



**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

December 7, 2016

ALC File: 54650

Alan Young  
4268 Hill Rd  
Ferne, BC V0B 1M4

Dear Mr. Young:

**Re: Reconsideration of original application to Subdivide Land in the Agricultural Land Reserve (ALR)**

Please find attached the Reasons for Decision of the Executive Committee (Resolution #419/2016) 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 the applicant accordingly.

**Reconsideration of a Decision by an Affected Person**

We draw your attention 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

A handwritten signature in black ink, appearing to read 'Riccardo Peggi', is written over a light grey, semi-transparent rectangular box.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #419/2016)

cc: Regional District of East Kootenay (File: P 716 210)

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**AGRICULTURAL LAND COMMISSION FILE 54650**

**RECONSIDERATION OF ORIGINAL APPLICATION**

**REASONS FOR DECISION OF THE EXECUTIVE COMMITTEE**

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

**Applicants:**

**Alan Young**  
**(the “Applicant”)**

**Application before the Executive Committee:**

**Frank Leonard, Chair**  
**William Zylmans, South Coast Panel**  
**Jennifer Dyson, Island Panel**  
**Sharon Mielnichuk, Kootenay Panel**  
**Dave Merz, North Panel**  
**Gerald Zimmermann, Okanagan Panel**  
**Lucille Dempsey, Interior Panel**

**Attachments:**

**Exhibit A – Reasons for decision of the Kootenay Panel, Resolution #360/2016 dated October 31, 2016**

**Exhibit B – Chair Referral of Resolution #360/2016 to the Executive Committee dated November 9, 2016**



## **THE APPLICATION**

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

Parcel Identifier: 011-380-217

Lot 5, Kootenay District Plan NEP1299, District Lot 4588, LD26

(the "Property")

[2] The Property is 4.0 ha in area.

[3] The Property has the civic address 4268 Hill Rd, 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. 21(2) of the *ALCA*, the Applicants are applying to subdivide the 4.0 ha property into two 2.0 ha parcels (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".

[7] By Resolution #360/2016, dated October 31, 2016, the Kootenay Panel approved the Proposal (the "Original Decision").

[8] On November 9, 2016, Reasons for Decision recorded as Resolution #360/2016 was referred by the Chair to the Executive Committee of the Commission under s. 33.1 of the *ALCA*.

## **RELEVANT STATUTORY PROVISIONS**

[9] The purposes of the commission set out in s. 6 of the *ALCA* 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 EXECUTIVE COMMITTEE**

[10] The Executive Committee considered the following evidence:

1. All the documents contained in the Application file from June 15, 2016, being the date the Application was received by the Commission, to the date of Resolution #360/2016;
2. The Commission's decision recorded as Resolution #360/2016 and dated October 31, 2016;
3. The Chair's Referral of Resolution #360/2016 to the Executive Committee dated November 9, 2016; and
4. The Applicant's submission to the Commission, dated November 14, 2016.

All documentation noted herein has been disclosed to the Applicant in advance of this decision.

### **FINDINGS**

[10] The Executive Committee confirms the Kootenay Panel's findings as outlined in Exhibit A and confirms Resolution #360/2016.

### **DECISION**

[11] For the reasons given above, the Executive Committee confirms Resolution #360/2016 and its conditions outlined in Exhibit A.



[12] 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.

[13] These are the unanimous reasons of the Executive Committee of the Agricultural Land Commission.

[14] A decision of the Executive Committee is a decision of the Commission pursuant to s. 10(3) of the *Agricultural Land Commission Act*.

[15] This decision is recorded as Resolution #419/2016 and is released on December 7, 2016.

**CERTIFICATION OF DECISION**

A handwritten signature in black ink that reads "Frank Leonard". The signature is written in a cursive style with a period at the end.

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Frank Leonard, Chair, on behalf of the Executive Committee

**END OF DOCUMENT**

# Exhibit A



**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

October 31, 2016

ALC File: 54650

Alan Young  
4268 Hill Rd  
Ferne, BC V0B 1M4

Dear Mr. Young:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #360/2016) as it relates to the above noted application. A sketch plan depicting the decision has been attached.

