



July 27, 2016

**Agricultural Land Commission**  
133–4940 Canada Way  
Burnaby, British Columbia V5G 4K6  
Tel: 604 660-7000  
Fax: 604 660-7033  
www.alc.gov.bc.ca  
ALC File: 54474

**(SENT VIA ELECTRONIC MAIL)**

Ward Engineering and Land Surveying Ltd.  
1014 Seventh Street  
Nelson, BC V1L 7C2

Dear Mr. Ward:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #282/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached. As agent, it is your responsibility to notify your client accordingly. Please send two (2) paper copies or one (1) electronic copy 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.

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:

A handwritten signature in black ink that reads 'Colin J. Fry'. The signature is written in a cursive style with a large, sweeping 'C' and 'F'.

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #282/2016)  
Sketch plan

cc: Central Kootenay Regional District (File: A1515) **(SENT VIA ELECTRONIC MAIL)**

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## **AGRICULTURAL LAND COMMISSION FILE 54474**

### **REASONS FOR DECISION OF THE KOOTENAY PANEL**

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

**Applicant:** Harmony Ellert-Maeser  
(the “Applicant”)

**Agent:** Peter Ward  
(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: 005-972-892

District Lot 9370, Kootenay District  
(the "Property")

[2] The Property is 47.1 ha in area, of which 38.0 ha are situated within the ALR.

[3] The Property has the civic address 760 Meadow Creek Forest Service Road, Meadow Creek.

[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 4.2 ha and a 42.9 ha, in order to separate the Applicant's investment into the 4.2 ha area from the remainder of the Property (the "Proposal"). The Proposal along with supporting documentation is collectively (the "Application").

[7] On November 15, 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 Agent in advance of this decision.

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

[13] 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 82K/6 for the mapping units encompassing that portion of the Property that is within the ALR are Class 3, Class 4 and Class 5; more specifically (7:4TM – 3:3X) and (6:5TP – 4:4TP).

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), M (moisture deficiency), T (topographic limitations) and X (combination of soil factors).

[14] The Panel reviewed the CLI ratings and find that the Property has moderate to poor agricultural capability.

[15] The Panel notes that the tenant, Mr. David Sufady, moved to the Property in 2009. According to Mr. Sufady he has a land use agreement with the Applicant and has a registered interest in the Property in the form of a Right of First Refusal (Registration No. CA2306632). Mr. Sufady has invested significant effort into improving the proposed 4.2 ha parcel.

[16] In his letter, the Agent stated that:

*“Currently operating small market gardens, 0.8 ha are in productions [sic] with 74 square meters of greenhouse. Raise rabbits and chickens for personal consumption and to build compost. Upon moving to the property in 2009, the meadow was fallow and overgrown with birch and poplar trees. The owners have cleared 0.8 ha, removing stumps. Due to spring flooding, they have put in 243.8 m of ditching, 1.0 ha of the garden has been fenced. Also 74 square meters of greenhouse has been built. Other than the owners residence, there are no other non-agricultural activities.”*

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

[17] The Applicant did not provide any evidence or rationale regarding any economic, cultural and social values that may be pertinent to the Application.

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

[18] The Property is within the Regional District of Central Kootenay in an area without a zoning bylaw or official community plan.

Weighing the factors in priority

[19] The Panel notes that there is no other agriculture occurring along Meadow Creek Forest Service Road, and that the Applicant has completed significant agricultural improvements to the Property.



- [20] The Panel concludes that the Proposal will provide a benefit to agriculture by separating an active farm unit from the remainder of the Property, and by allowing someone else to better utilize the remainder of the Property.
- [21] The Panel concurs that the proposed subdivision will have limited negative impact on agriculture as there is no other agriculture in the area. The Panel believes the proposed parcel sizes are acceptable.
- [22] 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**

- [23] For the reasons given above, the Panel approves the Proposal to subdivide the Property into two parcels of approximately 4.2 ha and a 42.9 ha.
- [24] The approved Application is subject to the following conditions:
- a. the subdivision being in substantial compliance with the plan submitted with the Application; and
  - b. the subdivision plan being completed within three (3) years from the date of release of this decision.
- [25] 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.
- [26] Panel Chair **Sharon Mielnichuk** concurs with the decision.  
Commissioner **Ian Knudsen** concurs with the decision.  
Commissioner **Harvey Bombardier** concurs with the decision.



[27] Decision recorded as Resolution #282/2016.

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 #282/2016. The decision is effective upon release.

A handwritten signature in black ink, appearing to be 'CJF', is positioned above the name of the Director of Policy and Planning.

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

**July 27, 2016**

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**Date Released**

# PLAN OF PROPOSED SUBDIVISION OF PART OF DISTRICT LOT 9370 KOOTENAY DISTRICT.

ALC Application #54474  
 (Applicant - Ellert-Maeser)  
 (Agent - Ward Engineering and Land Surveying Ltd.)  
 Resolution #282/2016

