



Agricultural Land Commission
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November 24, 2016

ALC File: 55422

Hugh Buckley
10081 Waneta Nelway Road
Trail, BC V1R 4X7

Dear Mr. Buckley:

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

Please find attached the Reasons for Decision of the Kootenay Panel (Resolution # 399/2016) as it relates to the above noted application. A sketch plan depicting the decision has been attached. As agent, it is your responsibility to notify the applicant accordingly.

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.

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*.

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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 "Ric Peggi", written in a cursive style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #399/2016)
Sketch plan

cc: Kootenay-Boundary Regional District (File: A-3617-00619-100, A-3617-00619.002)

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AGRICULTURAL LAND COMMISSION FILE 55422

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant: **Shirley Buckley**
(the “Applicant”)

Agent: **Hugh Buckley**
(the “Agent”)

Application before the Kootenay Regional Panel: **Sharon Mielnichuk, Panel Chair**
Harvey Bombardier
Ian Knudsen



THE APPLICATION

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

Property 1

Parcel Identifier: 027-514-277

Lot A, District Lot 3617, Kootenay District Plan NEP86632

Area: 28.5 ha (21.2 ha in ALR)

Property 2

Parcel Identifier: 027-514-285

Lot B, District Lot 3617 and Township 7A, Kootenay District Plan NEP86632

Area: 35.7 ha

(collectively the “Properties”)

[2] The Properties have the civic address 10081 Waneta Nelway Road, Trail.

[3] Property 1 is located partially within a designated agricultural land reserve (“ALR”) as defined in s. 1 of the *Agricultural Land Commission Act* (the “ALCA”). Property 2 is located wholly within a designated ALR.

[4] The Properties are located within Zone 2 as defined in s. 4.2 of the *ALCA*.

[5] Pursuant to s. 21(2) of the *ALCA* the Applicants are applying to adjust the boundaries between Property 1 and Property 2 to create a 60.8 ha parcel (“Proposed Lot 1”) and a 3.4 (“Proposed Lot 2”) ha parcel, the smaller of which would be used to build a dwelling for retirement purposes (the “Proposal”). The Proposal along with supporting documentation is collectively the “Application”.



RELEVANT STATUTORY PROVISIONS

[6] 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.

[7] 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.

[8] The purposes of the Agricultural Land Commission (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

[9] The Panel considered the following evidence:

1. The Application
2. Local government documents

3. Previous applications
4. Agricultural capability map, ALR context map, and satellite imagery

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

[10] At its meeting of July 5, 2016, the Kootenay-Boundary Regional District (the “RDKB”) resolved that the Application be forwarded to the Commission with a recommendation of support.

[11] The Panel reviewed one previous application involving the Properties:

Application ID: 27663
Legacy File: 10748
(Buckley, 1980)

To subdivide the 52.6 ha subject property (of which 44.5 ha is in the ALR) into 2 parcels of 8 ha and 44.6 ha (8 ha and 36.5 ha in the ALR). The Commission found that proposal would alienate 8 ha of good agricultural land from the farm unit. The application was refused by ALC Resolution #1358/1980.

Note: The Panel did not find the application to be relevant to the current Proposal and as such did not consider it in their deliberations.

[12] The Panel was provided three applications relating to the application:

Application ID: 1474
Legacy File: 27653
(Cowell, 1993)

To adjust the boundary between a 0.8 ha and 6.5 ha property in order to accommodate the encroachment of an existing pool. Approximately 0.04 ha would be added to the 6.47 ha property. The application was approved by ALC Resolution #444/1993.

Note: Application 1474 was located on the property adjacent to the south boundary of the Property.



Application ID: 12565
Legacy File: 23221
(Sorensen, Tennant, & Cimolai,
1989)

To subdivide the 102 ha subject property (58.6 ha is within the ALR) into 4 lots of 23 ha, 24 ha, 26 ha, and 29 ha. The proposed subdivision would create roughly 4 lots of 22.2 ha, 1.5 ha, 14.4 ha, and 20.5 ha in the ALR. The Commission wanted the ALR portion of the property to remain intact and noted that sufficient land was located outside of the ALR that would permit 4 parcels that comply with local zoning. The application was refused by ALC Resolution #471/1989.

