



Agricultural Land Commission
201 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

November 14, 2018

ALC File: 54694

Denman Community Land Trust Association
DELIVERED ELECTRONICALLY

Attention: Harlene Holm,

Re: Reconsideration of Application 54694 to exclude land from the Agricultural Land Reserve

Please find attached the Reasons for Decision of the Island Panel for the above noted application (Resolution #359/2018). As agent, it is your responsibility to notify the applicant accordingly.

Review of Decisions by the Chair

Under section 33.1 of the *Agricultural Land Commission Act (ALCA)*, the Chair of the Agricultural Land Commission (the Commission) has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

Request for Reconsideration of a Decision

Under section 33(1) of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. The request must be received within one (1) year from the date of this decision's release. For more information, refer to *ALC Policy P-08: Request for Reconsideration* available on the Commission website.

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

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Wallace', is written over a white background.

Ron Wallace, Land Use Planner

Enclosures: Reasons for Decision (Resolution #359/2018)
Schedule A: Decision Map (Resolution #359/2018)
Reasons for Original Decision (Resolution #389/2016)

cc: Islands Trust – Northern Office (File: DE-ALR-2015.1)



AGRICULTURAL LAND COMMISSION FILE 54694

**RECONSIDERATION OF PANEL DECISION
REASONS FOR DECISION OF THE ISLAND PANEL**

Exclusion application submitted under s. 30(1) of the *Agricultural Land Commission Act*

Request for Reconsideration submitted pursuant to s. 33 of the *Agricultural Land Commission Act*

Applicant: Beverly Severn

Agent: Harlene Holm

**Property: Parcel Identifier: 009-708-537
Legal Description: Parcel M (DD 6601N) of Section
18, Denman Island, Nanaimo District, except that
part in Plan 24807
Civic: 3730 Denman Road, Denman Island, BC
Area: 1.6 ha**

**Panel: Clarke Gourlay
Honey Forbes**

OVERVIEW

- [1] The Property is located within the Agricultural Land Reserve (ALR) as defined in s. 1 of the *Agricultural Land Commission Act* (ALCA). The Property is located within Zone 1 as defined in s. 4.2 of the ALCA.
- [2] Pursuant to s. 30(1) of the ALCA, the Applicant, in conjunction with the Denman Community Land Trust Association (the “DCLTA”) applied to the Agricultural Land Commission (the “Commission”) to exclude land for the establishment of eight units of affordable seniors housing for Denman Island residents (the “Proposal”).
- [3] By Resolution #389/2016, dated November 15, 2016, the Panel approved the exclusion of 1.6 ha for the establishment of affordable seniors housing for Denman Island residents (the “Original Decision”). The approval included the following conditions:
- The Commission receive and approve a vegetative buffer and fencing plan between the Property and adjacent agricultural lands, and that the buffer be on the non-ALR side;
 - Photographic evidence of the fencing and vegetative buffer;
 - Re-zoning of the Property to allow for affordable seniors housing;
 - The Commission receive and approve a housing agreement to be registered on Title ensuring that the land use, tenancy selection and occupancy support the continuing use of the land for affordable seniors housing; and
 - The conditions be completed within three years from the date of release of the decision.
- [4] On February 23, 2018, the Commission received the Applicant’s Request for Reconsideration of Resolution #389/2016. Request for Reconsideration of Resolution #389/2016 submits that the Island Panel was in error when it considered that the Proposal is for exclusion of the entire 1.6 ha Property for the establishment of eight units of affordable seniors housing for Denman Island residents. The proponents state that the Application is not strictly to exclude the whole Property for senior housing but instead to exclude the whole Property for both affordable housing and for the landowner (i.e.

Beverly Severn) to continue living on her home property. The portion of the Property proposed for affordable housing is an L-shaped area along the west and south border comprising approximately 0.8 ha; the remainder will continue to be used as a homesite. Further, the DCLTA would be given the 'right of first refusal' to purchase the remainder of the Property from the landowner (i.e. Beverly Severn, should she wish to sell) as a site for potential additional affordable housing.

