



Agricultural Land Commission
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September 6, 2016

ALC File: 54160

Ralph Russell
5800 Edwards Road
Grand Forks, BC V0H 1H0

Dear Mr. Russell:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #331/2016) as it relates to the above noted application.

Your attention is drawn to s. 3(1)(b.1) of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* BC Reg 171/2002, which outlines the allowable residential uses within the ALR in Zone 2, and the attached ALC Policy #24 – Residential Uses in the ALR – Zone 2.

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.

Further correspondence with respect to this application is to be directed to Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #331/2016)
ALC Policy #24 – Residential Uses in the ALR – Zone 2

cc: Regional District of Kootenay Boundary (File: D-615-03007.020)



AGRICULTURAL LAND COMMISSION FILE 54160

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant:

**Ralph Russell
(the “Applicant”)**

Application before the Kootenay Regional Panel:

**Sharon Mielnichuk, Panel Chair
Harvey Bombardier
Ian Knudsen**



THE APPLICATION

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

Parcel Identifier: 001-780-816

Lot 1, District Lots 615 and 715, Similkameen Division Yale District, Plan 27006

(the "Property")

[2] The Property is 40.7 ha in area.

[3] The Property has the civic address 5800 Edwards Road, Grand Forks.

[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 2 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 into two parcels of approximately 10.7 ha and 30 ha (the "Application").

[7] On November 18, 2015, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Kootenay 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 pursuant to its mandate in s. 4.3 of the *ALCA*:

4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;
- (b) economic, cultural and social values;
- (c) regional and community planning objectives;
- (d) other prescribed considerations.

[10] The purposes of the Commission set out in s. 6 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.

EVIDENTIARY RECORD BEFORE THE PANEL

[11] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Agricultural capability map, ALR context map and satellite imagery

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

[12] At its meeting of April 30, 2015 the Regional District of Kootenay Boundary (the “RDKB”) resolved to forward the Application to the Commission.

SITE VISIT

[13] On May 25, 2016, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[14] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Applicant on June 27, 2016 (the “Site Visit Report”).

FINDINGS**Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture**

[15] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), ‘Soil Capability Classification for Agriculture’ system. The improved agricultural capability ratings identified on CLI map sheet 82E/1 for the mapping units encompassing the Property are approximately 90% 6:4M – 4:3MW, and 10% 7:3M – 3:2M.

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.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), and W (excess water).



[16] The Panel reviewed the agricultural capability ratings and notes that the Property has moderate to good capability for agriculture.

[17] The Panel further notes that the Property is one of a few larger parcels in the area, as a result of a consolidation of several smaller properties in 1976.

[18] The Applicant states that the purpose of the subdivision is to provide a house for the Applicant's son to reside close by and to help with operations of the farm. The Applicant intends to retain ownership of both parcels. The Applicant states:

"We would prefer to leave this parcel as one intact lot, but subdivision seems to be the only process through which we can build a second house for his family on the property – we actually intend to apply to reconsolidate the lots (if approved, of course) after the house construction is completed."

Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values

[19] The RDKB states that *"Cultural and social values will be preserved if the applicant's family have the opportunity to subdivide and live on the proposed parcel. They would be able to instill knowledge of farming in younger family members"*.

Section 4.3(c) of the ALCA: third priority to regional and community planning objectives

[20] The Property is designated as "Agricultural Resource" in the RDKB's Official Community Plan (the "OCP") for the area. The Property is zoned as "Agricultural Resource 1 (AGR1) by the RDKB's zoning bylaw. The minimum parcel size requirement within the AGR1 zone is 10 ha, and the proposed lot sizes meet this requirement.

[21] The RDKB states that *"This proposed subdivision appears to be in line with the goals and objectives in the current Official Community Plan of supporting agriculture and minimizing opportunities for incompatible land uses to become established in predominantly agricultural areas"*.

Weighing the factors in priority

[22] The Commission does not support the subdivision of ALR properties into smaller parcels as it often reduces the types of agriculture that can occur on the Property.

[23] BC Regulation 171/2002 (*Agricultural Land Reserve Use, Subdivision and Procedure Regulation*) (the “Regulation”) permits specific additional residential use in the ALR, s. 3(1)(b.1) states:

3 (1) The following land 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 law of the applicable treaty first nation government:

...

(b.1) for a parcel located in Zone 2,

(i) one secondary suite within a single family dwelling, and

(ii) either

[A] one manufactured home, up to 9 m in width, for use by a member of the owner’s immediate family, or

[B] accommodation that is constructed above an existing building on the farm and that has only a single level.

(iii) a second single family dwelling, but only if the parcel is at least 50 ha in size and if the total area occupied by all residences and other residential structures, roads and service lines, and all land between them, is 4 000 m² or less.

The Panel finds that the residential uses accommodated in the Regulation are sufficient with respect to the Property and subdivision for the purpose of constructing a second permanent residence on the Property is not appropriate.

[24] While respectful of the RDKB's current zoning as it pertains to the Property, the Panel finds that this alone, would be insufficient to outweigh the first priority that must be given to agriculture relative to land that is both capable and suitable for agricultural use.

[25] The Panel gave consideration to economic, social and cultural values and regional and community planning objectives planning as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel's finding following its review of the agricultural considerations.

DECISION

[26] For the reasons given above, the Panel refuses the Application to subdivide the Property into two parcels of approximately 10.7 ha and 30 ha.

[27] Panel Chair **Sharon Mielnichuk** concurs with the decision.
Commissioner **Harvey Bombardier** concurs with the decision.
Commissioner **Ian Knudsen** concurs with the decision.

[28] Decision recorded as Resolution #331/2016.

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

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #331/2016. The decision is effective upon release.



