



**Agricultural Land Commission**  
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January 23, 2017

ALC File: 54929

The Fickle Fig Farm Market  
1780 Mills Road West  
North Saanich, BC V8L 5S9

Attention: Mitchell Morse

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

Please find attached the Reasons for Decision of the Island (Resolution #15/2017) 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 the applicants 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).

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to be 'S. Huber', written in a cursive style.

Sara Huber, Land Use Planner

Enclosures: Reasons for Decision (Resolution #15/2017)  
Sketch Plan

cc: District of North Saanich (File: 6635 2016) Attention: Kelly Albucz

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## **AGRICULTURAL LAND COMMISSION FILE 54929**

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

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

**Applicants:**

**James F. Waterhouse  
Gwenda L. Waterhouse  
(the “Applicants”)**

**Agent:**

**Mitchell Morse, Fickle Fig Farm  
Market  
(the “Agent”)**

**Application before the Island Regional Panel:**

**Jennifer Dyson, Panel Chair  
Honey Forbes  
Clarke Gourlay**



## **THE APPLICATION**

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

Parcel Identifier: 005-469-431

Lot B, Section 13, Range 2 East, North Saanich District, Plan 8812  
(the "Property")

[2] The Property is 3.0 ha in area.

[3] The Property has the civic address 1780 Mills Road, North Saanich, 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 (landowners) in conjunction with The Fickle Fig Farm Market ("Fickle Fig") (operator) are applying to utilize 0.2 ha of the Property for a small commercial kitchen for canning and preparing farm produce, as well as a small food service utilizing farm grown products. In addition, Fickle Fig is proposing to create a year-round farmers' market, selling its own farm products and also selling other local farms products. In the future, Fickle Fig would like to operate a brewery in which over 50% of the ingredients used in the beer/mead will be grown on its farms (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.



[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
- 2. Local government documents
- 3. 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 April 18, 2016, the District of North Saanich Council resolved:

*That the Non-Farm Use Permit (ALC 2016-01) for 1780 Mills Road proceed to the Agricultural Land Commission.*

#### **SITE VISIT**

[11] On July 28, 2016, the Panel conducted a site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[12] 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 the Agent on August 3, 2016 (the "Site Visit Report").

## **FINDINGS**

[13] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the British Columbia Land Inventory (BCLI), 'Soil Capability Classification for Agriculture' system. The improved agricultural capability ratings identified on BCLI map sheet 92B.063 for the mapping units encompassing the Property are approximately 50% (7:3AP 3:2D) and 50% (6:2D 4:3DW).

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.

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.

The limiting subclasses associated with this parcel of land are A (soil moisture deficiency-modified), P (stoniness), D (undesirable soil structure), W (excess water).

In this regard, the Panel finds that the Property has good agricultural capability and is appropriately designated as ALR.

[14] For 13 years, the Applicants operated Twin Peaks Nursery on the Property until its closure in 2016. After closure of the nursery, Fickle Fig entered into an agreement with the Applicants to lease the Property. As a result of the historical nursery use of the Property, the existing nursery infrastructure has been converted for use for the farm market, commercial kitchen, and food service. The commercial infrastructure occupies the southern third of the Property and the single family dwelling is located in the northern portion of the Property. The Proposal would utilize approximately 0.2 ha of the Property and would not require construction of any additional buildings.

[15] Fickle Fig currently farms over 4 ha of land across three properties, including vegetable crops, orchard, apiculture, and livestock (referred to as the “Farm”). The Panel is of the opinion that the non-farm uses on the Property should be commensurate, yet ancillary (i.e. is directly related), with the agricultural activities taking place on the Farm. In this regard, the Panel believes the current level of agricultural activity on the Farm is sufficient to justify the proposed non-farm uses in order to retail the farm produce at a central location.

