



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

March 21, 2017

ALC File: 54641

Stephan Klafki
8450 Kaisner Road
Sparwood, BC V0B 2G3

Dear Mr. Klafki:

Re: Reconsideration of a Decision of the Kootenay Panel (Resolution #404/2016) by the Executive Committee of the Agricultural Land Commission

Please find attached the Reasons for Decision of the Executive Committee of the Agricultural Land Commission (Resolution #69/2017) as it relates to the above noted application.

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.

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

Riccardo Peggi, Land Use Planner

Enclosure: Reasons for Decision (Resolution #69/2017)

cc: Regional District of East Kootenay (File: P 715 126)



**AGRICULTURAL LAND COMMISSION FILE 54641
REASONS FOR DECISION OF THE EXECUTIVE COMMITTEE**

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

Reconsideration directed pursuant to s. 33.1 of the *Agricultural Land Act*

Applicants:

**Donald Jubinville
Elaine Jubinville
(the “Applicants”)**

Agent:

**Stephan Klafki
(the “Agent”)**

Application before the Executive Committee:

**Frank Leonard, Chair
Linda Michaluk, Island Panel
Dave Merz, North Panel
Gerry Zimmermann, Okanagan Panel
Richard Mumford, Interior Panel
Sharon Mielnichuk, Kootenay Panel
William Zylmans, South Coast Panel**

Attachments:

Exhibit A – Reasons for Decision of the Kootenay Panel, Resolution #404/2016

Exhibit B – Chair Referral of Resolution #404/2016 to Executive Committee for

Reconsideration, dated December 15, 2016



THE APPLICATION

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

Parcel Identifier: 016-449-347

The East ½ of the Northwest ¼ of District Lot 8450, Kootenay District, Except Part
included in SRW Plan 14540
(the “Property”)

[2] The Property is 31.9 ha in size and lies entirely within the ALR.

[3] The Property is located at 5683 Highway 43, between Sparwood and Elkford.

[4] Pursuant to s. 21(2) of the *ALCA* the Applicants are applying to subdivide a 2 ha parcel from the Property for family members (the “Proposal”). The Proposal along with supporting documentation is collectively (the “Application”).

[5] By Resolution #404/2016, dated November 28, 2016, the Kootenay Panel approved the Proposal (the “Original Decision”).

[6] On December 15, 2016, the Chair referred the Original Decision to the Executive Committee of the Commission for reconsideration under s. 33.1 of the *ALCA*.

EVIDENTIARY RECORD BEFORE THE EXECUTIVE COMMITTEE

[7] The Executive Committee considered the following evidence on this reconsideration:

1. All the documents contained in the Application file from February 17, 2016, being the date the Application was received by the Commission, to the date of Resolution #404/2016;
2. Agricultural capability map, ALR context map and satellite imagery;
3. Local government documents; and
4. Reasons for the decision of the Kootenay Panel – Resolution #404/2016.



FINDINGS OF THE MAJORITY OF THE EXECUTIVE COMMITTEE

[8] This section sets out the findings of Frank Leonard, Linda Michaluk, Gerry Zimmermann and Richard Mumford (the “the majority of the Executive Committee”).

Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture

[9] The majority of the Executive Committee concurs with the findings of the Panel that the Property has agricultural capability, having CLI Class 4 soils with a limitation of a combination of soil factors (X).

[10] The majority of the Executive Committee does not concur with the finding of the Panel that the Proposal will not have a negative effect on the agricultural use of the Property as it is presently operated as two distinct agricultural ventures. The majority of the Executive Committee does not find that two distinct agricultural ventures on one Property is justification for subdivision as both operations can operate on the same parcel.

[11] The majority of the Executive Committee considered the long-term implications of subdivision and finds that a 2.0 ha lot in this area would constitute a rural residential parcel in the midst of larger agricultural parcels. The majority of the Executive Committee considers that this situation would negatively affect farmland and provides no benefit to agriculture.

