



AGRICULTURAL LAND COMMISSION FILE 59756
REASONS FOR DECISION OF THE ISLAND PANEL

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

Applicant: Municipality of North Cowichan

Property Owners: John Wyatt and Jeri Wyatt

Agent: Rob Conway, Municipality of North Cowichan

Property: Parcel Identifier: 009-489-134
Legal Description: The North 60 Acres of Section 6, Range 6, Chemainus District, Except That Part Lying South West of the Chemainus River, and Except Parts in Plans 18552 and 46197
Civic: 8682 Trans-Canada Highway, Chemainus, BC
Area: 10.7 ha (entirely in the ALR)



Panel:

Linda Michaluk, Island Panel Chair

Jennifer Woike



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] In 1986 the Agricultural Land Commission (the "Commission" or "ALC") refused an application submitted by the Property Owners to develop a campground on a proposed area of the Property. The Commission was not amenable to the location of the proposed campground on the Property but was willing to entertain a proposal that confined that campground to the less capable agricultural areas along the Chemainus River. The Commission reiterated this position through several resolutions between 1986 and 1995.
- [3] In 2003 and 2004 the Municipality of North Cowichan authorized development of 10 serviced campsites, nine un-serviced campsites, and a washroom facility on an area of the Property that the Commission has not agreed to, per its previous resolutions. The Property Owners began to operate the Chemainus River Campground.
- [4] Sometime after, the seasonal campground began to include long-term residency for approximately 12 individuals.
- [5] The Chemainus River Campground is currently comprised of 21 full hookup campsites and 20 non-hookup campsites, a 650 m² main office building, ~74

m² washroom facility, a ~27 m² gardening shed, and a ~ 9 m² pump house (the “Campground”). Of the 21 full hookup campsites, 10 are currently occupied by long-term residents.

[6] On September 30, 2020, the ALCA was amended such that private landowners can no longer submit exclusion applications to the Commission. Section 29(1) of the ALCA states that exclusion applications can be submitted only by the province, a first nation government, a local government, or a prescribed public body.

[7] The Municipality of North Cowichan (i.e., the Applicant) is applying to the Commission, under s. 29(1) of the ALCA, to exclude the 10.7 ha Property from the ALR so that the Property Owners may continue operating the Campground (the “Proposal”).

[8] The Proposal was considered in the context of the purposes and priorities of the Commission as 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.

[9] Although Commissioner Linda Michaluk's term expired between the time when the panel began to consider this application and before this decision was issued, the Chair of the Commission authorized Commissioner Michaluk on December 9, 2022 to continue to exercise powers as a member of the Commission on all applications Commissioner Michaluk was involved in immediately prior to her term expiring, including Application 59756, pursuant to section 7 of the *Administrative Tribunals Act*.

EVIDENTIARY RECORD

[10] The Proposal, along with related documentation provided by 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.

[11] The Panel conducted a walk-around site visit (the “Site Visit”) on December 13, 2021 in accordance with the *ALC Policy Regarding Site Visits in Applications*. 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 Agent on January 17, 2022 (the “Site Visit Report”).

[12] On February 9, 2022, a Notice of Exclusion Meeting was provided to the Agent who represents the Municipality of North Cowichan. On February 17, 2022, the Panel conducted a meeting with the representatives of the Applicant, the Property Owners and Agent by video conference (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 April 13, 2022 (the “Exclusion Meeting Report”).

BACKGROUND

[13] The Property is surrounded by the ALR on all sides and is adjacent to the Trans-Canada Highway. The Property Owners purchased the Property in 1980.



- [14] In 1986, the Property Owners submitted ALC Application 20020 to develop a campground on the Property (the "1986 Proposal"). The 1986 Proposal sought to develop 46 campsites, road access, toilet and convenience areas, and fencing on the Property. The Commission expressed concern with the location of the proposed access road and a possible future expansion area, as it would taking up better agricultural capability lands. By Resolution #449/86, the Commission refused the 1986 Proposal but noted it would be "willing to entertain a proposal that confines the campground to the lesser capability land", provides fencing to separate the campground from the remainder of the Property, and provides access to the campground with minimal negative effects.
- [15] In 1989, the Property Owners submitted ALC Application 23099 to exclude the Property to develop a mobile home park (the "1989 Proposal"). By Resolution #648/89, the Commission refused the 1989 Proposal on the grounds that the majority of the Property is comprised of lands with "good to moderate agricultural capability" which therefore warrants retention of the Property in the ALR.
- [16] In February 1995, the Property Owners requested reconsideration of Resolution #449/86 (the "February 1995 Reconsideration Request"). The February 1995 Reconsideration Request proposed the development of a 79-site campground, a laundry/washroom facility, and swimming pool on a portion of the Property with an agricultural capability rating of Class 5 with



