

# An Opinion on an Application for Non-Farm Use of an Intrusion into the Agricultural Land Reserve

Clients: Robert and Evelyn Isley

Date: 2017

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## 1.0 Introduction

In 2009, Robert and Evelyn Isley received approval from the Agricultural Land Commission to adjust the ALR boundaries on:

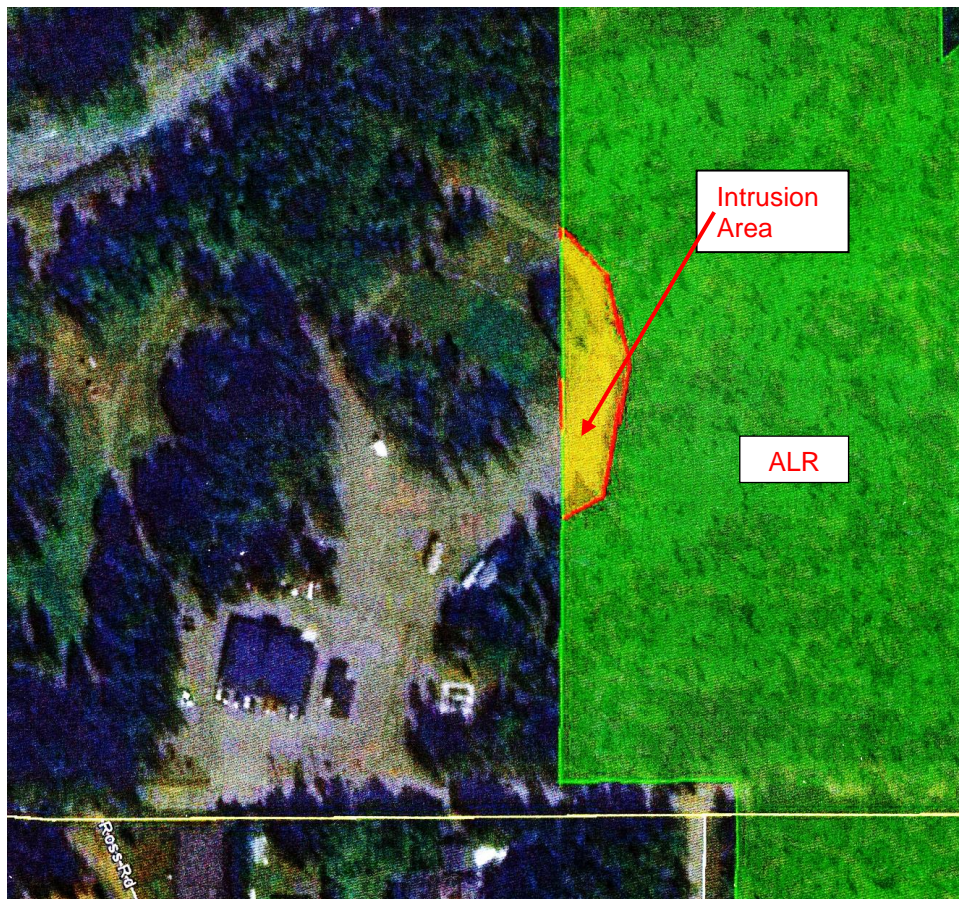
The West 1/2 of the North West 1/4 Section 17 Township 23 Range 9 West of the 6th Meridian Kamloops Division Yale District except Part of the Southerly 350 Feet of Legal Subdivision 12 Section 17 as shown on Plan B7633;PID 014-009-552; located at 6929 Squilax-Anglemont Road, Magna Bay, BC.

Following the ALR boundary adjustments, the Isleys constructed a tourist centre containing a convenience store, gas pumps, 20 RV sites, and a campground. Unfortunately, 2 ½ of the RV sites were located across the ALR boundary.

The balance of the ALR land has not been developed.

The intrusion of the ALR lands is shown in Figure 1:

**Figure 1: Aerial View of Subject Property**



The surface view of the specific campsites is shown in Photograph 1.



**Photograph 1: View of the Intruding RV Sites**

On October 12, 2017, the Isleys received an email from Roland Persinovic, Compliance and Enforcement Officer for the Agricultural Land Commission identifying about 0.19 hectare encroachment of the campground into the ALR.

