the ownership and occupancy of the Property.

[14] The Panel recognizes that the Applicant is a long time farmer in the area and appreciates that the Application would help facilitate the Applicant’s future retirement and continued residency on the Property while allowing younger generations of the family to take over the farm operation.

[15] Although the Applicant plans to transfer the Remainder lot to his grandsons, the Homesite lot would be transferred to the Applicant’s daughter. Point 6 of the Policy states:

6. A condition of every homesite severance approved by the Commission shall be an order stipulating that the homesite is not to be sold for five years except in the case of the death of the owner. Prior to the issuance of a Certificate of Order authorizing deposit of the subdivision plan, the owner shall file with the Commission a written undertaking or other legal documentation satisfactory to the Commission setting out this commitment.

As a result, the Application does not adhere to every aspect of the Policy. However, upon review of the Application, the Panel finds that the Application would be keeping

with the intent of the Policy as the Applicant would transfer the Remainder lot and reside in an existing residence on the Property.

DECISION

[16] For the reasons given above, the Panel approves the Proposal to subdivide a Homesite lot approximately 0.4 ha in size, creating a Remainder lot approximately 13.9 ha in size.

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

- a. The subdivision must be in substantial compliance with the plan submitted with the Application; and
- b. The construction of a fence along the boundaries of the Homesite lot, excluding the boundary along Westham Island Road;
- c. The planting of vegetation for buffering along the boundaries of the Homesite lot, excluding the boundary along Westham Island Road;
- d. The submission of documentation showing a legitimate intention to sell the Remainder lot; and
- e. The subdivision plan must be completed within three (3) years from the date of release of this decision.

[18] Despite the requirement of the Policy, the Panel does not objection to the transfer of the Homesite lot to the Applicant's daughter. However, the Homesite lot may not be resold to another party for a minimum of five (5) years from the date of deposit of the subdivision plan.

[19] 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.



[20] Panel Chair **William Zylmans**, concurs with the decision.

Commissioner **Gordon McCallum**, concurs with the decision.

Commissioner **Satwinder Bains**, concurs with the decision.

[21] Decision recorded as Resolution #141/2016.

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

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #141/2016. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

May 5, 2016
Date Released

PLAN SHOWING PROPOSED SUBDIVISION OF
 LOT 3 EXCEPT: PARCEL "A" (EXPLANATORY PLAN 15248);
 DISTRICT LOT 101A, GROUP 2,
 NEW WESTMINSTER DISTRICT, PLAN 11723
 B.C.G.S. 92G.005



ALC Application ID 54094
Approved Homesite Severance Subdivision
Resolution #141/2016
Homesite Severance Lot - Approximately 0.4 ha
Remainder Lot - Approximately 13.9 ha (not shown)

SCALE: 1:750
 ALL DIMENSIONS ARE METERS
 UNLESS OTHERWISE SPECIFIED
 1. 1:1000 SCALE
 2. 1:500 SCALE
 3. 1:250 SCALE
 4. 1:125 SCALE
 CURRENT ZONING IS A1 - AGRICULTURE

REV. 2
 5/18



WATSON E. BARNARD
 1134-76th STREET
 WESTMINSTER, BC V3L 4G1
 TEL: 604-263-5555 FAX: 604-263-0420

FILE: 237149FD
 PLAN: 2014/12/02
 MAP: P-12

DATE OF ISSUE: 2013
 140000 E B00003 (89) A.C.L.S.