



Agricultural Land Commission
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February 8, 2017

ALC File: 55607

Anke Brander
7547 Wycliffe Road
Cranbrook, BC V1C 7C4

Dear Ms. Brander:

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

Please find attached the Reasons for Decision of the Kootenay Panel (Resolution #26/2017) as it relates to the above noted application. A sketch plan depicting the decision is also attached.

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 Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

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Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "Riccardo Peggi". The signature is written in a cursive, flowing style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #26/2017)
Sketch plan

cc: Regional District of East Kootenay (File: P 716 338)

55607d1



AGRICULTURAL LAND COMMISSION FILE 55607

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant:

**Anke Brander
(the “Applicant”)**

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: 014-010-186

District Lot 6164 Kootenay District, Except

(1) Parcel A (Reference Plan 89781)

(2) Part Included In Reference Plan Plan 858171 And

(3) Parts Included In Plans 8417 And 13296

(the "Property")

[2] The Property is 69.6 ha in area.

[3] The Property has the civic address 7547 Wycliffe Rd, Cranbrook.

[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 Applicant is applying to subdivide the 69.6 ha Property into two lots of approximately 9.5 ha and 60.1 ha as divided by Wycliffe Road (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. 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 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

[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
5. *Soil and Agricultural Capability and Suitability Assessment: Portion of District Lot 6164, Kootenay District, 7552 Wycliffe Road, Cranbrook, BC*, prepared by David Struthers, June 2016 (the “Struthers Report”)

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

[11] At its meeting of October 7, 2016, the Regional District of East Kootenay (the “RDEK”) resolved to forward the Application to the Commission with a comment of support.

[12] The Panel reviewed three previous applications involving the Property:

Application ID: 26105
Legacy File: 06350
(Tournier, 1978)

To subdivide approximately 16 ha from the 73.5 ha Property. The Commission found the Property to be agriculturally capable, particularly for perennial crops and grazing. For this type of agriculture, parcel size should be kept as large as possible. The Commission therefore did not want the subdivision of smaller parcels to intrude this agricultural potential or the land base necessary for this agriculture.

Furthermore, it was the Commission’s opinion that the area north of Highway 95A and the area south and west of the Old Kimberly Highway (of which this parcel is a part) should be retained as large parcels for grazing and other agricultural purposes. Refused by Resolution #10064/78.

Application ID: 17757
Legacy File: 34135
(Thane, 2001)

To subdivide the 69.6 ha Property into two lots of approximately 9.5 ha and 60.1 ha. The Commissioners expressed concern over the unauthorized construction of the second residence/veterinary clinic on the 9.5 ha portion of the Property. The Commission found that the land possessed capability for agriculture, that the holding's agricultural capabilities were consistent with

those of other lands in the area, and that the property had previously been utilized for agricultural production in its current configuration. The Commission refused the proposal. However, the Commission approved the existing (unauthorized) residence/veterinary clinic in its current size and authorized a lifetime lease over the 9.5 ha area under application for use by the applicant. Resolution #135/2003.

Note: the lifetime lease approved by Resolution #135/2003 is no longer in effect.

Application ID: 52311
(Brander, 2011)

To subdivide the approximately 70 ha parcel into one 8 ha parcel and 62 ha remainder. The Commission found that the Property has good agricultural capability, that no external factors, such as encroaching non-farm development, limited the suitability of the Property for agriculture. The Commission considered the size and agricultural capability of the Property, noting its suitability for livestock grazing and forage crops, and found that approval of the proposed subdivision would reduce the agricultural potential of the Property. The Commission found that Wycliffe Road did not prevent the integrated use of the proposed 8 ha lot and the remainder of the parcel. Refused by Resolution #514/2011.

SITE VISIT

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

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 ratings identified on CLI map sheet 82G/12 for the mapping units encompassing the Property are approximately 36% (6:5TP – 4:6T), 26% (4TP), 17% (4W), 11% 8:6T – 2:5PM), and 10% (2X).

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 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.

Class 6 - land is important in its natural state as grazing land. These lands cannot be cultivated due to soil and/or climate limitations.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), P (stoniness), T (topographic limitations), W (excess water), and X (combination of soil factors).

