

November 8, 2024

ALC File: 65162

Catherine Seel
Ministry of Transportation & Infrastructure
DELIVERED ELECTRONICALLY

Dear Catherine Seel:

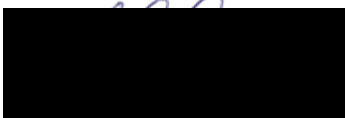
Re: Reasons for Decision – Reconsideration of ALC Resolution #350/2023

The North Panel received correspondence dated June 20, 2024 from Catherine Seel, requesting reconsideration of Resolution #350/2023. Please find attached the Reasons for Decision of the North Panel on reconsideration for the above noted application. 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 s. 11(2)(b) of the ALR General Regulation.

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

Yours truly,



Leticia Sturlini, Land Use Planner

Enclosures: Reasons for Decision (Resolution #717/2024)
Schedule A: Decision Map

Schedule B: Original Decision (Resolution #350/2023)

cc: Regional District of Fraser Fort George (File: ALR 8945 & 8946).

Attention: Richard Buchan

65162d2



AGRICULTURAL LAND COMMISSION FILE 65162
RECONSIDERATION OF PANEL DECISION
REASONS FOR DECISION OF THE NORTH PANEL

Reconsideration of Resolution #350/2023 (a decision made on a Subdivision Application Submitted Under s.21(2) of the *Agricultural Land Commission Act*)

Original Applicant: Ministry of Transportation & Infrastructure (“MoTI” or the “Ministry”)

Property Owner: Her Majesty the Queen in the Right of the Province of British Columbia

Agent: Catherine Seel, MoTI

Properties:

Property 1:

Parcel Identifier: 010-492-119
Legal Description: The Fractional West ½ of District Lot 8946 Cariboo District

Civic: ~4 km Northwest of McBride, BC
Area: 19.38 ha (entirely within the ALR)

Property 2:

Parcel Identifier: 010-492-135

Legal Description: District Lot 895 Cariboo District,
Except Plan 21079

Civic: ~4 km Northwest of McBride, BC

Area: 19.41 ha (entirely within the ALR)

Property 3:

Parcel Identifier: 010-498-371

Legal Description: Parcel A (E15879) of the East ½
of District Lot 8946 Cariboo District Except Plan
21329

Civic: ~4 km Northwest of McBride, BC

Area: 5.78 ha (entirely within the ALR)

Panel:

Janice Tapp, North Panel Chair

Karen McKean

Andrew Adams

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] Pursuant to s. 21(2) of the ALCA, the Original Applicant applied to the Agricultural Land Commission (the “Commission”) to dedicate ~2.04 ha of public road right-of-way in order to extend Westlund West Road by 1.02 km (the “Proposal”).
- [3] The Original Application states that the road is already constructed but is not legally surveyed or dedicated as provincial public highway. The Original Application proposed to dedicate a 20 m wide public road right-of-way to provide legal access to the Properties, land owned by the Lucille Mountain Water Users Community (“LMWUC”), the McBride Community Forest, and other lands beyond.
- [4] By Resolution #350/2023, dated July 18, 2023, the Panel refused the Proposal (the “Original Decision”). In reaching its decision, the Panel concluded that:
- The existing road alignment bisects Property 1 and Property 3, creating two “hooked” parcels for each property across the road;
 - Dedicating the road alignment would fragment Properties 1 and 3, potentially impacting agricultural efficiency;
 - A publicly dedicated road may increase traffic between the fragmented sections of each property, affecting their agricultural use;

- The survey plan provided with the Application shows undeveloped statutory rights-of-way (SRWs) along the eastern and southern boundaries of the Properties. Developing these SRWs could provide access to the Properties and surrounding land without the need for subdivision.

[5] On June 20, 2024, the Commission received the Original Applicant's Request for Reconsideration of Resolution #350/2023 (the "Request for Reconsideration"). The Request for Reconsideration explains why the undeveloped SRWs were not proposed for construction, why the proposed road is necessary in order for the Original Applicant to dispose of the Properties, and that the proposed alignment will not impact waterways.

[6] Section 33 of the ALCA states that the Commission may reconsider a decision of the Commission upon written request of a person affected or on the Commission's own initiative, if the Commission determines that evidence that was not available at the time of the original decision that could not have been obtained earlier through the exercise of due diligence has become available, and /or if the original decision was based on information that was incorrect or false, and the information would have been germane to the review of ALC Application 65162.

[7] In this case, the Panel found that the information provided in the request for Reconsideration regarding the feasibility of constructing a road in the road dedication along the southern boundary of Property 1, and the necessity to

provide public access that can't be accommodated in the SRW along the east boundary is evidence that was not available to the Panel at the time of the Original Decision and is germane to the review of ALC Application 65162. The Panel finds that the Original Decision should be reconsidered.