[5] As per Commission Resolution #029N/2014, all requests for reconsideration are directed to the Executive Committee of the Commission to determine if the submission contains evidence that was not available at the time of the Original Decision, and/or the Original Decision was based on information that was in error or false, and the information would have been germane to the review of the Application by the Panel.

[6] In this case, the Executive Committee found that the Request for Reconsideration of Resolution #389/2016 was based on information that may be in error or false, and the information would have been germane to the review of the Application by the Panel.

[7] The Executive Committee did not consider that there were any persons affected by the reconsideration.

[8] In accordance with s. 11.1(3) of the *ALCA*, the Chair of the Commission referred the Request for Reconsideration of the Original Decision to the Panel.

[9] The Panel considered the request to exclude the Property from the ALR for both the development of affordable housing and for the landowner to continue living on her home property in the context of the purposes of the Commission set out in s. 6 of the *ALCA*.

These purposes are:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land 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 agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

EVIDENTIARY RECORD

[10] The Panel considered the following evidence:

1. The Application evidence from the Original Decision;
2. The Site Visit Report;
3. The Original Decision;
4. The Request for Reconsideration documentation received by the Commission from the Agent.

EVIDENCE AND FINDINGS

[11] Upon reconsideration, the Panel reviewed the evidentiary record and noted that the Proposal is to exclude the entire 1.6 ha Property for both the establishment of eight units of affordable senior housing for Denman Island residents and for the landowner to continue living on her home property. The Panel understands from the submission that the portion of the Property proposed for affordable housing is a 0.8 ha L-shaped area along the west and south border and that the remainder 0.8 ha of the Property is proposed for a homesite for the landowner.

[12] Based on the findings outlined in the Original Decision, the Panel supports the exclusion of the Property from the ALR for the purpose of providing affordable seniors housing for Denman Island residents. The Panel reiterates the findings of the Original Decision in which it expressed that it “would have no objection to increasing the number of dwelling units, if a higher density would mitigate further applications to the ALC.”

[13] The Panel does not support the exclusion of any portion of the Property for the purpose of establishing a homesite for the landowner. Regardless of the proposed provision to grant the DCLTA with the ‘right of first refusal’ to purchase the remainder of the Property from the landowner as a site for potential additional affordable housing, there is no assurance that it will eventually be developed for this purpose. The Panel finds that exclusion of land for a single residential lot is not consistent with the purposes of the Commission, as set out in s. 6 of the ALCA.

[14] For these reasons, the Panel is amenable to excluding either the entire 1.6 ha Property for affordable seniors housing or only the 0.8 ha portion of the Property for affordable seniors housing.

DECISION

[15] The Panel therefore refuses the Proposal to exclude the 1.6 ha Property for both affordable housing and to create a homesite for the landowner (i.e. Beverly Severn).

[16] The Panel approves, as in the Original Decision, the exclusion of the 1.6 ha Property for the establishment of affordable seniors housing for Denman Island residents. The decision is subject to conditions outlined by Resolution #389/2016.

[17] Alternatively, the Panel approves the exclusion of the ±0.8 ha portion of the Property proposed for the establishment of affordable seniors housing for Denman Island residents. This approval is subject to the following conditions:

- a. the submission of a survey plan delineating the area to be excluded;
- b. the Commission receive and approve a vegetative buffer and fencing plan between the area of the Property approved for exclusion and adjacent agricultural lands, and that the buffer be on the non-ALR side;
- c. photographic evidence of the fencing and vegetative buffer;
- d. re-zoning of the non-ALR portion of the Property to allow for affordable seniors housing;
- e. the Commission receive and approve a housing agreement to be registered on Title ensuring that the land use, tenancy selection and occupancy support the continuing use of the land for affordable seniors housing; and
- f. the conditions be completed within three (3) years from the date of release of this decision.

[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(5) of the ALCA.

