



Agricultural Land Commission
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January 30, 2017

ALC File: 55304

Dennis Horsthuis
2400 Clark Road
Courtenay, BC V9J 1T1

Dear Mr.Horsthuis:

Re: Application to Include Land into the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Island Panel (Resolution #23/2017) 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.

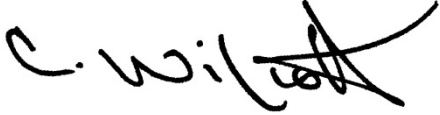
For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Further correspondence with respect to this application is to be directed to Christopher Wilcott at (Christopher.Wilcott@gov.bc.ca).

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "C. Wilcott". The signature is stylized with a large, sweeping flourish at the end.

Christopher Wilcott, MCIP, RPP
Land Use Planner

Enclosure: Reasons for Decision (Resolution #23/2017)

cc: Comox Valley Regional District (File:3110-20/ALR 3B 16) - Attention: Jodi MacLean, Rural
Planner

55304d1



AGRICULTURAL LAND COMMISSION FILE 55304

REASONS FOR DECISION OF THE ISLAND PANEL

Application submitted pursuant to s. 17(3) of the *Agricultural Land Commission Act*

Applicant:

**Dennis Horsthuis
(the “Applicant”)**

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: 001-334-981

Lot 6, District Lot 181, Comox District, Plan 30007.

(the "Property")

[2] The Property is 1.1 ha in area.

[3] The Property has the civic address 2400 Clark Road, Courtenay.

[4] The Property is located outside 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. 17(3) of the *ALCA*, the Applicant is applying to include the Property into the ALR to develop a medical marihuana production facility (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. 17(3) of the *ALCA*:

17(3) On application by an owner of land, the commission may designate all or part of the land described in the application as part of an agricultural land reserve if the commission considers that the designation carries out the intent of this Act.

[8] 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

[9] 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 Applicant in advance of this decision.

[10] At its meeting of October 25, 2016, the Comox Valley Regional District (CVRD) board made the following motion:

That the application (ALR 3B16) to include the property legally described as Lot 6, District Lot 181, Comox District, Plan 30007 (2400 Clark Road), into the agricultural land reserve be forwarded to the Agricultural Land Commission;

And finally that the board forward the recommendation that should the Agricultural Land Commission be supportive of including the property into the Agricultural Land Reserve that inclusion be conditional on the property being re-designated to 'agricultural areas' in the official community plan and the zoning bylaw being amended accordingly.

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

Application ID: 8588
Legacy File: 19142
(ALR Review – Fine Tuning,
1986)

A review of the Deep Bay/Oyster River Fine Tuning project was undertaken by the Commission. The Commission moved that the fining tuning proposal be forwarded to the Minister of Agriculture and Fisheries for presentation to the Environmental and Land Use committee by ALC Resolution #1347/88. The exclusion affecting the Property was finalized by Order in Council No. 795/1991.

SITE VISIT

[12] The Panel, in the circumstances of the Application, and based on the evidentiary record associated with the application, did not consider it necessary to conduct a site visit to the Property.

FINDINGS

[13] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on BCLI map sheet 92F.075 & 92F.076 for the mapping units encompassing the Property are approximately 90% (7:4T – 3:3TA), 5% (7:1 – 3:2D), and 5% (2TA).

Class 1 - land is capable of producing the very widest range of crops. Soil and climate conditions are optimum, resulting in easy management.

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.

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

The limiting subclasses associated with this parcel of land are A (moisture deficiency), D (undesirable soil structure) and T (topographic limitations).

- [14] The Panel reviewed the BCLI ratings and finds that the Property has limited agricultural capability, which does not, in itself, justify a change in the land's ALR status.
- [15] The Panel reviewed the previous approved exclusion of the Property (Application ID: 8588) from the ALR. The Panel finds that the previous fine-tuning exclusion decision was reasonable in consideration of the Property's size.
- [16] The Property is currently designated as 'rural settlement area' in the CVRD OCP and as residential-rural in the zoning bylaw. While both the applicable OCP designation and zoning bylaw allow agricultural uses, neither currently permit medical marihuana production. Inclusion of the Property into the ALR would permit production of marihuana as a farm use in accordance with the Marihuana for Medical Purposes Regulations, SOR/2013-119 (Canada) pursuant to s. 2(2)(p) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (the "Regulation"). Section 2 of the Regulation prevents local governments from prohibiting specified farm uses and, as such, if the Property was included in the ALR, the medical marihuana facility would be permitted despite the local zoning and OCP designation.
- [17] The Panel gave consideration to the agricultural suitability of the Property and finds that there is little merit in including land which has already been excluded, for the purpose of permitting a use which could be accommodated by way of local zoning amendments.

DECISION

[18] For the reasons given above, the Panel refuses the Proposal.

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

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

[21] This decision is recorded as Resolution #23/2017 and is released on January 30, 2017.

CERTIFICATION OF DECISION

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left, positioned above a horizontal line.

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

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