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

[12] The Application 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

[13] The majority of the Executive Committee notes that the minimum designation of the Property in the OCP and zoning is 8 ha and that the Applicants and local government referred to s. 514 (formerly section 946) of the *Local Government Act (LGA)* as a mechanism to subdivide the Property below the minimum lot size. The Commission recognizes s. 514 of the *LGA* as a tool available to local government to accommodate a subdivision for a relative where the proposed lot is smaller than the minimum lot size specified in a zoning bylaw. If a subdivision for a relative involves land in the ALR, the local government can only use s. 514 of the *LGA* if an application for subdivision has first been approved by the Commission under the *ALCA*. The Commission considers applications to subdivide ALR property in accordance with section 6 of the *ALCA* and, in Zone 2, section 4.3 of the *ALCA*.

Weighing the factors in priority

[14] The majority of the Executive Committee considers the Proposal to be inconsistent with the Commission's mandate to preserve agricultural land and encourage farming because it represents the creation of a separate residential lot and could result in future farm/residential conflicts.

[15] The majority of the Executive Committee finds that economic, social, cultural and community planning considerations do not outweigh the negative impacts of subdividing a 2.0 ha lot from the Property.

[16] The majority of the Executive Committee concludes that arguments based on section 514 of the *LGA* and provisions in the OCP and zoning which may permit subdivisions that are not consistent with the designated minimum parcel size of the Property do not supersede the *ALCA* or the purposes of the Commission as set out in section 6 of the Act.



DECISION OF THE MAJORITY

[17] For the reasons given above, the majority of the Executive Committee (comprised of Frank Leonard, Linda Michaluk, Gerry Zimmermann and Richard Mumford) reverses the decision of the Kootenay Panel recorded as Resolution #404/2016 and refuses the Proposal.

[18] A decision of the Executive Committee is a decision of the Commission pursuant to s. 10(3) of the *Agricultural Land Commission Act*.

DISSENTING REASONS

[19] This section sets out the dissenting reasons of Sharon Mielnichuk, Dave Merz and William Zylmans.

[20] Ms. Mielnichuk, Mr. Merz and Mr. Zylmans disagree with the majority's conclusions.

[21] Ms. Mielnichuk and Mr. Zylmans find that the proposed smaller parcel is topographically separated from the proposed remainder parcel and therefore would be more optimally operated as a separate parcel.

[22] Ms. Mielnichuk notes that both parcels would remain within the ALR therefore both parcels would be preserved for agricultural use and any non-farm uses would require further approval from the Commission.

[23] Mr. Merz finds the location of the proposed smaller lot would not negatively impact the agricultural production on the remainder of the Property. No new infrastructure such as an access road would be required for the proposed smaller lot given that it already has road access. Mr Merz finds that there should be no further development on the larger remainder parcel.

RESOLUTION AND RELEASE

[24] This decision is recorded as Resolution #69/2017 and is released on March 21, 2017.



CERTIFICATION OF DECISION

A handwritten signature in black ink, reading "Frank Leonard".

Frank Leonard, Chair (majority)

A handwritten signature in black ink, reading "R. Mumford".

Richard Mumford, Interior Panel (majority)

A handwritten signature in black ink, reading "Linda Michaluk".

Linda Michaluk, Island Panel (majority)

A handwritten signature in black ink, reading "G. Zimmermann".

Gerry Zimmermann, Okanagan Panel (majority)

A handwritten signature in black ink, reading "Dave Merz".

Dave Merz, North Panel (in dissent)

A handwritten signature in black ink, reading "W. Zylmans".

William Zylmans, South Coast Panel (in dissent)

A handwritten signature in black ink, reading "Sharon Mielnichuk".

Sharon Mielnichuk, Kootenay Panel (in dissent)

END OF DOCUMENT

Exhibit A



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 28, 2016

ALC File: 54641

Stephan Klafki
8450 Kaisner Road
Sparwood, BC V0B 2G3

Dear Mr. Klafki:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #404/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached. As agent, it is your responsibility to notify your clients 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.

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 'Riccardo Peggi', written in a cursive style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #404/2016)
Sketch plan

cc: Regional District of East Kootenay (File: P 715 126)

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AGRICULTURAL LAND COMMISSION FILE 54641

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicants:

**Donald Jubinville
Elaine Jubinville
(the “Applicants”)**

Agent:

**Stephan Klafki
(the “Agent”)**

Application before the Kootenay Regional Panel:

**Sharon Mielnichuk, Panel Chair
Harvey Bombardier
Ian Knudsen**



THE APPLICATION

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

Parcel Identifier: 016-449-347

The East ½ of the Northwest ¼ of District Lot 8450, Kootenay District, Except Part included in SRW Plan 14540.