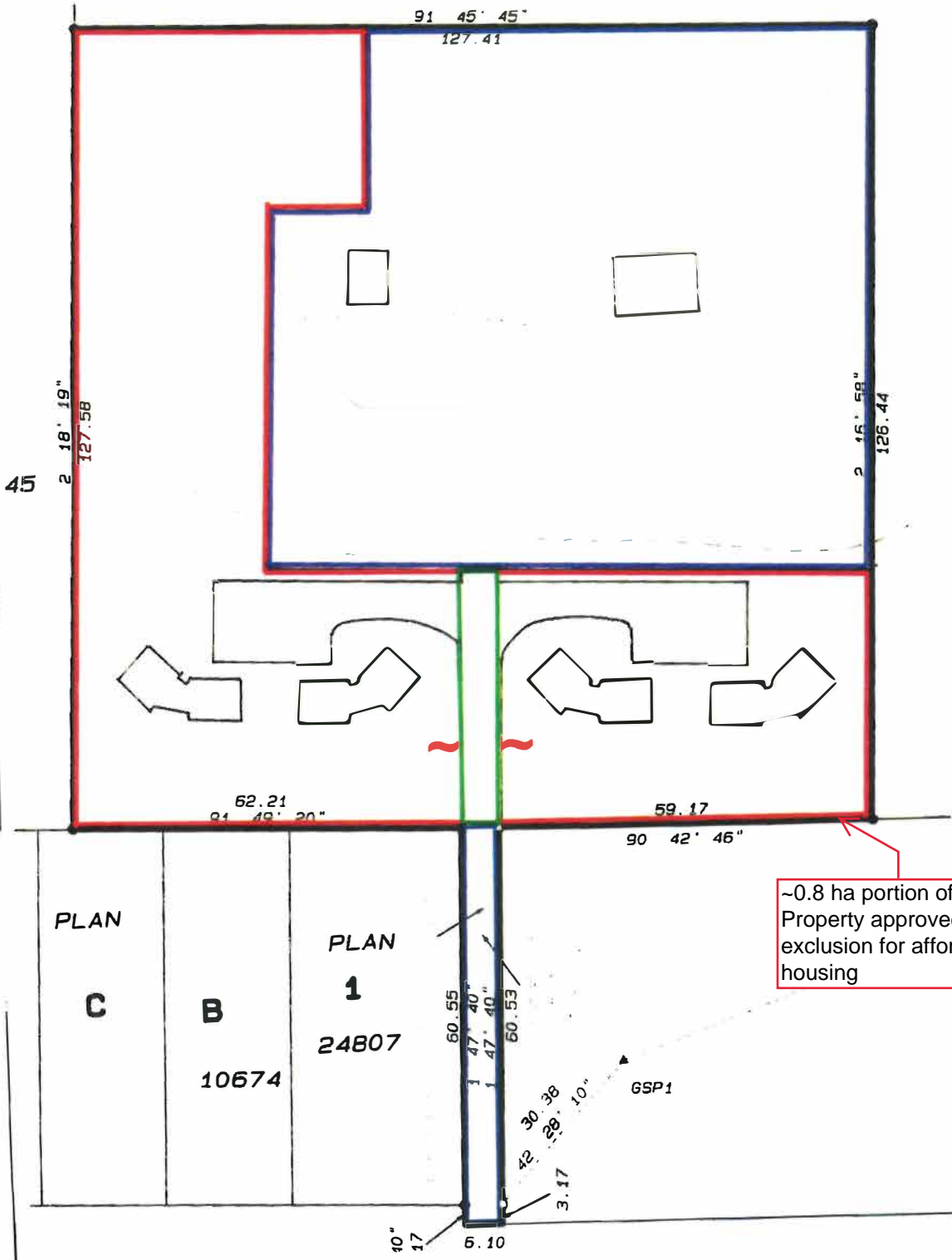
[21] Resolution #359/2018

Released on November 14, 2018

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Clarke Gourlay, Panel Chair

On behalf of the Island Panel



~0.8 ha portion of Property approved for exclusion for affordable housing

Schedule A
 ALC Application #54694 (Severn)
 ALC Resolution #359/2018
 Conditionally Approved Exclusion of 0.8 ha of the Property for affordable seniors housing

BS *[Signature]*



Agricultural Land Commission
133–4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

November 15, 2016

ALC File: 54694

Denman Community Land Trust Association
3900 Lacon Road
Denman Island, BC V0R 1T0

Attention: Harlene Holm

Re: Application to Exclude Land from the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Island Panel (Resolution #389/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached. As agent, it is your responsibility to notify the applicant accordingly.