Since the ALR lands are not developed, and consequently cannot obtain Farm status under the Assessment Act. Therefore, the campground cannot be allowed under the Agri-Tourism policy (L-05) of the ALC.

Mr. Persinovic recommended the following:

To bring the property into compliance you have the following options:

1. Cease the non-farm use of ALR land and remediate the area to an agricultural capability, or;
2. Suspend the non-farm use of ALR Land until the property receives farm classification or
3. Submit a non-farm use application to request authorization from the ALC for the non-farm use. An application does not guarantee approval.

The campground is now closed due to the end of the tourist season and the oncoming winter weather.

The Isleys have commissioned me to provide an opinion on the nonfarm use of the subject parcel. Following the completion of my opinion, I will file an application for Non-Farm use.

## **2.0 Qualifications**

I am a licensed Agrologist and have been a full member of the B.C. Institute of Agrologists since 1971 (except 2001-2002). I am a graduate from the University of British Columbia with a Bachelor of Science degree in 1967, specializing in Agriculture Economics, and a Master of Science degree in 1972, specializing in Farm Management. My thesis for my Master's degree was entitled *Resource Allocation for the Median Peace River Farm in British Columbia*

I have been involved in the work of the Agricultural Land Commission since 1974 when the reserve boundaries were proclaimed. At that time, I was District Agriculturist for the British Columbia Ministry of Agriculture in Prince George. In October 1978 I entered private practice and have provided professional opinions for clients who have sought amendments to the Agricultural Land Reserve boundaries, subdivision within the ALR, or who have needed assistance in compliance with requests from the Commission.

I have also written and spoken of the need to address the unintended consequences of the provincial land use policy.

All agricultural assessments, whether they are for feasibility or management purposes, start with the soils. Past that point one needs an understanding of plant science, animal science and farm management to properly assess the farming potential of any site. I have demonstrated that understanding throughout my career.

During my years in both public and private practice, Courts and Review Boards have accepted me as an expert regarding farming practices in British Columbia. Consequently, I feel qualified to provide an assessment of a proposal under the *Agricultural Land Commission Act*. My qualifications and experience allow me to comment on the value of agricultural land and the practices of farming on that land. While not formally trained in soil science, I have been exposed to the principles of that discipline through short courses, field trips, and by accompanying pedologists during soils assessments.

Consequently, I believe I am qualified to comment on the two main purposes of the Agricultural Land Commission. That is: to preserve agricultural land, and to encourage farming on agricultural land in collaboration with other communities of interest.

I am currently a member of the Environmental Appeal Board and the Forest Appeals Commission. Following these appointments, I have received training in Administrative Law and the Rules of Natural Justice.

Since the inception of the Application Portal, I have been identified in the application as the “Agent.” The reader should note that I do not act as an agent in the normal use of the term. That is, I have no fiduciary responsibility to the applicants.

Section 3 of the Code of Ethics of the BC Institute of Agrologists includes the paragraph:

- ensure that they provide an objective expert opinion and not an opinion that advocates for their client or employer or a particular partisan position.

Given the complexity of the Portal, it is more expeditious for me to enter the data and forward correspondence than to expect the applicants to learn the procedure for what may be a one-time process.

I have requested that the Commission use the term “Consultant” rather than “Agent” as it more accurately describes the work performed. Given the refusal to amend the title, I am content in the understanding that I am acting in concert with the requirements of my profession whatever term is used.

### **3.0 Agricultural Capability**

I dealt with the agricultural capability in my previous opinion. In short, the land within the ALR should, I believe, be considered as agricultural land under terms of the *Act*. I

attach Photograph 2 showing a shallow pit illustrating the arable nature of the silt loam soils.



**Photograph 2: Soil Pit on ALR Land**

As Photograph 1 shows, the RV sites are covered with a thin layer of clean gravel. If the campsites were to be developed for farm use, the gravels could easily be removed and would not impede farm development.

#### **4.0 Summary and Conclusion**

There is no evidence, and no admission from the applicants, that the intrusion into the ALR was anything but accidental. Given the need to make this application, and the engagement of me and surveyors, there has been no advantage in doing so.

Currently, the ALR portion of the property has not been developed for farming. Consequently, the land does not have Farm Class and cannot conform to the Agri-Tourism policy of the ALC. However, neither do the intruding 2 ½ campsites pose any interference with farming activities.