(the “Property”)

[2] The Property is 31.9 ha in area.

[3] The Property is located at 5683 Highway 43, between Sparwood and Elkford.

[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 2 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 21(2) of the *ALCA* the Applicants are applying to subdivide a 2 ha parcel from the Property for family members (the “Proposal”). The Proposal along with supporting documentation is collectively (the “Application”).

RELEVANT STATUTORY PROVISIONS

[7] 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.

[8] 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.

[9] The purposes of 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

[10] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history
4. Agricultural capability map, ALR context map and satellite imagery

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

[11] The Panel reviewed two previous applications involving the Property:

Application ID: 53300
(Jubenville, 2014)

To use 0.43 ha of the Property to operate a crusher and a portable asphalt plant. The application was approved by Resolution #401/2013 and subject to the terms and conditions of Resolution #203/2013.



Application ID: 52704
(Jubenville, 2011)

Notice of Intent – To extract up to 300,000 m³ of gravel from an approximately 3 ha area of the Property. The application was approved for 7 years subject to terms and conditions. Resolution #203/2013.

SITE VISIT

[12] On June 23, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[13] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on August 3, 2016 (the “Site Visit Report”).

FINDINGS

Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture

[14] 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 rating identified on CLI map sheet 82G/15 for the mapping unit encompassing the Property is Class 4; more specifically (4X).

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

The limiting subclass associated with this parcel of land is X (combination of soil factors).

[15] The Panel reviewed the CLI ratings and the Site Visit Report and finds that the Property has moderate capability for agriculture.

[16] The Applicant provided the following rationale with regards to the Proposal supporting agriculture:

The proposal will support agriculture in both, short and long term. Currently the main parcel provides hay for the farm's livestock and for sale, along with a large family garden. The main parcel has previously run a small herd of cattle, along with chickens and depending upon market conditions will be considered again. The 2 ha lot will continue to be developed to support 2 horses and the raising of a few Steers (sic) yearly. The small field on the proposed 2 ha will be further developed to provide feed for the livestock.

The Panel finds that the subdivision will not have a negative effect on the agricultural use of the Property as it is presently operated as two distinct agricultural ventures.

- [17] The Application provided the following reasons with respect to the Property's suitability for subdivision:

The reasons the parcel is suitable for subdivision are as follows. The proposed 2 ha lot is a stand-alone area of the original 31 ha and does not contribute to the main parcel's farm use. The 2 ha area consists of a residence, outbuildings, garden, fenced livestock area, along with a small field. The proposed lot configuration would not affect the integrity of the main parcel as the 2 ha location is located in the NW corner of the parcel and has its own separate road access along with utilities.

The Panel finds that the proposed smaller lot is separated from the remainder of the Property and subdivision will not affect the agricultural use of either lot.

- [18] The Panel notes that a single family house currently exists in the area proposed to be subdivided. The Panel finds that the subdivision will not result in any new houses to be constructed. Furthermore, the Panel finds that the areas of the Property currently function as two distinct operations so the subdivision will not have a negative effect on the agricultural use of the Property.



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

[19] The Application 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

[20] The RDEK Board forwarded the Application with support. The RDEK Advisory Planning Committee for Area “A” also supports the Application.

[21] The Panel gave consideration to regional and community planning objectives as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel’s finding following its review of the agricultural considerations.

Weighing the factors in priority

[22] The Panel does not find the Proposal will negatively affect the agricultural uses of the Property due to the isolation of the proposed smaller lot from the remainder of the Property.

[23] The Panel gave consideration to economic, social and cultural values and regional and community planning objectives planning as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel’s finding following its review of the agricultural considerations.

DECISION

[24] For the reasons given above, the Panel approves the Proposal to subdivide the Property into two parcels of 2 ha and 29.9 ha.

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

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

[26] 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.

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

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

[30] This decision is recorded as Resolution #404/2016 and is released on November 28, 2016.

