



July 28, 2016

Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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www.alc.gov.bc.ca

ALC File: 54904

(SENT VIA ELECTRONIC MAIL)

Bruce and Annalee Anderson
404a Ash Road
Creston, BC V0B1G8

Dear Mr. and Mrs. Anderson:

Re: Application to Exclude Land from the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #286/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached.

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:

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #286/2016)
Sketch plan

cc: Regional District of Central Kootenay (File: A1506C-06095.100)
(SENT VIA ELECTRONIC MAIL)

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AGRICULTURAL LAND COMMISSION FILE 54904

REASONS FOR DECISION OF THE KOOTENAY PANEL

Application submitted pursuant to s. 30(1) of the *Agricultural Land Commission Act*

Applicants:

**Annalee Anderson
Bruce Anderson
(the “Applicants”)**

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: 006-246-478

Lot 1, District Lot 9554, Kootenay District, Plan 17139, Except Plan NEP21073
(the "Property")

[2] The Property is 2.2 ha in area.

[3] The Property has the civic address 404a Ash Road, Creston, BC.

[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. 30(1) of the *ALCA*, the Applicants are applying to exclude the Property from the ALR (the "Proposal"). The Proposal along with supporting documentation is collectively (the "Application").

RELEVANT STATUTORY PROVISIONS

[7] The Application was made pursuant to s. 30(1) of the *ALCA*:

30 (1) An owner of land may apply to the commission to have their land excluded from an agricultural land reserve.

[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

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

[11] The Panel reviewed three previous applications involving the Property:

Application ID: 23372
Legacy File: 03970-0
(Anderson, 1977)

To construct a third dwelling on the property for the applicant's son. Allowed by Resolution #6126/77 with conditions; however, the Commission mentioned that it would not look favorably upon a subdivision of the property in the future.



Application ID: 36147
Legacy File: 19591-0
(Anderson, 1985)

To subdivide a 0.8 ha parcel from the 4.0 ha property.
Allowed by Resolution #1239/85, subject to the subdivision of the proposed lot at the base of the escarpment, and that the subdivision is granted in lieu of any further homesite severance on the property.

Application ID: 44543
Legacy File: 37778
(Anderson, 2007)

To exclude the property to allow the existing four dwelling units on the property. Refused by Resolution #142/2008, based on the agricultural capacity of the land and the impact of the proposal on agriculture. The Commission allowed three dwellings to remain and required one dwelling to be removed of the applicant's choice.

SITE VISIT

[12] On May 4, 2016, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[13] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Applicants on June 7, 2016 (the "Site Visit Report").

FINDINGSSection 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 rating identified on CLI map sheet 82F/02 for the mapping unit encompassing the Property is Class 3 and Class 6; more specifically (7:6TR - 3:3T).

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 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 subclasses associated with the Property are R (consolidated bedrock) and T (topographic limitations).

[15] The Panel reviewed the CLI ratings and find that the Property has poor capability for agriculture.

[16] In their letter, the Applicants stated the following:

"This parcel of land is not suitable for the purpose of sustainable farming or agricultural practices. The sub-soil contents of this land consists [sic] primarily of stratified rock and large aggregate. Most of this undesirable product is encountered as little as 2 inches below the soil surface and continuing indefinitely. This makes cultivation of this land nearly impossible."

[17] The Panel viewed during the Site Visit, as noted in the Site Visit Report, bedrock outcroppings on the Property and a strong topographical drop on the Property.

- [18] The Panel notes that some of the surrounding parcels have agricultural capability and suitability for agriculture.

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 may be pertinent to the Application.

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

- [20] The Regional District of Central Kootenay (the "RDCK"), noted in its report that Local Area Director Larry Binks on October 19, 2015:

"Walked the property and find it non-productive because of soil and rocks. Saw rocks protruding above the ground, shale and rocks begin 2-4 inches from the surface.

Support initiative – better value as non-agricultural."

Weighing the factors in priority

- [21] The Panel does not believe that the Property has good capability for agriculture, due to the bedrock outcrops and the strong topographical differences between the upper and lower portions of the Property, as viewed during the Site Visit.

- [22] The Panel does, however, believe that some of the surrounding properties are capable and suitable for agriculture; and that excluding the Property would result in a fragmented ALR in this area.

- [23] 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

[24] For the reasons given above, the Panel refuses the Proposal as submitted, but approves an alternative Proposal to subdivide the Property into two parcels of approximately 1.1 ha each.

[25] The Proposal is approved 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.

[26] 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.

[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 #286/2016.

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 #286/2016. The decision is effective upon release.

