



Agricultural Land Commission
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June 29, 2016

ALC File: 55184

DELIVERED VIA ELECTRONIC MAIL

Cam Mclvor
PO Box 494
Pemberton, BC V0N 2L0

Dear Mr. Mclvor

Re: Application to Conduct a Non-Farm Use in the Agricultural Land Reserve

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #241/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

Your attention is drawn 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.

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”. 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 should be directed to Liz Sutton at (Elizabeth.Sutton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosure: Reasons for Decision (Resolution #241/2016)

cc: Squamish-Lillooet Regional District – Attention: Kimberly Needham, via electronic mail

Village of Pemberton – Attention: Nikki Gilmore, via electronic mail

Huka Entertainment – Attention: David Buttrey, via electronic mail



AGRICULTURAL LAND COMMISSION FILE 55184

REASONS FOR DECISION OF THE SOUTH COAST PANEL

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

Applicants:

**Brenda Lynn McLeod
Marion Doreen Ayers
Garth Phare
Valerie Phare
(the “Applicants”)**

Agent:

**Cam McIvor
(the “Agent”)**

Application before the South Coast Regional Panel:

**William Zylmans, Panel Chair
Gordon McCallum
Satwinder Bains**



THE APPLICATION

[1] The legal descriptions of the properties involved in the application are:

Property 1

Parcel Identifier: 013-256-378

District Lot 213, Lillooet District, Except Plan 35687

("Property 1")

Property 2

Parcel Identifier: 009-810-382

Lot 11, District Lot 210, Lillooet District, Plan 1241

("Property 2")

(also collectively referred to hereafter as the "Properties")

[2] Property 1 is 84.7 ha in area and Property 2 is 4.1 ha in area.

[3] Property 1 has the civic address 1691 Sea to Sky Highway and Property 2 has the civic address 7312 MacRae Road, both in Pemberton.

[4] The Properties are located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Properties are located within Zone 1 as defined in s. 4.2 of the ALCA.

[6] Pursuant to s. 20(3) of the ALCA, the Applicants are applying to use the Properties as part of the Pemberton Music Festival (the "Festival"). More specifically, the Applicants are applying to use Property 1 for parking and Property 2 for staff camping (the "Proposal"). The Proposal along with supporting documentation is collectively referred to hereafter as 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, including, but not limited to:

The report with the title *1691 Sea to Sky Highway and 7312 Macrae Road Pemberton BC Agrologist Report* prepared by Stewart Brown, M.Sc., P.Ag., R.P.Bio., and Ned Pottinger, M.Sc., P.Geo., P.Ag., of PGL Environmental Consultants dated April 2016, and

The letter with the title *RE: Response to Squamish Lillooet Regional District Comments* prepared by Stewart Brown, M.Sc., P.Ag., R.P.Bio., and Ned Pottinger, M.Sc., P.Geo., P.Ag., of PGL Environmental Consultants dated May 13, 2016.

- (collectively referred to hereafter as the “P.Ag. Reports”);
2. Local government documents;
 3. Submissions from third parties of which disclosure was made to the Agent;
 4. Previous application history;
 5. Letter from the Village of Pemberton (the “Village”) dated May 27, 2016;
 6. Additional submissions provided by the Agent on June 14, 2016; and
 7. Agricultural capability map, ALR context map and satellite imagery.

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

[10] The Squamish-Lillooet Regional District (the “Regional District”) resolved to forward the Application to the Commission subject to a number of conditions.

[11] The Panel reviewed two (2) previous applications involving the Festival:

Application ID: 52853
(2012)

In 2012, the Commission considered an application advanced by the Village on behalf of multiple land owners to use three (3) properties as the site for the Festival. The proposal involved approximately 78.6 ha of land in the ALR. The Commission, by the decision recorded as Resolution #327/2012, approved the first year of the Festival subject to a number of conditions, including, but not limited to, the execution of a memorandum of understand (the “MOU”) which outlined “the expectations, roles and responsibilities of each party as they relate to the Festival; as well as a commitment to identify opportunities to meaningfully enhance agriculture in the region and to facilitate the enhancement.” The Commission also stated that it would “consider the request for future events after it evaluates the outcome of the 2013 Festival and receives an executed memorandum of understanding it considers acceptable”.