- [8] Pursuant to s. 33(3) of the ALCA, the Panel notified the affected parties of its intention to reconsider the Original Decision. The ALC received communications in support of the Application from the LMWUC (letter dated October 15, 2024) and the McBride Farmers Institute (email dated October 16, 2024).

EVIDENTIARY RECORD

- [9] The Panel considered the following evidence:
1. The Proposal and the Request for Reconsideration along with related documentation from the Original Applicant, Agent, local government, third parties, and Commission; and
 2. The Original Decision.

ANALYSIS AND FINDINGS

- [10] The Applicant applied to the Commission to dedicate ~2.04 ha of public road right-of-way in order to extend Westlund West Road by 1.02 km. The Application states that the purpose of the road dedication is in part to provide legal access to the Properties, provide legal access to the LMWUC,

the McBride Community Forest, and other lands beyond.

- [11] The Panel originally refused the application to dedicate a road through the Properties due to concerns about land fragmentation and the potential negative impact on agricultural use and efficiency. In its Original Decision, the Panel suggested using existing statutory rights-of-way as a less disruptive alternative. However, the Applicant has provided information that submits that the Panel's suggested options are not feasible.
- [12] The Request for Reconsideration explains that the road dedication along the south boundary of Property 1 was established under a previous plan, but it has never been constructed as the area is wet and swampy, which presents geotechnical challenges that would make construction costly. Additionally, the Request for Reconsideration submits that the SRW Plan BCP4382 along the east boundary of Property 3 is a statutory right-of-way in the name of the LMWUC and does not provide legal or public access for anyone other than LMWUC.
- [13] In the Request for Reconsideration, the Agent reiterates that because the Ministry's gravel pit is now depleted, it intends to dispose of the Properties so they can be made available for other uses. The Agent submits that dedicating the existing road is necessary for the disposal of the Properties and would provide legal access to the Properties and to lands beyond, preventing future landowners from having to invest significant funds to secure access.

[14] In an email from Catherine Seel, dated August 15th, 2024 (the “August 15th email”), the Applicant states that it has reviewed the location of all of LMWUC’s waterways and water lines and confirms that the proposed road dedication will not impact the Dore River, Dore River watershed, or LMWUC water pipeline/ditching infrastructure. However, in reviewing the water licences, the Applicant identified one water line which goes through Property 3 to the adjacent parcel to the south. The Applicant explains that this line was built without the Applicant’s knowledge or permission. Nevertheless, the Applicant states that this water line is not impacted by the road and will be protected by an easement before Property 3 is sold or transferred.

[15] While the Panel still views the fragmentation of the Properties by a road as less than ideal, it recognizes that the physical impact of the road alignment already exists. The Panel considered the necessity of securing legal access to the Properties and preventing future landowners from facing unnecessary barriers to agricultural use. Given the Applicant’s explanation of the lack of viable alternatives, the Panel is prepared to approve the road dedication.

DECISION

[16] For the reasons given above, the Panel approves the Proposal to dedicate ~2.04 ha of public road right-of-way in order to extend Westlund West Road by 1.02 km subject to the following conditions:

- (a) the submission of a survey plan delineating the area to be subdivided;

- (b) the survey plan to be in substantial compliance with Schedule A of this decision;
- (c) the survey plan be submitted within three years from the date of release of this decision (by November 8, 2027); and

[17] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan.

[18] 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.

