



**Agricultural Land Commission**  
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January 19, 2017

ALC File: 55654

Karen Bergman  
654 Kerr Road  
Baynes Lake, BC V0B 1T4

Dear Ms. Bergman:

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

Please find attached the Reasons for Decision of the Kootenay Panel (Resolution #11/2017) as it relates to the above noted application. 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 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 #11/2017)  
"Schedule C" of the Regional District of East Kootenay Official Community Plan

cc: Regional District of East Kootenay (File: P 716 220)

55654d1



## **AGRICULTURAL LAND COMMISSION FILE 55654**

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

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

**Applicants:**

**Karen Bergman  
Dwight Grymaloski  
(the “Applicants”)**

**Agent:**

**Karen Bergman  
(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: 028-826-850

Lot 2, District Lot 132, Kootenay District, Plan EPP13338

(the "Property")

[2] The Property is 2.0 ha in area.

[3] The Property has the civic address 654 Kerr Road, Baynes Lake.

[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 the 2.0 ha Property into two lots of 1.0 ha each (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

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

[11] At its meeting of October 7, 2016, the Regional District of East Kootenay resolved to forward the Application to the Commission.

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

Application ID: 45473  
Legacy File: 38551  
(Borggard, 2008)

To subdivide the 6.5 ha property into one parcel of approximately 2.2 ha and two parcels of 2.1 ha. The Commission was of the view that the property has marginal agricultural capability and noted that according to the application the property had not been previously used for agriculture. The Commission noted that the property was comprised of a bank and was physically separated from flatter land with higher agricultural capability to the west and east. The Commission did not consider that there were any external factors such as encroaching non-farm development that would cause the land to become unsuitable for agriculture. The Commission also considered that the property, by reason of its low agricultural capability and steep slope, is not typical of others in this area. Hence the proposal would not cause increased expectations for subdivision on other land in the area. In any event the Commission noted that the proposed subdivisions are similar in size to existing parcels to the east in Baynes Lake. The Commission did not believe that the proposed subdivision of the property would impact existing or potential agricultural use of the property and the surrounding lands. The application was approved by ALC Resolution #155/2009.

**Note: The subdivision approved by ALC Resolution #155/2009 resulted in the current lot configuration.**

**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 unimproved agricultural capability ratings identified on CLI map sheet 82G/03 for the mapping units encompassing the Property are 7:6T – 3:7T.

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

Class 7 - land has no capability for soil bound agriculture.

The limiting subclass associated with this parcel of land is T (topographic limitations).

[15] The Panel reviewed the CLI ratings and find that the Property has limited or no agricultural capability.

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

[16] The Applicant did not provide any evidence or rationale regarding any economic, cultural and social values that are pertinent to the Application



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

[17] The Property is designated as Medium Holdings (MH) in the RDEK Official Community Plan (“OCP”).

[18] The RDEK identifies areas supportive of subdivision in Schedule C of the OCP which has been endorsed by the Commission. Outside of the areas identified in Schedule C of the OCP subdivision and exclusion of ALR land is generally not supported in order to reduce the potential for negative impacts on agriculture and resource based activities. The Panel notes that the Property is located outside of the area identified on Schedule C of the OCP.

[19] The Property is zoned RR-2, Small Holding Rural Zone by the RDEK Zoning Bylaw which has a minimum parcel area of 2.0 ha. The Panel finds that the Proposal is inconsistent with the RDEK zoning bylaw.

Weighing the factors in priority

[20] Despite the CLI ratings of the Property, the Panel finds that the Property is located outside of the area outlined in Schedule C of the RDEK OCP which has been endorsed by the Commission.

[21] The Applicant did not provide any evidence or rationale regarding any economic, cultural and social values that are pertinent to the Application

**DECISION**

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

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



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

[25] This decision is recorded as Resolution #11/2017 and is released on January 19, 2017.

**CERTIFICATION OF DECISION**

A handwritten signature in black ink, appearing to read 'Sharon Mielnichuk', written in a cursive style.

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

**END OF DOCUMENT**

Surveyors Lake

DL 6235

PARK

# Baynes Lake OCP part Schedule C

DL 6235

Baynes Lake Dump Rd

Baynes Lake

DL 8271



Subject Property

DL 132

Waldo Rd

DL 6197

Lake Koocanusa

DL 12988

DL 3009

Area identified for possible support of subdivision of 1 ha parcels.

DL 132