Request for
Reconsideration

Shortly after the decision recorded as Resolution #327/2012 was made by the Commission, a request for reconsideration was received from the Village with respect to Application ID 52853. Generally, the request for reconsideration from the Village was regarding clarification of some matters addressed in the decision recorded as Resolution #327/2012. The Commission, by the decision recorded as Resolution #395/2012, made two (2) minor amendments to the decision as per Resolution #327/2012, clarified and confirmed two (2) additional matters related to the decision as per Resolution #327/2012 and further confirmed that the Village had satisfied a number of conditions identified in the decision as per Resolution #327/2012.

One of the two (2) clarifications provided in the decision recorded as Resolution #395/2012 stated, in part:

[I]t should be noted that the Commission will conduct a performance evaluation and impact assessment of the land following each festival, hence the need for the involvement of a Professional Agrologist. If at any point, the Commission determines there to be a substantial lack of performance and/or believes the agricultural quality of the land has been compromised, it will be compelled to re-assess the appropriateness of subsequent festivals. The ability to continue holding festivals as approved by the Commission is completely dependent on the adherence to the conditions of approval contained in Resolution #327/2012, and as amended herein, and provided the agricultural capability of the land is maintained.



Application ID: 53089
(2013)

In 2013, the Commission considered an additional application with respect to the Festival. The proposal involved two (2) properties that would be used for event camping in conjunction with the Festival as approved by the decisions recorded as Resolutions #327/2012 and #395/2012. The two (2) properties in question were within the District and as a result required a separate application from Application ID 52853. However, the Village was acting as agent on behalf of the land owners associated with Application ID 53089. The Commission, by the decision recorded as Resolution #259/2013, approved the application subject to the conditions outlined in the decisions recorded as Resolutions #327/2012 and #395/2012.

(the decisions of the Commission recorded as Resolutions #327/2012, #395/2012 and #259/2013 are collectively referred to hereafter as the “Previous Decisions of the Commission”)

SITE VISIT

[12] The Panel, in the circumstances of the Application, did not consider it necessary to conduct a site visit to the Properties based on the evidentiary record associated with the Application.

FINDINGS

[13] 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 92J/07 for the mapping units encompassing the Properties are Class 1 and Class 2. More specifically, Property 1 has the improved capability rating ([8:1 – 2:2W]) and Property 2 has the improved capability rating (8:2M – 2:1).

Class 1 - land is capable of producing the very widest range of crops. Soil and climate conditions are optimum, resulting in easy management.

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.

The limiting subclasses associated with these parcels of land are M (moisture deficiency (droughtiness)) and W (excess water).

In this regard, the Panel finds that the land making up the Properties is capable of supporting agriculture and is appropriately designated within the ALR.

[14] In addition to the CLI information, the Panel considered the P.Ag. Reports. The P.Ag. Reports generally confirm the CLI information with respect to the agricultural capability of the Properties. The P.Ag. Reports also provide information with respect to the potential impacts of the Proposal on the future agricultural use of the Properties. Based on the P.Ag. Reports as well as the previous editions of the Festival, the Panel finds that the Properties could be used in conjunction with the Festival without presenting a significant risk the future agricultural capability of the Properties.

[15] Although some of the land associated with the Proposal has historically been cleared for agriculture and used for agricultural production, the southern portion of Property 1 was cleared for agricultural use, in part, as a result of the Festival. The Panel finds that the large area of cleared land presents an improvement to the agricultural utility of Property 1 and that this may not have occurred in the short term without the support of the Festival.

[16] The Panel is cognisant of the Previous Decisions of the Commission with respect to the Festival and is in general concurrence with the objectives of the Commission in approving the Festival as it relates to supporting agriculture in the Pemberton Valley while also supporting a land use that is being pursued by the Village and Regional District as beneficial for the community in general.