[15] In addition, the Panel received a professional agrologist report, prepared by David Struthers, and dated June, 2016 (the Struthers Report"). The Struthers Report finds that:

Based on the site-specific assessment of agricultural capability conducted during the June 6, 2016 site inspection, the portion of the property being proposed for subdivision

(the 9.5 ha lot) is comprised of two capability polygons. The majority of the parcel (including the southeast corner where the buildings are located) has an unimproved capability of 4MF and an improved capability of 4M. The fertility limitations on this area can be addressed through soil/crop husbandry practices, but the climatic moisture deficit remains due to the impracticality of irrigation. The depressional area associated with the seasonal tributary on the east side of the parcel has an unimproved capability of 4W related to excess free water and low soil permeability.

[16] The Panel reviewed the CLI ratings for the proposed 9.5 ha lot north of Wycliffe Road which is indicated to be improvable to predominantly Class 2X, 4W, and 4TP, respectively. The Struthers Report finds that this same area is only improvable to Class 4M and 4W. The Panel finds that the 9.5 ha area north of Wycliffe Road has a lower agricultural capability based on the findings of the Struthers Report which indicate that the fertility and especially moisture deficiency limitations relegate the suitable use of the land to perennial crops and undisturbed grazing. The Panel finds that the smaller range of crop suitability, lower productivity, and the impact of the CLI limitations renders improvements to the agricultural capability of the 9.5 ha area to be impractical. The Panel therefore finds that the proposed parcels may be better utilized for agriculture as separate parcels.

[17] The Panel finds that the Proposal would not be detrimental to adjacent agricultural uses because the proposed 9.5 ha lot would be of a similar approximate size to the surrounding parcels.

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

[18] The Applicant stated in their letter that they would reinvest the income from the sale of the proposed lot into their existing farming operation south of Wycliffe Road. 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.

Section 4.3(c) of the ALCA: third priority to regional and community planning objectives

[19] The Property is zoned as Rural Resource (RR-60) by the RDEK Zoning Bylaw. According to the RDEK staff report, this zone has a minimum parcel size of 60.0 ha therefore a rezoning application would be required to complete the subdivision. The Panel notes, however, the RDEK Board Resolution dated October 7, 2016 which states that the RDEK supports the Application.

[20] The Property is designated as Rural Resource (RR) in the RDEK Official Community Plan. This designation supports agricultural, rural residential and rural resource land uses with parcel sizes 8.0 ha and larger. An OCP amendment would not be required to accommodate the subdivision.

Weighing the factors in priority

[21] The Panel finds improvements to agricultural suitability on the 9.5 ha area north of Wycliffe Road to be impractical. The Panel finds the subdivision of the Property would increase the feasibility of improving the agricultural suitability of the land. Further, the Panel finds the proposed 9.5 ha lot would be a similar size to the surrounding parcels in the area and therefore will not negatively affect any surrounding agricultural operations.

[22] The Applicant did not provide any evidence or rationale regarding any economic, cultural and social values that the Panel found to be pertinent to the Application.

[23] The Panel found the Proposal is consistent with the OCP in the area. Although the Proposal is inconsistent with the zoning designation for the Property, the Panel acknowledges that the RDEK forwarded the Application to the Commission with support.

DECISION

[24] For the reasons given above, the Panel approves the Proposal to subdivide the 69.6 ha Property into two lots of approximately 9.5 ha and 60.1 ha.

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

- a. the preparation of a subdivision plan to delineate the area to be subdivided per the drawing 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 release 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 #26/2017 and is released on February 8, 2017.