**Reconsideration of a Decision as Directed by the ALC Chair**

Please note that pursuant to [s. 33.1 of the \*Agricultural Land Commission Act\*](#), the Chair may direct the executive committee to reconsider any 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 s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

**Reconsideration of a Decision by an Affected Person**

We draw your attention 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.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

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

A handwritten signature in black ink, appearing to read 'Riccardo Peggi', written in a cursive style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #360/2016)  
Sketch plan

cc: East Kootenay Regional District (File: P 716 104)

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## **AGRICULTURAL LAND COMMISSION FILE 54650**

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

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

**Applicant:**

**Alan Young  
(the “Applicant”)**

**Application before the Kootenay Regional Panel:**

**Sharon Mielnichuk, Panel Chair  
Harvey Bombardier**





## **THE APPLICATION**

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

Parcel Identifier: 011-380-217

Lot 5, Kootenay District Plan NEP1299, District Lot 4588, LD26  
(the "Property")

[2] The Property is 4.0 ha in area.

[3] The Property has the civic address 4268 Hill Rd, 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. 21(2) of the *ALCA*, the Applicants are applying to subdivide the 4.0 ha property into two 2.0 ha parcels (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".

## **RELEVANT STATUTORY PROVISIONS**

[7] 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.

[8] 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.

[9] 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**

[10] 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
5. *Agriculture Capability and Soils Assessment of Plan 1299, Lot 5, District Lot 4588 – Kootenay Land District, 4268 Hill Road near Fernie, BC*, prepared for Alan D. Young and Donna Marie Young, completed by David W. Yole MSc PAg on July 2, 2015 (the “Yole Report”).

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

[11] At its meeting of June 14, 2016, the Regional District of East Kootenay resolved to forward the Application to the Commission.



[12] The Panel reviewed two relevant applications relating to the application:

Application ID: 51148  
(Stamler, 2010)

To subdivide the 4.0 ha property into two 2.0 ha parcels. The Commission concluded that the land under application has very poor agricultural capability and is unsuitable for agricultural use and that the subdivision proposal may have impacts on agriculture and parcel sizes in the area. The application was approved by Resolution #2330/2010.

**Note: Application 54418 is located to the south and adjacent to the Property.**

Application ID: 51148  
(Pritchard, 2011)

To subdivide the 3.9 ha property into two approximately 2.0 ha parcels. The Commission concluded as follows:

1. The subject property has poor agricultural capability;
2. Subdivision of the property would not significantly reduce the limited agricultural options available on the property; and
3. The proposed subdivision would have no significant impact on agriculture in the area.

**Note: Application 51148 is located to the west and adjacent to the Property.**

### **SITE VISIT**

[13] 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

[14] 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 approximately 50% (8:3FM – 2:4MP) and 50% (7:3M – 3:4MP).

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), P (stoniness) and F (low fertility).

[15] In addition, the Panel received a professional agrologist report, prepared by David W. Yole, MSc. PAg., dated July 2, 2015 (the “Yole Report”). Based on a field report conducted on June 15, 2015 by David Yole, the Yole Report the following table summarizes the agricultural capability ratings for the Property:

CLI Map Label	Approx. Area (ha)	Arable/Non-Arable
6P	1.05	Non-arable
7:6WP - 3:5P	0.08	Non-arable
4:5-6P – 4:AP – 2:5W	0.65	60% Non-arable
5:6-7W – 5:5W	0.65	Non-arable
8:5WP – 2:5T	0.73	Non-arable
8:2-3A(P) – 2:6P	0.77	80% Non-arable

Total Non-arable lands: 2.85 ha (72%)

Total Arable lands: 1.15 ha (28%)

[16] The Yole Report concluded:

*Subdivision of the land in question would not appear to affect the real farmable area of ALR lands in the property or of the surrounding area. Currently, fragmentation of other properties, and having similar soil types in immediate area and the relatively poor soils, the agricultural potential would not be reasonable expectation, except for the purpose of 'hobby' farming given the poor gravelly/cobbly soil conditions that exist. It would appear that ALR lands and agricultural potential of the area would not be compromised if the subject property were subdivided in half the size (2.0 ha) as proposed by the land owner. Rural residential ('hobby' farm) type land use appear to be the most common and practical use for the land based on the soil factors assessed/measured.*

[17] The Panel reviewed the CLI ratings and the Yole Report and find that the land has a moderate capability for agriculture.

[18] The Panel noted the two relevant applications in which the Commission approved the subdivision of 4.0 ha properties into two 2.0 ha lots adjacent to the Property. The Panel echoes the rationale used to approve the relevant applications. In particular, the Property is located in a rural residential subdivision consisting primarily of 4 ha lots and that although the proposed subdivision would increase residential density, it would not significantly change the rural residential character of the Property. In addition, the Panel does not believe that the Proposal would have a significant negative impact on agriculture in the area. Lastly, the Panel finds that the Proposal would not reduce the already limited range of viable agricultural uses available on the Property.

