

October 15, 2024

ALC File: 69552

**David Pow**  
**McElhanney Consulting**

**Delivered Electronically**

Dear David Pow:

**Re: Reasons for Decision - ALC Application 69552**

Please find attached the Reasons for Decision for the above noted application (Resolution #660/2024). As the agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with section 11(2)(b) of the ALR General Regulation.

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](mailto:ALC.Kootenay@gov.bc.ca).

Yours truly,



Martin Colins, Land Use Planner

Enclosures: Reasons for Decision (Resolution #660/2024)  
Schedule A: Decision Map

cc: Regional District of East Kootenay

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**Agricultural Land Commission File 69552**  
**Reasons for Decision of the Chief Executive Officer**

**Removal of Soil Application Submitted Under s.20.3(5) of the Agricultural Land  
Commission Act**

**Applicants:** City of Fernie

**Agent:** David Pow – McElhenny Consulting

**Property:** Parcel Identifier: n/a  
Legal Description: Sublot 18 District Lot 4589,  
Kootenay District, Plan X-27

Location: Back Road, Elko  
Area: 2.5 ha (only 1.8 ha in the ALR)

**Chief Executive Officer:** Kim Grout  
(the “CEO”)

## 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. 20.3(5) of the ALCA, the City of Fernie (the “Applicant”) is applying to the Agricultural Land Commission (the “Commission” or “ALC”) to remove 17,000 m<sup>3</sup> of gravel from a ~ 0.42 ha portion of the 2.5 ha property over a period of 10 years (the “Proposal”).
- [3] Under Section 27 of the ALCA the Commission, by resolution, may establish criteria under which the CEO may approve applications for exclusion, subdivision, non-farm use, non-adhering residential use, and soil or fill use applications. By resolution, the Commission as specified that the following applications may be decided by the CEO:
- 14. Subdivision, non-farm use, non-adhering residential use and soil or fill use that are not consistent with any of the existing approved criteria (Criteria 1 – 13) but nonetheless are minor in nature and in the opinion of the CEO, the interests of the Commission would be unaffected by an approval of the application. In the case of exclusion applications, the CEO may only consider applications submitted to the local government before midnight on September 29, 2020.*
- [4] The Proposal was considered in the context of the purposes and priorities of the Commission set out in section 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.

## **BACKGROUND**

[5] The file material indicates that the majority of the 2.5 ha (1.8 ha) Property has been used as a gravel pit as far back as at least 1985, although there is no record of any approvals from the ALC. The southerly ~0.7 ha non-ALR portion of the Property is relatively undisturbed and is unlikely to be disturbed by the updated Proposal.

- [6] The City of Fernie proposes to extract gravel from the previously disturbed 1.8 ha ALR portion of the Property (the “Proposed Aggregate Extraction Area”) to an average depth of 10 meters. The material would be extracted for use in City of Fernie projects, as required.
- [7] The CLI soil capability ratings for the 1.8 ha ALR portion of the Property are 80% Class 5: and 20% Class 6 with steep topography, moisture deficiency and stoniness limitations.

### **ANALYSIS AND FINDINGS**

- [8] The CEO considered that the Property were comprised of secondary soils limited by steep topography and that the request was limited to areas already disturbed by extraction.
- [9] The Application states that material will be removed by excavator and/or front-end loader and any crushing and /or screening required will occur on site within the already disturbed area.
- [10] The Application states that when reclamation is required, the slopes will be graded to approximately 2:1 (hz:vt) slope, the settling pond will be filled in, and previously stripped and stockpiled organics and overburden will be spread over the extraction area and seeded with an approved seed mixture.

- [11] The CEO finds that impacts to the agricultural utility of the Property are limited to the footprint of already disturbed areas, with agricultural capability ratings of Class 5 and 6 limited by steep topography, and that provided the Applicant reclaims the property to an agricultural standard the same or better than the lands current agricultural rating the integrity of the ALR will be protected.
- [12] The Commission notes that weeds can greatly reduce the productivity of agricultural areas and that disturbed sites like pits and quarries present the perfect conditions for the establishment of invasive plants and can contaminate the material removed from a pit and be transferred to other sites unless proper weed management practices are implemented. Under the BC Weed Control Act, the land occupier has a legal obligation to control noxious weeds on the site.
- [13] The CEO reviewed the Application materials and finds that the Proposal to remove 17,000 m<sup>3</sup> of gravel in a ~ 0.42 ha area of the Property at a depth of 10 m will have limited impacts to the agricultural utility of the Property provided appropriate remediation to an agricultural standard overseen by a qualified professional occurs.