limitations of soil moisture deficiency (A) and stoniness (P) and improved agricultural capability rating of Class 4 with a stoniness (P) limitation. The February 1995 Reconsideration Request also proposed a picnic area along the Chemainus River along the northerly Property boundary. The Commission noted that, apart from the location of the access road, the 1986 Proposal was less intrusive than the February 1995 Reconsideration Request proposal. The Commission noted that development of the 79-site campground in the center portion of the Property would eliminate the possibility or preclude any agricultural development. As such, by Resolution #188/95, the Commission refused the 1995 Reconsideration Request; however, the Commission was prepared to allow a 46-site campground along the river frontage (Class 7T areas) subject to access being located on the northerly Property boundary and other conditions which required the Commission's further review and approval.

- [17] In May 1995, the Property Owners requested reconsideration of Resolutions #449/86 and #188/95 (the "May 1995 Reconsideration Request") submitting that "most of the [Property] has little potential for agricultural uses because of poor soil conditions" and that the low impact campground use would allow for future agricultural uses "should the need arise". Further, the May 1995 Reconsideration Request explains that the campground is proposed in the upland area as access to the river is "extremely unstable". By Resolution #615/95, the Commission refused the May 1995 Reconsideration Request on the grounds that the development would reduce the agricultural potential of

the Property and heighten expectations that other non-farm uses would be permitted in the ALR. In the Commission's letter, dated July 19, 1995, the Commission re-iterated that it remains prepared to allow development of the campground adjacent to the Chemainus River per Resolution #449/86 subject to conditions including the submission of detailed site plan showing the location of permanent structures and facilities.

- [18] In 2003 and 2004, the Municipality of North Cowichan (the "Municipality") authorized the Property Owners to develop ten full service, nine un-serviced campsites, and a washroom facility on the upland portion of the Property without referral to the ALC and contrary to the previous decisions of the Commission. In 2014, the Municipality issued a building permit allowing the construction of 11 additional full-service campsites and nine tent sites on the Property. The Commission was not contacted at the time these permits were requested or issued, and neither the original campground development nor expansion was authorized by the Commission.
- [19] In 2017, the Property Owners contacted ALC staff requesting permission to further expand the campground. ALC staff reviewed the history of ALC Applications on the Property and advised the Property Owners that the campground had been developed in contravention of ALC decisions and that an application to the ALC would be required for expansion of the campground.

[20] In 2018, the Property Owners submitted ALC Application 56336 requesting the Commission authorize, as a non-farm use, the existing campground use occupying approximately 1.8 ha of the Property, including 21 recreational vehicle sites with electricity and water service hookups, 24 tent sites with no services, and a washroom/shower facility, and additionally permit expansion of the existing campground by adding an additional 10 sites (occupying 0.2 ha of the Property) (the "2018 Proposal"). The existing unauthorized campground is located on lands capable of supporting a range of agricultural uses with proper farm management and were not approved for non-farm use in Resolution #449/86 and #188/95. The Island Panel found that the existing campground use negatively impacted the agricultural utility of the Property by occupying areas suitable for a range of agricultural uses including grazing, soil-bound agriculture, and non-soil bound agriculture. The Island Panel concurred with the previous decisions of the Commission (Resolutions #449/86, #188/95, and #614/95) and, by Resolution #109/2018, refused the 2018 Proposal.

[21] In August 2018, the Property Owners requested reconsideration of Resolution #109/2018 (the "2018 Reconsideration Request"). The 2018 Reconsideration Request included an Agricultural Land Capability Assessment report prepared by Madrone Environmental Services Ltd., dated May 31, 2018. The 2018 Reconsideration Request was refused as the information contained in the Agricultural Land Capability Assessment was substantially available to the Island Panel at the time of the original decision

in the information supplied by the, then, District of North Cowichan, the walk-around site visit conducted on January 15, 2018, and ALC in-office resources (air photos and Canada Land Inventory maps).

[22] Upon refusal of ALC Application 56336, the ALC's Compliance & Enforcement Department issued a letter dated January 24, 2019 to the Property Owners informing them that they were "required to remove all campground sites and any and all services required for the use of the campground sites by October 1, 2019 and return the Property back to its original agricultural capability as it was prior to the unauthorized use".