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

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

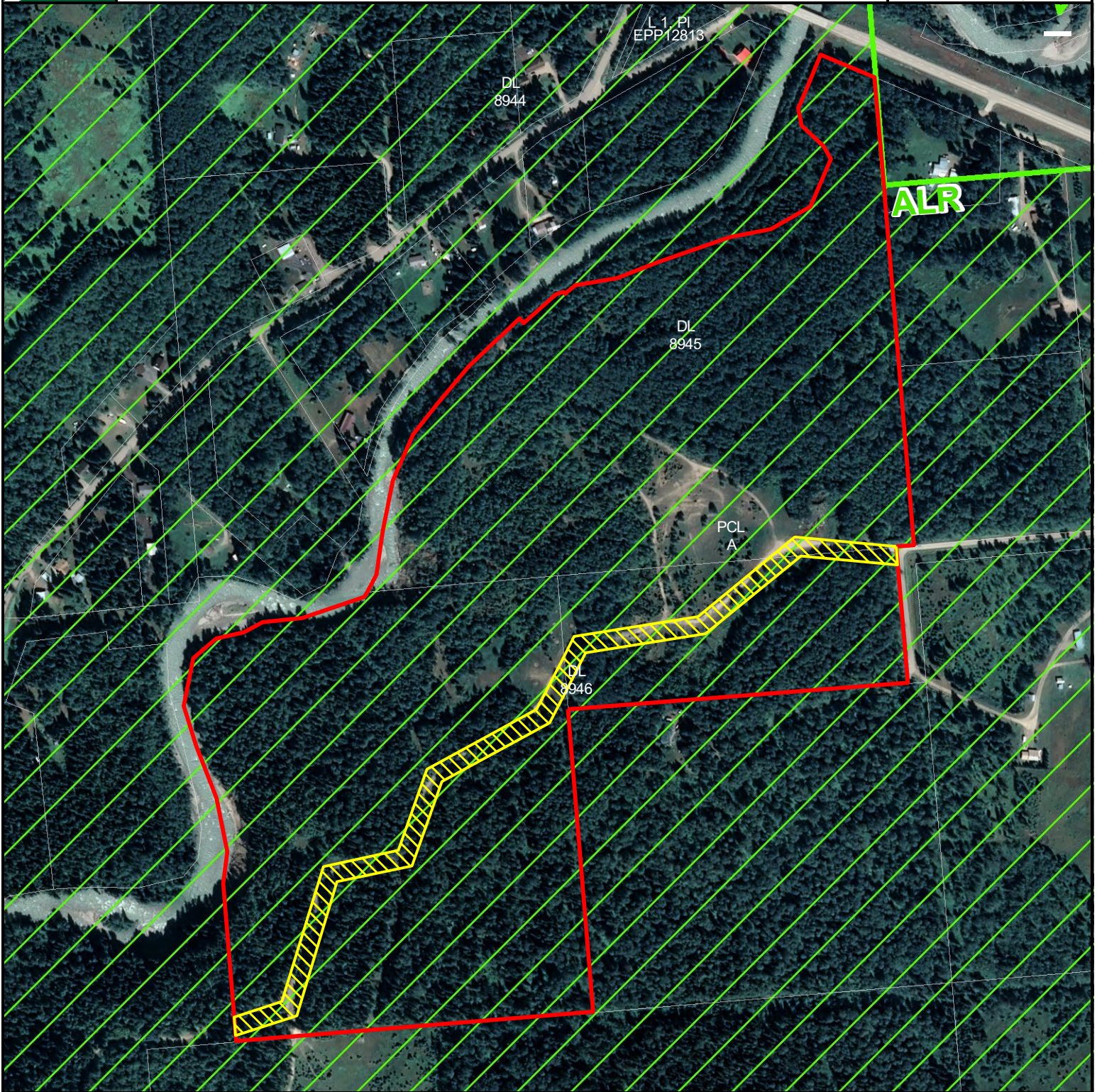
[21] Resolution #717/2024

Released on November 8, 2024



Janice Tapp, Panel Chair

On behalf of the North Panel







ALC FILE NO: 65162
RESOLUTION NO: 717/2024

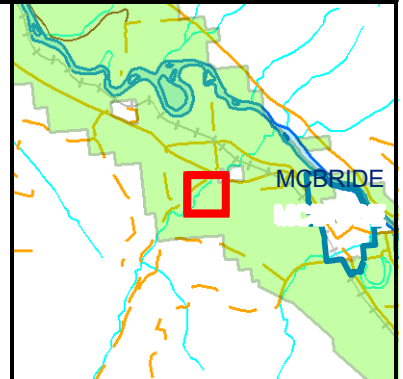
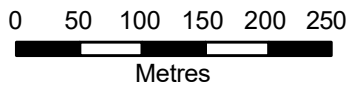
MAP PRODUCED:
November 08, 2024

MAP SCALE:
1:6,000

DATA SOURCES & NOTES:
ALC, BCGW & Google Earth.
Contains information licensed under
Open Government License - British
Columbia.

Map for reference only. Accuracy not
guaranteed.

