



Agricultural Land Commission
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March 7, 2017

ALC File: 55665

Charles Shoemith
Burma Road, PO Box 2355
Fernie, BC V0B 1M0

Dear Mr. Shoemith,

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

Please find attached the Reasons for Decision of the Kootenay Panel (Resolution #49/2017) 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 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 #49/2017)
Sketch plan

cc: Regional District of East Kootenay (File: P 716 114)

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AGRICULTURAL LAND COMMISSION FILE 55665

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant: **Norm Roberts Logging Limited
(the “Applicant”)**

Agent: **Charles Shoemith
(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: 011-177-063

Lot 45, District Lot 4139, Kootenay District Plan 802, Except Plan 7617
(the "Property")

[2] The Property is 1.7 ha in area.

[3] The Property has the civic address 6241 Cunliffe Road, Fernie.

[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. 20(3) of the *ALCA*, the Applicant is applying to construct a 297.2 m² shop building for the purpose of storing and servicing logging and re-forestation equipment used in the Applicant's business. In addition, the Applicant intends to add a greenhouse onto the proposed shop building for growing tree seedlings. A total area of approximately 0.2 ha is proposed for the non-farm use (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 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 November 8, 2016, the Regional District of East Kootenay (the “RDEK”) resolved to forward the Application to the Commission with support.



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

Application ID: 53569
(Agricultural Land Commission,
2013)

Elk Valley Boundary Review Area 5 - Ghost rider. The Property was identified as a potential exclusion area during the 2013 Electoral 'A' Boundary Review. However, the Commission decided against excluding the Property because, at the time, it formed part of a cohesive farming unit with adjacent properties that were all owned and operated by a single owner. In the case of the Property, the Commission concluded that if/when the owner decided to sell the individual parcels in the future, exclusion of these parcels may be appropriate. The Elk Valley Boundary Review was approved by Resolution #5/2014.

[13] The Panel reviewed one relevant application relating to the Application:

Application ID: 42527
Legacy File: 36354
(Mainroad east Kootenay Ltd.,
2006)

To establish a municipal solid waste transfer facility. The parcel was being used as a highway maintenance yard and the proposed use would utilize some of the existing buildings on the parcel. Approved by Resolution #132/2006.

Note: Application 42527 is located to the north of the Property.

SITE VISIT

[14] 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**

[15] 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/11 for the mapping units encompassing the Property are Class 3 and Class 4; more specifically (6:3X – 3:4MP – 1:4W).

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 X (combination of soil factors), M (moisture deficiency), P (stoniness) and W (excess water).

[16] The Panel reviewed the CLI ratings and find that the Property has agricultural capability.

[17] The proposed shop building is intended to store and service equipment to support the Applicant's logging and re-forestation business. The Applicant intends to also construct a greenhouse and establish a tree farm for re-forestation purposes on the remainder of the Property. The Panel notes that the greenhouse and tree farm are permitted farm uses according to s. 2 of BC Regulation 171/2002 (Agricultural Land Reserve Use, Subdivision and Procedure Regulation) (the "Regulation"). The Panel finds that the proposed non-farm uses are related to the permitted farm use.

[18] The Panel considered the location of the 0.2 ha shop area proposed on the southern-most portion Property. The Panel finds that the location of the proposed shop is ideal to preserve the remainder of the Property for agriculture.



[19] The Panel considered the Proposal in the context of the surrounding properties and their uses. To the north and south of the Property are industrial/commercial uses located outside of the ALR. To the east across Highway is a greenhouse operation and to the west is a hay farm, both of which are in the ALR. The Panel finds that the Proposal for the greenhouse and storage of logging equipment is consistent with both the surrounding industrial development and agricultural uses in the area.

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

[20] A letter from the Agent contained in the Application stated the following:

Norm Roberts Logging recently acquired a large tree farm in the Elk Valley with mature forest. Their plan is to re-plant as they harvest. The nearest seedlings available are in Nelson and there is a year waiting list. If they could build their maintenance shop and greenhouses on this portion of their land they could re-seed as they go and would be well on the way to being able to provide seedlings for re-forestation not only for themselves but for other businesses as well.

[21] While the Application makes arguments that the tree farm, and subsequently the necessity for storage of logging equipment may be a benefit to local businesses, the Panel finds that these considerations are not contributory to the decision following the review of the agricultural considerations.

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

[22] The Property is designated as Large Holdings (LH) in the RDEK Official Community Plan (OCP) which supports rural residential development and rural resource land uses on parcel sizes in the range of 2.0 ha to 8.0 ha. The Panel notes that the RDEK states in the Staff Report that the Proposal is consistent with the OCP designation for the Property.



[23] The Property is zoned Light Industrial (MG-1) by the RDEK Zoning Bylaw. In the RDEK Staff Report dated October 18, 2016, the RDEK states that the Proposal is consistent with the industrial zoning for the Property.

[24] The Panel finds the Proposal to be consistent with the OCP designation and zoning.

Weighing the factors in priority

[25] The Panel finds that the tree farm proposed on the Property is a permitted farm use under the Regulation. The Property is located in an area of both non-farm and farm uses, has been identified during the ALC Boundary Review for potential exclusion, and is zoned for industrial uses by the RDEK. The Panel therefore finds the Proposal to be appropriate on the Property.

[26] The Panel gave consideration to economic, social and cultural values as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision.

DECISION

[27] For the reasons given above, the Panel approves the Proposal to construct a 297.2 m² shop building for the purpose of storing and servicing logging and re-forestation equipment for a total non-farm use area of approximately 0.2 ha.

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

- a. the non-farm use be in substantial compliance with the plan submitted with the Application;
 - b. the location of the non-farm use as depicted in the attached sketch plan;
 - c. the construction of the shop building be completed within three (3) years of this decision;
- and

- d. approval for the non-farm use is granted for the sole benefit of the Applicant and is non-transferable. For further clarification, if the ownership of the Property changes prior to the shop construction being completed, the approval for the Proposal is not transferred to the new owner.

[29] 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.

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

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

[32] This decision is recorded as Resolution #49/2017 and is released on March 7, 2017.

CERTIFICATION OF DECISION

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

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

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