CERTIFICATION OF DECISION

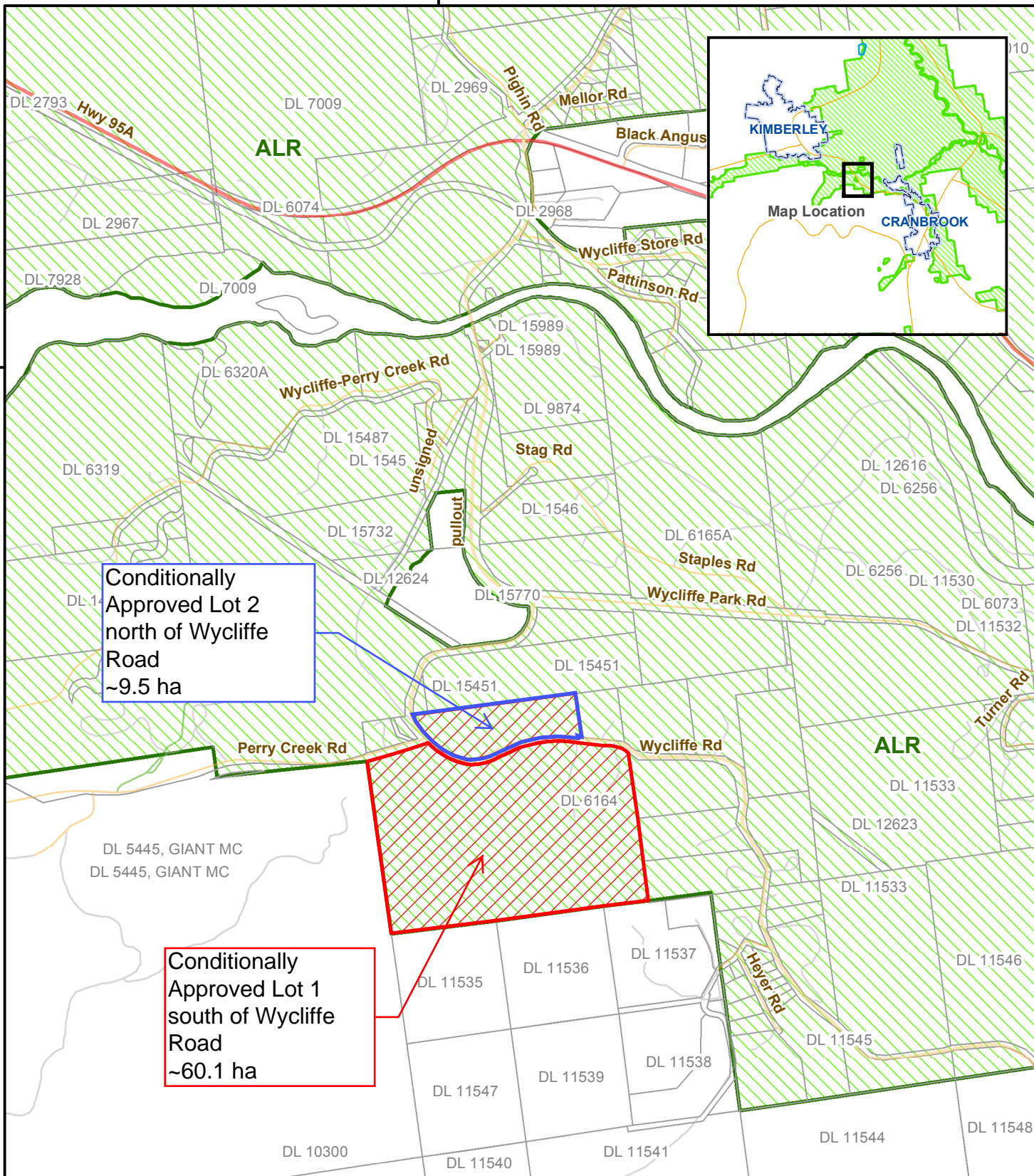


Sharon Mielnichuk, Panel Chair, on behalf of the Kootenay Panel

END OF DOCUMENT

115°52'0"W

49°36'0"N



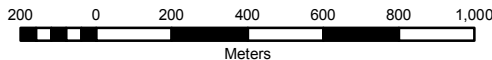
Conditionally
Approved Lot 2
north of Wycliffe
Road
~9.5 ha

Conditionally
Approved Lot 1
south of Wycliffe
Road
~60.1 ha



ALC Context Map

Map Scale: 1:20,000



**ALC Application 55607
ALC Resolution #26/2017
Approved Subdivision**