At some time in the future, I would expect the ALR land to be developed for farming. At that time, the land will have Farm Class. Once Farm Class is granted, then the intruding campsites will comply with the Agri-Tourism policy.

Until the time of that development, the granting of a Non-Farm Use permit will allow the applicants to continue to make an economic contribution to the North Shuswap area.

I remain available to discuss my opinion regarding this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R.G. Holtby', with a long horizontal stroke extending to the right.

R.G. (Bob) Holtby, P.Ag.

October 30, 2017

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## 1.0 Introduction

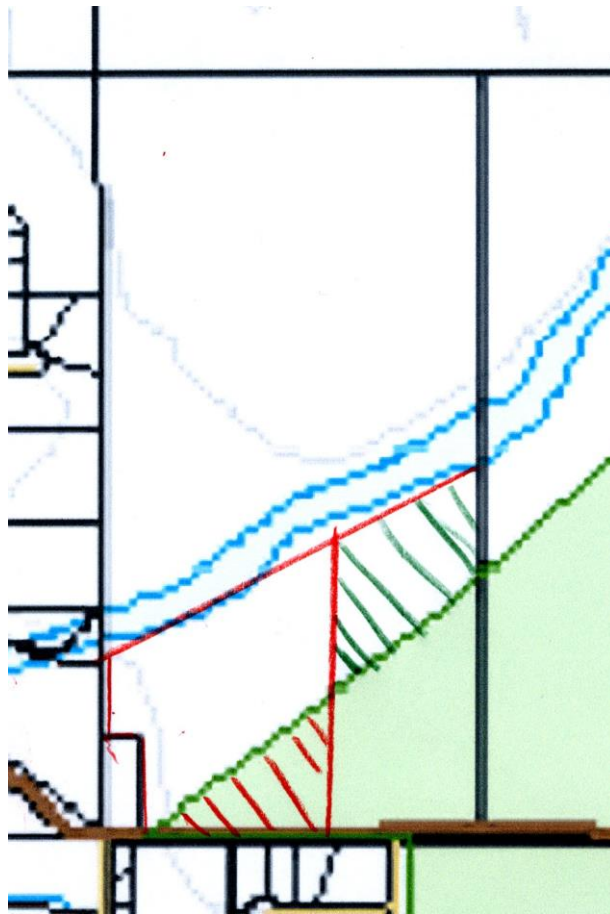
Mr. Bob Isley has asked me to provide an opinion of the effect on agriculture from his proposed subdivision, exclusion and inclusion of land within the Agricultural Land Reserve of:

The Remaining West ½ of the North West ¼ of Section 17, Township 23,  
Range 7, KDYD

located at Magna Bay.

He proposes to create two lots to the south of Ross Creek. The ALR portion of the land on the west lot will be excluded from the ALR. The non-ALR land on the east lot will be included in the ALR. This proposal can be shown in Figure 1.

**Figure 1: Sketch Map of Proposed Subdivision, Exclusion, and Inclusion**



The two lots will be of equal size in the final plan. The red hatched area is that proposed for exclusion from the ALR and the green hatched area is slated for inclusion.

## 2.0 Qualifications

I am a licensed Agrologist and have been a full member of the B.C. Institute of Agrologists since 1971 (except 2001-2002). I am a graduate from the University of British Columbia with a Bachelor of Science degree in 1967, specializing in Agriculture Economics, and a Master of Science degree in 1972, specializing in Farm Management. My thesis for my Master's degree was entitled *Resource Allocation for the Median Peace*

*River Farm in British Columbia.* In it I dealt with the kind of farm resource allocation issues that are relevant in the present project.

