



**Agricultural Land Commission**  
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December 17, 2019

ALC File: 57495

**Keith Ekman**  
**McElhanney Associates Land Surveying**  
**DELIVERED ELECTRONICALLY**

Dear Keith Ekman:

**Re: Application 57495 to subdivide land in the Agricultural Land Reserve**

Please find attached the Reasons for Decision of the Kootenay Panel for the above noted application (Resolution #509/2019). As agent, it is your responsibility to notify the applicant(s) accordingly.

**Review of Decisions by the Chair**

Under section 33.1 of the *Agricultural Land Commission Act (ALCA)*, the Chair of the Agricultural Land Commission (the "Commission") has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

**Request for Reconsideration of a Decision**

Under section 33(1) of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. The request must be received within one (1) year from the date of this decision's release. For more information, refer to *ALC Policy P-08: Request for Reconsideration* available on the Commission website.

Please direct further correspondence with respect to this application to  
ALC.Kootenay@gov.bc.ca.

Yours truly,

A handwritten signature in black ink, appearing to read 'M Bandy', is written over a light grey background.

Mike Bandy, Land Use Planner

Enclosure: Reasons for Decision (Resolution #509/2019)

cc: Regional District of East Kootenay, Attn: Krista Gilbert (File: P 719 111)



**AGRICULTURAL LAND COMMISSION FILE 57495**  
**REASONS FOR DECISION OF THE KOOTENAY PANEL**

**Subdivision Application Submitted Under s. 21(2) of the *Agricultural Land Commission Act***

**Applicant:** Daniel Ayars

**Agent:** Keith Ekman, McElhanney Associates Land  
Surveying

**Property:** Parcel Identifier: 011-469-994  
Legal Description: Lot 10, District Lots 6393 and  
11707, Kootenay District, Plan 1411  
Civic: 1643 Dicken Road, north of Fernie, BC  
Area: 50 ha (13.9 ha in ALR)

**Panel:** David Zehnder, Kootenay Panel Chair  
Ian Knudsen  
Jerry Thibeault

## OVERVIEW

- [1] The Property is located partially within the Agricultural Land Reserve (ALR) as defined in s. 1 of the *Agricultural Land Commission Act (ALCA)*. The 13.9 ha of the Property within the ALR is comprised of relatively flat land adjacent to the eastern boundary. The remaining area of the Property slopes steeply upward to the west and is not within the ALR.
- [2] Pursuant to s. 21(2) of the ALCA, the Applicant is applying to the Agricultural Land Commission (the "Commission") to subdivide the 50 ha Property into five lots and a common access, as follows:
- Lot 1: 9.2 ha (9.2 ha in ALR)
  - Lot 2: 2.0 ha (0.9 ha in ALR)
  - Lot 3: 2.0 ha (0.3 ha in ALR)
  - Lot 4: 33.9 ha (0.9 ha in ALR)
  - Lot 5: 2.0 ha (2.0 ha in ALR)
  - A 0.6 ha lot for common access (0.6 ha in ALR) (the "Proposal").
- [3] The issue the Panel considered is whether the Proposal would impact the Property's agricultural utility.
- [4] The Proposal was considered in the context of the purposes of the Commission set out in s. 6 of the ALCA. These purposes are:
- (a) to preserve the agricultural land reserve;
  - (b) to encourage farming of land within the agricultural land reserve 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 land within the agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.

**EVIDENTIARY RECORD**

[5] The Proposal along with related documentation from the Applicant, Agent, local government, and Commission is collectively referred to as the "Application". All documentation in the Application was disclosed to the Agent in advance of this decision.

**BACKGROUND**

[6] In 2005, ALC Application 36235 was submitted to the Commission to dedicate a 0.41 ha road along the southern boundary of the Property to provide access to, and facilitate subdivision of, the non-ALR portion of the Property. The Commission approved the application by ALC Resolution #570/2005. A portion of the road has been constructed, though the dedication and subdivision of the non-ALR portion of the Property have not been completed. The approval for the road dedication granted by ALC Resolution #570/2005 is still valid and can be pursued by the Applicant.