- [17] On May 17, 2016, the Panel communicated a number of items to the Village. The Village provided a response in this regard by letter dated May 27, 2016. The Village has outlined a number of policies that have been adopted with respect to agriculture in the Village and the Pemberton Valley more generally. However, the only direct infrastructure related to agricultural production appears to be primarily focused on Property 1 and the Festival properties more generally. The Panel is supportive of the work done by the Village with respect to the agricultural objectives outlined in the May 27, 2016 letter. However, the Panel finds that the agricultural enhancements are not sufficient with respect to the understanding that the Panel has in this regard based on the Previous Decisions of the Commission and the MOU.
- [18] The Panel takes the position that meaningful agricultural enhancements would be infrastructure related to agricultural production, such as drainage, irrigation, dyking, ditching, etc. These enhancements should impact as large an area as possible and should extend beyond the Festival sites, potentially including, but certainly not limited to, the Properties. The Panel finds that these enhancements should be led by the Village with input and support from the Regional District and the Commission. The implementation of such enhancement(s) would be either implemented by the Festival organizers, or, more likely, funded by the Festival as outlined in the May 27, 2016 letter from the Village that identified funds created as a result of the Festival. Furthermore, the Panel finds that substantive steps with respect to identifying, planning and implementing, if possible, agricultural infrastructure must be accomplished before the 2017 edition of the Festival.
- [19] The Panel understands that achieving large scale agricultural enhancements in the Pemberton Valley will require an ongoing willingness by the Village and the Regional District to work collaboratively. However, this collaboration is paramount for the success of the Festival more generally and to ensure that compliance with the Previous Decisions of the Commission is maintained at all times.



[20] One of the conditions of approval outlined in the decision recorded as Resolution #327/2012 states that:

The proposed uses are restricted to areas of the [Festival site]. Satellite parking facilities and other amenities associated with the event are strictly prohibited on other ALR lands.

Furthermore, the MOU states that:

The [Village and Regional District], with the support of the Commission, will ensure that the Festival does not significantly impact the agricultural use of ALR lands adjacent to or near the Festival Site. The Village will ensure that ALR lands, not associated with the Festival and within jurisdiction of the Village, are not used in a manner inconsistent with the ALCA during the Festival.

The Panel is of the opinion that the Commission was not necessarily supportive of the Festival expanding beyond the area that was considered as part of the Previous Decisions of the Commission. However, the Panel understands that expanding the Festival should allow for more effective operation of the Festival which should aid in achieving compliance with the Previous Decisions of the Commission. Despite the Panel's positions with respect to the Proposal, the Panel is concerned that the Application may encourage further consideration to expand the Festival, either by the Village, Regional District, Festival organizers and/or individual land owners and the Panel does not agree that this is warranted or appropriate. With respect to this concern, the Village stated although it supports the Application this "is not to say that the [Village] is carte blanche supportive of any and all future requests for Non-Farm Use applications to expand the Festival's operations into lands within the ALR."

[21] The Panel finds that the current size of the Festival combined with the areas identified in the Application are more than adequate. The Village, Regional District and Festival organizers are strongly encouraged to consider reconfiguring the Festival layout and the number of participants before approaching the Commission with any future request to

further expand the Festival. Furthermore, any future request to further expand the Festival site would cause the Panel to question the appropriateness of continuing the Festival more generally as further expansion would continue to encroach onto ALR land.

[22] The Village must continue to provide appropriate oversight for the Festival. The Previous Decisions of the Commission state that the approvals “are for the sole benefit of the Village and are not transferrable.” Although neither the Commission nor the Panel are concerned about the use of a third party Festival organizer, the Village must remain responsible for the general administration of the Festival as it related to the Previous Decisions of the Commission. As stated in the MOU, the role of the Village in this regard will be achieved in concert with the Regional District and with the support of the Commission but the responsibility rests primarily with the Village.

[23] As noted at paragraph [11], the Festival is subject to ongoing performance evaluations and impact assessments. Although the Panel finds that the Festival has successfully maintained and, in some instances, improved the agricultural capability of the land used by the Festival to date, the performance of the Festival extends beyond the land used for the Festival. In this regard, the Panel finds that an extensive review of the Festival is warranted in advance of the 2017 edition of the Festival especially in light of the Proposal. This may include Commission Compliance and Enforcement staff attending parts of the Festival site or the Pemberton Valley more generally during the Festival.

