



Agricultural Land Commission
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December 23, 2019

ALC File: 59274

Katherine Friedley
DELIVERED ELECTRONICALLY

Dear Katherine Friedley:

Re: Application 59274 to conduct a non-farm use in the Agricultural Land Reserve

Please find attached the Reasons for Decision of the Kootenay Panel for the above noted application (Resolution #537/2019). 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 ALC.Kootenay@gov.bc.ca.

Yours truly,

A handwritten signature in black ink, appearing to read 'Katie Cox', is written over a light grey signature line.

Katie Cox, Land Use Planner

Enclosures: Reasons for Decision (Resolution #537/2019)
Schedule A: Decision Map

cc: Regional District of East Kootenay File P 718 603



AGRICULTURAL LAND COMMISSION FILE 59274
REASONS FOR DECISION OF THE KOOTENAY PANEL

Non-Farm Use Application Submitted Under s. 20(2) of the *Agricultural Land Commission Act*

Applicants: Katherine Friedley
Adrian Pery

Agent: Katherine Friedley

Property: Parcel Identifier: 005-723-990
Legal Description: District Lot 9046, Kootenay
District Excluding Parcel A (RP 119394I)
Civic: 3550 Highway 95, southeast of Brisco, BC
Area: 256.2 ha

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

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. 20(2) of the ALCA, the Applicants are applying to the Agricultural Land Commission (the "Commission") for a recreational camping facility and to host special events.

Recreational Camping Facility

The Applicants are applying to establish a 1.0 ha site on the Property (the "Proposal Area") for outdoor education courses and passive recreation including:

- 3 to 4 non-permanent canvas tent sites;
- 1 temporary camp kitchen shelter structure;
- 1 temporary outhouse with a buried pump-able container for waste and
- Existing gravel pad, access road

(the "Recreational Facility Proposal")

Trail Proposal

The Applicants are applying to utilize existing logging roads on the Property for use as recreational trails (the "Trail Proposal").

Special Events

The Applicants also wish to host special events such as wellness retreats, educational seminars, workshops, gatherings, reunions, weddings, guided outfitting, bird watching, photo safaris, art excursion, and sports gatherings (paragliding, orienteering, trail running, snowshoeing) for groups of between 16 to 75 people. Events will range from single day to multi-day sessions (the "Events Proposal").

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

- [4] The second issue the Panel considered is whether the Trail Proposal would impact the agricultural utility of the Property.
- [5] The third issue the Panel considered is whether the Events Proposal would impact the agricultural utility of the Property.
- [6] 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

- [7] The Proposal along with related documentation from the Applicants, 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.

EVIDENCE AND FINDINGS

- [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. There are 4 different areas of agricultural capability on the Property, including: Class 4PF (improvable to Class 3P) and Class 5PT (improvable to Class 4P) in the south and west portions, Class 6TP and Class 5PT (not improvable) in the central majority, Class 6TP (not improvable) in the northeast corner; and Class 6RT and Class 7RT (not improvable) in the north portion. The Proposal Area is contained within the unimprovable Class 6TP and Class 5PT (6:6TP-4:5PT) area.

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.

Class 7 - land has no capability for soil bound agriculture.

The limiting subclasses associated with this parcel of land are F (low fertility), P (stoniness), R (bedrock near the surface), and T (topographic limitations).

[9] At its meeting of September 6, 2019, the Regional District of East Kootenay Board resolved to support the Application and forward it to the Commission for a final decision.

Issue 1: Whether the Recreational Facility Proposal would impact the agricultural utility of the Property.

[10] The Panel considered the 1.0 ha size, siting, and description of the recreational areas in relation to the size of the Property and its historic use as a log landing site. The Panel finds that the Recreational Facility Proposal would not adversely impact the agricultural utility of the Proposal Area due to the historic disturbance of the area.

[11] While the Panel finds that the use of the log landing site minimizes the area of impact of the recreational facilities, the Panel is concerned with the use of the area in perpetuity. Therefore, the Panel is not amenable to granting approval of the Recreational Facility Proposal as a commercial use in perpetuity. Instead, the Panel would prefer the

Commission have an opportunity to re-assess the impact of the commercial use by way of a new application after ten years. Re-assessment would provide for oversight of the commercial use and ensure compliance with this decision.

Issue 2: Whether the Trail Proposal would impact the agricultural utility of the Property.

[12] The Applicants intend to utilize the existing logging roads and trails for commercial use as recreational trails in association with the Recreational Facility Proposal. The Application specified that the use of the trails would be restricted to non-motorized use, but it did not specify if mechanized uses (i.e. bicycles) would also be restricted. The Panel is concerned that the use of trails on the Property for mechanized or motorized uses may negatively impact the agricultural utility of the Property by creating erosion and potential conflict with surrounding agricultural uses. For this reason, the Panel is amenable to the use of existing trails on the Property provided that mechanized and motorized users are prohibited, and that no further construction of trails associated with the proposed non-farm use is undertaken. The Panel requests a site plan and trail map of the proposed recreational facilities and trails for its review.

Issue 3: Whether the Events Proposal would impact the agricultural utility of the Property.

Section 17 of the ALR Use Regulation provides ALR landowners with an opportunity to host 10 events per year, provided that the property is assessed as 'farm' under the *Assessment Act*, the events are 24 hours or less, there are no more than 150 people, and that the facilities used in conjunction with the events are not permanent. This provision provides an opportunity for additional revenue if the Property is already in agricultural production. Given that the Property is not assessed as farm, and that the Applicants are requesting an unlimited number of events, the Panel finds that the primary use of the Property will be commercial and not subordinate to agriculture.