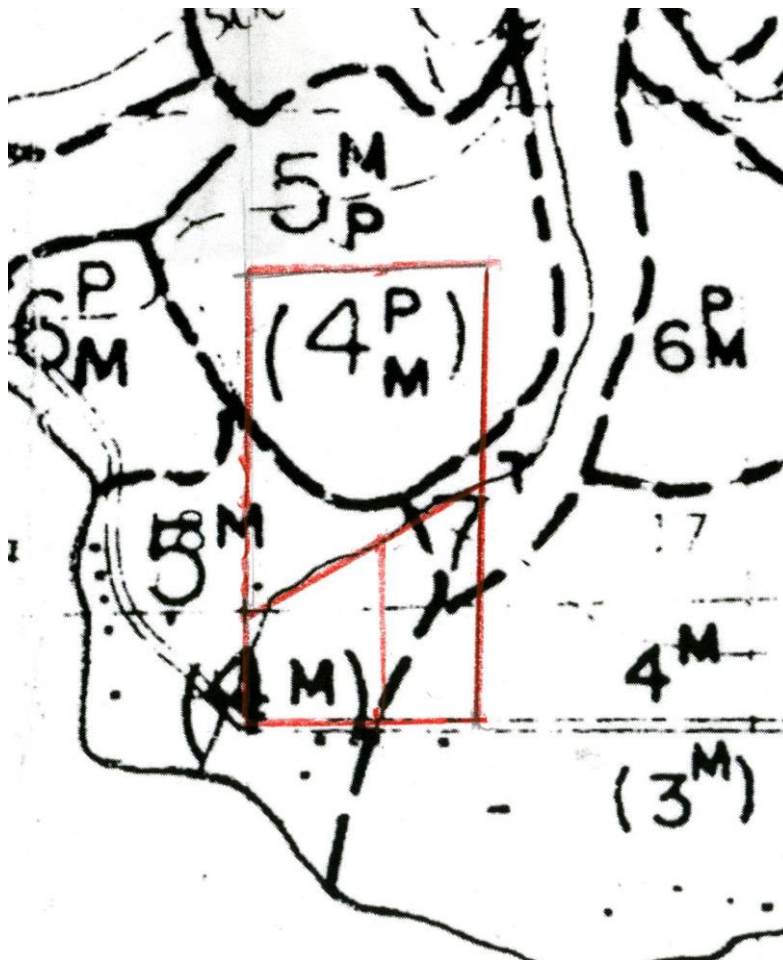
I have been involved in the work of the Agricultural Land Commission since 1974 when the reserve boundaries were proclaimed. At that time, I was District Agriculturist for the British Columbia Ministry of Agriculture in Prince George. In October 1978 I entered private practice and have provided professional opinions for clients who have sought amendments to the Agricultural Land Reserve boundaries or who have needed assistance in compliance with requests from the Commission.

During my years in both public and private practice, Courts and Review Boards have accepted me as an expert regarding farming practices in British Columbia. Consequently, I feel qualified to provide an assessment of a proposal under the *Agricultural Land Commission Act*. My qualifications and experience allow me to comment on the value of agricultural land and the practices of farming on that land.

### 3.0 Agricultural Capability of the Subject Property

Figure 2 provides the Canada Land Inventory ratings for the subject property.

**Figure 2: Canada Land Inventory Rating for Subject Parcel**



As rated, the proposed parcels for subdivision are rates as Class 5 limited by moisture but improvable to Class 4 limited by moisture with irrigation; and Class 4 limited by

moisture again improvable to Class 3 limited by moisture after irrigation is provided. There was a small piece of Class 7 land mapped with a topography limitation.