Colin J. Fry, Director of Policy and Planning

September 6, 2016

Date Released



**Agricultural Land
Commission Act**

Policy #24

January 2016

**ACTIVITIES DESIGNATED AS A PERMITTED NON-FARM USE:
RESIDENTIAL USES IN THE ALR – ZONE 2**

This policy is intended to assist in the interpretation of the [Agricultural Land Commission Act](#), 2002, including amendments as of September 2014, (the “ALCA”) and BC Regulation 171/2002 ([Agricultural Land Reserve Use, Subdivision and Procedure Regulation](#)), including amendments as of June 2015, (the “Regulation”). In case of ambiguity or inconsistency, the ALCA and Regulation will govern.

REFERENCE:

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Regulation 171/2002), Sections 3(1)(b.1) and Section 1(1)

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:

- (b.1) for a parcel located in Zone 2 ,*
 - (i) one secondary suite in a single family dwelling,*
 - (ii) either*
 - (A) one manufactured home, up to 9 m in width, for use by a member of the owner's immediate family, or*
 - (B) accommodation that is constructed above an existing building on the farm and that has only a single level, and*
 - (iii) a second single family dwelling, but only if the parcel is at least 50 ha in size and if the total area occupied by all residences and other residential structures, roads and service lines, and all land between them, is 4 000 m² or less;*

1(1) In this regulation:

“immediate family” means, with respect to an owner, the owner’s

- (a) parents, grandparents and great grandparents,*
- (b) spouse, parents of spouse and stepparents of spouse,*
- (c) brothers and sisters, and*
- (d) children or stepchildren, grandchildren and great grandchildren;*

Agricultural Land Commission Act. S.B.C 2002 c. 36, Section 4.2:

4.2 The following zones are established:

- (a) Zone 1, consisting of the Island Panel Region, the Okanagan Panel Region and the South Coast Panel Region.*
- (b) Zone 2, consisting of all geographic areas of British Columbia not in Zone 1.*

Note - The Panel Regions are described in more detail in the Schedule to the ALCA and on the Agricultural Land Commission website

Agricultural Land Commission Act. S.B.C 2002 c. 36, Section 18(a):

- 18 *Unless permitted under this Act,*
- (a) *a local government, a first nation government or an authority, or a board or other agency established by a local government, a first nation government or an authority, or a person or agency that enters into an agreement under the [Local Services Act](#) may not*
- (i) *permit non-farm use of agricultural land or permit a building to be erected on the land except for farm use, or*
- (ii) *approve more than one residence on a parcel of land unless the additional residences are necessary for farm use,*

INTERPRETATION:

Subject to applicable local government bylaws, one single family residential dwelling is allowed on land in the Agricultural Land Reserve (the “ALR”). This residence is considered a single family dwelling and referred to as the “single family dwelling” in this policy. A local government may approve one single family dwelling.

The Regulation permits, unless otherwise prohibited by a local government bylaw, a secondary suite for residential purposes, wholly contained within the single family dwelling on a parcel in the ALR. The secondary suite does not need to be occupied by immediate family.

The Regulation provides for one manufactured home, in addition to the single family dwelling, on a parcel in the ALR. The manufactured home may only be occupied by the property owner’s immediate family.

The maximum width of manufactured home is 9 metres, (commonly known as a ‘double-wide’).

If the manufactured home is no longer occupied by member of the property owner’s immediate family, it is not a permitted non-farm use in the ALR and must be removed from the parcel. If it remains, the manufactured home must not be used for residential purposes except by the owner’s immediate family.

An alternative to a manufactured home, is an accommodation that is only a single level constructed above an existing building on a farm. In order to add an accommodation to an existing building, the parcel on which the structure is located must be operated as a farm and classified as a “farm” under the [Assessment Act](#). There is no restriction on who can occupy this additionally constructed dwelling (family, renter, farm workers) ; however, the accommodation must be consistent with the definition below.

Note - The Regulation does not permit both a manufactured home and accommodation constructed above an existing building on the farm.

In addition to the above and **only in Zone 2**, a second stand-alone single family dwelling may be constructed on a parcel of land in the ALR that is at least 50 hectares in accordance with section 3(1)(b.1)(iii) of the Regulation. The total area occupied by all residences and any other residential structures on the parcel (regardless of how the residence was authorized), must be 4,000 m² or less. The restriction of 4,000 m² or less is only imposed when a second single family dwelling is proposed. It does not apply to the first single family dwelling on its own. If the first single family residence, either alone or in combination with any other permitted residence on the parcel would exceed 4,000 m², a second single family dwelling is not permitted.

Note - Where a local government zoning bylaw is in place, any use outlined herein must also be specifically permitted by that bylaw.

TERMS:

secondary suite means an area set aside for residential use, within the footprint of a single family dwelling, and secondary or ancillary to the residential use of that single family dwelling.

manufactured home means a transportable prefabricated structure, whether ordinarily equipped with wheels or not, that is designed, constructed or manufactured to be moved from one place to another and to be used for residential use by a single family. The structure normally conforms to the CSA Z240 series standards of the Canadian Standards Association for manufactured homes built on concrete pile or surface pier foundation systems.

accommodation means a single residential unit that may have more than one bedroom, but does not have more than one kitchen, and does not serve as the residence for more than one person or family.

other residential structures means roads, driveways, service lines, parking areas, pools, tennis courts, landscaped area, garages, septic fields or dugouts, and any other use reasonably considered ancillary to a single family dwelling.

existing building means a building approved and constructed, or under construction, in accordance with the *ALCA* and Regulation

Unless defined in this policy, terms used herein will have the meanings given to them in the *ALCA* or the Regulation.