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

[19] 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

[20] The Property is designated as “Large Holdings” in the RDEK’s Official Community Plan (the “OCP”) for the area. The OCP designation supports rural development with minimum lot sizes in the range of 2 ha to 8 ha.

[21] The Property is zoned as “Rural Residential” (RR-4) by the RDEK’s zoning bylaw. The minimum parcel size requirement within the RR-4 zone is 4 ha.

[22] RDEK staff made the recommendation in the Local Government Report that “*previous subdivisions in this area were completed prior to adoption of the Elk Valley OCP. The proposed development is not supported by the OCP policies for this area*”. Furthermore, the proposed 2 ha lot is not supported by the zoning designation for the area.

Weighing the factors in priority

[23] Although the Panel finds that the Property has moderate agricultural capability, the Panel finds that subdivision on the Property would be suitable given the existing rural residential nature of the area.

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

[25] Although the Proposal is not supported by the RDEK’s OCP policies and Zoning Bylaw, the RDEK resolved to forward the Application to the Commission.

**DECISION**

[26] For the reasons given above, the Panel approves the Proposal to subdivide the 4.0 ha property into two 2.0 ha parcels.

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

- a. the subdivision being in substantial compliance with the plan submitted with the Application;
- b. submission of two (2) paper copies or one (1) electronic copy of the final survey plan to the Commission; and
- c. the subdivision plan being completed within three (3) years from the date of release of this decision.

[28] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan.

[29] 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.

[30] These are the unanimous reasons of the Kootenay Panel of the Agricultural Land Commission.

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

[32] This decision is recorded as Resolution #360/2016 and is released on October 31, 2016.