-  Proposed Road Dedication (~2.04 ha)
-  Subject Property
-  Agricultural Land Reserve
-  PMBC Parcel Cadastre





**AGRICULTURAL LAND COMMISSION FILE 65162
REASONS FOR DECISION OF THE NORTH PANEL**

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

Applicant: Ministry of Transportation and Infrastructure (MoTI)

Property Owner: Her Majesty the Queen in the Right of the Province of British Columbia

Agent: Rae-Lynn Olson (MoTI)

Properties:

Property 1:
Parcel Identifier: 010-492-119
Legal Description: The Fractional West ½ of District Lot 8946 Cariboo District
Civic: ~4 km Northwest of McBride, BC
Area: 19.38 ha (entirely within the ALR)

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Parcel Identifier: 010-492-135
Legal Description: District Lot 895 Cariboo District, Except Plan 21079
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Property 3:

Parcel Identifier: 010-498-371

Legal Description: Parcel A (E15879) of the
East ½ of District Lot 8946 Cariboo District
Except Plan 21329

Civic: ~4 km Northwest of McBride, BC

Area: 5.78 ha (entirely within the ALR)

Panel:

Janice Tapp, North Panel Chair

Karen McKean

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] The Applicant is applying to the Agricultural Land Commission (the “Commission” or “ALC”) under s. 21(2) of the ALCA to dedicate ~2.04 ha of public road right-of-way in order to extend Westlund West Road by 1.02 km (the “Proposal”).
- [3] The issue the Panel considered is whether the Proposal would have a negative effect on the Properties’ agricultural potential.
- [4] 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

[5] The Proposal, along with related documentation from the Applicant, 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.

BACKGROUND

[6] The Regional District of Fraser-Fort George (“RDFFG”) staff report states that the Properties are designated Agriculture/Resource (Ag/Res) by the Robson Valley - Canoe Downstream Official Community Plan (OCP) Bylaw No. 1948, and that *“as per section 3.9(a) of the OCP, it is the general policy of the Board to support upgrading of the local road network.”*

[7] Further, the RDFFG staff report also states that the Properties are zoned Rural 5 (Ru5) by Zoning Bylaw No. 2892, and that public highways are not subject to zoning.

ANALYSIS AND FINDINGS

Issue: What effect the Proposal would have on the Properties’ agricultural potential.

[8] The Application material states that the road is already constructed but is not legally surveyed or dedicated as provincial public highway. The Application proposes to dedicate a 20 m wide public road right-of-way.

- [9] The Application states that the purpose of the road dedication is in part to provide legal access to the Properties, provide legal access to the Lucille Mountain Water Users Society (“LMWUS”), the McBride Community Forest, and other lands beyond.
- [10] The Application included correspondence from the public which is generally opposed. The correspondence raised the following issues:
- Illegal dumping of debris in the Johnson Pit using the current road. Increased access may in turn increase dumping issues.
 - Increased traffic adversely impacting ground stability in riparian areas.
 - Increased access may impact the LMWUS water intake and distribution system at risk of damage and contamination for domestic and agricultural users.
 - Impacts to recreational use of the Johnson Pit.
 - Potential development of land.
- [11] The Panel reviewed the public correspondence and notes that there is some confusion regarding the necessity for subdivision for a road that the Panel wishes to clarify. The road is already constructed; however, it is not dedicated as a public road. The reference plan provided with the Application indicates that the road dedication is proposed pursuant to section 107 of the *Land Title Act* (“LTA”). A subdivision, reference, or explanatory plan that causes subdivision of an area smaller than the entire parcel, including uses as a road or highway, requires that a subdivision application be submitted to the Commission.
- [12] Although there were many issues raised within the public correspondence, the Panel may only consider those which fall within the Commission’s purposes of

section 6 of the ALCA which are agricultural in nature. Other issues are more appropriately addressed by the local government or provincial ministries with jurisdiction over those matters.

[13] As part of the public correspondence, the Panel received comments regarding potential impacts to the LMWUC infrastructure including potential damage and contamination of water that is used by residential and agricultural users. MoTI provided a response to the public concerns in an email to the RDBN date July 19, 2022 which states that the dedication would provide the LMWUC with permanent access to their infrastructure after the three fee simple Properties are disposed of to a new landowner. MoTI explains that an easement would not be a suitable instrument to for access to the LMWUC or other land beyond in this circumstance.

[14] The Panel considered the existing road alignment that primarily bisects Property 1 and Property 3 creating two 'hooked' parcels across the road. The Panel finds that dedicating the road alignment will fragment Property 1 and 3, and that a publicly dedicated road is likely to increase traffic travelling between the fragmented sections of the Properties which may impact the ability to use both sides efficiently for agriculture. Further, the Panel reviewed the survey plan submitted by the Applicant and notes that there is currently an undeveloped statutory right-of-way along the eastern and southern boundaries of the Properties. Development of this statutory right-of-way would provide access to the Properties and lands beyond without the need for subdivision.

DECISION

[15] For the reasons given above, the Panel refuses the Proposal to dedicate ~2.04 ha of public road right-of-way in order to extend Westlund West Road by 1.02 km.



[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 #350/2023
Released on July 18, 2023



Janice Tapp, Panel Chair

On behalf of the North Panel