Reconsideration of a Decision as Directed by the ALC Chair

Please note that pursuant to [s. 33.1 of the *Agricultural Land Commission Act*](#), the Chair may direct the executive committee to reconsider any panel decision if, within 60 days from the date of this decision, he considers that the decision may not fulfill the purposes of the commission as set out in s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

Reconsideration of a Decision by an Affected Person

We draw your attention to [s. 33\(1\) of the *Agricultural Land Commission Act*](#) which provides a person affected the opportunity to submit a request for reconsideration.

- 33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that:
- (a) evidence not available at the time of the original decision has become available,
 - (b) all or part of the original decision was based on evidence that was in error or was false.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Further correspondence with respect to this application is to be directed to Sara Huber at (sara.huber@gov.bc.ca).

Page 2 of 2

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to be 'S. Huber', written in a cursive style.

Sara Huber, Land Use Planner

Enclosure: Reasons for Decision (Resolution #389/2016)

cc: Islands Trust - Northern Office (File: DE-ALR-2015.1)

54694d1



AGRICULTURAL LAND COMMISSION FILE 54694

REASONS FOR DECISION OF THE ISLAND PANEL

Application submitted pursuant to s. 30(1) of the *Agricultural Land Commission Act*

Applicant:

**Beverly Severn
(the “Applicant”)**

Agent:

**Harlene Holm
(the “Agent”)**

Application before the Island Regional Panel:

**Jennifer Dyson, Panel Chair
Honey Forbes
Clarke Gourlay**



THE APPLICATION

[1] The legal description of the property involved in the application is:

Parcel Identifier: 009-708-537

Parcel M (DD 6601N) of Section 18, Denman Island, Nanaimo District, except that part in Plan 24807

(the "Property")

[2] The Property is 1.6 ha in area.

[3] The Property has the civic address 3730 Denman Road, Denman Island, BC.

[4] The Property is located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Property is located within Zone 1 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 30(1) of the *ALCA*, the Applicant, in conjunction with the Denman Community Land Trust Association (the "DCLTA") is applying to exclude land for the establishment of eight units of affordable seniors housing for Denman Island residents (the "Proposal"). The Proposal along with supporting documentation is collectively the application (the "Application").

RELEVANT STATUTORY PROVISIONS

[7] The Application was made pursuant to s. 30(1) of the *ALCA*:

30 (1) An owner of land may apply to the commission to have their land excluded from an agricultural land reserve.

[8] The Panel considered the Application within the context of s. 6 of the *ALCA*:

- 6 The following are the purposes of the commission:
- (a) to preserve agricultural land;
 - (b) to encourage farming on agricultural land 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 agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

EVIDENTIARY RECORD BEFORE THE PANEL

[9] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history
4. Agricultural capability map, ALR context map and satellite imagery
5. Additional information provided by the Applicant
 - a. *Affordable Housing for Seniors on Denman Island*, prepared by Stephanie Slater for the Denman Community Land Trust Association, dated September 17, 2014
 - b. 2014 Services Map
6. Additional Information provided by Islands Trust
 - a. *Contextual Analysis of Adjacent Non-ALR Lands*
 - b. *DCLTA's ALR Exclusion Application Comments by Louise Bell*, dated March 10, 2016 *Affordable and Convenient Housing Needs on Denman Island*, *Denman Housing Association*, prepared by John M Roberts, Management Consulting, dated November 9, 2013
 - c. *Re: Denman Housing Needs Summary Report of August 25th Community Information Meeting*, Islands Trust Staff Report, dated October 3, 2013
 - d. Excerpt from *Denman Housing Needs Assessment, 2008*

- e. *Age-Friendly Communities Report Denman and Hornby Islands*, prepared by Shari Dunnet, Gerald Hodge, and Wendy Johnstone for the Hornby and Denman Community Health Care Society, dated November 1, 2011.

All documentation noted above was disclosed to the Agent in advance of this decision.

