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AGRICULTURAL LAND COMMISSION ACT

[§34.16]

- (g) conducting soil research and testing, if the soil removed or fill placed is limited to the amount necessary for the research or testing.

[B.C. Reg. 30/2019; am B.C. Reg. 149/2020.]

Prohibited fill

36 (1) Except as permitted under subsection (2), the following must not be used as fill on agricultural land:

- (a) construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste;
- (b) asphalt;
- (c) glass;
- (d) synthetic polymers;
- (e) treated wood;
- (f) unchipped lumber.

(2) Recycled concrete aggregate and recycled asphalt pavement may be used as fill on agricultural land for the purpose of maintaining an existing farm road as described in section 35(d).

(3) For the purposes of subsection (2), “**recycled concrete aggregate**” and “**recycled asphalt pavement**” mean concrete and asphalt that

- (a) have been recovered from a demolition process,
- (b) have been crushed to a particle size
 - (i) that may pass through a 1.905 cm screen, in the case of recycled concrete aggregate, or
 - (ii) of 1.905 cm³ or smaller, in the case of recycled asphalt pavement, and
- (c) do not include, or are not combined with, metal, plastic, rubber, wood, glass, paper, organic materials or other contaminants.

[B.C. Reg. 30/2019; am B.C. Reg. 149/2020.]

21 Subdivision of agricultural land reserve [§34.16]

21 (1) A person must not subdivide agricultural land unless permitted under section 25 or 45 or the regulations.

(2) An owner of agricultural land may apply to the commission for permission under section 25 to subdivide agricultural land.

2002-36-21, effective November 1, 2002 (B.C. Reg. 171/2002); 2007-14-73, effective December 1, 2007 (B.C. Reg. 354/2007); 2018-56-14, effective February 22, 2019 (B.C. Reg. 30/2019).

REGULATIONS

Permitted Subdivisions

See Part 2 of the Agricultural Land Reserve General Regulation, B.C. Reg. 57/2020, in force September 30, 2020, which sets out the circumstances under which an approving officer can approve a subdivision of agricultural land, or where the “lands under a final agreement” are permitted to be subdivided:

Subdivision permitted on determination by approving officer

3 (1) A subdivision of agricultural land is permitted for the purposes of the Act if

- (a) an approving officer determines that the subdivision is of a type referred to in subsection (2), and
- (b) the approving officer

- (i) indicates the approval by endorsing on the plan of subdivision a certificate in the form required by the commission, and
 - (ii) submits to the commission a copy of the endorsed plan.
- (2) The following types of subdivision are permitted for the purposes of subsection (1) (a):
- (a) a subdivision that does one or more of the following:
 - (i) consolidates 2 or more parcels into a single parcel by eliminating common lot lines;
 - (ii) establishes a legal boundary along the boundary of the agricultural land reserve;
 - (iii) resolves a building encroachment on a property line, if no additional parcels are created;
 - (b) a subdivision for which all of the following conditions are met:
 - (i) the agricultural land to be subdivided involves not more than 4 parcels, each of which is a minimum of 1 ha;
 - (ii) on subdivision, there would be no increase in the number of parcels and no parcel would be less than 1 ha;
 - (iii) the subdivision would allow for boundary adjustments that, in the opinion of the approving officer, will enhance farming on the agricultural land or permit better use of structures used for farming.

Subdivision of lands under final agreement permitted 4 (1) In

this section:

“**lands under a final agreement**” means those lands affected by a plan that a treaty first nation will own in fee simple, as treaty lands or otherwise, in accordance with the treaty first nation’s final agreement;

“**plan**” has the same meaning as in section 19 (1) [*registration restrictions*] of the Act.

- (2) A subdivision of agricultural land is permitted for the purposes of the Act if
- (a) the subdivision results from the registration of an indefeasible title in the name of a treaty first nation to lands under a final agreement, and
 - (b) the registration is
 - (i) effective on the date the final agreement comes into effect, and
 - (ii) in accordance with the final agreement.

Registrar of Titles may accept deposit of permitted plans

5 A Registrar of Titles may accept an application for the deposit of a plan referred to in this Part if the applicable conditions of this Part with respect to the subdivision of agricultural land shown on the plan are met.

PRACTICE**Commission Approval Required for Subdivision**

A person who wishes to subdivide agricultural land must obtain the approval of the Provincial Agricultural Land Commission. The subdivider must submit their plan to the commission before applying for deposit of the plan in the land title office. The commission verifies that the plan complies with the Act, the regulations, and any order or conditions the commission has set and then sends its original signed order to the land title office directly. The subdivider may then make an application to deposit the plan in the land title office.

Exception to Requirement for Commission Approval

If the conditions specified in s. 4 of the regulation apply, then an approving officer, rather than the commission, may approve a plan of subdivision, all or part of which consists of land in the agricultural land reserve.

Endorsement on Subdivision Plan

Submissions

The surveyor adds the following notation to the plan image:

THIS PLAN LIES WITHIN THE AGRICULTURAL LAND RESERVE

The signature of the approving officer is to be included in an electronic plan application. The appropriate text for the signature of the approving officer has been incorporated into the Schedule of Approving Officers available in the electronic plan application. Note also the need for a new form of certificate as required per s. 3(1)(b)(i); contact the Provincial Agricultural Land Commission for the form.