[13] The Panel would like to clarify that the intention of refusing the Events Proposal at this time is not to stifle the Applicants' plan to host events on the Property. Rather, the Panel encourages the Applicants to develop agriculture on the Property in order to meet the criteria to host gatherings for events in the ALR in accordance with s. 17 of the ALR Use Regulation.

DECISION

[14] For the reasons given above, the Panel refuses the Events Proposal.

[15] However, the Panel approves the use of 1.0 ha of the Property for the Recreational Facilities Proposal, and the use of the existing logging roads and trails for the Recreational Trail Proposal subject to the following conditions:

- a. The non-farm use is approved for a period of 10 years from the date of release of this decision;
- b. The submission of a site plan acceptable to the Commission, delineating any existing and proposed infrastructure, including structures and trails to be used in association with the non-farm use within 1 year of the date of release of this decision;
- c. The Recreational Facilities Proposal is confined to a 1.0 ha area per the sketch plan attached to Resolution #537/2019 (Schedule A), with the exception of the use of existing trails for passive recreation purposes, and existing access roads for accessing the site;
- d. No fill or permanent structures associated with the Proposal are permitted;
- e. Approval for non-farm use is granted for the sole benefit of the Applicant and is non-transferable.

[16] 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.

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



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

[19] Resolution #537/2019

Released on December 23, 2019

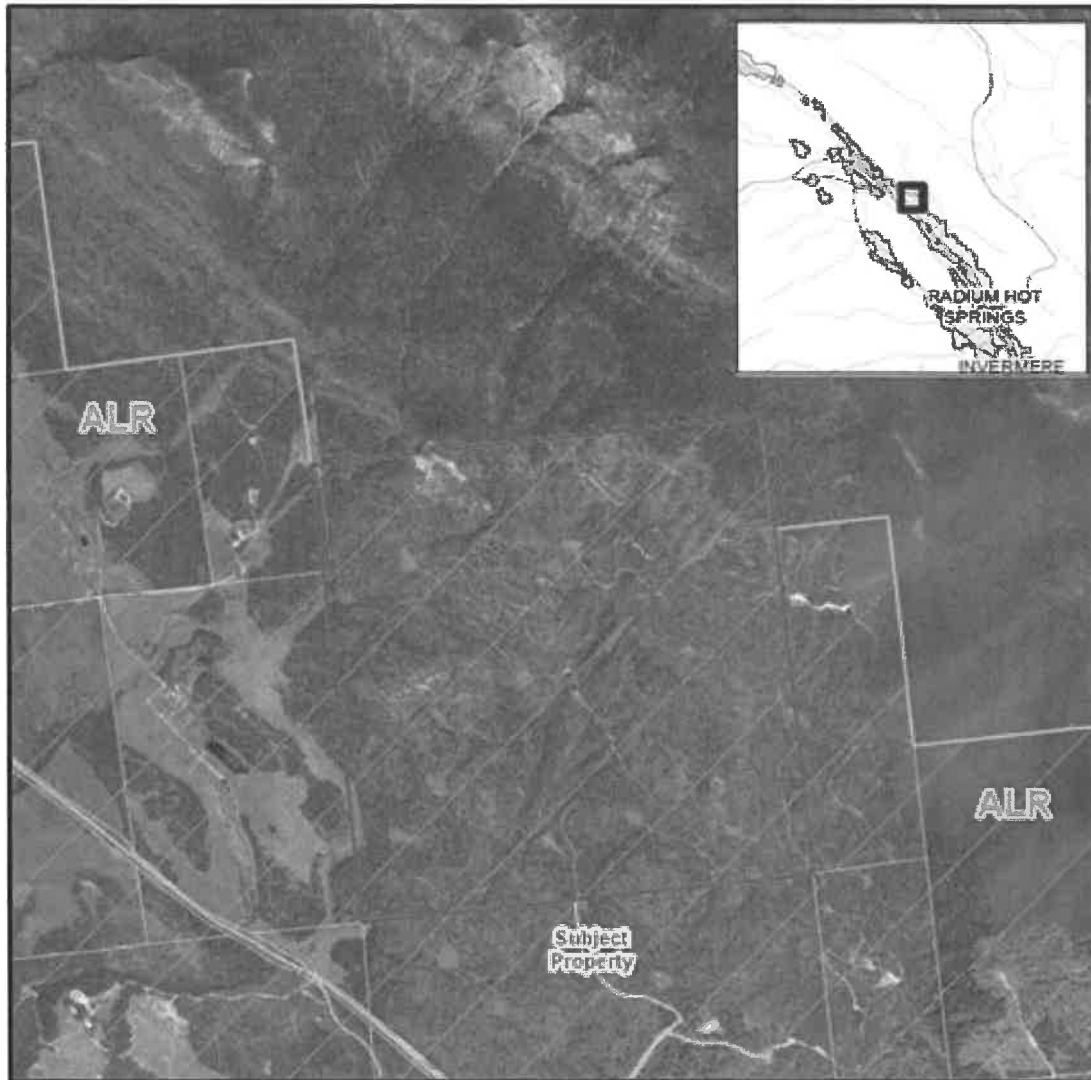
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David Zehnder, Panel Chair

On behalf of the Kootenay Panel



Schedule A: Agricultural Land Commission Decision Map
ALC File 59274 (Friedley)
Conditionally Approved Non-Farm Use Area (1.0 ha)
ALC Resolution #537/2019



	Conditionally Approved Recreational Facility Area (1.0 ha)
	The Property