



Agricultural Land Commission
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August 3rd, 2017

ALC File: 55916 and 55449

MK Delta Lands Group
320-6165 Hwy 17
Delta, BC V4K 5B8

Attention: Joanne Barnett:

Re: Applications to Exclude Land from and Include Land into the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the South Coast Panel (Resolutions #234/2017 and #233/2017) as it relates to the above noted applications. A sketch plan depicting the decision is also attached as Schedule A. 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 Kelsey-Rae Russell at (KelseyRae.Russell@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "K Russell". The signature is written in a cursive, slightly slanted style.

Kelsey-Rae Russell , Land Use Planner

Enclosures: Reasons for Decision (Resolution #234/2017 and 233/2017)
Schedule A – Sketch Plan

cc: Corporation of Delta (File: LU007445)

55916d1, 55449d1



AGRICULTURAL LAND COMMISSION FILE 55916 & 55449

REASONS FOR DECISION OF THE SOUTH COAST PANEL

Application 55916 submitted pursuant to s. 30(1) of the *Agricultural Land Commission Act*

Application 55449 submitted pursuant to s. 17(3) of the *Agricultural Land Commission Act*

Applicant:

**569244 BC Ltd
(the “Applicant”)**

Agent:

**Joanne Barnett, MK Delta
Lands Group**

Applications before the South Coast Regional Panel:

**William Zylmans, Panel Chair
Sam Wind
Satwinder Bains**



THE APPLICATIONS

[1] The legal description of the properties involved in the applications are:

Property 1: File 55916 (Exclusion)

Parcel Identifier: 000-915-025

Lot 4, District Lot 437, Group 2, New Westminster District, Plan 1180, Except Plan EPP375

Civic Address: 7969 Highway 91 Connector, Delta

Area: 62.7 ha

Property 2: File 55449 (Inclusion)

Parcel Identifier: 025-891-111

Lot B, District Lot 437, Group 2, New Westminster District, Plan BCP10128

Civic Address: 7007 Highway 91, Delta

Area: 78.2 ha (0 ha ALR)

(collectively referred to hereafter as the “Properties”)

[2] Property 1 is located within a designated agricultural land reserve (“ALR”) as defined in s. 1 of the *Agricultural Land Commission Act* (the “ALCA”). Property 2 is located outside of the ALR.

[3] The Properties are located within Zone 1 as defined in s. 4.2 of the *ALCA*.

[4] Pursuant to s. 30(1) of the *ALCA*, the Applicant is applying to exclude Property 1 in order to accommodate construction of an industrial park. The exclusion application submits that Property 1 is an ideal location for an industrial park due to: its proximity to the South Fraser Perimeter Road; the Roberts Bank Container Terminal; industrial docks and facilities along the Fraser River; and the United States Border. Pursuant to s. 17(3) of the *ALCA*, the Applicant is applying to include Property 2, which the inclusion application submits is of a similar size, configuration and agricultural capability as Property 1. The purpose of including



Property 2 into the ALR is to “*offset the loss of [Property 1] from the ALR*” and for expansion of the Burns Bog Ecological Conservancy’s area (the “Proposal”). The Proposal along with supporting documentation collectively forms the applications (the “Applications”).

RELEVANT STATUTORY PROVISIONS

[5] The Applications were made pursuant to s. 30(1) and s.17(3) of the *ALCA*:

30 (1) An owner of land may apply to the commission to have their land excluded from an agricultural land reserve.

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.

[6] The Panel considered the Applications 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

[7] The Panel considered the following evidence:

1. The Applications



2. Local government documents
3. Public Comments
4. Agricultural capability maps, ALR context maps and satellite imagery
5. Drone footage of the Properties, submitted by the Applicant on May 16th, 2017.

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

[8] At its meeting of July 26th, 2016 the Corporation of Delta Council resolved to refer the Applications to the Commission with a recommendation of support.

SITE VISIT

[9] The Panel, in the circumstances of the Applications, did not consider it feasible to conduct a site visit to the Properties based on their wetness and inaccessibility. However, the Panel requested and reviewed aerial drone footage showing both Property 1 and Property 2.

APPLICANT MEETING

[10] On March 8th, 2017, the Panel conducted a meeting with the Applicant (the “Applicant Meeting”) in accordance with s. 22(1) of the Regulation. The Applicant Meeting was held at the ALC Office at 133-4940 Canada Way, Burnaby, BC. The Applicant Meeting was attended by the Panel, ALC staff, representatives of the Applicant, and representatives of the Corporation of Delta. A report of the Applicant Meeting was provided to the Agent on April 25th, 2017.

FINDINGS

[11] 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 92G/02 for the mapping units encompassing the Properties are:



Property 1

Class 2, Class 3 and Class 4, more specifically 70% (O2W), 10% (7:3DW 3:3WN), 10% (O3LW), and 10% (O4WF).

Property 2

Class 2 and Class 4, more specifically 80% (O4WF) and 20% (O2W).

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 W (excess water), L and O (organic soils which will degrade if improved), F (fertility), D (undesirable soil structure) and N (salinity).