### **COMMERCIAL KITCHEN AND FOOD SERVICE**

[16] The Panel evaluated the Proposal to use a commercial kitchen for canning and preparing Farm produce and for a small food service within s. 2(2)(c) of the Agricultural Land Reserve Use, Subdivision, and Procedure Regulation (the “Regulation”) criteria for farm product processing:

*(2) The following activities are designated as farm use for the purposes of the Act:*

*(c) storing, packing, preparing or processing farm products, if at least 50% of the farm product being stored, packed, prepared or processed is*

*(i) produced on the farm,*

*(ii) produced by an association as defined in the Cooperative Association Act to which the owner of the farm belongs, or*

*(iii) feed required for farm production purposes on the farm.*

The Panel has no objection to Fickle Fig utilizing the commercial kitchen for farm processing pursuant to the Regulation. However, bistros, cafes and restaurants are considered non-farm uses in the ALR, and as such the small food service does not comply with the Regulation. In this circumstance, the Panel is amenable to allowing the commercial kitchen to be utilized for the proposed food service provided that the products continue to be sourced from the Farm.

**FARM RETAIL SALES**

[17] The Panel evaluated the Proposal for a year-round farmers' market selling products from the Farm and also selling other local farms products against the criteria for farm retail sales pursuant to s. 2(2)(a) of the Regulation:

*2(2) The following activities are designated as farm use for the purposes of the Act:*

*(a) farm retail sales if*

*(i) all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or*

*(ii) the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m<sup>2</sup> and if at least 50% of that retail sales area is limited to the sale of farm products produced*

*(A) on the farm on which the retail sales are taking place, or*

*(B) by an association as defined in the Cooperative Association Act to which the owner of the farm on which the retail sales are taking place belongs*

With regards to the sourcing of the products for the year round farm market, the Agent stated:

*As we are not an official co-op market, the total percentage of products used/sold on site from our own farms would be about 60% right now, with the remaining 35% being sourced from Vancouver Island and the rest of BC. I'd say 5% is from local companies in BC or the peninsula that buy from free trade/eco-friendly countries (i.e.: 2% Jazz Coffee in Victoria supplies our espresso beans...they roast in Victoria, but buy beans from other countries ethically).*

*This number is a reflection of winter time and the scarcity of local produce, as we were quite busy starting this project up to plan properly for these bare-cupboard months. We've already planned for a year-round operation for next year.*



*In Spring, Summer, and Fall we supply our market with about 75% of our own farm products, with the remaining 20% coming directly from our unofficial co-op local peninsula farmers. So hyper-local. I hope this gives you an idea of how committed we are to our mission of using our own produce. Right now we are stretching our meat supply of lamb, pork, chicken, turkey, and beef...not to mention highlighting eggs and pumpkins.*

The Application states that the current size of the retail sales area is roughly 49.2m<sup>2</sup> which is consistent with the farm retail sales area defined in the Regulation. Based on the description outlined above, the farm market, as currently operated, is in compliance with the Regulation and as such does not require approval of the Panel. The Panel advises that if the year-round farm market is operated outside of the parameters of the Regulation, a new application will be required to expand as a non-farm use.

#### **BREWERY**

[18] The Panel discussed the proposed brewery and determined that giving consideration to a brewery at this time, prior to the establishment of the farm market, would be premature. Should Fickle Fig decide to pursue a brewery in future, the Panel advises that breweries may be established in compliance with s. 2(2.3) of the Regulation. If a proposed brewery does not meet the criteria of the Regulation, a new non-farm use application would be required with specific information pertaining to the merits of a brewery on the Property.

#### **DECISION**

[19] For the reasons given above, the Island Panel approves the Proposal to utilize the existing kitchen (<0.1 ha) on the Property for canning and preparing farm produce, as well as a small food service utilizing Fickle Fig's farm grown products.

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

- a. no additional buildings are constructed for non-farm use;

- b. the non-farm use of the kitchen remain within its current footprint; and
- c. approval for non-farm use is granted for the sole benefit of the Applicant and is non-transferable.

[21] 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.

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

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

[24] This decision is recorded as Resolution #15/2017 and is released on January 23, 2017.

#### **CERTIFICATION OF DECISION**

A handwritten signature in black ink, appearing to be 'Jennifer Dyson', is written over a horizontal line.

Jennifer Dyson, Panel Chair, on behalf of the Island Panel

**END OF DOCUMENT**

ALC Application 54929 (Waterhouse)  
Conditionally Approved Non-Farm Use  
Resolution # 15/2017



**Legend:**

 Property Boundary

 Conditionally Approved Non-Farm Use