[23] On September 4, 2019, the Municipal Council heard a delegation from Bill Routley on behalf of the Property Owners, at which Mr. Routley asked Council for its assistance to make an application on behalf of the Property Owners to the ALC to exclude the land from the ALR, or alternatively, to support an application to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to increase the water license to accommodate agriculture. The Council resolved the following:

That Council direct staff to submit an application to the Agricultural Land Commission (ALC) under Section 29 of the ALC Act to exclude the Chemainus River Campground lands from the Agricultural Land Reserve; And That the Mayor be authorized to write the Minister of Agriculture, with copies to the Minister of Municipal Affairs and Housing, the Minister of Environment and Climate Change Strategy, Minister of Tourism, Arts and Culture, and the Minister of Forests, Lands, Natural Resource Operations and Rural Development, citing the following concerns:

- *By shutting down the campground there will be a loss of temporary and permanent housing which is unreasonable given the housing crisis we are facing;*
- *The land was previously never used for Agriculture purposes as it was forest; and*
- *The existing water licence, which permits 1,000 gallons a day from the Chemainus River for domestic use only, would not support agriculture use without a substantial increase to the water licence to accommodate agriculture use during the growing season.*

[24] On April 21, 2021 the Municipality held a public hearing for ALC Application 59756. The Mayor called for submissions from the public at the hearing, but nobody spoke to the Application. The Council resolved to forward the Application to the Commission with a recommendation that the Application be approved *"for reasons outlined in the September 12, 2019 letter to the Minister of Agriculture from Mayor Siebring"*.

[25] In May 2021, the Municipality submitted ALC Application 59756 to the Commission on behalf of the Property Owners.

ANALYSIS AND FINDINGS

[26] The Municipality is applying on behalf of the Property Owners to exclude the Property from the ALR to continue operating the Campground. At the Exclusion Meeting, the Municipality indicated that they would also be amenable to a non-farm use approval if the Panel refused to grant exclusion

for the Property. Accordingly, the Panel also considered the possibility of granting a non-farm use approval pursuant to s. 29.1(2)(c) of the ALCA for the operation of the Campground.

[27] The Panel reviewed the previous history of applications on the Property for campground use against the current use of the Property. In this regard, the Panel finds that the current use diverges from the previous applications and approvals on Property as follows:

- i. The Campground was developed in a different location than the Commission was willing to consider in its 1986 and 1995 resolutions. The Panel understands that the Campground was developed in this location at the authorization of Municipality. During the Site Visit, Mayor Siebring explained that the Municipality disagreed with the Commission's previous decision (Resolution #188/95) regarding siting of the campground on the Class 7 portions of the Property. The Property Owners explained that the Municipality's staff (building inspector and engineer) concluded that the Class 7 portions of the Property were not suitable for the campground and, therefore, issued a building permit for the campground in its current location in 2003, contrary to the Commission's previous decisions (Resolutions #188/95 and #615/95).
- ii. The Campground was previously proposed in the ALR for short-term accommodation and has evolved to include long-term residential use for some of its occupants.

[28] The Municipality's Report to Council dated January 15, 2020 (the "2020 Municipality Staff Report") explains that the A2 Zoning applicable to the Property does not permit campground use; however, the A2 zone includes a site-specific provision for the Property that permits "campground, short term" use, which is defined in the following excerpt from the 2020 Municipality Staff Report:

The use of land for short-term accommodation (less than 28 consecutive days) for vacation or recreational purposes, in tents or recreational vehicles, and may include the following accessory uses for campground occupants: washrooms, showers, laundry facilities, offices, recreational facilities, convenience stores or restaurants.

[29] The Application states that the Campground provides permanent, long-term housing for individuals year-round, which is contrary to the Municipality's zoning. The Property Owners explained that the Campground maintenance costs are high and, as such, they require people who stay long term. The Property Owners explained during the Site Visit that approximately 10 of the 21 full hookup campsites were occupied by the same party for longer than 28 days. Representatives of the Applicant acknowledged that the use of the Property for long-term accommodation is not currently consistent with the zoning designation and stated that the Property will either be rezoned or be the subject of compliance action.