[7] In 2010, ALC Application 51595 was submitted to exclude 1.1 ha of land adjacent to the southern boundary on the Property from the ALR, and to include an equal amount of land adjacent to the northern boundary on the Property into the ALR. The intent of the Proposal was to reduce the length and cost of the access road to the non-ALR portion of the Property that was approved by ALC Resolution #570/2005. The exclusion and inclusion were not completed, and the approval expired in 2013.

[8] In 2014, the Commission undertook a review of the ALR Boundary in the Elk Valley area of the Regional District of East Kootenay (RDEK) Electoral Area A. A portion of the Property west of the current ALR boundary was identified as having potential for inclusion into the ALR, as portions of the area were cleared and relatively flat. The landowner expressed their preference to not include the identified area into the ALR, as they planned to subdivide the non-ALR part of the Property in the future. The ALR boundary on the Property was ultimately not changed following completion of the boundary review.



## **EVIDENCE AND FINDINGS**

### **Issue: Whether the Proposal would impact the agricultural utility of the Property.**

[9] To assess agricultural capability on the Property, the Panel referred in part to agricultural capability ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The improved agricultural capability ratings applicable to the ALR portion of the Property are Class 2, Class 3, Class 4, Class 5, and Class 6; more specifically, the majority (approximately 80%) of the ALR area is (8:3M – 2:4MP), approximately 15% is (2CX), and approximately 5% is (6:5T-4:6T).

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.

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 C (adverse climate), M (moisture deficiency), P (stoniness), T (topographic limitations), and X (a combination of soil factors).

[10] In addition, the Panel received a professional Agrologist's report, prepared by T.J. Ross, P.Ag., dated February 2019 (the "Ross Report"). The Ross Report classified the Property's unimproved agricultural capability based on an on-site soil survey. The Ross report submits:

*"Based on data collected in this survey, and experience with landforms, soils and agriculture practices in the East Kootenay, it is believed that the Agricultural Capability designations are, for the most part, correct. Designations from this study indicate that 37% of the property is Class 4 soils, and the remainder are Class 5 soils."*

The majority of the ALR portion of the Property is comprised of Class 4 land (unimproved rating).

[11] Based on the agricultural capability ratings and the Ross Report, the Panel finds that the Property has mixed prime and secondary agricultural capability. The ALR portion of the Property is capable of supporting a moderate range of soil-based crops in addition to non-soil based agricultural activities. The Panel notes that the majority of the ALR portion of the Property is currently used for agricultural purposes.

[12] At its meeting of July 8, 2019, the RDEK Board resolved to forward the application to the Commission with support. In the RDEK staff report dated June 26, 2019, RDEK planning staff recommended refusal of the Application, stating:

*"Parcelization and fragmentation of ALR land is not supported. The proposal intends to divide land currently used in a farm operation and would impact the agricultural capability of the land by allowing more non-farm development in the ALR after subdivision. In addition, subdivision along the ALR boundary is already permitted and further subdivision of the non-ALR portion of the property is possible if access can be provided."*

[13] The Panel concurs with the above comments of the RDEK staff. The Panel finds that the Proposal would fragment the most productive part of the Property and contribute to further encroachment of rural residential-sized lots into the ALR. The Panel finds that the Proposal would negatively impact the agricultural utility of the Property by converting

potential farmland into rural residential uses. Smaller, rural residential lots offer a narrower range of options for agricultural development than larger parcels.

[14] The Panel notes that the approval for the road dedication to access the non-ALR portion of the Property granted by ALC Resolution #570/2005 is still valid. The Panel finds that the Commission has already made concessions to allow for the subdivision of the non-ALR portion of the Property that can still be pursued by the Applicant if they so choose.

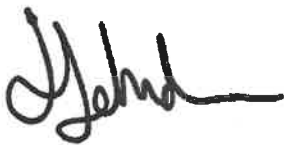
### **DECISION**

[15] For the reasons given above, the Panel refuses the Proposal to subdivide the Property into five lots and a common access.

[16] These are the unanimous reasons of the Panel.

[17] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the ALCA.

[18] Resolution #509/2019  
Released on December 17, 2019



**David Zehnder, Panel Chair**

On behalf of the Kootenay Panel