



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

December 19th, 2016

ALC File: 55596

Brian Smith
1053 Stewart Road,
Gibsons, BC V0N 1V7

Dear Mr. Smith:

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

Please find attached the Reasons for Decision of the South Coast Panel (Resolution #437/2016) as it relates to the above noted application.

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 Kelsey-Rae Russell at KelseyRae.Russell@gov.bc.ca.

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "Kelsey-Rae Russell".

Kelsey-Rae Russell , Land Use Planner

Enclosure: Reasons for Decision (Resolution #437/2016)

cc: Local Government (File: F-49)

555961



AGRICULTURAL LAND COMMISSION FILE 55596

REASONS FOR DECISION OF THE SOUTH COAST PANEL

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

Applicant: **Persephone Brewing Company Inc.**
(the “Applicant”)

Agent: **Brian Smith**
(the “Agent”)

Application before the South Coast Regional Panel: **William Zylmans, Panel Chair**
Gordon McCallum

THE APPLICATION

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

Parcel Identifier: 019-112-076
Lot A, District Lot 914, Plan LMP20836
(the “Property”)

[2] The Property is 4.6 ha in area.

[3] The Property has the civic address 1053 Stewart Road, Gibsons, 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 Applicants are applying to continue to operate Persephone Brewing which includes a tasting room, food truck and outdoor seating areas (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.

The Panel considered the Application within the context of s. 6 of the ALCA. 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

[8]The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Public comments from third parties of which disclosure was made to the Agent
4. Agricultural capability map, ALR context map and satellite imagery
5. Site Visit Report
6. October 2014 correspondence between the Agent and ALC Staff

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

[9] At its meeting of June 23rd, 2016, the Sunshine Coast Regional District resolved that the application should be approved and forwarded to the Commission for consideration.

SITE VISIT

[10] On November 1st, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[11] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications*. The site visit report was certified as accurately reflecting the

observations and discussions of the Site Visit by Brian Smith on November 7th, 2016 (the “Site Visit Report”).

FINDINGS

[12] 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 92G/5 for the mapping units encompassing the Property are Class 4 and Class 5, more specifically 70% 4MP and 30% 5MP.

Class 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

Class 5 - land is capable of production of cultivated perennial forage crops and specially adapted crops. Soil and/or climate conditions severely limit capability.

The limiting subclasses associated with this parcel of land are M (moisture deficiency) and P (stoniness).

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.

[13] The Applicant has been in operation since 2013, which pre-dates the inclusion of breweries as a permitted farm use in BC. Regulation 171/2002 Agricultural Land Reserve Use, Subdivision and Procedure Regulation in June 2015. Prior to the inclusion of breweries into the Regulation, the Commission has consistently informed local governments and landowners that breweries were not expressly permitted by the Regulation.

[14] In June 2015, the Regulation was amended to include breweries as a designated farm use pursuant to s. 2(2.3) which states:

s. 2. (2.3) A brewery, distillery or meadery, and ancillary uses, are designated as farm uses for the purposes of the Act if at least 50% of the farm product used to make the beer, spirits or mead produced each year is grown on the farm on which that brewery, distillery or meadery is located.

[15] The Application states that they currently grow hops on the Property which are used in the brewing process and that all of the barley used for the brewery is sourced from other locations not associated with the farm. ALC Policy L-21 *Activities Designated as Farm Use: Brewery, Distillery and Meadery in the ALR* clarifies that for beer, the farm product used to calculate the 50% farm product is grain and not hops due to the (small) quantities of hops involved in the beer making process. As the Applicant does not produce at least 50% of the farm product used to make the beer on the farm on which the brewery is located, the Panel finds that the existing brewery has historically been, and is currently operated in contravention of the ALCA and Regulation.

[16] The Panel has been put in a difficult position whereby the proposed non-farm use, is in fact, an existing non-farm use. In a situation where the Panel must retroactively consider a non-farm use, the Panel must give consideration as to whether or not it would have allowed the proposed use if the contravention had not taken place. The Panel considered the proposal to operate a brewery on the Property which sources all of the barley used for the beer from other locations. The Panel finds that the brewery as currently operated is a non-farm processing facility and therefore could be located outside of the ALR.

[17] The Agent stated during the Site Visit that Persephone Brewing is in the process of expanding its operations onto industrially zoned land. For this reason, the Panel supports the relocation of the brewery as currently operated, to more appropriately zoned land outside of the ALR.

[18] At the time of the Site Visit, the Panel observed that there was a grain silo to be used for barley storage awaiting installation on the Property. By way of submitting the Application, the Applicant was aware that the Proposal is a non-farm use which may or may not be approved. The Panel understands that the Applicant has invested a substantial amount of

capital into Persephone Brewing; however, the Applicant has continued to operate, expand, and invest in the brewery facility prior to receiving a decision from the Commission. In order to provide the Applicant with a reasonable amount of time to relocate their business, the Commission will defer enforcement actions against the contravention for a period of two (2) years from the date of the release of this decision. The Applicant must demonstrate compliance with the *ALCA* and Regulation or relocate to lands outside of the ALR at the end of this two year period.

DECISION

[19] For the reasons given above, the Panel refuses the Proposal to continue to operate Persephone Brewing which includes a tasting room, food truck and outdoor seating areas associated with the brewery.

[20] These are the unanimous reasons of the South Coast Panel of the Agricultural Land Commission.

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

[22] This decision is recorded as Resolution #437/2016 and is released on December 19th, 2016.

CERTIFICATION OF DECISION

William Zylmans, Panel Chair, on behalf of the South Coast Panel

END OF DOCUMENT