[30] The Municipality's rationale for submitting the exclusion Application is found in a letter dated September 12, 2019 from Mayor Al Siebring to the Honourable

Lana Popham, Minister of Agriculture (the “Siebring Letter”). In the Siebring Letter, Mayor Siebring outlines some of the history of the Property and states:

“In addition to being a recreational campground, the property provides a great deal of value to our local community in that it has been providing permanent housing to a number of people over the years including – currently – about 12 individuals. It is a boon to our local tourism economy; a well-run establishment where the owners take great pride in what they offer to the community. If the campground is required to shut down, there will be a loss of both temporary and permanent housing. Given the housing shortage that is affecting our community, forcing the closure of this facility would be patently unreasonable, and counter to your government’s objectives with respect to provision of affordable housing”.

[31] Further, the Siebring Letter cites other issues with the use of the Property for agriculture, including issues related to the agricultural capability of the Property outlined in an agrologist report from Madrone Environmental Services, water licensing, and impacts of water use on the Halalt First Nation. Lastly, the Siebring Letter states that the Municipality’s Official Community Plan supports “protecting the agricultural land base” but suggests that the Property was incorrectly included into the ALR at the time of the ALR’s establishment.

[32] At the February 17, 2022 Exclusion Meeting held by the Panel with the Property Owners and representatives of the Municipality (the Agent, Mayor Al Siebring, and Chief Administrative Officer Ted Swabey), the Agent stated that *“mistakes were made by all parties involved.”* In the Agent’s view, the Commission



should not have granted permission to locate a campground on the Class 7 land, as the Municipality believes those lands are entirely unsuitable for a campground. However, the Agent acknowledged that the Municipality erred in issuing permits for the campground and that the Property Owners should not have developed the campground without the Commission's approval.

[33] The Commission has repeatedly and consistently stated that the campground use should be constrained to the Class 7 portion of the Property so as not to negatively impact agricultural use of the remainder of the Property (Resolutions #449/86, #188/95, #615/95); despite the Commission's findings the Municipality issued a building permit for construction of campground on the upland portion of the Property in 2003. The Panel appreciates that the Municipality acknowledges that it erred in issuing permits for the campground. The Panel wishes to remind the Municipality that, although the Commission previously issued conditional approvals for siting of the campground on the Class 7 portions of the Property, the Municipality was not compelled by the Commission's decision to issue building permits or licenses for a campground in circumstances where it opposed the siting of the campground as approved by the ALC.

[34] The Panel is faced with a difficult situation. The Commission previously indicated that it would be amenable to use of a portion of the Property as a campground, but the Campground was developed on a different portion of the Property. It has continued for approximately twenty years in that location. The

Panel must now consider whether to exclude ALR land to allow continuation of a Campground, including long-term residential use, which was established in contravention of the ALCA, the Commission's decisions, and the Municipality's bylaws.

[35] The Application submits that the Campground is addressing a temporary and permanent housing need in the community. The Panel understands that the Municipality views the Proposal as a benefit to the community as it provides low-cost housing. However, the broader housing issue in BC cannot be resolved through ad hoc applications to the ALC. The Commission must weigh proposals against its purposes, as set out in s. 6 of the Act. These purposes are agricultural. The ALR represents less than ~5% of the province where agricultural uses are to be prioritized and other uses are restricted.

Issue: Whether to exclude the Property to allow continued use as a Campground, or, in the alternative, to allow the Campground as a non-farm use.

[36] The Application proposes to exclude the Property from the ALR to allow for its continued use as a campground.

[37] The Application submits that the Property was previously forested and was never used for agricultural purposes. Further, the Application submits that the Property will never be used for agricultural purposes as engaging in

agricultural activities on the Property would be involve the implementation of extensive and costly land use management practices due to the soil limitations and topography. Further the Application claims that the existing water license would not support agricultural use.

- [38] To assess agricultural capability on the Property, the Panel referred in part to agricultural capability ratings in the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system.
- [39] According the BCLI, the agricultural capability ratings of the Property with investment in farming improvements (i.e. irrigation, enhanced drainage, soil amendments, fill placement, stone-picking, and/or subsoil decompaction) to mitigate soil and climate limitations are improvable to 30% Class 2TD, 5% Class 3WT, 40% Class 4P, and 25% Class 7T, and with subclass limitations associated with A (soil moisture deficiency), D (undesirable soil structure), P (stoniness), T (topographic limitations), and W (excess water). In BC, land with a BCLI classification of Class 1 to 3 are considered prime agricultural land.
- [40] The portions of the Property with Class 2 capability ratings are prime agricultural lands; these lands are capable of producing a wide range of crops where minor restrictions of soil or climate may reduce the capability but pose no major difficulties to management. The portions of the Property with Class 3 capability ratings are prime agricultural land; these lands are capable of producing a fairly wide range of crops under good management practices.