[24] A number of issues related to the operation of the Festival on the Properties have been raised by area residents. Although these concerns should not be discounted, the Panel finds that the matters that fall within the purview of the *ALCA* are properly addressed in the Application and/or managed by suitable conditions. However, the Panel points to s. 31 of the *ALCA*, that states:

It is a condition of permission granted under section 25(1)(b) or (c), 29(1) or 30(2)(b) or (c) that the owner or occupier must comply with applicable Acts, regulations, bylaws

of the local government, laws of the first nation government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

DECISION

[25] For the reasons given above, the Panel approves the Proposal to use Property 1 for parking and Property 2 for staff camping in conjunction with the Festival.

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

- a. The use of the Properties must be in substantial compliance with the information submitted with the Application;
- b. In advance of the 2016 edition of the Festival, the submission of a detailed plan for the entire Festival site that includes areas, locations and specific Festival uses for each property, including all access paths and roads. Should the Festival layout change between subsequent editions of the Festival, the Commission must be provided an updated plan. Any change to the plan must be in substantial compliance with the Previous Decisions of the Commission and the information submitted with the Application;
- c. The required financial security is increased to \$500,000. The financial security, in the form of an Irrevocable Letter of Credit (the "ILOC"), must be posted with the Minister of Finance, in favour of the Provincial Agricultural Land Commission. The ILOC must be received by the Commission no later than 30 days prior to the Festival;
- d. The MOU must be updated to reflect the use of the Properties as part of the Festival site;
- e. The continued submission of a closure report within 30 days following the last day of the Festival. The closure report must be prepared by a qualified registered professional Agrologist specializing in soil reclamation and must confirm the post-event clean-up has been successfully completed to an agricultural standard. Upon receipt of the closure report, the Commission will release the ILOC for that year's edition of the Festival, if appropriate;

- f. The closure report may include the required pre-event plan for the following edition of the Festival. However, should anything occur that would impact the pre-event plan between the submission of the closure report and the following edition of the Festival, the qualified registered professional Agrologist must provide an addendum to the closure report identifying any required measures or changes;
- g. The properties used by the Festival must be actively farmed, to the extent possible, during the remainder of the year and information in this regard should be included for each property used by the Festival in the annual closure report;
- h. Any internal roads on the properties used by the Festival, in particular the Properties, must be constructed in a manner that can be readily reclaimed by the Festival and/or the land owners should they no longer be required. Information in this regard must be included in the closure report;
- i. Appropriate temporary fencing must be installed in advance of the Festival and maintained throughout the Festival to ensure attendees are contained to only the approved locations on the properties approved for the Festival;
- j. The Village, with input from the Regional District, must submit a preliminary plan identifying agricultural enhancement opportunities in the Pemberton Valley by October 31, 2016 for review, comment and approval, if applicable, by the Commission;
- k. The Village, with input from the Regional District, must provide updates every six (6) months with respect to the status of the planning and implementation of any agricultural enhancements in the Pemberton Valley that have been supported by the Commission in conjunction with the Festival;
- l. All documentation with respect to the 2016 edition of the Festival must be submitted by October 31, 2016 to enable a review of the Festival in advance of the 2017 edition of the Festival; and
- m. The Proposal is subject to all the conditions identified in the Previous Decisions of the Commission (Resolutions #327/2012, #395/2012 and #259/2013), except as amended herein.

[27] 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.

[28] The Panel hereby instructs staff to refer this decision and the matter of the Festival more generally to Commission Compliance and Enforcement staff to review this matter and coordinate with the Village and Regional District to prepare a report with respect to the 2016 edition of the Festival. This should include the properties used by the Festival as well as properties in the vicinity of the Festival site and the Pemberton Valley more generally.

[29] Panel Chair **William Zylmans** concurs with the decision.

Commissioner **Gordon McCallum** concurs with the decision.

Commissioner **Satwinder Bains** concurs with the decision.

[30] Decision recorded as Resolution #241/2016.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *ALCA*.

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #241/2016. The decision is effective upon release.



Colin J. Fry, Director of Policy and Planning

June 29, 2016
Date Released