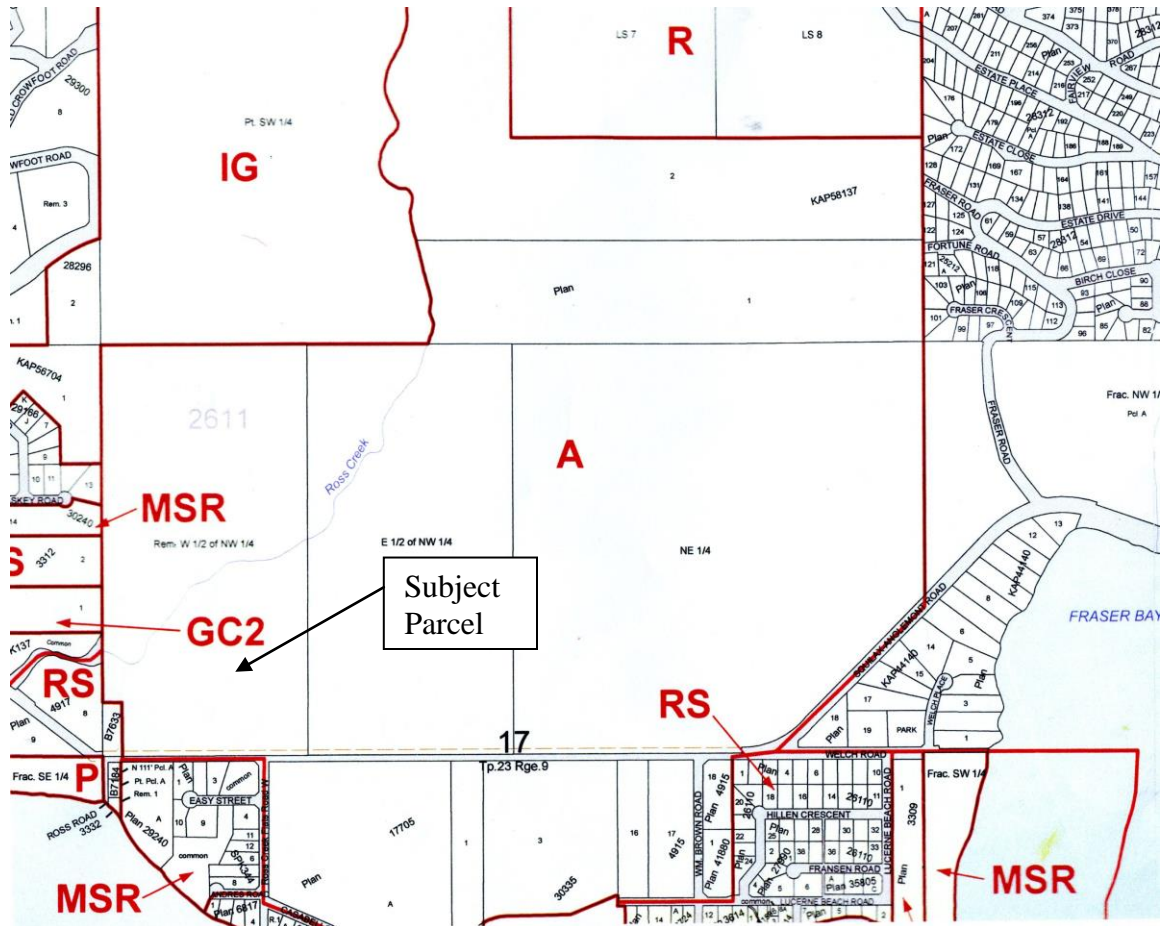
My inspection of the property verifies the arability of the major part of the property but I could not determine any Class 7 land except in Ross Creek that is outside the area proposed for subdivision. I was further unable to determine any significant difference in the ability to farm land inside or outside of the Agricultural Land Reserve.

Thus, I conclude that the swap that the applicants propose leaves the ALR whole in area. Further, the lot that is proposed to be entirely within the ALR adjoins an existing farm. Consequently, the potential for conflict is diminished.

#### 4.0 Zoning

The current zoning, as shown in Figure 3, for the subject parcel is “A” Agriculture. Under this zone, the minimum parcel size is 60 hectares, above the current parcel size.

**Figure 3: Zoning Designations for the Subject Area**



As the map shows, there is a number of different zones both adjacent to and in the area of the subject property. The Regional District currently has a rezoning application that will allow for farming on sites smaller than 60 hectares.

The rezoning of the excluded lot will be determined by the applicant following approval of this application.

## **5.0 Related Agricultural Considerations<sup>1</sup>**

The following questions have been identified by the Commission as important in its consideration of applications.

### ***5.1 Will the Proposal Benefit Agriculture?***

The application proposes a switch of ALR land in an area in which the land is undifferentiated. As a result, the ALR land is consolidated in one parcel.

### ***5.2 Is the Proposed Use Supportive of Agriculture or in Conflict with it?***

See above.

### ***5.3 Will the Proposal Permanently Damage the Physical Capability of the Land for Agricultural Use?***

The proposal will allow the excluded land to be used for non farm purposes.

### ***5.4 How do Existing and Proposed Parcel Sizes Relate to the Type of Agriculture in the Area?***

The only agriculture in the area is to the east of the subject parcel, adjacent to the area proposed for inclusion into the ALR. That land is currently in forage production although it has potential for more intensive use.

### ***5.5 Are there Physical Restrictions that Significantly Interfere with the Farm Use of the Property?***

Ross Creek is a barrier to development to the north of the parcel.