## **DECISION**

- [14] After reviewing the Application, I am satisfied that the Proposal is consistent with Criterion #14 and approve the removal of gravel from the Property for a period of 10 years subject to the following conditions:

**General Conditions**

- a) The aggregate extraction activities are restricted to the area shown in the Schedule A: Decision Map attached to this Decision;
- b) The total volume of material to be removed is limited to 17,000 m<sup>3</sup>;
- c) Appropriate weed control must be practiced on all disturbed areas.
- d) The lands are reclaimed to an agricultural standard, such that the agricultural capability rating of the land will be the same or better than the current rating of Class 5MT and this is confirmed in a closure letter submitted to the ALC by a qualified registered professional with specific knowledge of soils, drainage and land reclamation at end of mine life;
- e) Extraction activities must be completed within 10 years from the date of the release of this decision.
- f) Approval for the aggregate extraction is granted for the sole benefit of the Applicant and is non-transferable.

**Prior to conducting proposed extraction activities**

- g) To ensure the successful reclamation of the Proposed Aggregate Extraction Area and appropriate oversight by a qualified registered professional, a security deposit in the amount of \$20,000 must be



made payable to the Minister of Finance c/o the Agricultural Land Commission ALC prior to the commencement of the proposed aggregate extraction activities. The security deposit is to ensure the proposed aggregate extraction activities are conducted in accordance with the information submitted with the Application and the conditions of this approval.

This security only covers the ALR portion of the Property and does not cover reclamation related to other jurisdictional bodies.

For greater clarity, some or all of the security deposit will be accessible to and used by the ALC upon the failure of the operator to comply with any or all aspects of the conditions of approval contained herein.

The security deposit may be made in the form of an Irrevocable Letter of Credit (the "ILOC") or bank draft/certified cheque. Note that all financial securities must be in the name of the owner(s); the ALC no longer accepts securities from 3rd parties.

An Irrevocable Letter of Credit (ILOC) is a form of financial guarantee issued by a financial institution (usually the bank's guarantees or securities department) and made out to the Minister of Finance. Please see Schedule D for a sample ILOC for your information.

The ALC also accepts bank drafts or certified cheques payable to the Minister of Finance, these funds are deposited into a government

security/refundable deposit account – please note that there will be no interest paid on cheques or bank drafts at the time of refund (applicant would need to sign an acknowledgement form to this effect – see Schedule E). The bank drafts/certified cheques should be made out to the below:

Minister of Finance  
c/o Agricultural Land Commission  
201- 4940 Canada Way  
Burnaby BC V5G 4K6

Please include the ALC application number in the memo section of the cheque/bank draft.

Release of the security deposit will be dependent on receipt of evidence that the proposed aggregate extraction activities are completed to a standard deemed satisfactory by the ALC. In this regard, the ALC will consider the closure report that must be prepared and submitted to the ALC in fulfillment of condition “h” below

**Upon completion of proposed extraction activities**

h) A closure report, for the ALC’s review and approval, must be submitted to the ALC upon completion of the proposed aggregate extraction activities. The closure report must include, but is not limited to, the following:

- i. A written description of the completed proposed aggregate extraction activities;
- ii. Final cross section profiles of the proposed aggregate extraction activities area showing final contours, and depth and volumes of extraction;
- iii. The closure report must be submitted to the ALC no more than six (6) months after the completion of the proposed aggregate extraction activities and no later than April 30, 2035;

[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.

