



## Agricultural Land Commission Appeal Decision, ALC File 60756

### Appeal pursuant to section 55 of the *Agricultural Land Commission Act*

**Appellants:** Thomas Pearce Harvey  
Charlene Louise Harvey

**BEFORE:** An Appeal Panel of the ALC  
Jennifer Dyson, ALC Chair  
Dave Merz, ALC Vice Chair  
Linda Michaluk, ALC Vice Chair  
Richard Mumford, ALC Vice Chair  
Dave Zehnder, ALC Vice Chair

**HEARING DATE:** July 26, 2018

**PLACE OF HEARING:** ALC Offices at #201, 4940 Canada Way, Burnaby, BC

**APPEARING:** For the Appellants: Thomas Percy Harvey

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### Appeal

[1] On June 13, 2018, an Order dated June 13, 2018 (the “Remediation Order”) from Kim Grout, Chief Executive Officer (“CEO”) of the Agricultural Land Commission (“ALC”), was served on Thomas Pearce Harvey and Charlene Louise Harvey (the “Appellants”), owners of PID 010-905-154 – *Lot 4, Section 31, Twp. 20, NWD, Plan 3277*, located at 8953 Eagle Road, Fraser Valley Regional District (the “Property”). The Remediation Order required the removal of the unauthorized fill from the Property and the land’s remediation to a suitable agricultural standard.

[2] On June 21, 2018 the Agricultural Land Commission (“ALC”) received a Notice of Appeal from Mr. Harvey pursuant to section 55 of the *Agricultural Land Commission Act* (“ALCA”).

[3] The Appeal Panel (“Panel”) of the ALC has the authority to hear this appeal under section 55 of the ALCA which provides

**55** (1) *A person who is the subject of a determination, a decision, an order or a penalty under section 50, 52 or 54 (1) may appeal the determination, decision, order or penalty to the commission by serving the commission with a notice of appeal.*

- (2) On an appeal under this section, the commission may*
- (a) confirm or reverse the determination, decision, order or penalty, or*
  - (b) refer the matter, with or without directions, back to the person who made the initial determination, decision or order.*

[4] The Appellants are requesting the Remediation Order be reversed.

### **The Appeal Process**

- [5] On June 21, 2018 the ALC received a Notice of Appeal on behalf of the Appellants pursuant to section 55 of the ALCA. The Notice of Appeal was acknowledged in a letter from the ALC dated June 21, 2018.
- [6] On June 22, 2018, the Panel provided direction regarding procedure related to the Appeal Hearing and applicable timelines (the “June 22, 2018 Directions”). The June 22, 2018 Directions included timelines for the submission of additional information and representations.
- [7] On June 22, 2018, the Appellants were provided electronic access to the information that was before the CEO when she made the Remediation Order under appeal, and to a electronic copy of the Remediation Order itself (“ALC Documents Package”).
- [8] The Appeal was conducted by way of an Oral Hearing which was attended by the Appellant Mr. Harvey.

### **Background**

- [9] The Remediation Order relates to the property located at 8953 Eagle Road, Fraser Valley Regional District (as defined above, the “Property”). The legal description of the Property is:

PID : 010-905-154 – Lot 4, Section 31, Twp. 20, NWD, Plan 3277

- [10] The Property is 2.6 ha in area and is located within a designated agricultural land reserve (“ALR”) as defined in section 1 of the ALCA.

[11] The involvement of Compliance and Enforcement (“C&E”) staff of the ALC with the Property began in 2017. Timeline highlights follow.

- On July 14, 2017 the ALC received a complaint from a member of the public that Mr. Harvey had brought in fill to raise the Property.
- The Property was inspected on July 25, 2017 by ALC C&E Officer David Assels who observed dump trucks depositing fill on the eastern portion of the Property, existing fill material deposited in conjunction with residential construction at the westerly edge of the Property, and a graveled lot on the north side of the Property on which was stored commercial equipment.
- On August 1, 2017 C&E Officer Assels served orders to: remove the fill from the eastern and northerly portions of the Property, and rehabilitate the land (deadline: September 25, 2017); and, to cease the unauthorized commercial activity (deadline: September 12, 2017).

