



**Agricultural Land Commission**  
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February 27, 2017

ALC File: #54348  
Your File: 16604 – North  
Courtenay Connector

Ministry of Transportation and Infrastructure  
310-1500 Woolridge Street  
Coquitlam BC V3K 0B8

Attention: James Loewen

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #36/2017) 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.

**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](mailto:Sara.Huber@gov.bc.ca)).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to be 'Sara Huber', with a stylized, cursive script.

Sara Huber, Land Use Planner

Enclosures: Reasons for Decision (Resolution #36/2017)  
Sketch plan

cc: Comox Valley Regional District (File: 16604-North Courtenay Connector)  
City of Courtenay

54348d2



## **AGRICULTURAL LAND COMMISSION FILE 54348**

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

**Application was submitted pursuant s. 6 of BC Regulation 171/2002 (ALR Use, Subdivision and Procedure Regulation)**

**Request for Reconsideration submitted pursuant to s. 33(1) of the *Agricultural Land Commission Act***

**Applicant:** Ministry of Transportation and  
Infrastructure  
(the “Applicant”)

**Agent:** James Loewen  
(the “Agent”)

**Application before the Island Regional Panel:** Linda Michaluk, Panel Chair  
Honey Forbes  
Clarke Gourlay



## **THE APPLICATION**

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

### Property 1

Parcel Identifier: 009-519-700

Section 40, Comox District Except That Part Shown Outlined in Red on Plan

Deposited Under DD 18633F and Except That Part Included Within Plan Deposited  
Under DD 18632F

Area: 2.2 ha

Location: 3270 Dove Creek Road, Courtenay BC

### Property 2

Parcel Identifier: 000-913-375

Lot A, Section 21, Comox District, Plan 25680

Area: 21.8 ha

Location: 3120 Dove Creek Road, Courtenay BC

### Property 3

Parcel Identifier: 009-516-662

Parcel A (DD 24949N) of Section 21, Comox District, Except That Part in Plans  
17006 and 25680

Area: 25.5 ha

Location: 4943 Topland Road, Courtenay BC

### Property 4

Parcel Identifier: 009-518-002

That Part of Section 40, Comox District Shown Outlined in Red on Plan Deposited  
Under DD 18633F

Area: 22.3 ha

Location: 3207 Dove Creek Road, Courtenay BC



Property 5

Parcel Identifier: 004-517-563

Lot 3, Section 45, Comox District, Plan 13392

Area: 4.3 ha

Location: Dove Creek Road off of Headquarters Road

(collectively the “Properties”)

[2] Property 1 and 2 were considered under Resolution #3/2016. Property 2 is not impacted by the reconsideration. Properties 3, 4, and 5, have been added for consideration as part of the reconsideration request.

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

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

[5] Pursuant to s. 6 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (the “Regulation”), the Ministry of Transportation and Infrastructure (MoTI) applied to utilize 2.95 ha in order to realign Dove Creek Road between Piercy Road and Headquarters Road. The proposed road right-of-way is two lanes to a maximum of 55 metres wide, and an average of 3 to 4 metres high. The realignment would be known as the North Courtenay Connector. The North Courtenay Connector is proposed for two main reasons:

- i. To replace the existing Reese Bridge over the Tsolum River which does not meet current standards, and;
- ii. To provide a more direct route to the new Comox Valley Hospital located at 101 Lerwick Road, Courtenay.

(the “Proposal”)



The Proposal along with supporting documentation is collectively the “Application”.

- [6] By Resolution #3/2016 dated January 7, 2016, the Island Panel approved the Proposal (the “Original Decision”). In reaching its decision, the Island Panel concluded:

*Despite consideration of the good agricultural capability of the Properties, the Panel understands that the right-of-way is proposed to improve infrastructure safety and to better accommodate emergency services in the Courtenay area.*

- [7] Following the release of the Original Decision, the Commission was contacted by Darren Englund, Senior Project Manager at MoTI, to advise that additional properties will be impacted by the North Courtenay Project which were not considered in the Original Decision in part due to a minor change in the proposed alignment (Property 1 and 5) and the inadvertent omission of three properties (Property 3 and 4) from the Application. The current total impact of the Proposal on the Properties is  $\pm 0.9$  ha and is apportioned as follows:

Property 1

Area affected: 0.6 ha

Property 2

Area affected: 0 ha

Property 3

Area affected: 0.1 ha

Property 4

Area affected: 0.1 ha

The portion of Dove Creek Road south of Percy Road ( $\pm 0.8$  ha) and the portion of Property 1 south of the right-of-way ( $\pm 0.7$  ha) are to be closed and consolidated with Property 4 (increasing the area of Property 4 by  $\pm 1.5$  ha).

Property 5

Area affected: 0.08 ha



[8] As a result, on October 26, 2016, the Agricultural Land Commission (the “Commission”) received the Applicant’s *Request for Reconsideration* of Resolution #3/2016.

### **RELEVANT STATUTORY PROVISIONS**

[9] The reconsideration request was submitted pursuant to s. 33 of the *ALCA* which states:

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.