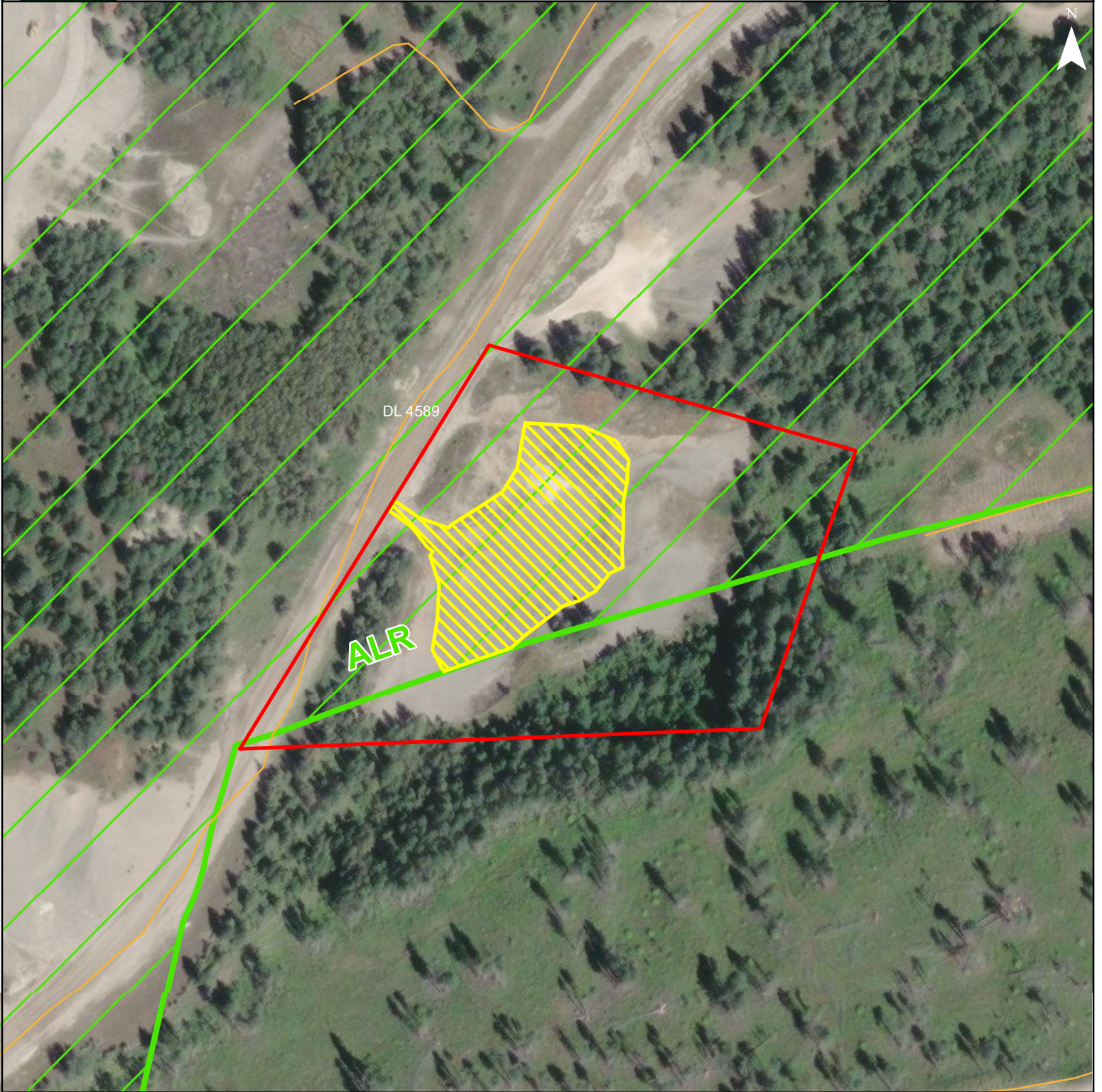
[16] A decision of the CEO is a decision of the Commission pursuant to s. s. 27(5) of the ALCA.

[17] Resolution #660/2024  
Released on October 15, 2024

A handwritten signature in black ink, appearing to read 'Kim Grout', is written over a printed name and title.

**Kim Grout, CEO**





ALC FILE NO: 69552	RESOLUTION NO: #660/2024
MAP PRODUCED: October 9, 2024	
MAP SCALE: 1:2,000	
DATA SOURCES & NOTES: ALC, BCGW and ESRI / Maxar. Contains information licensed under Open Government License - British Columbia.	
Map for reference only. Accuracy not guaranteed.	

- Conditionally Approved Aggregate Removal Area (~0.42 ha)
- Crown Tenure Application Area
- Agricultural Land Reserve
- PMBC Parcel Cadastre

0 20 40 60 80 100  
Metres

