



**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

November 14, 2016

ALC File: 55032

Mark Kozielecki  
420 Bay Avenue  
Parksville, BC V9P 1E1

Dear Mr. Kozielecki:

**Re: Application to Conduct a Non-Farm Use the Agricultural Land Reserve (ALR)**

Please find attached the Reasons for Decision of the Island (Resolution #381/2016) as it relates to the above noted application. As agent, it is your responsibility to notify the applicants accordingly.

**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 Sara Huber at (sara.huber@gov.bc.ca).

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to be 'S. Huber', written in a cursive style.

Sara Huber, Land Use Planner

Enclosure: Reasons for Decision (Resolution #381/2016)

cc: Town of Qualicum Beach (File: memo.848FernRd.ALCApplication.April25.docx)

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## **AGRICULTURAL LAND COMMISSION FILE 55032**

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

**Application submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act***

**Applicant:**

**Mark Kozielecki  
(the “Applicant”)**

**Application before the Island Regional Panel:**

**Jennifer Dyson, Panel Chair  
Honey Forbes  
Clarke Gourlay**



## **THE APPLICATION**

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

Parcel Identifier: 003-262-022

Lot 4, Block 16, District Lot 78, Newcastle District, Plan 1694  
(the "Property")

[2] The Property is 2.2 ha in area.

[3] The Property has the civic address 848 Fern Road, Qualicum Beach, 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 1 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 20(3) of the *ALCA*, the Applicant is applying for a "garden suite" in lieu of a secondary suite (the "Proposal"). The Proposal along with supporting documentation is collectively the application (the "Application").

## **RELEVANT STATUTORY PROVISIONS**

[7] The Application was made pursuant to s.20(3) of the *ALCA*:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[8] The Panel considered the Application within the context of s. 6 of the *ALCA*:

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**

[9] 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 Applicant in advance of this decision.

[10] At its meeting of April 25, 2016, the Town of Qualicum Beach Council resolved:

*That the application to conduct a non-farm use activity within the ALR for 848 Fern Road East to proceed to the Agricultural Land Commission, subject to the registration of a restrictive covenant with the following conditions:*

- a. *the garden suite shall be a maximum front yard setback of 30m from the front lot line (Fern Road East); and,*
- b. *vehicular access from Fern Road East shall be limited to a single driveway.*

### **SITE VISIT**

[11] 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**

[12] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on BCLI map sheet 92F.038 and 92F.039 for the mapping units encompassing the Property are primarily Class 2A (10%), and Class 3A (40%) and Class 4P (40%).

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 P (stoniness), A (soil moisture deficiency-modified).

[13] Based on the agricultural capability as determined by the BCLI rating, The Panel finds that the Property has good agricultural capability and could support a wide range of crops.

[14] There is currently a 613 ft<sup>2</sup> cabin located on the Property. The Applicant is proposing to construct a single family dwelling and a garden suite, in addition to the existing cabin on the Property. In order for the number of dwellings to remain consistent with the *ALCA* and BC Regulation 210 Agricultural Land Reserve Use, Subdivision and Procedure Regulation (the "Regulation"), the existing cottage must be demolished, moved off the parcel, or made uninhabitable prior to occupancy of any new residence.

[15] In light of the lack of agricultural activity currently taking place on the Property, the Panel reviewed the Applicant's rationale for the Proposal for non-farm purposes:

*Our reasoning for this is primarily related to safety and privacy. Having a detached dwelling affords extra safety as any incidents relating to fire, flooding etc. can be contained to the dwelling in which it happens, thereby not affecting the other occupants. As far as privacy is concerned, not sharing common walls, ceiling, etc., allows for a more comfortable living environment for both the owner and the tenant.*

[16] The Panel believes that the residential situation should reflect the agricultural needs of a particular property. Based on the information provided, the Panel does not believe that there is an agricultural rationale to warrant an additional dwelling on the Property.

[17] The Panel considered the construction of the proposed garden suite for non-farm purposes and finds that s. 3(1)(b) of the Regulation provides opportunities to accommodate up to three residential uses without the necessity to construct an additional permanent residence on the Property.

*3 (1) The following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by law of the applicable treaty first nation government:*

*(b) for a parcel located in Zone 1,*

*(i) one secondary suite within a single family dwelling, and*

*(ii) either*

*(A) one manufactured home, up to 9 m in width, for use by a member of the owner's immediate family, or*

*(B) accommodation that is constructed above an existing building on the farm and that has only a single level.*



**DECISION**

[18] For the reasons given above, the Island Panel refuses the Proposal.

[19] These are the unanimous reasons of the Island Panel of the Agricultural Land Commission.

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

[21] This decision is recorded as Resolution #381/2016 and is released on November 14, 2016.

**CERTIFICATION OF DECISION**

A handwritten signature in black ink, consisting of several overlapping loops and a long tail stroke.

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Jennifer Dyson, Panel Chair, on behalf of the Island Panel

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