



Agricultural Land Commission
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March 15, 2023

ALC File: 65307

Ron Popoff

DELIVERED ELECTRONICALLY

Dear Ron Popoff:

Re: Reasons for Decision - ALC Application 65307

Please find attached the Reasons for Decision of the Kootenay Panel for the above noted application (Resolution #90/2023). As agent, it is your responsibility to notify the applicants accordingly.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
 - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or
 - Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

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

Yours truly,

A handwritten signature in cursive script that reads 'Martin Collins'.

Martin Collins, Regional Planner

Enclosure: Reasons for Decision (Resolution #90/2023)

cc: Regional District of East Kootenay. Attention: Krista Gilbert

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**AGRICULTURAL LAND COMMISSION FILE 65307
REASONS FOR DECISION OF THE Kootenay Panel**

Subdivision Application Submitted Under Section 21(2) of the Agricultural Land
Commission Act

Applicants: Rocco Potorti

Agent: Ron Popoff

Property: Parcel Identifier:015-843-149
Legal Description: Lot 44, District Lot 3556,
Kootenay District, Plan 1241
Civic: Gold Creek Subdivision 1819 34th St
South, Cranbrook BC
Area: 2 ha (entirely within the ALR)

Panel: Jerry Thibeault, Kootenay Panel Chair
Danna O'Donnell
Wayne Harris

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] The Applicants are applying to the Agricultural Land Commission (the “Commission” or “ALC”) under s. 21(2) of the ALCA to subdivide the 2 ha Property into two 0.5 ha lots and one 1 ha lot (the “Proposal”).

[3] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA:

6 (1) The following are the purposes of the commission:

- (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.

(2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:

- (a) the size, integrity and continuity of the land base of the agricultural land reserve;
- (b) the use of the agricultural land reserve for farm use.

EVIDENTIARY RECORD

[4] 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.

BACKGROUND

[5] The Property does not have BC Assessment “farm” status but contains a residence and is used for grazing two horses.

[6] The Current Regional District zoning designation is RR-2 - Rural Residential (small holding) zone permits a minimum parcel size of 2 ha.

[7] Relevant OCP policies indicate that maintenance of existing zoning designations and residential land use patterns within the Gold Creek subarea is supported. Additional subdivision to parcel sizes below the minimum requirements established within the zoning bylaw is generally not supported. Should the application be permitted bylaw amendments are required.

[8] At its meeting of May 7, 2022, the Board of the Regional District of East Kootenay resolved to forward the application with a recommendation of support.

ANALYSIS AND FINDINGS

[9] The Application indicates that the purpose of the subdivision is to create two 0.5 ha lots for small hobby farms, and to retain the 1 ha lot with the existing home.

[10] The Application states that the two proposed 0.5 ha lots are consistent with the lots adjacent to the east, across 34 Ave S. The six adjoining small lots (ranging in size between 0.2 – 0.4 ha) to the east were subdivided in the early 1970's prior to the establishment of the ALR. The Panel is not compelled to subdivide to the size or surroundings lot, or the minimum lot size in a local government bylaw. Instead the Panel must consider the Application within the context of section 6 of the ALCA and its priorities to preserve agricultural land for farm use.

[11] 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 unimproved agricultural capability rating is Class 5SP, and the improved agricultural capability ratings applicable to the Property are Class 3 and Class 4, more specifically (8:4PT – 2:3T).

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.

The limiting subclasses referred to are P (stoniness) and T (topographic limitations), and S (a combination of undesirable soil structure, low fertility, moisture deficiency, or salts).

[12] Based on the agricultural capability ratings, the Panel finds that the Property has mixed prime and secondary agricultural capability that is similar to surrounding ALR parcels, and could support a range of crops, including forage, with appropriate management practices. The Application indicates that 75% of the 2 ha Property is used for horse grazing.

[13] The Panel also considered whether the subdivision of two 0.5 ha lots would have a negative effect on the productive capacity of the 2 ha property. The Panel considered the small size of the proposed lots and finds that two 0.5 ha lots would be occupied by a new home, driveway, yard and other residential infrastructure that would decrease the area available for agricultural use. In the Panel's experience, parcel size and configuration can influence the type of agriculture that is successful on a parcel because larger parcels of agriculturally capable land allow for more land to support agricultural production, and agricultural infrastructure. As such the proposed subdivision represents the creation of three small lots that may not be large enough to support agricultural activities (including the current grazing) and therefore may be more appealing for solely residential use. Subdividing for residential use of ALR land is inconsistent with the Commission's purpose of encouraging farming in the ALR and incrementally diminishes the overall inventory of agricultural land.

[14] In summary, the Panel finds that the proposed subdivision would discourage farming, and eliminate farming potential on the subdivided parcels, inconsistent with the purposes and goals of the ALC Act.

DECISION

[15] For the reasons given above, the Panel refuses the application to subdivide the Property into two 0.5 ha lots and one 1 ha lot .

[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(3) of the ALCA.

[18] Resolution #90/2023
Released on March 15, 2023

A handwritten signature in cursive script, appearing to read 'Jerry Thibeault'.

Jerry Thibeault , Panel Chair
On behalf of the Kootenay Panel