The soil and/or climate limitations are somewhat restrictive. The portions of the Property with Class 4 capability ratings are secondary agricultural lands; these lands are capable of producing a restricted range of crops. The soil and climate conditions require special management considerations. The portions of the Property with Class 7 capability ratings are secondary agricultural lands with no capability for soil bound agriculture. While lands with Class 7 agricultural capability ratings have no capacity for soil bound agriculture, Class 7 lands be used for other agricultural activities such as non-soil bound agriculture and/or to accommodate accessory agricultural uses such as farm structures.

[41] As part of the Application materials, the Panel received two Agricultural Land Capability Assessments prepared by Madrone Environmental Services, dated May 31, 2018 and April 3, 2019. The Agent explained that the Madrone Report (dated April 3, 2019) was the most recent version and asked that the May 31, 2018 version be removed from the Application materials. In accordance with the Agent's request, the May 31, 2018 Agricultural Land Capability Assessment Report by Madrone Environmental Services was not included in the Application materials for review by the Panel.

[42] The Panel reviewed and considered the Agricultural Land Capability Assessment, prepared by Madrone Environmental Services Ltd., dated April 3, 2019 (the "Madrone Report"). The Panel finds that the Madrone Report

meets *ALC Policy P-10 – Criteria for Agricultural Capability Assessments*.

According to the Madrone Report:

- 20.49% of the Property has fair agricultural capability (improvable to Class 3),
- 8.75% of the Property has poor agricultural capability (improvable to Class 4),
- 37.24% of the Property has very poor agricultural capability (Class 5 to 7 due to stoniness), and
- 33.52% of the Property has very poor agricultural capability (Class 5 to 7 due to very steep topography).

The Madrone Report concludes that the Property, except for the steep slopes, can be used for production of forage crops and possibly grapes; establishment of fruit, nut trees and berry crops that are frost and moisture tolerant; establishment of pastureland, providing that local animal processing facilities are available; and/or bare-earth greenhouse agricultural operations on the gravelly soil.

- [43] Based on the BCLI agricultural capability ratings and the Madrone Report, the Panel finds that the Property has a mix of prime and secondary agricultural capability and that areas of the Property are capable of agriculture, with the eastern portion having good agricultural capability with the potential for activities including forage crops, grapes, fruit, nut trees, berry crop, pasture, and greenhouses.

[44] According to the Madrone Report, the Campground is located at the centre of the Property in an area of secondary agricultural capability and recommends that if the Campground is expanded, that the expansion is close to the existing disturbed area, leaving the most viable agricultural land intact for future farming operations.

[45] The Application submits that the Campground takes up about 17% of the Property, was constructed on a portion of the Property with lower agricultural capability and which has a low impact on the overall capability of the Property. Based on the BCLI agricultural capability ratings and the findings in the Madrone Report, the Panel finds that the Campground was not constructed in the area with the lowest agricultural capability along Chemainus River as previously contemplated by the Commission in its 1986 resolution. Further, the Panel finds that based on the Madrone Report there is still potential for certain forms of agriculture on portions of the Property not impacted by the existing campground use.

[46] The Application submits that the Property is unsuitable for agriculture, in part, because the Property is currently licensed for 1,000 gallons of water per day from the Chemainus River (365,000 gallons per year) for domestic use for two dwellings. The Application provides a copy of a "Conditional Water License" issued in 1994 as supporting documentation.

[47] The Property Owners estimate that growing 0.4 ha (1 ac) of grass would require one-acre foot (271,328 gallons) of water for one season. The Property Owners estimate that only 6 ha (15 ac) of the Property can be used for agricultural purposes, and, as such, the Property Owners estimate that 15 acre-feet of water (approximately 4,069,921 gallons) is required for one season of agricultural use of a portion (6 ha) of the Property.

[48] Further, the Application provided a letter dated July 31, 2018 that the Property Owners received from the former Ministry of Forests, Lands, Natural Resource Operations, and Rural Development requesting a voluntary reduction in water use during the dry season to accommodate the severe low flows in the Chemainus River. The letter was generic, addressed to "Occupant" and requested that licensees review their license to ensure that they are adhering to the terms and conditions. At the Site Visit, the Property Owners explained that they had received two such letters. Water management during times of severe drought is an issue for all registered water users, including campground use, and is not a determinative factor on the capability of land to be farmed.

