

October 16, 2024

ALC File: 69296

Tracy Van de Wiel
Delivered Electronically

Dear Tracy Van de Wiel:

Re: Reasons for Decision - ALC Application 69296 (RDEK)

Please find attached the Reasons for Decision of the Kootenay Panel for the above noted application (Resolution #666/2024). As the agent, it is your responsibility to notify the applicant 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 33.1 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.

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,



Ron Wallace, Land Use Planner

Enclosures: Reasons for Decision (Resolution #666/2024)
Schedule A: Decision Map

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Agricultural Land Commission File 69296
Reasons for Decision of the Kootenay Panel

**Exclusion Application Submitted Under s.29(1) of the Agricultural Land
Commission Act**

Applicants: Ken and Joyce Strelloff

Agent: Tracy Van de Wiel

Property: Parcel Identifier: 008-122-687
Legal Description: Lot 5 (amended), District
Lot 4590, Kootenay District, Plan 2345, Except
Part Included in Plan NEP19344
Civic: 7124 Rosen Lake Road, Rosen Lake/
Jaffray, BC
Area: 27.5 ha (21 ha 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. 29(1) of the ALCA to exclude a ±0.72 ha portion of the Property (the "Proposal area") from the ALR (the "Proposal"). The Applicants state that the purpose of the Proposal is to enable them to subdivide along the ALR boundary and create two rural residential lots outside of the ALR. The remaining ALR property would continue to be farmed.
- [3] The Applicants have submitted an accompanying application for inclusion (67643) of land into the ALR as an 'ALR swap' to be considered conditional on approval of the proposed exclusion Application.
- [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.

EVIDENTIARY RECORD

- [5] The Proposal, along with related documentation from the Applicants, Agent, local government, third parties, and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision.
- [6] The Panel conducted a walk-around and meeting site visit on May 16, 2024 in accordance with the *ALC Policy Regarding Site Visits in Applications*, (the “Site Visit”). A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications*. The site visit report was certified as accurately reflecting the observations and discussions of the Site Visit by the Applicant on June 6, 2024 (the “Site Visit Report”).
- [7] On June 18, 2024, a Notice of Exclusion Meeting was provided to the Applicant and Agent. On June 25, 2024, the Panel conducted a meeting

with the Applicant and Agent via teleconference (the “Exclusion Meeting”). An exclusion meeting report was prepared and was certified as accurately reflecting the observations and discussions of the Exclusion Meeting by the Agent on July 23, 2024 (the “Exclusion Meeting Report”).

BACKGROUND

- [8] The Property is located east of Jaffray and south of Rosen Lake Road. There are three residences located on the north and west portions of the Property; one residence (just off Rosen Lake Road) is located outside the ALR, and the other two residences are located on or near the western ALR boundary within the Property. The Application states that most of the Property within the ALR is used for grazing livestock and hay production.
- [9] In 1997, the RDEK submitted a block exclusion application to the Commission for areas proposed for exclusion of land from the ALR and inclusion of land into the ALR for the Jaffray Loop area (i.e., including the Property under Application). The Commission, by Resolution #309/97, approved the exclusion of approximately 17 ha from the ALR (including the western portion of the Property). That application excluded ALR land within the Property adjacent to the Proposal area in this current Application.
- [10] In accordance with s. 29(2) of the ALCA, the RDEK held a public hearing for the Application on September 26, 2023, via Zoom webinar. Staff

advised that no written submissions were received prior to the public meeting. The landowner, Mr. Strelhoff, was present at the hearing and said he talked to neighbours about the Proposal, and nobody expressed any opposition. No members of the public were in attendance.

- [11] The ALR portion of the Property is designated Rural Resource Zone (RR-60) and the non-ALR portion of the Property is designated Rural Residential (Estate) Zone. There is no Official Community Plan (OCP) for the area.
- [12] The proposed realignment of the ALR boundary would enable the owner of the Property to subdivide along the ALR boundary without the need for ALC approval. Exclusion would also enable the owner to create the proposed remainder ALR lot which is smaller than the zoning requires because they would be subdividing along a zone boundary (i.e., a condition when the 60-ha minimum lot size does not apply).

ANALYSIS AND FINDINGS

- [13] The Panel considered the Application in context to the Proposal area's agricultural capability and current use and whether the accompanying application for inclusion of land into the ALR would result in an ALR property more suitable for agricultural purposes.
- [14] To assess agricultural capability on the Property, the Panel referred in part to agricultural capability ratings as identified using the Canada Land



Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The majority of the ALR land proposed for exclusion has an improved agricultural capability ratings of 70% Class 4T with a limitation of T (topography) and 30% Class 2X with a limitation of X (a combination of soil factors). A small portion of the ALR land proposed for exclusion has an improved agricultural capability rating of 60% Class 3M with a limitation of M (soil moisture deficiency) and 40% Class 2X.

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.

[15] Based on the agricultural capability ratings, the Panel finds that the Proposal area has mixed prime and secondary agricultural capability. From the Site Visit the Panel observed that the portion of the ALR proposed for exclusion (the wedge-shaped Proposal area) extends from approximately the fence line to the west – including the gravel driveway and up to the eastern edge of the two western residences – and back to the southern boundary of the Property. The Panel finds that the



Proposal area has limited agricultural potential due to its current use as an access driveway and its steeper topography.

- [16] The Panel finds that the exclusion of the Proposal area would better define the ALR boundary based on the agricultural capability ratings and from the Panel's observations of the Property from the Site Visit. The Panel is prepared to support the proposed exclusion area from the ALR to permit subdivision of rural residential lots outside of the ALR, provided the existing fence located along the western edge of the ALR is maintained to mitigate potential trespass onto the remaining ALR parcel.

DECISION

- [17] For the reasons given above, the Panel approves the Proposal to exclude a ± 0.72 ha portion of the Property from the ALR, subject to the following conditions.
- (a) the submission of a surveyed subdivision plan to the Commission, within three years of the date of the release of this decision, that is in compliance with Schedule A of this decision;
 - (b) the existing fence located along the western edge of the ALR is maintained to mitigate potential trespass onto the remaining ALR parcel.
 - (c) Approval for exclusion is granted for the sole benefit of the Applicant and is non-transferable.



[18] The Commission will advise the Register of Land Titles that the Proposal area shown in Schedule A has been excluded from the ALR when it has received a subdivision plan that is within reasonable compliance with the proposed subdivision plan that was submitted with the application.

[19] 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.

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

[21] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

[22] Resolution #666/2024
Released on October 16, 2024


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


Jerry Thibeault, Panel Chair


On behalf of the Kootenay Panel




ALC FILE NO: 69296	RESOLUTION NO: 666/2024
MAP PRODUCED: October 8, 2024	
MAP SCALE: 1:5,000	
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 Area for Exclusion
(~0.72 ha)

 Subject Property

 Agricultural Land Reserve

 PMBC Parcel Cadastre

0 50 100 150 200 250
Metres