Note: Application 12565 was located on the property adjacent to the east boundary of the Property.

Application ID: 12564
Legacy File: 18741
(Tennant & Sorensen, 1984)

To subdivide the 102 ha subject property (58.6 ha is within the ALR) into 4 lots of approx. 25.5 ha to accommodate each owner. The proposed subdivision would create roughly 3 lots of 21.6 ha, 27.1 ha, and 9.9 ha in the ALR. The Panel found that the subdivision would parcelize the ALR portion of the property which has good agricultural capability. The application was refused by ALC Resolution #16/1985.

Note: Application 12564 was located on the property adjacent to the east boundary of the Property.

Note: The Panel did not find the applications in paragraph 12 to be relevant to the current Proposal and as such did not consider them in their deliberations.

SITE VISIT

[13] 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**Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture**

[15] 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/4 for the mapping units encompassing the Properties are approximately 70% Class 3MT, 25% (7:6RT – 3:7R), and 5% Class 3M.

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.

Class 7 - land has no capability for soil bound agriculture.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), R (bedrock near the surface), and T (topographic limitations).

The Panel reviewed the CLI ratings and finds that the majority of Property 1 and Property 2 are rated as being improvable to Class 3 and are therefore capable and suitable for agriculture. The remainder of Property 1 and Property 2 contains a topographic break and is contained within a mapping unit rated as Class 6 and Class 7.

[16] The Panel noted that there is a topographic break on Property 1 in the form of a steep slope. The Panel finds that the topographic break alienates the proposed 3.4 ha parcel (Proposed Lot 2) from the remainder of the property (Proposed Lot 1) and that the topographic break creates a natural boundary which aligns with the proposed boundary adjustment.

[17] The Panel noted that the proposed boundary adjustment would not create any new parcels and would result in a 60.8 ha parcel (Proposed Lot 1) with more area available for use as rangeland. The Panel finds that Property 1 would not be losing any arable land due to the steep topography and that the remaining 3.4 ha parcel (Proposed Lot 2) would still be of a sufficient size for agricultural production.

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

[18] The Applicant 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

[19] Panel did not find any rationale regarding regional or community planning objectives to be pertinent to the Application.

Weighing the factors in priority

[20] The Panel determines that the proposed subdivision will not have a negative impact on the viability of current or future agricultural operations on either parcel as Proposed Lot 2 will not be losing any arable land due to the steep topography, and Proposed Lot 1 will have more area available for rangeland. In addition, the Panel believes that the 3.4 ha Proposed Lot 2 lot is of a sufficient size to support a small viable agricultural operation.

[21] The Applicant did not provide arguments for the consideration of economic, social, and cultural values, and regional and community planning objectives as required by s. 4.3. In

this case, the Panel based its decision given the Panel's finding following its review of the agricultural considerations.

DECISION

[22] For the reasons given above, the Panel approves the Proposal to adjust the boundaries between Property 1 and Property 2 to create a 60.8 ha parcel and a 3.4 ha parcel.

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

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

[24] 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.

[25] 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.

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

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



[28] This decision is recorded as Resolution #399/2016 and is released on November 24, 2016.

CERTIFICATION OF DECISION

A handwritten signature in black ink, reading 'Sharon Mielnichuk', written in a cursive style. The signature is positioned above a horizontal line.