[49] The Property Owners explained at the Site Visit that the Property currently uses water from an onsite well and claimed that there is no water available for agricultural purposes.

[50] The statements made in the Application about existing water use and estimated use by agriculture were unclear and the Panel found no technical

evidence or documentation in the Application to substantiate the Property Owners' claims respecting the availability and water needs for agricultural purposes. Additionally, in the Panel's experience, water demand can vary greatly based on the specific use of the property.

[51] At the Site Visit, the Property Owners further explained that, if they were to irrigate the Property, the water would drain into an existing ditch that flows into the Chemainus River which is upstream from the Halalt First Nation's water supply intake. The Panel found no evidence or documentation in the Application to substantiate the Property Owners' claim respecting drainage. Regardless, the Panel notes that the Halalt First Nation had multiple opportunities to comment on the Proposal but no comments were received. Specifically, the Municipality referred the Application to Halalt First Nation for comment on February 24, 2021 and held a virtual public hearing on April 21, 2021 to receive comments from the public, and no comments from Halalt First Nation were received on those occasions. Further, during the Site Visit, the Property Owners explained that John Wyatt wrote a letter to the Halalt First Nation Chief regarding the Property; however, he did not receive a reply or comments.

[52] In the Panel's experience, agricultural land is rarely without limitations or without agricultural management requirements. The Commission finds that exclusion of land from the ALR based solely on the presence of some limitations to agricultural capability and current lack of water is short-sighted

and inconsistent with the Commission's mandate to preserve the land base of the agricultural land reserve. Further, given that the Property is surrounded by land in the ALR, exclusion of the Property would result in an intrusion of non-ALR land in a contiguous area of ALR. The Panel finds this intrusion of non-ALR land would negatively impact the integrity and continuity of the ALR and has the potential to increase conflicts. By retaining the Property within the ALR, the Commission has the opportunity to regulate use of the Property to ensure any potential non-farm uses are compatible with the future agricultural use of the Property, and the current and future agricultural use of surrounding properties.

[53] For this reason, the Panel finds that although some portions of the Property are Class 7 and have limited agricultural capability, that the majority of the Property is capable of supporting agriculture (either soil bound or non-soil bound) and is appropriately designated as ALR. While the Campground could have been constructed on an area of lower agricultural capability, the Panel finds that the Property is still capable of agriculture. As such, the Panel must seek to maintain the agricultural integrity of the Property and the ALR, and retain the ALR designation on the Property. The Panel wishes to clarify that agriculture takes many forms ranging from personal use to commercial scale intensity; the ALR permits and encourages all types of agriculture. In addition, the Panel wishes to clarify that, in addition to encouraging the use of agricultural land for agricultural purposes, the Commission's mandate includes



preserving the ALR land base for potential future agricultural use, regardless of whether it is currently used or unused for agriculture.

[54] As the Panel is not amenable to excluding the Property from the ALR, the Panel then considered the possibility of approving a non-farm use under s. 29.1(2) of the ALCA as an alternative method of retaining the Campground on the Property within the ALR. The Panel acknowledges that the ALC previously approved the concept of a campground use on a different location on the Property. The Panel understands that the Municipality has acknowledged that it erred in issuing building permits to locate the Campground at the center of the Property instead of on the Class 7 land as directed by Commission's decisions, and that the Campground has operated there since that time. The Panel finds that the Campground use has impacted, although not negated, the agricultural capability of the Property through the construction of the full hookup and non-hookup campsites and other infrastructure.

[55] During the Site Visit, the Panel observed sheds, patios, and fencing constructed in association with the long-term stay full hookup campsites. The Panel finds that additional infrastructure associated with long term stays results in additional impact to land that is capable of agriculture and further entrenches the campground use, making it more difficult to use the land for agricultural purposes in the future. The Panel finds that long term stays result in increasing residential uses, including the construction of additional residential infrastructure and residential density that are incompatible with and

alienate agriculture. Therefore, the Panel does not approve the use of the Campground for long-term residential use (beyond the 28-day period permitted under the Municipality's zoning bylaw). The Panel finds that retaining the Campground in its current size and configuration for short-term accommodation will not further impact the integrity of the remainder of the Property, which could be used for appropriate and compatible agricultural uses such as raised beds, market gardens, greenhouse, hobby farm, etc. The Panel is therefore amenable to allowing the Campground in its current size and configuration as a non-farm use, with the condition that the use of the campground be limited to short-term accommodation.