### ***5.6 What Effect or Impact Would the Proposal Have on Existing or Potential Agricultural Use of Surrounding Lands?***

The proposal leaves the eastern portion to agriculture adjacent to an existing farm. The western portion will be used for non farm purposes similar to land to its west.

### ***5.7 Does the Proposal Include any Measures to Reduce Potential Impact of Surrounding Lands?***

None needed, in my opinion.

### ***5.8 Can the Proposal be Modified or Should Conditions be Imposed to Reduce Potential Negative Impacts?***

No modification needed in my opinion.

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<sup>1</sup> Agriculture Land Commission, *Applicant Information Package*

## **6.0 Area Concerns**

### **6.1 *How do Surrounding Uses and Parcel Sizes Affect Use of the Property for Farm Purposes***

The surrounding uses of properties are varied. The proposal retains the agricultural land adjacent to an existing farm while that area excluded from the ALR is adjacent to non agricultural uses.

### **6.2 *Does the Proposal Meet the Regional and Community Planning Objectives for the Area?***

The proposal will require a change in zoning on the western parcel to reflect its new use. The eastern portion will need to be rezoned to conform to the new lot size.

### **6.3 *Given a Documented Need for the Proposal, Can it be Accommodated Outside the ALR?***

N/A

### **6.4 *Are There Land Use Issues the Commission Could Address to Encourage or Improve the Agricultural Use of the Land or Area?***

No.

### **6.5 *What are the Recommendations of the Local Government, Advisory Committees, and Other Stakeholders?***

See attached.

### **6.6 *Has Funding been Provided to Improve the Agricultural Infrastructure in the Area?***

No.

## **7.0 Commission Goals**

Section 6 of the *Agricultural Land Commission Act* provides the purpose of the Commission as:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Section 1 of the act, the Definitions defines “Agricultural Land” as:

- ...land designated as agricultural land under this Act and includes agricultural land under a former Act;

The proposal maintains the amount of land within the ALR while providing a block of land that would be more amenable to farming than the current configuration.

## **8.0 Summary and Conclusion**

This application is the result of an error in the mapping of the subject area. I assume that the designation of some of the parcel as Class 7 was the result of an aerial photographic error. In the present configuration, the opportunities to develop good field patterns for cropping are limited. The proposal corrects this limitation.

As mentioned above, the proposal leaves the size of the Reserve intact in the area.

I remain available to discuss my findings in this report.

Respectfully submitted,

R.G. (Bob) Holtby, P.Ag.

## **9.0 Appendix A: Application from the Landowner**



## APPLICATION BY LAND OWNER

*NOTE: The information required by this form and the documents you provide with it are collected to process your application under the Agricultural Land Commission Act and regulation. This information will be available for review by any member of the public. If you have any questions about the collection or use of this information, contact the Agricultural Land Commission and ask for the staff member who will be handling your application.*

### TYPE OF APPLICATION (Check appropriate box)



**EXCLUSION**

under Sec. 30(1) of the Agricultural Land Commission Act



**SUBDIVISION in the ALR**

under Sec. 21(2) of the Agricultural Land Commission Act



**INCLUSION**

under Sec. 17(3) of the Agricultural Land Commission Act



**Non-farm USE in the ALR**

under Sec. 20(3) of the Agricultural Land Commission Act

### APPLICANT

Registered Owner: Robert and Evelyn Isley		Agent: R.G. (Bob) Holtby, P.Ag.	
Address: RR #1, Site 16, Comp 40		Address: 670 - 17 <sup>th</sup> Street SE	
Celista, BC	Postal Code VOE 1L0	Salmon Arm, BC	Postal Code V1E 1W2
Tel. (home) (250)955-0134 (work) ( )		Tel. (250) 832-7865 or 250-804-1798	
Fax ( )		Fax (250) 832-7865	
E-mail		E-mail bholtby@sunwave.net	

### LOCAL GOVERNMENT JURISDICTION (Indicate name of Regional District or Municipality)

Columbia Shuswap Regional District

### LAND UNDER APPLICATION (Show land on plan or sketch)

Title Number	Size of Each Parcel (Ha.)	Date of Purchase	
		Month	Year
KR40823	32ha	May	2001

