



**Agricultural Land Commission**  
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March 11, 2020

ALC File: 59442

**Alva Soppit**  
**DELIVERED ELECTRONICALLY**

Dear Alva Soppit:

**Re: Application 59442 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 #112/2020). As agent, it is your responsibility to notify the applicant(s) accordingly.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'M Bandy', is written over a light blue horizontal line.

Mike Bandy, Land Use Planner

Enclosure: Reasons for Decision (Resolution #112/2020)

cc: Regional District of East Kootenay, attn. Krista Gilbert (File: P 719 362)



**AGRICULTURAL LAND COMMISSION FILE 59442**  
**REASONS FOR DECISION OF THE KOOTENAY PANEL**

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

**Applicants:** Alva Soppit  
Holly Elliot

**Agent:** Alva Soppit

**Properties:** Property 1 ("District Lot 781"):  
Parcel Identifier: 016-390-610  
Legal Description: District Lot 781, Kootenay District  
Civic: 450 Wardner-Fort Steele Road, Fort Steele, BC  
Area: 69.5 ha (69.5 ha within the ALR)

Property 2 ("District Lot 39"):  
Parcel Identifier: 016-390-636  
Legal Description: That Part of District Lot 39,  
Kootenay District, Lying East of a Line Which Bisects  
the Northerly and Southerly Boundaries Thereof  
Civic: Wardner-Fort Steele Road, Fort Steele, BC  
Area: 34 ha (34 ha within the ALR)

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

**OVERVIEW**

- [1] The Properties are located within the Agricultural Land Reserve (ALR) as defined in s. 1 of the *Agricultural Land Commission Act* (ALCA).
- [2] In 2001, one of the current Applicants, Alva Soppit, submitted Application 16960 to the Commission to subdivide a 151 ha parcel ("District Lot 284") located to the south of the Properties into two lots as divided by Wardner-Fort Steele Road. The Commission refused the application on the grounds that retention of District Lot 284 as a single parcel would have a greater agricultural benefit than the creation of two smaller parcels.
- [3] In 2003, Alva Soppit submitted a reconsideration request of ALC Application 16960. Upon reconsideration, the Commission approved the subdivision of District Lot 284 on the condition that two other parcels owned by the applicant, District Lot 781 and District Lot 39 (the Properties), be consolidated or bound by covenant (the "2003 Decision"). As the Properties were being farmed together at the time, the applicant agreed to registration of Covenant KX12779, which restricts the sale or transfer of the Properties independently (the "Covenant"). The Properties are currently jointly owned by the Applicants.
- [4] Pursuant to s. 20(2) of the ALCA, the Applicants are applying to the Agricultural Land Commission (the "Commission") to release the Covenant from the title of the Properties (the "Proposal").
- [5] The Applicants are requesting that the Covenant be released to allow them to add one of the owners' husbands to the title of District Lot 781. The Applicants submit that removal of the covenant would assist with estate planning and taxation issues, and would enable the Applicants to undertake repairs and maintenance on the farm.
- [6] The issue the Panel considered is whether the Covenant still provides a benefit to agriculture as intended by the 2003 Decision.

[7] 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**

[8] 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**

[9] At its meeting of January 10, 2020, the Regional District of East Kootenay Board resolved to forward the Application to the Commission with support.

### **EVIDENCE AND FINDINGS**

**Issue: Whether the Covenant still provides a benefit to agriculture as intended by the 2003 Decision.**

[10] The Panel reviewed the 2003 Decision and the Commission's rationale. The Panel notes that the proposal to subdivide District Lot 284 was initially refused by the Commission on the grounds that retention of District Lot 284 as a single parcel would provide greater agricultural benefit than the creation of two smaller parcels. The subdivision of District Lot 284 was subsequently approved by the Commission on the condition that the Properties (District Lots 781 & 39) be consolidated or bound by covenant as a means of providing a benefit to agriculture. The Panel notes that binding

of titles by covenant is an alternative to consolidation by survey because it is generally less expensive than surveying, but achieves a similar result. The Panel confirms that the intent of the 2003 Decision was to improve the agricultural utility of the Properties by having the Properties retained as a single, cohesive, farmable unit. The Panel notes that the current landowner was amenable to this option at the time of the 2003 Decision and agreed to registration of the Covenant.

- [11] The Panel understands that the Applicants intend to continue to farm the Properties and do not intend to sell the Properties at this time. However, the Panel recognizes that the release of the covenant would allow the Properties to be sold separately in the future, potentially resulting in fragmentation of the single contiguous, farmable area achieved by the Covenant. In this regard, the Panel considers that release of the Covenant is akin to subdivision of the Properties in this circumstance.
- [12] Generally, the Panel considers that reducing the size of agricultural parcels limits the range of viable agricultural options and reduces the likelihood of future agricultural activity taking place. Further, the Panel considers that it is beneficial to retain larger parcels in this area in order to better support the region's primary agricultural activities of forage and grazing. As such, the Panel finds that release of the Covenant would reduce the overall agricultural utility of the Properties.
- [13] Despite the estate planning benefits that the Proposal would provide to the Applicants, the Panel finds that release of the Covenant would be contrary to the spirit of the 2003 Decision, as it would negate any agricultural benefit gained by allowing the subdivision of District Lot 284.

### **DECISION**

- [14] For the reasons given above, the Panel refuses the Proposal to release the Covenant from the title of the Properties.
- [15] These are the unanimous reasons of the Panel.



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

[17] Resolution #112/2020

Released on March 11, 2020

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**David Zehnder, Panel Chair**

On behalf of the Kootenay Panel