#### **CERTIFICATION OF DECISION**

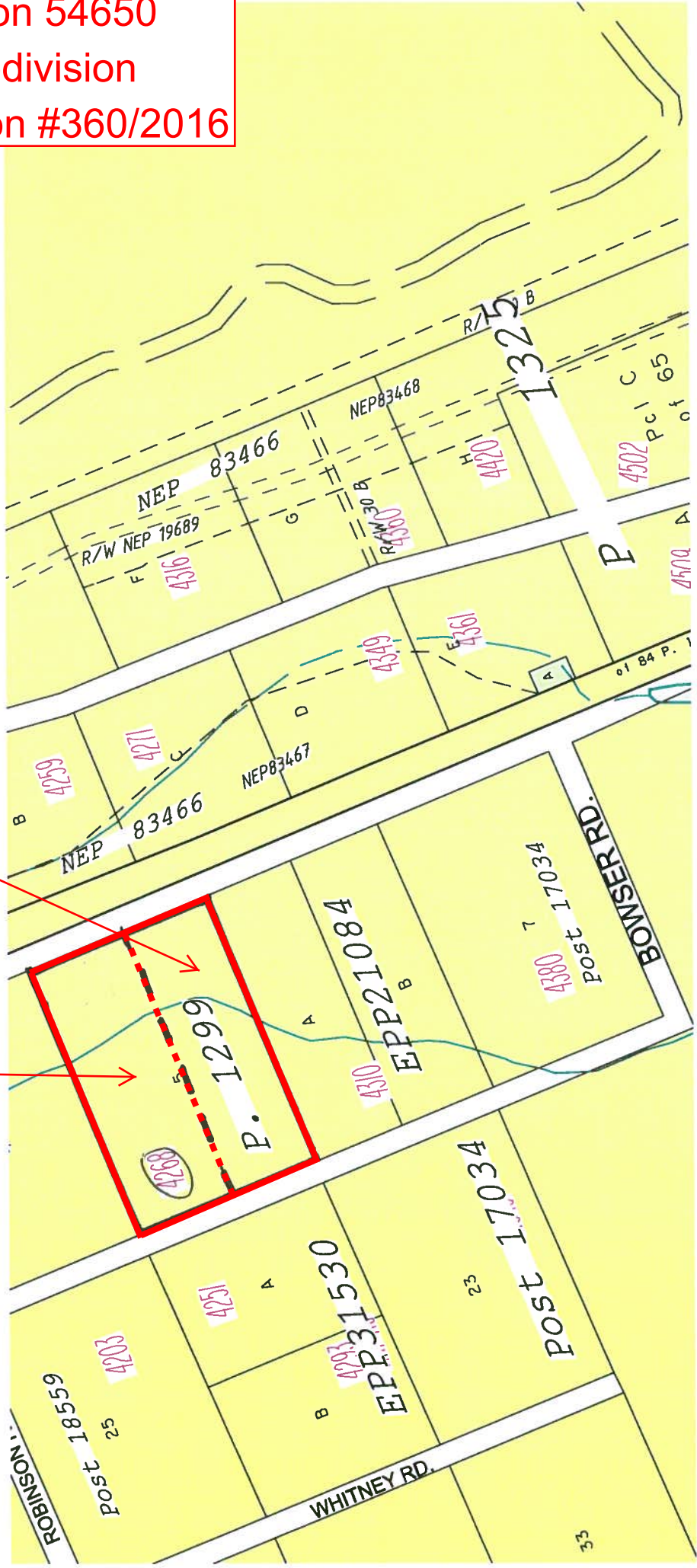


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Sharon Mielnichuk, Vice Chair, on behalf of the Kootenay Panel

**END OF DOCUMENT**

ALC Application 54650  
Approved Subdivision  
ALC Resolution #360/2016



Lot 1  
~2.0 ha

Lot 2  
~2.0 ha

PROPOSED  
SUBDIVISION  
LINE





## Agricultural Land Commission

133 – 4940 Canada Way  
Burnaby, British Columbia V5G 4K6  
Tel: 604 660-7000  
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November 9, 2016

ALC File: 54650

To: Executive Committee Members  
Provincial Agricultural Land Commission

Whereas:

1. I, Frank Leonard, Chair of the Provincial Agricultural Land Commission (the "Commission") have reviewed the *Reasons for Decision of the Kootenay Panel*, recorded as Resolution #360/2016 and released on October 31, 2016 ("the Decision"). A copy of the Decision is attached.
2. Section 33.1 of the *Agricultural Land Commission Act* (the "ALCA") states:

### Reconsideration of decisions of panel

33.1(1) The chair of the commission may, in writing, direct the executive committee to reconsider a decision made by a panel established under section 11(1) respecting an application or other matter allocated to the panel by the chair of the commission, including a panel's reconsideration of a decision under section 33 (1), if

(a) the chair considers that the decision

- (i) may not fulfill the purposes of the commission as set out in section 6, or
- (ii) does not adequately take into consideration the considerations set out in section 4.3, if applicable, and

(b) the chair makes the direction to the executive committee within 60 days of the decision being made.

- (2) If the chair of the commission directs the executive committee to reconsider a decision under subsection (1), the chair must give notice of the reconsideration to any person that the chair considers is affected by the reconsideration.
- (3) If the chair of the commission directs the executive committee to reconsider a decision under subsection (1), the executive committee must confirm, reverse or vary the decision.
- (4) For the purposes of subsection (3), the executive committee has all the powers, duties and functions of the commission.
- (5) A decision by the executive committee under subsection (3) is for all purposes a decision of the commission.

Reconsideration to Executive Committee  
Re: ALC File: 54650

3. I consider that the Decision may not properly fulfill the purposes of the Commission in section 6 and does not adequately take into consideration the considerations in section 4.3, which factors apply in Zone 2; and
4. This referral to the Executive Committee under s. 33.1(1) does not represent my final conclusion on the proper outcome of the reconsideration, and determines only that this Decision is appropriate for referral to and independent consideration by the Executive Committee, with each Executive Committee member being responsible for exercising their independent judgment as part of the Executive Committee as a decision-making body after deliberation, discussion and consideration of all the information, evidence and submissions.

Therefore I direct as follows:

1. That the Decision is referred to the Executive Committee for reconsideration.
2. That while I do not consider that the Regional District of East Kootenay (the "Regional District") is entitled to notice under s. 33.1(2), I exercise my discretion to direct staff to notify the Regional District of the reconsideration and provide it with the opportunity to provide any information in addition to that it has already provided in connection with the application, which information is to be provided to the Commission and the Applicants no later than Monday November 21, 2016.
3. That I do consider Alan Young ("the Applicant") to be persons entitled to notice under s. 33.1(2), and therefore direct staff to notify the Applicants of the reconsideration and provide them with the opportunity to provide any additional evidence and submissions to the Commission no later than Monday November 21, 2016.
4. That staff arrange a meeting of the Executive Committee to consider the reconsideration at the first available meeting opportunity following the close of submissions.

PROVINCIAL AGRICULTURAL LAND COMMISSION



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Frank Leonard, Chair  
Provincial Agricultural Land Commission

November 9, 2016

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Date