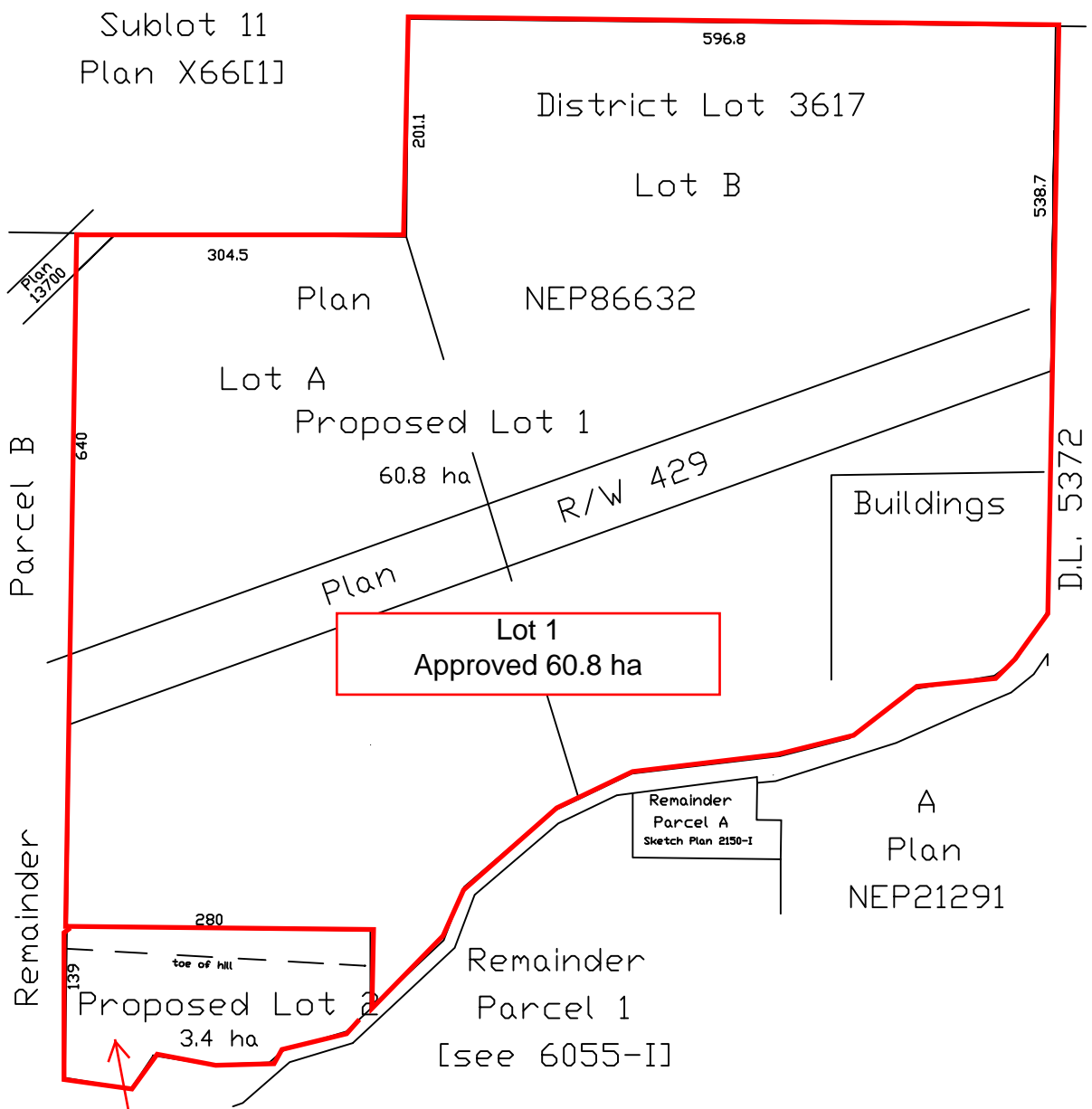
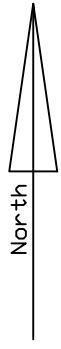
Sharon Mielnichuk, Panel Chair, on behalf of the Kootenay Panel

END OF DOCUMENT

ALC #55422 (Buckley)
Conditionally Approved Subdivision
ALC Resolution #399/2016

PLAN

Of Proposed Subdivision
Lot A & Lot B Plan NEP86632
District Lot 3617
Kootenay District
Tp 7A



Lot 1
Approved 60.8 ha

Lot 2
Approved 3.4 ha

Note Dimensions are in meters