SCALE 1: 1250

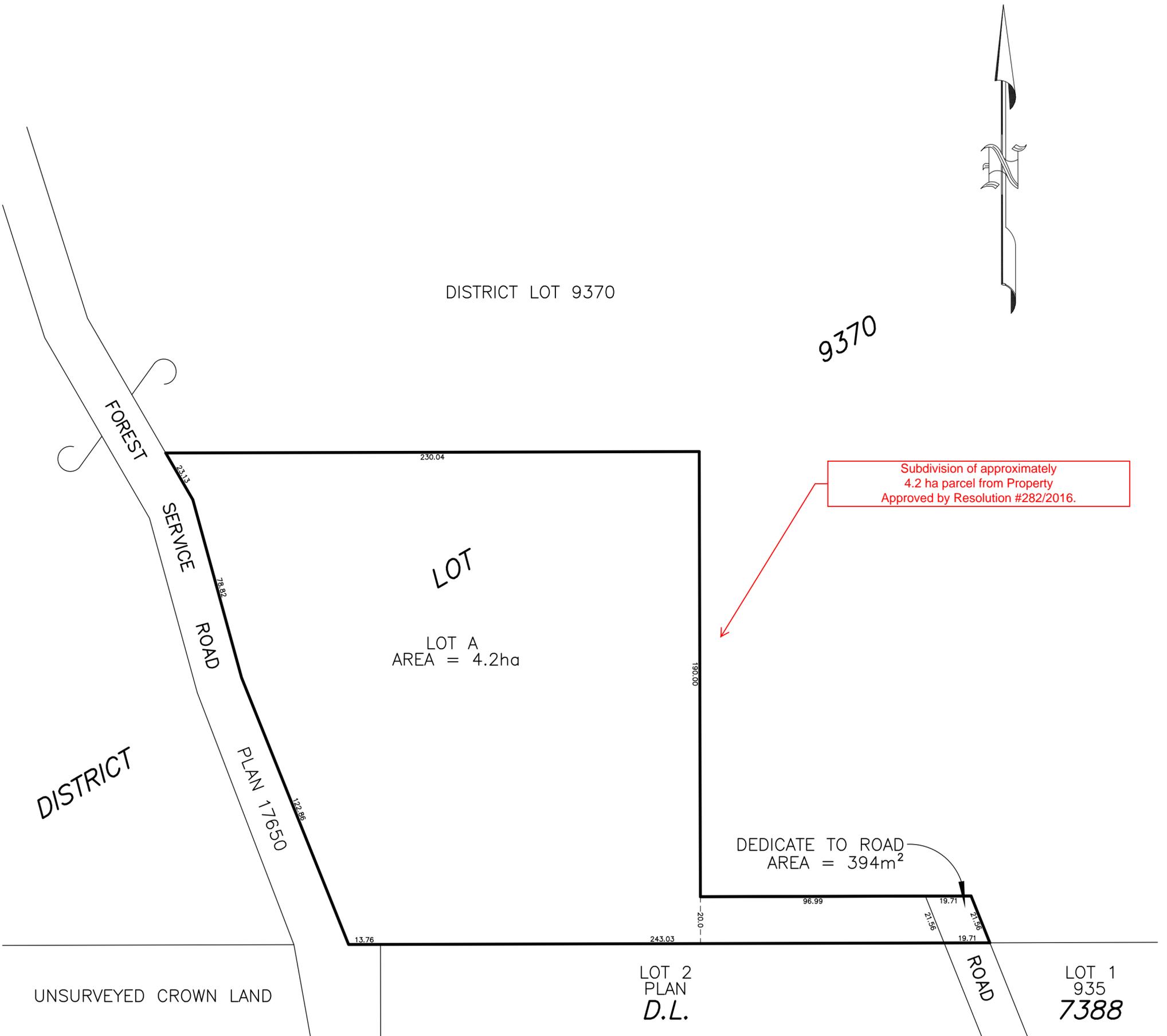


This plan shows horizontal ground level distances in metres.

The intended plot size of this plan is 432 mm in width by 560 mm in height (C size) when plotted at a scale of 1:1250.

Proposed lot areas are approximate and subject to legal survey.

The lands shown on this plan are in the Agricultural Land Reserve.



Subdivision of approximately 4.2 ha parcel from Property Approved by Resolution #282/2016.

THIS PLAN WAS PREPARED AT THE REQUEST OF DAVE SUFADY.  
 THIS PLAN WAS PREPARED FOR AN APPLICATION TO THE AGRICULTURAL LAND COMMISSION ONLY.  
 ANY USE, RELIANCE, OR DECISIONS WHICH A THIRD PARTY MAY MAKE BASED ON THIS PLAN IS THE RESPONSIBILITY OF SUCH THIRD PARTIES. WARD ENGINEERING AND LAND SURVEYING LTD. ACCEPTS NO RESPONSIBILITY FOR DAMAGES A THIRD PARTY MAY SUFFER AS A RESULT OF THEIR RELIANCE ON THIS PLAN.  
 THIS IS NOT A LEGAL SURVEY PLAN AND SHOULD NOT BE USED FOR THE RE-ESTABLISHMENT OF LEGAL BOUNDARIES.  
 NO STRUCTURES SHOULD BE POSITIONED BASED ON INFORMATION SHOWN ON THIS PLAN.  
 IF BUILDING LAYOUT IS REQUIRED, A FORMAL LEGAL SURVEY SHOULD BE COMPLETED.

**WARD ENGINEERING AND LAND SURVEYING LTD.**

1014 Seventh Street  
 Nelson, British Columbia  
 V1L 7C2

Tel: (250) 354-1660  
 www.wels.ca

FILE: 15-037  
 DRAWING: 15-037 ALR  
 DATE: SEPTEMBER 17, 2015

This plan lies within the Regional District of Central Kootenay.