



Agricultural Land Commission
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July 27, 2016

ALC File: 54582

(SENT VIA ELECTRONIC MAIL)

Richard Schroeder
Ursula Stucki
3421 Anderson Road
Fernie, BC V0B 1M1

Dear Mr. Schroeder and Ms. Stucki:

Re: Application to Include Land into the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #285/2016) as it relates to the above noted application.

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, appearing to read 'Leyton', is written over a large, stylized '40'.

Colin J. Fry, Director of Policy and Planning

Enclosure: Reasons for Decision (Resolution #285/2016)

cc: Regional District of East Kootenay (File: P 715 122) **(SENT VIA ELECTRONIC MAIL)**

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AGRICULTURAL LAND COMMISSION FILE 54582

REASONS FOR DECISION OF THE KOOTENAY PANEL

Application submitted pursuant to s. 17(3) of the *Agricultural Land Commission Act*

Applicants:

**Richard Schroeder
Ursula Stucki
(the “Applicants”)**

Application before the Kootenay Regional Panel:

**Sharon Mielnichuk, Panel Chair
Ian Knudsen**



THE APPLICATION

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

Parcel Identifier: 015-860-671

Lot 36, District Lot 5237, Kootenay District, Plan 1280

(the "Property")

[2] The Property is 2 ha in area.

[3] The Property has the civic address 3421 Anderson Road, Fernie.

[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. 17(3) of the *ALCA*, the Applicants are applying to include the Property into the ALR (the "Proposal"). The Proposal along with supporting documentation is collectively (the "Application").

[7] On February 22, 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. 17(3) of the *ALCA*:

17(3) On application by an owner of land, the commission may designate all or part of the land described in the application as part of an agricultural land reserve if the commission considers that the designation carries out the intent of this Act.

[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 application history
4. Agricultural capability map, ALR context map and satellite imagery

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



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

Commission Initiative: File 53569 (Agricultural Land Commission, 2014)	ALR Boundary Review: To exclude 1427.7 ha of land from the ALR pursuant to section 29(1) of the ALCA. Approved, by Resolution #5/2014.
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Note: This Commission initiative resulted in the Property being excluded from the ALR.

[13] The Panel reviewed one relevant application relating to the Application:

Application ID: 44345 Legacy File: 37627 (Belay Enterprise Ltd., 2007)	To exclude the 49 ha property to facilitate the development of an eco-sensitive residential neighbourhood. Alternate proposal approved, to exclude 48.2 ha of the property, while leaving the 0.8 ha northeastern corner of the property within the ALR.
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*Note: This subject property is located to the south, across
Mt. Fernie Park Road, from the Application Property.*

SITE VISIT

[14] 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

[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 82G/06 for the mapping units encompassing the Property are Class 3, 4, 5 and 6; more specifically (3T), (6:5T – 4:6T) and (8:6T – 2:4T).



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.

Class 6 - land is important in its natural state as grazing land. These lands cannot be cultivated due to soil and/or climate limitations.

The limiting subclass associated with this parcel of land is T (topographic limitations).

[16] The Panel reviewed the CLI ratings and find that the Property has moderate to poor capability for agriculture, and that the parcel size of the Property and adjacent properties further limits the agricultural potential of the Property.

[17] By Resolution #4/2014, the Commission resolved to exclude the Property from the ALR. The Staff Report regarding the Commission's Initiative (File 53569) states that:

"The properties west of Anderson Road (4.15 – 4.23 & 4.31) all face moderate slope constraints and have poor agricultural capability while the majority of properties east of Anderson Road (as well as Properties 4.24 & 4.25) are flat, possess good agricultural capability and many have obvious agricultural uses... The area as a whole however, is no longer a cohesive block of ALR land, having been fractured by the exclusions approved under Application #52121."

(Note: The Property under Application is referenced as Property 4.23 in the Staff Report for File: 53569)

[18] The Regional District of East Kootenay (the “RDEK”) in its report (the “RDEK Report”) state that:

“The RR-2 Zone permits agricultural use. The property was excluded by the ALC in 2013. It [the property] is located directly adjacent to the boundary of the City of Fernie and a proposed new small-lot residential subdivision. It does not have farm classification for tax purposes and is appropriately designated as non-ALR land.”

[19] The Applicants state, in their letter, that: *“I want to be able to raise livestock like chickens and grow produce”*; that the current agricultural uses on the Property are *“garden vegetable & produce”*, and the proposed agricultural uses are *“to build shelters and fence for pens.”*

[20] The Panel notes that the “right to farm” is protected under the *Farm Practices Protection (Right to Farm) Act* and that per s. 2(2)(b)(ii) these protections apply to farm operations that must:

(b) be conducted on, in or over land

(ii) on which, under the Local Government Act, farm use is allowed.

Therefore, as agriculture is permitted within RDEK zoning (RR-2) for the Property, the Applicants’ right to farm is protected by the *Farm Practices Protection (Right to Farm) Act*.

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

[21] The Applicants did not provide any evidence or rationale regarding any economic, cultural and social values that are pertinent to the Application.



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

[22] The Property is designated as “SH – Small Holdings” in the RDEK’s Official Community Plan (“OCP”) for the area, and is zoned as “RR-2, Rural Residential (Small Holding) Zone” with a minimum parcel size of 2 ha.

[23] In Application 44345 noted above, the Commission referred to a previous Resolution relating to the Commission’s review of the City of Fernie OCP, Resolution 68/1996, in which the Commission suggested:

“Any Southwest expansion of City boundaries onto ALR lands will take place on the Southwest Bench area, which the Agricultural Land Commission has agreed to exclude. The Commission has not agreed to exclude the more valuable agricultural lands on the Southwest Flats area.”

The Property is located in the Southwest Bench area. Therefore, the exclusion of this Property from the ALR has been agreed upon by the RDEK and the Commission as part of a Planning Process dating back to 1996.

[24] The Property is zoned as RR-2 in the RDEK’s Zoning Bylaw No. 829, which lists the permitted uses within this zone as:

- (a) Single family dwelling*
- (b) Two family dwelling*
- (c) Agricultural use;*
- (d) Seasonal produce stands;*
- (e) Veterinary clinics;*
- (f) Kennels, subject to subsection (5)(d);*
- (g) Uses permitted under Section 4.03 of this Bylaw.*

Therefore, agricultural uses are permitted within the RDEK’s RR-2 zoning.



Weighing the factors in priority

[25] The Panel finds that the Property has limited capability for agriculture, and due to the fragmented land base of suitable agricultural parcels surrounding the Property, the Property has limited agricultural suitability.

[26] The Panel finds that the Property is appropriately not within the ALR.

[27] 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

[28] For the reasons given above, the Panel refuses the Proposal to include the Property into the ALR.

[29] Panel Chair **Sharon Mielnichuk** concurs with the decision.
Commissioner **Ian Knudsen** concurs with the decision.

[30] Decision recorded as Resolution #285/2016.

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 #285/2016. The decision is effective upon release.

Colin J. Fry, Director of Policy and Planning

July 27, 2016

Date Released