[10] The purposes of the commission set out in s. 6 of the *ALCA* 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.

### **DELEGATION TO EXECUTIVE COMMITTEE**

[11] Resolution #029N/2014 of the ALC allows the delegation of certain reconsideration requests to the Executive Committee. The following is an excerpt from the resolution:

- A. The Agricultural Land Commission (the Commission) may, pursuant to s. 10(3) of the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36, as amended (*ALCA*), delegate any of the Commission’s functions to the Executive Committee.

- B. The Executive Committee is a standing committee of the Commission established under s. 10(1) of the *ALCA*, consisting of the Commission Chair and Vice Chairs.
- C. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to decide under s. 33 whether to reconsider an application decision made by a regional panel (following which, if the decision is to reconsider, the Commission Chair must under s. 11.1(3) of the *ALCA* refer the matter to the regional panel who made the decision).

[12] A meeting of the Executive Committee (the "Executive Committee") of the Commission was held on December 19, 2016 as it relates to the *Request for Reconsideration* of Application #54348. All members of the Executive Committee were in attendance.

[13] As per paragraph 11(C) above, the Executive Committee considered the *Request for Reconsideration* pursuant to s. 33(1) of the *ALCA* and determined that the submission contains evidence that was not available at the time of the Original Decision, and the information would have been germane to the review of the Application by the Island Panel.

[14] The Executive Committee concluded that the *Request for Reconsideration* meets the requirements for reconsideration pursuant to s. 33(1) of the *ALCA* and the request is therefore granted.

[15] Pursuant to s. 33(2) of the *ALCA*, the Executive Committee did not consider that there were any persons affected by the reconsideration.

[16] In accordance with s. 11.1(3) of the *ALCA*, the Chair of the Commission referred the *Request for Reconsideration* of the Original Decision to the Island Panel.

#### **EVIDENTIARY RECORD BEFORE THE PANEL**





[17] The Panel considered the following evidence:

1. All the documents contained in the Application file from August 10, 2015, being the date the Application was received by the Commission, to the date of Resolution #3/2016;
2. The Panel's decision recorded as Resolution #3/2016 and dated January 7, 2016; and
3. The Applicants' request for reconsideration dated October 26, 2016, received by the Commission on October 26, 2016.

All documentation noted herein has been disclosed to the Agent in advance of this decision.

## **FINDINGS**

[18] As part of the Proposal, the portion of Dove Creek Road south of Percy Road ( $\pm 0.8$  ha) and the portion of Property 1 south of the right-of-way ( $\pm 0.7$  ha) are to be closed and consolidated with Property 4. The Panel finds that the consolidation results in a net benefit to agriculture as it resolves the severing of the southern portion of Property 1 by the proposed right-of-way and adds land to Property 3, a property which is actively farmed.

[19] As described by the Applicant, the right-of-way to the west of the proposed cul-de-sac, following the northwestern boundary of Property 5, is to be retained as a maintenance access to the Tsolum River for the City of Courtenay.

[20] The portion of Dove Creek Road on the northwest boundary of Property 5 connecting to Reese Bridge is currently owned by MoTI, but is to be sold. The Comox Valley Regional District (CVRD) has expressed interest in obtaining this piece of land for the purpose of creating a recreational trail in the future. The Panel advises that this decision has no bearing on any future considerations of development of a recreational trail which would be considered on its own merits.



[21] The Panel finds that the impact on agriculture is minimal and the *Request for Reconsideration* proposes a minor variance from what was approved in Resolution #3/2016.

## **DECISION**

[22] For the reasons given above, the Panel approves the Proposal to utilize  $\pm 0.9$  ha across the four (4) Properties in order to realign Dove Creek Road between Piercy Road and Headquarters Road.

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

- a. Receipt and approval of a drainage, fencing, and buffering plan for adjacent agricultural lands;
- b. The preparation of a survey plan to delineate the rights-of-way areas per the plan attached to Resolution #36/2017;
- c. The survey plan being completed within three (3) years from the date of this decision; and
- d. Submission of two (2) paper copies or one (1) electronic copy of the final survey plan to the Commission.

[24] 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.

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

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

[27] This decision is recorded as Resolution #36/2017 and is released on February 27, 2017.



**CERTIFICATION OF DECISION**

A handwritten signature in black ink, appearing to read 'Linda Michaluk', is positioned above a horizontal line.