[56] For clarity, Panel will allow continuation of the campground use in its current location and configuration, with 21 full hookup camp sites and 20 non-hookup camp sites, for short term accommodation (less than 28 consecutive days). The Panel requires the removal of any structures such as sheds, patios, and fencing associated with the long-term stay full hookup campsites.

[57] This non-farm use approval is for the sole benefit of the current Property Owners (John and Jeri Wyatt) and will not transfer to their heirs, successors or future property owners. Approval for the campground use will accordingly cease when John and/or Jeri Wyatt no longer own the Property. Should a future property owner wish to pursue a campground use on the Property that is inconsistent with the ALCA and regulations (whether consistent with the

Municipality of North Cowichan's zoning designation or not), an application to the Commission will be required.

[58] In the case that the current Property Owners cease the Campground use, the Panel requires that the 21 full hookup campsites and 20 non-hookup campsites (the "Campsite Area") be reclaimed for future agricultural use within 9 months of the Campground ceasing operation. The Panel finds that if the Campsite Area is reclaimed in the following manner, there will be minimal long-term negative impacts to agricultural use of the Campground Area in the future:

- Removing any servicing and hookups associated with each campsite;
- Removing any structures (such as sheds, patios, and fencing) and structural material (such as sand, gravel, or aggregate) placed for each campsite;
- Decompacting the soil, and amending with organic soil amendment or fertilizer; and
- Seeding to an appropriate agronomic cover.

[59] Further, in the event that the Property is sold or transferred, the Panel requires that the Campsite Area be reclaimed as described above (paragraph 58) prior to the transfer of title.

[60] With respect to the four buildings associated with the Campground use (the 650 m² main office building, ~27 m² gardening shed, ~9 m² pump house, and



~74 m² washroom facility), the Panel finds that these structures can be repurposed for future agricultural use of the Property, and as such does not require these structures to be demolished if the campground ceases operation or the Property is sold. However, the Panel notes that the structures can only be used for the purposes set out in this decision or in accordance with the ALCA and its regulations.

[61] To allow the Property Owners time to come into compliance with this decision, the Panel will defer enforcement until October 31, 2024.

DECISION

[62] While the Panel does not approve the exclusion of the Property from the ALR, for the reasons given above, the Panel approves the 21 full hookup campsites and 20 non-hookup campsites, 650 m² main office building, ~27 m² gardening shed, ~9 m² pump house, and ~74 m² washroom facility as a non-farm use subject to the following conditions:

- (a) The Campground use is limited to the area (~3.08 ha) outlined in Schedule A;
- (b) Approval for this non-farm use is granted for the sole benefit of the Property Owners (John Wyatt and Jeri Wyatt) and is non-transferable;
- (c) Submission of proof of removal of any structures such as sheds, patios, and fencing associated with the long-term stay full hook up campsites by October 31, 2024.

- (d) In the event that the current Property Owners cease the campground use, the Campsite Area must be reclaimed within 9 months of the Campground ceasing operations, as follows:
 - i. Removing any servicing and hookups associated with each campsite;
 - ii. Removing any structures (such as sheds, patios, and fencing) and structural material (such as sand, gravel, or aggregate) placed for each campsite;
 - iii. Decompacting soil, and amending with organic soil amendment or fertilizer; and
 - iv. Seeding to an appropriate agronomic cover;
- (e) In the event of sale or transfer of the Property, the Campsite Area must be reclaimed as described in condition (d) above prior to the transfer of title; and
- (f) Within 90 days of the date of this decision, the Property Owners must register a covenant in favour of the Commission, on a form and in a substance as may be determined by ALC staff in their sole discretion, acting reasonably, for the purpose of:
 - i. limiting the Campground use to short term accommodation (less than 28 consecutive days);
 - ii. restricting the non-farm use for the sole benefit of the current property owners (John and Jeri Wyatt); and
 - iii. requiring reclamation of the Campsite Area on the terms set out in condition (d) above in the case that the property owners

cease operation of the campground, or prior to transfer of title of the Property.