[12] On June 13, 2018, the CEO reviewed material from Officer Assels, and issued the Remediation Order which contained the following elements (numbered for ease of discussion in this Decision):

...

- 1) Remove all fill, including, but not limited to, any material brought onto the Property in the areas identified as the Eastern Fill Area, the Graveled Lot Area, and the South-Centre Fill Pile (see attached Site Map);
- 2) Remediate the Graveled Lot Area to ensure that the soil agriculture capability is similar to or better than before the fill was imported onto the Property;
- 3) Remove the gravel and stone material from the Landscaped Area; and
- 4) Remove commercial equipment and materials stored on the Graveled Lot Area.

The above requirements must be completed by October 31, 2018 ...

### **Appellants’ Submission**

[13] Mr. Harvey provided photographs to the Panel to demonstrate the present state of the landscaping and property. Mr. Harvey’s oral submissions are summarized as follows:

1. That 3.2% of the filled northern gravel pad was used as a parking area for non-agricultural commercial equipment. This was to be a temporary situation as the business is new and he is still working to “get their legs under them”. As of September, 2017, the commercial equipment has been removed.
2. That he plans to develop a container nursery operation on the northern gravel pad. To that end, he has secured quotes on cost of a water system and plant stock.
3. That the other identified piles of fill material were comprised of topsoil and have already mostly been spread onto the Property, filling low spots. The area has been graded and no runoff impacts neighbouring properties. No additional fill will be brought on to the Property.
4. That the fill material deposited is generally high quality soil.
5. That he hired a professional rock picker (\$10,000) and has removed a significant amount of rocks from the soil thereby improving the quality of the land.

[14] Mr. Harvey requests that the Remediation Order be reversed.

### **Discussion and Findings:**

[15] The Panel accepts the photographic evidence provided by Mr. Harvey at the Appeal Hearing as demonstrating that landscaping of the Property is complete, and/or that any remaining piles of soils are a suitable capability and that their deposit on the Property will not harm the land's agricultural use.

[16] The Panel considers that the Mr. Harvey's assertion that he intends to establish a nursery operation on the northerly gravel filled area to be compelling because he provided information about how he intended to start up a nursery business at the Appeal Hearing.

[17] Therefore, the Panel is prepared to stay points 1, 2 3 (as set out in this Decision) of the Remediation Order for one year from the date of this Decision to ascertain whether a container nursery is established. Part of the establishment of a container nursery will include Mr. Harvey's achieving BC Assessment farm status for the Property.

[18] As indicated above, the Panel accepts that the use of the gravel area will be for a container nursery. As such, the Panel finds parking commercial equipment on the gravel area is not in keeping with the intended use.

[19] The Appeal Panel does not stay point 4 of the Remediation Order and it remains in effect.

### Conclusion

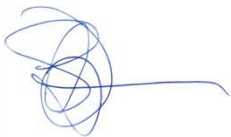
[20] Having received and considered the information submitted as part of the appeal, the Appeal Panel stays the following elements of the Remediation Order for a period of one year from the date of this Decision:

- 1) Remove all fill, including, but not limited to, any material brought onto the Property in the areas identified as the Eastern Fill Area (10, 11), the Graveled Lot Area, and the South-Centre Fill Pile (9) (see attached Site Map);
- 2) Remediate the Graveled Lot Area to ensure that the soil agriculture capability is similar to or better than before the fill was imported onto the Property;
- 3) Remove the gravel and stone material from the Landscaped Area;

[21] The Appellants are required to submit evidence showing the operation of a nursery on the gravel pad and that the Property has achieved BC Assessment "Farm Status" by August 20 2019

[22] The remaining element of the Remediation Order, remove commercial equipment and materials stored on the Graveled Lot Area, remains in effect.

Appeal Panel:



Jennifer Dyson



Richard Mumford

*Linda Michaluk*  
Linda Michaluk

*Dave Merz*  
Dave Merz

*Dave Zehnder*  
Dave Zehnder

Appeal Decision Date: August 27 2018

Site Map