A handwritten signature in black ink, appearing to be 'CJF', is located below the text of the decision.

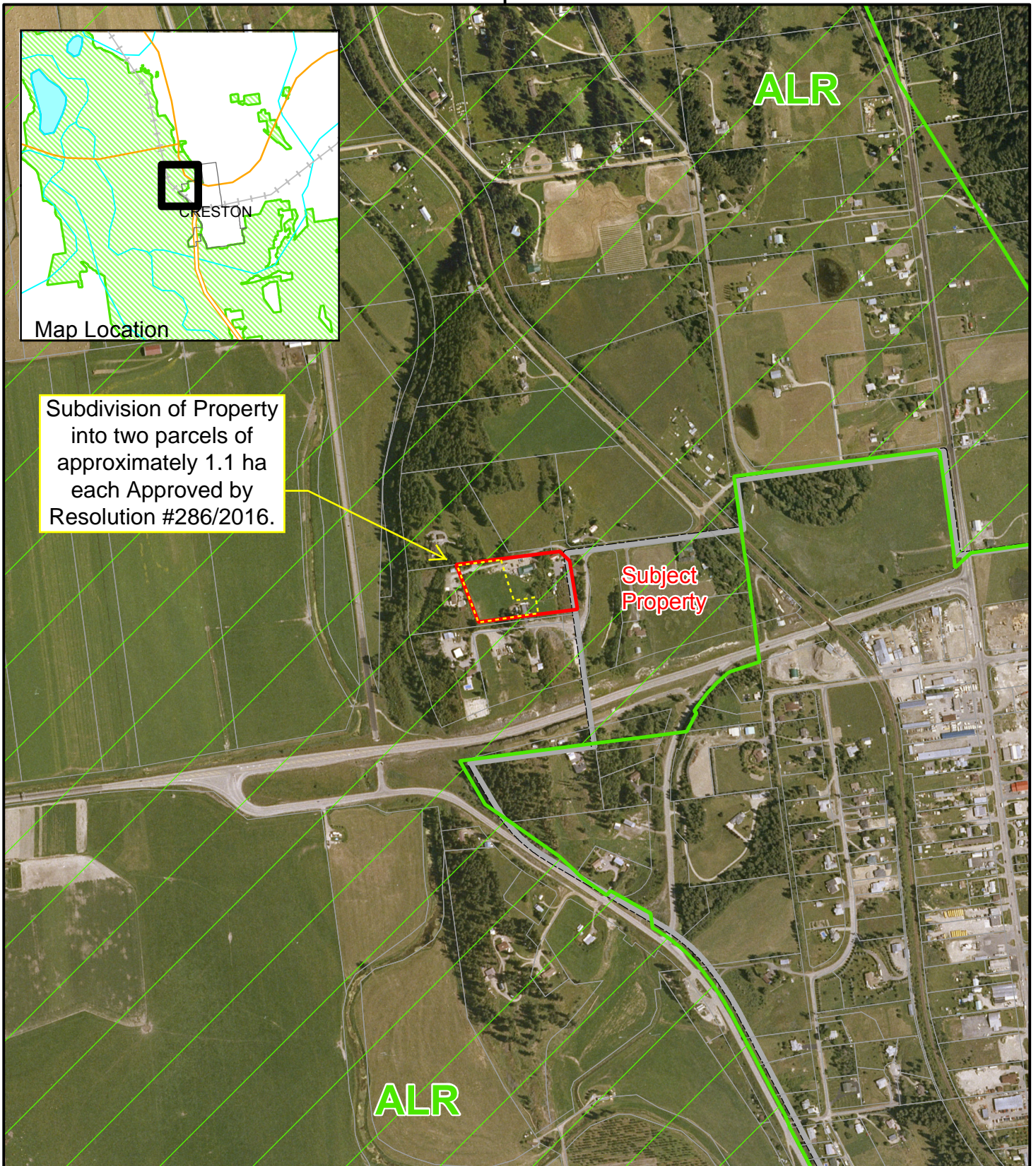
Colin J. Fry, Director of Policy and Planning

July 28, 2016

Date Released

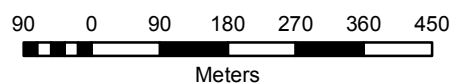
ALC Application 54904
(Applicant - Anderson)
Resolution #286/2016

116°32'0"W



Airphoto Map

2005 Natural Colour
Map Scale: 1:10,000



ALC File #:	54904
Mapsheet #:	82F.018
Map Produced:	Feb 18, 2016
Regional District:	Central Kootenay