The signature to be included in an electronic plan application must be:

I HEREBY CERTIFY THAT SUBDIVISION PLAN EPP _____ IS APPROVED UNDER
SECTION _____ OF THE AGRICULTURAL LAND RESERVE General REGULATION ON
_____ [DATE].

[SIGNATURE]

APPROVING AUTHORITY [FILL IN NAME AND
POSITION]

[FILL IN NAME OF MUNICIPALITY, OR AS CASE
MAY BE]

[INCLUDE FILE REFERENCE IF DESIRED]

Where all or part of a subdivision plan lies within the Agricultural Land Reserve, the following notation must be included on the plan:

THIS SUBDIVISION PLAN LIES WITHIN THE AGRICULTURAL LAND RESERVE

Subdivision by Way of Lease

If a lease of part of land deals with land in the agricultural land reserve, the lease instrument must be endorsed with the approval of the commission. See the practice discussion regarding the requirements for subdivisions by way of lease under s. 99(1)(k) of the *Land Title Act*.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION

Effective September 30, 2020, s. 58.1(c) of the Act provides for the Lieutenant Governor in Council to make regulations for the purposes of s. 21(1):

58.1The Lieutenant Governor in Council may make regulations as follows:

- (c) for the purposes of section 21 (1), specifying permitted types of subdivision.

CASE LAW

Partition of ALR Parcel Declined

As well as under the *Partition of Property Act* (see chapter 51 (Partition of Property Act, R.S.B.C. 1996, c. 347), *McLachlan v. Ast*, 2018 BCSC 1365 was decided under ss. 6 and 18(5) of the *Agricultural Land Commission Act* and s. 10(1)(c) of the *Agricultural Land Reserve Transitional Regulation*, B.C. Reg. 171/2002, before the 2019 amendment of that Act, the 2019 renaming and partial replacement of that regulation, and further naming and statutory amendments as well as repeal and replacement of the regulation, both in 2020

(see the commentary to “20.3 Soil or fill use” and the commentary to “21 Subdivision of agricultural land reserve” in this chapter). The provisions may not have changed in substance to degrees that would affect the result. Through inheritance and family dealings, the petitioner and the respondent, her uncle, came to own, respectively, a 75% and a 25% undivided interest in a 2.5-acre property located in the agricultural land reserve. The petitioner applied under the *Partition of Property Act* to have the property partitioned, so the respondent would receive the eastern 1/4 of the property and she would receive the remainder. The court dismissed her application, finding the proposed subdivision would create an “orphan” lot for the respondent, with potential difficulty of road and utility access. The court also declined to exercise its discretion to order partition in the absence of reasonable assurance that the subdivision would meet with Agricultural Land Commission (“ALC”) (now Provincial Agricultural Land Commission) approval. The exemption from ALC approval for certain subdivisions did not apply because at least one of the proposed parcels would be less than 1 ha (in fact, both parcels, after the proposed subdivision, would be less than 1 ha) and there would be an increase in the number of parcels of land; see s. 10(1)(c) of the former Agricultural Land Reserve Use, Subdivision and Procedure Regulation, B.C. Reg. 171/2002, as well as s. 10(1)(c) of the Agricultural Land Reserve General Regulation, B.C. Reg. 171/2002. See, as well, the pre-and post-amended versions of s. 18 of the Act, requiring commission approval of a subdivision. The court also declined to order the partition because of the possibility of a claim with respect to gravel mining under approximately the eastern half of the parcel.

22 Covenants [§34.17]

- 22** (1) The commission may enter into a covenant under the *Land Title Act* with an owner of agricultural land.
(2) A covenant that restricts or prohibits the use of agricultural land for farm purposes has no effect until approved by the commission.

2002-36-22, effective November 1, 2002 (B.C. Reg. 171/2002); 2011-27-5.

PRACTICE

Crown Grant of Land to Be Used for Agricultural Purposes

If a Crown grant is made on condition that the land be used for agricultural purposes only or the grant contains a covenant restricting the use of land for such purposes, the Minister of Agriculture enforces the covenant or the conditions even if the land is not included in the agricultural land reserve.

If an owner wants to subdivide the land, the owner must apply to the Minister of Agriculture through the appropriate regional director for cancellation of the covenant or condition. The minister may refuse the application or grant the application for cancellation or amendment, with or without conditions.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION See Di Castri,

Registration of Title to Land, vol. 2, para. 353.

23 Exceptions [§34.18]

- 23** (1) Restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the *Land Registry Act*, R.S.B.C. 1960, c. 208, less than 2 acres in area.
(2) The restrictions on the use of agricultural land do not apply to land lawfully used for a non-farm use, established and carried on continuously for at least 6 months immediately before December 21, 1972, unless and until

- (a) the use is changed, other than to farm use, without the permission of the commission, (a.1)the use is discontinued for a continuous period of 6 months,
- (b) an enactment made after December 21, 1972, prohibits the use, or
- (c) permission for the use granted under an enactment is withdrawn or expires.

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