



Agricultural Land Commission
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July 28, 2016

ALC File: 54367

(SENT VIA ELECTRONIC MAIL)

R.G. (Bob) Holtby
2533 Copper Ridge Drive
West Kelowna, BC V4T 2X6

Dear Mr. Holtby:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #288/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client accordingly.

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 or does not adequately take into account the considerations set out in section 4.3”. 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 Laurel Eyton at (Laurel.Eyton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosure: Reasons for Decision (Resolution #288/2016)

cc: Regional District of Kootenay Boundary (File: #E-1250-04687.000)
(SENT VIA ELECTRONIC MAIL)

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AGRICULTURAL LAND COMMISSION FILE 54367

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant: 0472164 B.C. Ltd.
(the "Applicant")

Agent: Bob Holtby
(the "Agent")

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: 014-990-016

That Part of District Lot 1250, Lying West of the Westerly Boundary of the 66 foot Road as Shown on Plan 13939; Similkameen Division Yale District, Except Plan H16203

(the "Property")

[2] The Property is 27.6 ha in area. There are 11.6 ha of the Property within the ALR.

[3] The Property is generally described as being located on Highway 33, near Beaverdell.

[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 four lots of 0.7 ha, 3.4 ha, 4.1 ha, and 19.4 ha (the "Application").

[7] On January 5, 2016, 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. Previous and relevant application history
4. Agricultural capability map, ALR context map and satellite imagery
5. A report titled, *A Report on an Application to Exclude Land from and Subdivide within the ARL* (sic) prepared by Mr. Bob Holtby and dated April 9, 2015 (the “Holtby Report”).

Note: The Holtby Report also contains information regarding a proposed exclusion that is being considered under Application ID: 54368.

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

[12] The Panel reviewed a previous application involving the Property:

Application ID: 52710 (0472165 BC Ltd. - 2012)	To subdivide the Property into six lots and to exclude approximately 2 ha along the highway frontage. Refused by Resolution #474/2012.
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Reconsideration Request	The reconsideration request was the same as initially proposed. The Commission refused to reconsider as the request it did not meet the criteria for reconsideration.
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[13] The Panel reviewed a relevant applications relating to the application:

Application ID: 51631 (Wolf & Fochler, 2010)	To subdivide the 8.8 ha property into two lots as separated by Beaver Creek. The Commission decided to refuse the application by Resolution #2513/2010.
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Reconsideration Request	A reconsideration request was received in 2011. The request was to subdivide the property into two parcels; one parcel would be sold to a neighbor. The Commission decided to reconsider the application and then allowed the revised proposal on the condition that the parcel to be sold to the neighbour be consolidated with neighbour's property. Resolution #100/2011.
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SITE VISIT

[14] On May 26, 2016, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[15] 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

[16] 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 rating identified on CLI map sheet 82E/6 for the mapping unit encompassing the Property is Class 5; more specifically (5PM).

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 M (moisture deficiency) and P (stoniness).

[17] In addition, the Panel reviewed the Holtby Report which indicates:

“it is clear from the cultivated field to the east of the subject property across the road, that, given irrigation, the land can produce a crop. That crop would be limited to forages, that is, a grass-legume mix.”

[18] The Agent stated at the Site Visit that, according to his report, there is no discernible difference between the portions of the lower bench that are in and out of the ALR

[19] During the Site Visit, the Panel viewed that there are several functional agricultural operations to the east of Property that fall within the same soil classification mapping unit as the Property.

[20] During the Site Visit, the Applicant stated that the properties to the east of the Property have access to water from Beaver Creek, but that the water rights are fully subscribed and not available to the Applicant. Therefore, the Applicant currently only has access to well water on the Property which he estimates would be enough for one house and a small garden.

[21] The Panel reviewed the CLI ratings and the Holtby Report and find that the Property has moderate capability for agriculture.

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

[22] In the Holtby Report, the Agent stated the following in regards to section 4.3(b):
“the 30 foot lot size in Beavercreek prohibits the assembly of land for the proposed development. Consequently, allowing the proposal will allow for economic development which will benefit the community.”

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

[23] The Regional District of Kootenay Boundary (the “RDKB”) does not have zoning or an Official Community Plan (OCP) for this area. However, the RDKB notes that the Boundary Area Agricultural Plan (2011) includes the strategic objective:
“to create long term planning policies and regulations for Area ‘E’ which foster respect of agricultural land within the ALR and otherwise.”

[24] The RDKB resolved to forward the Application to the Commission without a recommendation.

Weighing the factors in priority

[25] The Panel believes the Property is capable and suitable for agriculture, and that subdividing the Property will limit the agricultural possibilities available to the owner of the Property.

[26] 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

[27] For the reasons given above, the Panel refuses the Application to subdivide the Property.

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

[29] Decision recorded as Resolution #288/2016.

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 #288/2016. The decision is effective upon release.



Colin J. Fry, Director of Policy and Planning

July 28, 2016

Date Released