



Agricultural Land Commission
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December 4, 2019

ALC File: 59481

Barry Brown-John
DELIVERED ELECTRONICALLY

Dear Barry Brown-John:

Re: Application 59481 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 #459/2019). As agent, it is your responsibility to notify the applicant 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 Mike Bandy at ALC.Kootenay@gov.bc.ca.

Yours truly,

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

Mike Bandy, Land Use Planner

Enclosures: Reasons for Decision (Resolution #459/2019)
Schedule A: Decision Map

cc: Regional District of East Kootenay, Attn. Tracy Van de Wiel (File: P 719 619)



AGRICULTURAL LAND COMMISSION FILE 59481
REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicants: Larry Breeze
Alice Breeze

Agent: Barry Brown-John

Property: Parcel Identifier: 012-510-602
Legal Description: District Lot 10718, Kootenay
District
Civic: 4201 Highway 95, north of Radium Hot
Springs, BC
Area: 13.7 ha (entirely in the ALR)

Panel: Jerry Thibeault, Acting Chair, Kootenay Panel
Ian Knudsen



OVERVIEW

[1] The Property is located within the Agricultural Land Reserve (ALR) as defined in s. 1 of the *Agricultural Land Commission Act* (ALCA).

[2] Pursuant to s. 21(2) of the ALCA, the Applicants are applying to the Agricultural Land Commission (the "Commission") to subdivide the 13.7 ha Property into a ± 10.5 ha lot and a ± 3.2 ha lot, as divided by Highway 95. The Applicants propose to negotiate an easement through an adjacent property to the east in order to provide access to the proposed new lot on the east side of Highway 95 (the "Proposal").

[3] The issue the Panel considered is whether the Proposal would impact the agricultural utility of the Property.

[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 1985, ALC Application 36311 was submitted to the Commission to subdivide five lots, including the Property, into a total of ten lots as divided by Highway 95. At the time of the application, all of the lots involved were owned by Kirk Forest Products. The Commission approved the application subject to consolidation of the resulting lots with adjacent parcels, as the Commission did not want to encourage the creation of residential sized lots in the area. The subdivision was never completed and all of the lots involved have been sold to individual owners since.

[7] In 2016, ALC Application 54578 was submitted to the Commission to subdivide the 63 ha lot directly to the south of the Property, into a 60 ha lot and a 3 ha lot, as divided by Highway 95. The Commission approved the application by ALC Resolution #215/2016 on the grounds that, due to the topography of the property west of Highway 95, and the highway itself, the subdivision would have no negative impact on the property's farm operation east of the highway.

EVIDENCE AND FINDINGS

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

[8] To assess agricultural capability on the Property, the Panel referred 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 Property are Class 3, Class 4, Class 5, and Class 6, more specifically, the area west of Highway 95 is approximately 80 percent (3P) and 20 percent (6:3T – 4:6T), while the portion of the Property east of Highway 95 (the "Proposed East Lot") is approximately 90 percent 6T, and 10 percent (6-5PT – 4:4P).

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 P (stoniness), and T (topographic limitations).

- [9] Based on the agricultural capability ratings, the Panel finds that the Property has mixed prime and secondary agricultural capability and that the Proposed East Lot has limited capability for soil-bound agricultural uses.
- [10] At its meeting of June 7, 2019, the Regional District of East Kootenay Board resolved to forward the Application to the Commission with support. In the staff report dated May 29, 2019, RDEK planning staff recommended support of the Application based on the challenging topography and marginal soils of the Proposed East Lot.
- [11] The Application submits that the Proposed East Lot is currently unused, has no legal access, and could not likely get legal access directly from Highway 95 as it is located above a steep cut bank along a curve of the highway. The Application submits that a neighbouring landowner is willing to provide access to the Proposed East Lot via an easement through their lot to the east of the Property, in order to facilitate the subdivision. The Proposal would potentially allow for construction of a residence on the Proposed East Lot; however, the Application suggests that it is not likely feasible to improve the Proposed East Lot for agricultural use due to the lack of water for irrigation, the steepness of the land, and poor soil conditions.

[12] The Panel considered the limited agricultural potential of the Proposed East Lot based on its topography, soil capability, and access constraints, and considered that it is unlikely the Proposed East Lot could function as part of any farm operation undertaken on the western portion of Property. As such, the Panel finds that the Proposal would have a negligible impact on the agricultural utility of the Property as a whole. The Panel would generally prefer that lots separated by roadways be consolidated with adjacent larger holdings instead of subdivided as stand-alone lots, as to not encourage parcelization of ALR land; however, given the constraints to agricultural use of the Proposed East Lot, the Panel is amenable to allowing the Proposal provided the Applicants can arrange access to the Proposed East Lot in a fashion that minimizes impact to ALR land.

DECISION

[13] For the reasons given above, the Panel approves the Proposal to subdivide the Property into a ± 10.5 ha lot and a ± 3.2 ha lot as divided by Highway 95, subject to the following conditions:

- a. The submission of a sketch plan, acceptable to the Commission, showing the proposed access route, and written rationale explaining how the proposed access layout minimizes impact to existing and future agricultural operations on any affected properties;
- b. the submission of an easement plan in substantial compliance with condition 'A';
- c. the submission of a survey plan delineating the area to be subdivided;
- d. the survey plan to be in substantial compliance with Schedule A of this decision;
- e. the survey plan be submitted within three years from the date of release of this decision;

[14] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan.

[15] 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.

[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 #459/2019

Released on December 4, 2019

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

Jerry Thibeault, Acting Panel Chair

On behalf of the Kootenay Panel