CERTIFICATION OF DECISION

A handwritten signature in black ink, reading 'Sharon Mielnichuk', is written over a horizontal line.

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

END OF DOCUMENT

ALC Application 54641
Approved Subdivision
ALC Resolution #404/2016

Approved 29.9 ha remainder

Approved 2.0 ha parcel

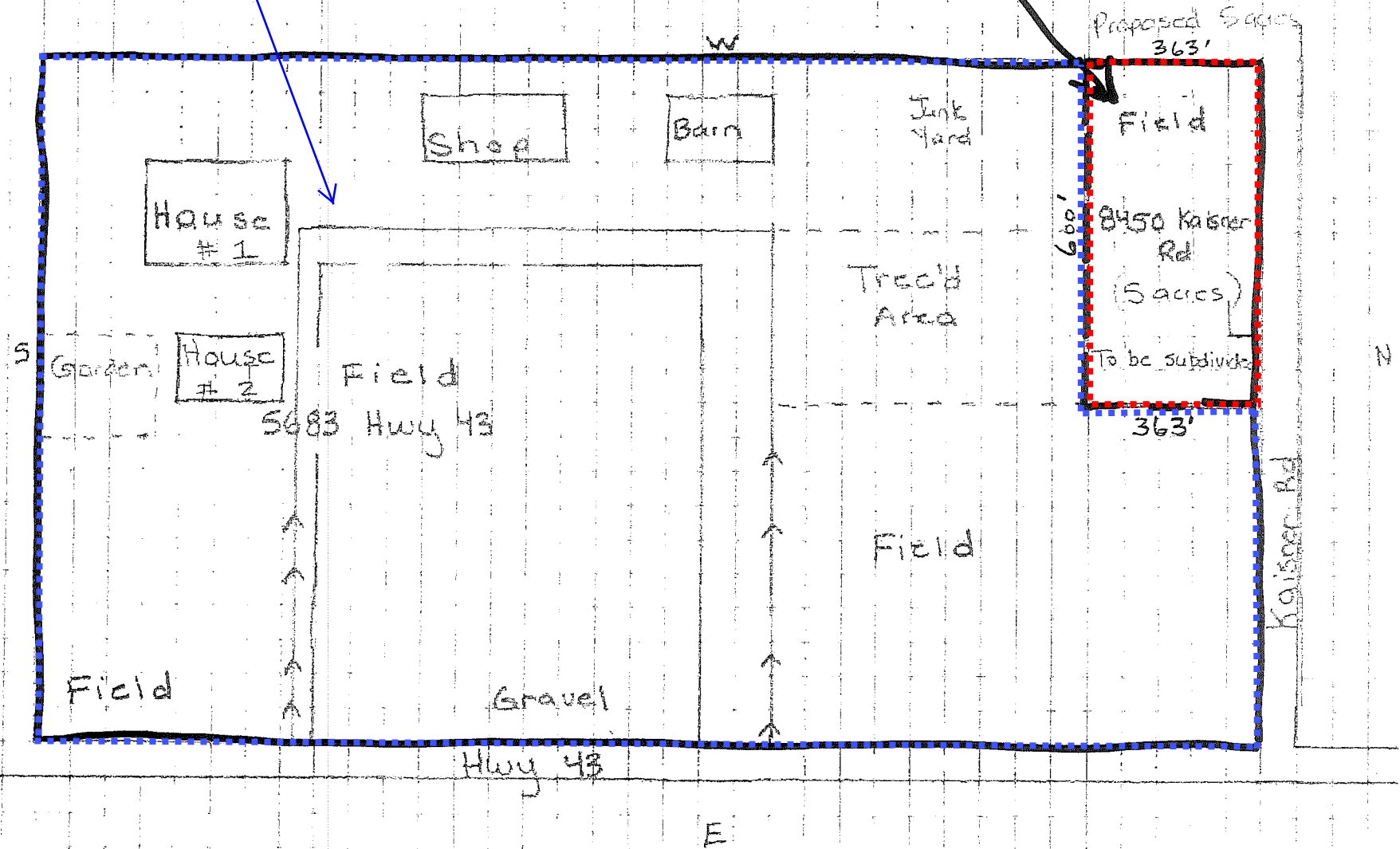




Exhibit B

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 15, 2016

ALC File: 54641

Stephan Klafki
8450 Kaisner Rd
Sparwood, BC V0B 2G3

Dear Mr. Klafki:

Re: Reasons for Decision – Kootenay Panel, Resolution #404/2016

This is further to the Agricultural Land Commission (the “Commission”) letter dated November 28, 2016 which forwarded the *Reasons for Decision of the Kootenay Panel*, recorded as Resolution #404/2016 (the “Decision”). In its covering letter to you, the Commission advised as follows:

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.