### OWNERSHIP OR INTERESTS IN OTHER LANDS WITHIN THIS COMMUNITY

(Show information on plan or sketch)

If you have interests in other lands within this community complete the following:

Title Number(s): PID's: 023-385-243; 008-455-023; 004-580-966; 009-319-531



**PROPOSAL** (Please describe and show on plan or sketch)

See Attached

**CURRENT USE OF LAND** (Show information on plan or sketch)

List all existing uses on the parcel(s) and describe all buildings  
Bare Land

**USES ON ADJACENT LOTS** (Show information on plan or sketch)

North      Ross Creek; undeveloped land  
East        Undeveloped land; farm land beyond  
South      Farmland; rural residences  
West        RV Park

**DECLARATION**

I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the *Agricultural Land Commission Act* and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

_____	_____	_____
<i>Date</i>	<i>Signature of Owner or Agent</i>	<i>Print Name</i>
_____	_____	_____
<i>Date</i>	<i>Signature of Owner or Agent</i>	<i>Print Name</i>
_____	_____	_____
<i>Date</i>	<i>Signature of Owner or Agent</i>	<i>Print Name</i>

**Please ensure the following documents are enclosed with your application:**

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application \*(See instructions)
- Photographs (optional)

## **10.0 Appendix B: Title Documents**

TITLE - KR40823

KAMLOOPS                    LAND TITLE OFFICE                    TITLE NO: KR40823  
FROM TITLE NO: KR40822

APPLICATION FOR REGISTRATION RECEIVED ON: 10 MAY, 2001  
ENTERED: 14 MAY, 2001

REGISTERED OWNER IN FEE SIMPLE:  
ROBERT PERRY ISLEY, SELF-EMPLOYED  
EVELYN JOYCE ISLEY, SELF-EMPLOYED  
RR#1, SITE 16, COMP. 40  
CELISTA, BC  
VOE 1L0  
AS JOINT TENANTS

TAXATION AUTHORITY:  
VERNON ASSESSMENT AREA

DESCRIPTION OF LAND:  
PARCEL IDENTIFIER: 014-009-552  
THE WEST 1/2 OF THE NORTH WEST 1/4 SECTION 17 TOWNSHIP 23 RANGE 9  
WEST OF THE  
6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT EXCEPT PART OF THE  
SOUTHERLY  
350 FEET OF LEGAL SUBDIVISION 12 SECTION 17 AS SHOWN ON PLAN B7633

LEGAL NOTATIONS:

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND  
COMMISSION ACT, SEE AGRICULTURAL LAND RESERVE PLAN NO. M11420

CHARGES, LIENS AND INTERESTS: NONE

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*

## **11.0 Appendix C: Authorization of Agent**

I authorize Mr.R.G. (Bob) Holtby, P.Ag. to discuss and answer questions as to the contents of the attached report and application.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## **12.0 Appendix D: Photographs of Subject Parcels**



**Photograph 1: Forest Cover in Subject Parcel**



**Photograph 2: Soil Type in Subject Parcel**

**13.0 Appendix E: Proof of Notice**



### Notice Text

## NOTICE OF EXCLUSION APPLICATION REGARDING LAND IN THE AGRICULTURAL LAND RESERVE

We, Robert and Evelyn Isley intend on making an application pursuant to Section 30(1) of the *Agricultural Land Commission Act* to subdivide, exclude and include lands in the **Agricultural Land Reserve** the following property which is legally described as,

**The Remaining West ½ of the North West ¼ of Section 17,  
Township 23, Range 7, KDYD**

Any person wishing to express an interest in the application may do so by forwarding their comments in writing to, the Columbia Shuswap Regional District 781 Marine Park Drive NE, Salmon Arm, BC, V1E 4P1 by July 9, 2008.



**Photograph 3: Notice Sign**

## 815 Legal Notices

### **NOTICE OF EXCLUSION APPLICATION REGARDING LAND IN THE AGRICULTURAL LAND RESERVE**

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**The remaining West 1/2 of the North West 1/4 of Section 17, Township 23, Range 7, KDYD.**

Any person wishing to express an interest in the application may do so by forwarding their comments in writing to, the Columbia Shuswap Regional District, 781 Marine Park Drive NE, Salmon Arm, B.C. V1E 4P1 by **July 2, 2008**.

### **Copy 1: Newspaper Advertisement**