



Agricultural Land Commission
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November 8, 2016

ALC File: 54986

Sandy Young
5920 Lasca Cr. Rd.
Nelson, BC V1L 7B2

Dear Ms. Young:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #367/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly. 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

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Per:

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #367/2016)
Sketch plan

cc: Regional District of Central Kootenay (File: A1605E)



AGRICULTURAL LAND COMMISSION FILE 54986

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant:

**Penny Ballance
Garth Ballance
(the “Applicants”)**

Agent:

**Sandy Young
(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: 015-751-902

Lot 2, District Lot 7365, Kootenay District Plan 1612, Except Part Included in Plan 7152

(the "Property")

[2] The Property is 2.9 ha in area.

[3] The Property has the civic address 6456 Fitchett Road, Harrop.

[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 2.9 ha Property from the ALR to facilitate future subdivision of the Property into two lots (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. Agricultural capability map, ALR context map, and satellite imagery
4. *Soil Survey of Lot 2, NEP1612, DL 7365, Pitchett Road* prepared for Penny and Garth Balance and prepared by David Yole, MSc, PAg and dated on October 19, 2015 (the "Yole Report").
5. *Site Assessment for Sewage Disposal for Subdivision* prepared for Garth and Penny Balance and prepared by Phillip Jackson, CPHI(C), and dated January 16, 2016 (the "Jackson Report").

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



[11] The Regional District of Central Kootenay (RDCK) Board of Directors delegates the duty, under the *Agricultural Land Commission Act*, to provide information and a resolution regarding ALR applications within the RDCK to the applicable Local Area Director in which an application is being made. In the RDCK Staff Report, dated June 20, 2016, the Local Area Director outlined their support for a subdivision within the ALR rather than an exclusion application, recognizing that there is some agricultural land and the applicant could subdivide and exclude a smaller lot in the poor agricultural use area.

SITE VISIT

[12] On September 20, 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 Agent on October 7, 2016 (the "Site Visit Report").

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 82F/11 for the mapping units encompassing the Property are 90% Class 4 and Class 3 (more specifically, 6:4T – 4:3T), and 10% Class 4, 3, and 2 (more specifically, 6:4PM – 2:3M – 2:2X).

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

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

[15] In addition, the Panel received the Yole Report, prepared by David W D Yole MSc PAg, dated October 19, 2015 . The Yole Report finds that “owing to very hummocky terrain and sandy, and often, stony glaciofluvial soils of the subject lands, approximately 87.3% of the 8.56 acre subject land in question is not arable, and has little agricultural value”.

[16] Based on a field report conducted on October 15, 2015 by David Yole, the Yole Report produced the following table of agricultural capability ratings for the Property:

Pit #	CLI Class	Area (Hectares)
1	6PA (6P)	0.28
2	6:6PT – 4:5PT	0.50
3	8:6PT – 2:5PT	1.87
4	4P	0.22
5	4PA	0.19
6	5:5PA – 5:6PA	0.38
Upper garden	3P	0.04

[17] The Panel reviewed the CLI ratings and the Yole Report and find that the Property has significant limitations for agricultural use.

[18] Although the Panel finds the agricultural capability of the Property to be limited, the Property is located in the middle of a block of ALR land in the Harrop-Procter area. The Panel is concerned that excluding the Property would result in a fragmented ALR in this area.



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

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

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

[20] The Property is designated as “Agriculture” (Ag) in the RDCK’s Official Community Plan Bylaw No. 2260, 2013 (the “OCP”). The RDCK recommends that “*lot sizes shall not be smaller than 4 hectares for lands within the ALR, or smaller than 2 hectares for lands outside of the ALR*”. The Property is not subject to a zoning bylaw.

[21] The Panel notes that the Property is smaller than the 4 ha lot size recommended by the RDCK OCP.

Weighing the factors in priority

[22] The Property is located within a block of ALR land in the Harrop-Procter area. The Panel is concerned that excluding the Property would result in a fragmented ALR in this area and therefore does not find the Property to be suitable for exclusion.

[23] Although the Panel does not support the exclusion of the Property, the Panel does not oppose to the subdivision of the Property. The Panel finds the Property to be suitable for subdivision because of the limited agricultural capability of the Property and because of the Property is in an area of smaller lots.

[24] The Panel did not receive evidence or rationale regarding any economic, cultural and social values.

[25] The Panel gave consideration to regional and community planning objectives planning as required by s. 4.3(c). 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

[26] For the reasons given above, the Panel refuses the Proposal to exclude the 2.9 ha Property from the ALR.

[27] However, the Panel approves subdivision of the 2.9 ha Property into two lots of 1.51 ha and 1.95 ha.

[28] 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.

[29] 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.

[30] 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.

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

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



[33] This decision is recorded as Resolution #367/2016 and is released on November 8, 2016.

CERTIFICATION OF DECISION

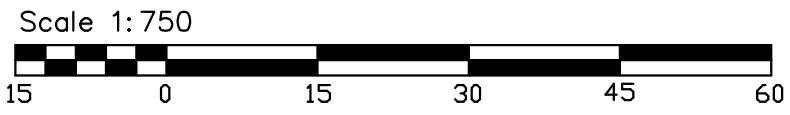
A handwritten signature in black ink, reading 'Sharon Mielnichuk', written in a cursive style.

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

END OF DOCUMENT

PLAN SHOWING PROPOSED SUBDIVISION
OF LOT 2 DL 7365 KD PLAN 1612,
EXCEPT PART INCLUDED IN PLAN 7152.

ALC Application 54986
Approved Subdivision
ALC Resolution #367/2016



LEGEND

Bearings are derived from Plan 7152.
All distances are in horizontal ground level metres.

- TP Septic test pit.
- ✕ Flagged Wood Stake placed.

H A R R O P P R O C T O R R O A D