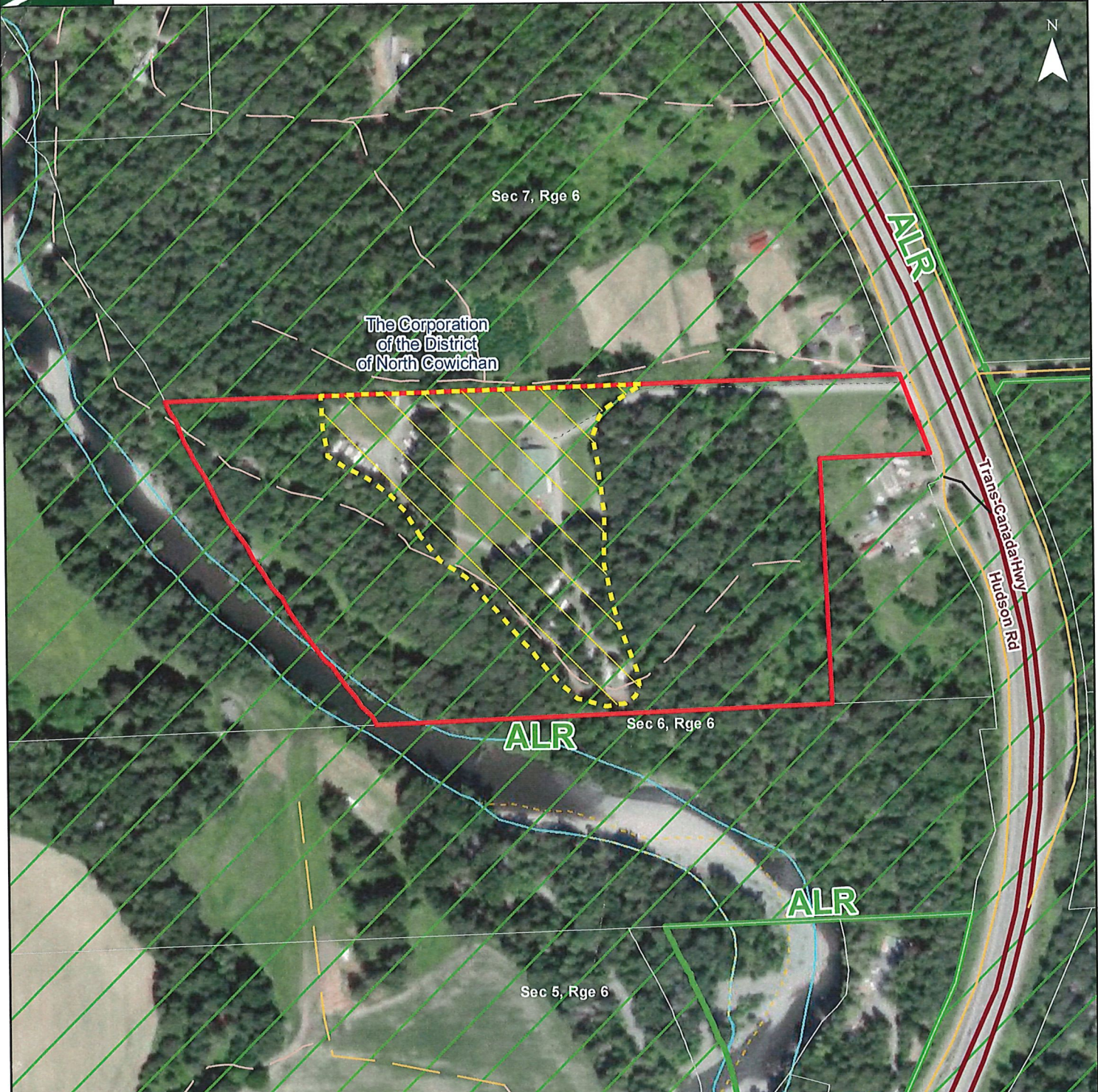
- [63] Should the above conditions of approval not be completed to the satisfaction of the ALC within the timeframe specified, the approval will expire and a new application may be required.
- [64] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.
- [65] These are the unanimous reasons of the Panel.
- [66] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

- [67] Resolution #520/2023
Released on October 23, 2023

A handwritten signature in black ink, appearing to read 'Linda Michaluk', written in a cursive style.

Linda Michaluk, Panel Chair

On behalf of the Island Panel




ALC FILE NO: 59756
RESOLUTION NO: 520/2023

MAP PRODUCED:
October 23, 2023

MAP SCALE:
1:4,000

DATA SOURCES & NOTES:
ALC, BCGW & ESRI / Maxar.
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Columbia.

Map for reference only. Accuracy not
guaranteed.

 Conditionally Approved Short-Term Campground
Area (~3.08 ha in GIS)

 Subject Property

 Agricultural Land Reserve

 PMBC Parcel Cadastre