I am writing to advise you that Commission Chair, Mr. Frank Leonard, has reviewed the *Reasons for Decision of the Kootenay Panel*, recorded as Resolution #404/2016 and has referred this matter to the Executive Committee of the Commission under s. 33.1 of the *Agricultural Land Commission Act* (the “ALCA”) which provides the following:

Reconsideration of decisions of panel

- 33.1(1) The chair of the commission may, in writing, direct the executive committee to reconsider a decision made by a panel established under section 11(1) respecting an application or other matter allocated to the panel by the chair of the commission, including a panel's reconsideration of a decision under section 3(1), if
- (a) the chair considers that the decision
 - (i) may not fulfill the purposes of the commission as set out in section 6, or
 - (ii) does not adequately take into consideration the considerations set out in section 4.3, if applicable, and
 - (b) the chair makes the direction to the executive committee within 60 days of the decision being made.

- (2) If the chair of the commission directs the executive committee to reconsider a decision under subsection (1), the chair must give notice of the reconsideration to any person that the chair considers is affected by the reconsideration.
- (3) If the chair of the commission directs the executive committee to reconsider a decision under subsection (1), the executive committee must confirm, reverse or vary the decision.
- (4) For the purposes of subsection (3), the executive committee has all the powers, duties and functions of the commission.
- (5) A decision by the executive committee under subsection (3) is for all purposes a decision of the commission.

The Chair has directed the reconsideration on the basis that he considers that the Decision may not fulfill the purposes of the Commission as set out in section 6 and that the decision does not adequately take into consideration the considerations set out in section 4.3, the latter of which apply in Zone 2. The Chair has also directed me to make clear that this referral to the Executive Committee under s. 33.1(1) is just that, a referral, and does not represent the Chair's final conclusion on the proper outcome of the reconsideration. The final decision by the Executive Committee (consisting of the Chair and the 6 Vice-chairs of the Commission) will be made by the Executive Committee with each member being responsible for exercising their independent judgment as part of the Executive Committee as a decision-making body after deliberation, discussion and consideration of all the information, evidence and submissions.

The Chair has in his discretion directed that the Regional District of East Kootenay (the "Regional District"), while not entitled to notice under s. 33.1(2), should be given the opportunity to provide any information in addition to that it has already provided in connection with the application, which information is to be provided to the Commission and to yourselves no later than Friday January 16, 2017.

The Chair has also determined that you are a person entitled to notice under s. 33.1(2), and has therefore directed me to notify you of the reconsideration and to give you the opportunity to provide the Commission with any additional evidence and submissions no later than Friday January 16, 2017. The Executive Committee will be considering both the application of section 6 and 4.3 to your application. While you are not required to provide additional evidence and submissions, you are invited to do so. In particular, you may wish to address the following issues:

- (a) The impact of your application on the purposes of the Commission as set out in section 6 of the *ALCA* ("to preserve agricultural land, to encourage farming on agricultural land in collaboration with other communities of interest, 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");
- (b) How section 4.3 applies to your application, including whether and how your application is supported by any of the factors set out in ss. 4.3(b) and (c), and how those factors should properly be applied in this case "in descending order of priority" as required by section 4.3:

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;

Once the submission process is complete, the Executive Committee will consider the reconsideration at the first available meeting opportunity.

If you intend to respond, please direct your submission to Riccardo Peggi, Land Use Planner at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Ric Peggi', is positioned above the printed name.

Riccardo Peggi, Land Use Planner

cc: Regional District of East Kootenay (File: P 715 126)
Ilan Knudsen, Acting Panel Chair, Kootenay Panel
Harvey Bombardier, Member, Kootenay Panel

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