[12] In addition, the Panel reviewed two professional agrologist reports prepared by PGL Environmental Consultants, both dated June 2016 (the "PGL Reports"). The BCLI ratings indicate that the Properties have good agricultural capability; however, the Panel finds that the PGL Reports provide a more comprehensive overview of the agricultural capability of the Properties as they were produced based on recent site visits and field observations at the Properties.

[13] The PGL Reports find that both Properties have "*poorly drained, very acidic and nutrient deficient soils*". In addition, the PGL Reports find that the improved agricultural capability rating of Property 1 is 100% O4W and the improved agricultural capability rating of Property



2 is also 100% O4W. The Panel finds that the Properties are of a similar agricultural capability.

[14] The PGL Reports submit that there has been a history of peat extraction activities on the Properties, but that Property 1 has been disturbed to a greater extent by peat extraction than has Property 2. The Panel reviewed the drone footage of the Properties and finds that the footage confirms that Property 1 has undergone greater disturbance than Property 2 and that this has compromised the agricultural utility of the land.

[15] The Panel considered the improvements which would be required in order to utilize the Properties for agricultural purposes. The Panel finds that the Properties exhibit a bog ecosystem and that a cranberry operation would be the most suitable agricultural use, however, the Panel finds that establishing a cranberry operation on this Property 1 would be unreasonably difficult due to the degree of disturbance exhibited. In this regard, the Panel finds that Property 1 is suitable for exclusion from the ALR.

[16] Given that Property 2 has been disturbed by peat extraction to a lesser degree than has Property 1, the Panel finds that the probability of agricultural remediation for Property 2 is greater than on Property 1. Due to the lesser degree of disturbance and greater probability of future agricultural remediation, the Panel finds that Property 2 is suitable for inclusion into the ALR.

[17] The Application submits that if the inclusion of Property 2 is approved by the Commission, the ownership of Property 2 will be transferred from the Applicant to the Corporation of Delta. The Corporation of Delta has proposed to place a restrictive covenant on Property 2 in order to designate it as part of the Burn's Bog Ecological Conservancy Area; the Application submits that the proposed covenant would restrict all agricultural uses on Property 2. The Panel finds that the placement of a covenant that restricts agriculture is not appropriate for a parcel within the ALR as it would preclude any future remediation and development of Property 2 for agricultural use. For this reason, the Panel is opposed to a restrictive covenant, and requires that any rezoning or future OCP re-designation of Property 2 must not prohibit agricultural uses.



[18] The Application submits that MK Delta Lands Group Ltd. intends to make a monetary contribution to the Corporation of Delta in order to facilitate improvements to agricultural capability, drainage and irrigation throughout Delta. While the Panel is pleased that MK Delta Lands Group Ltd has taken an interest in investing in agriculture, the Panel did not consider the proposed monetary contributions to be relevant to its review of the Application.

[19] Subsequent to submitting the Applications, the Corporation of Delta requested that the Commission review a concurrent application to include 111.5 ha of land into the ALR (reference ALC Application 55476). The Corporation of Delta passed a resolution on April 6th, 2017 requesting that, should ALC Application 55746 be approved, the ALC should recognize the included lands as compensation for the poorer capability lands proposed for exclusion from the ALR (Property 1). While all three applications were submitted concurrently, the Applications were considered on their own merits and the review of Application 55746 did not form part of the Panel's deliberations.

DECISION

[20] For the reasons given above, the Panel approves the Proposal to exclude Property 1 from the ALR and include Property 2 into the ALR.

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

- a. the submission of a vegetative buffering plan for Property 1, prepared by a qualified registered professional. The qualified registered professional must submit the required plans for the Commission's review and approval;
- b. the required buffering plan must outline the planting of vegetation along the entirety of Property 1 which abuts the ALR lands as per Schedule A (attached), for the purpose of buffering the excluded lands from adjacent ALR parcels, which must be at minimum in accordance with 3.8b of the Ministry of Agriculture's Guide to Edge Planning.
- c. The installation of the required vegetative buffering which is at minimum in accordance with the plans reviewed and approved by the Commission as per condition "b";
- d. Agriculture cannot be restricted on Property 2 by covenant, or otherwise;

- e. Any rezoning or new designation within the OCP of Property 2 must include agricultural uses; and
- f. Any rezoning or new designation within the OCP of Property 2 must be reviewed and approved by the Commission prior to final rezoning.

[22] The Commission will advise the Registrar of Land Titles that the Property 1 has been excluded from the ALR and Property 2 has been included into the ALR, when it has received confirmation that the conditions of approval have been met.

[23] 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.

[24] These are the unanimous reasons of the South Coast Panel of the Agricultural Land Commission.

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

[26] These decisions are recorded as Resolution #234/2017 and Resolution #233/2017 and are released on August 3rd, 2017.

CERTIFICATION OF DECISION



William Zylmans, Panel Chair, on behalf of the South Coast Panel



Agricultural Land Commission Decision Sketch Plan
ALC Files 55916 and 55449 (MK Delta Lands Group)
Conditionally Approved Exclusion and Inclusion
ALC Resolution #234/2017 and ALC Resolution #233/2017