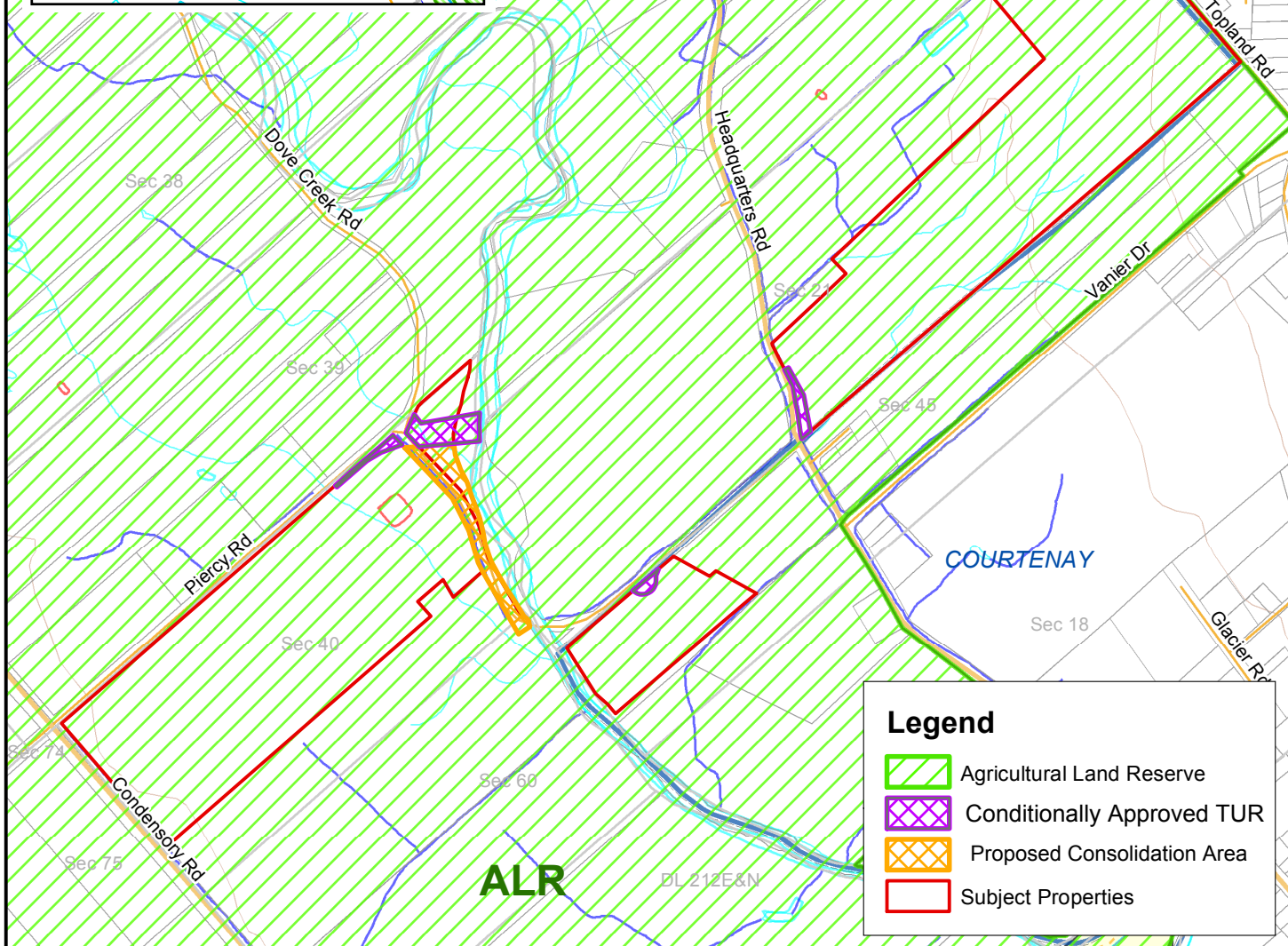
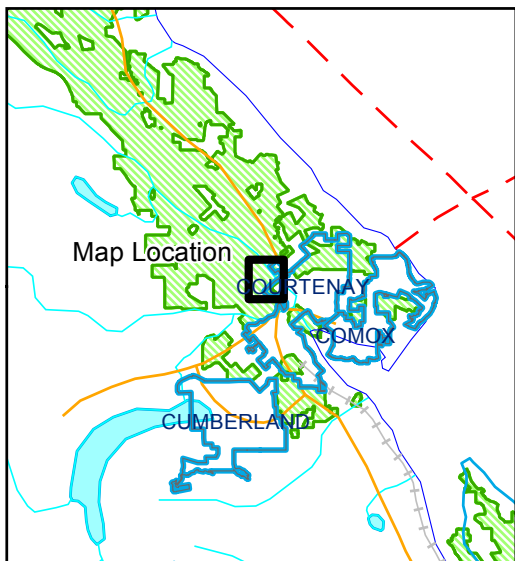
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Linda Michaluk, Panel Chair, on behalf of the Island Panel





**END OF DOCUMENT**

125°0'0"W

**ALC Application 54348 (MoTI)**  
**Conditionally Approved Transportation, Utility, Recreational**  
**Use (TUR)**  
**Resolution # 36/2017**



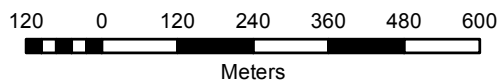
### Legend

-  Agricultural Land Reserve
-  Conditionally Approved TUR
-  Proposed Consolidation Area
-  Subject Properties



### ALR Context Map

Map Scale: 1:12,000



ALC File #: 54348  
 Mapsheet #: 92F.075 & 92F.076  
 Map Produced: January 27, 2017  
 Regional District: Comox Valley