[10] At its meeting of March 15, 2016, the Denman Island Local Trust Committee (the “Committee”) resolved:

1. *that the Denman Island Local Trust Committee supports application DE-ALR-2015.1 (Denman Community Land Trust Association on behalf of Beverley Severn) to exclude Parcel M (DD 6601N) of Section 18, Denman Island, Nanaimo District, except that part in Plan 24807 (3730 Denman Road) from the Agricultural Land Reserve;*
2. *that the Denman Island Local Trust Committee direct staff to forward application DE-ALR-2015.1 to the Agricultural Land Commission including a copy of the Committee’s resolution of support;*
3. *that the following comments be attached in support of the application:*
 - a. *comments provided by Louise Bell;*
 - b. *There is a well-documented need for seniors’ affordable housing (in the Denman Housing Needs Assessment of 2008, the Age Friendly Report of 2011, the Denman Community Land Trust Report of 2014, the Denman Housing Association Affordable and Convenient Housing Needs Report on Denman Island, 2013, and Denman Island Local Trust Committee public consultation on housing in 2013) to support viewing this project as potentially meeting an essential and pressing community need; and*
 - c. *There are currently no other available locations for affordable housing within walking distance of the village that are not in the Agricultural Land Reserve; and*
4. *that the Denman Island Official Community Plan excerpts regarding Seniors and affordable housing quotes from the Official Community Plan be attached.*



[11] The Panel reviewed two relevant applications relating to the application:

Application ID: 43436
Legacy File: 36936
(Wooley, 2006)

To exclude the 1.38 ha property for the development of commercial activities. The Commission considered that although the soil was prime capability, there was limited potential for agricultural uses due to the small size of the property and the current building footprint. The Commission noted that the previous non-farm uses approved on the property (guest accommodation), as well as the septic system areas deemed the majority of the property unsuitable for agriculture. The application was approved by ALC Resolution #574/2006.

Note: Application 43436 is located adjacent to the south of the Property.

Application ID: 24398
Legacy File: 06421
(McTaggart, 1978)

To exclude 3.1 ha for the development of commercial activity. The Commission found that the property was unsuitable for agricultural uses because of soil characteristics and size. The application was approved by ALC Resolution #9144/78.

Note: Application 24398 is located adjacent to the west of the Property.

SITE VISIT

[12] On May 26, 2016, the Panel conducted a walk around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[13] 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 June 20, 2016 (the “Site Visit Report”).

FINDINGS

[14] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), ‘Soil Capability Classification for Agriculture’ system. The improved agricultural capability ratings identified on CLI map sheet 92F/10 for the mapping units encompassing the Property are Class 2X.

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

The limiting subclass associated with this parcel of land is X (combination of soil factors).

[15] The Application included a professional Agrologist report, prepared by Emerson Soil Agrology Inc., dated November 26, 2015 (the “Emerson Report”). Based on the excavation of two soil pits, the Emerson Report finds that the soils on the property are Class 5P on the north half of the Property, and Class 3A on the southern half of the Property.

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

Class 5 - land is capable of production of cultivated perennial forage crops and specially adapted crops. Soil and/or climate conditions severely limit capability.

The limiting subclasses associated with this parcel of land are A (soil moisture deficiency - modified), and P (stoniness).

[16] The Emerson Report concluded:

Approximately half of the soils on the subject property are not suited to arable agriculture due mainly to stoniness and the remaining soils have moderate restrictions for agriculture due to a low water holding capacity.

[17] The Panel considered the findings of the Emerson Report as it relates to the agricultural capability and find that the Property has moderate agricultural capability.

[18] According to the *Affordable Housing for Senior's on Denman Island* report (the "Affordable Housing Report"), completed by Stephanie Slater in September 2014:

Denman Island, B.C. faces a pressing need for affordable and appropriate housing for its senior population. The total number of seniors on the island is expanding rapidly, and the age of individual seniors is growing. This trend is expected to continue for three or more decades.¹ Most of Denman's seniors say they want to continue to live on the island but they face numerous barriers to doing so. There are no dedicated seniors' or subsidized housing units; there are few rental accommodations and those that exist are inappropriate for people with mobility or health issues. There are limited options for downsizing to a more manageable home or yard for "aging in place" as older people's needs change.²

The Panel finds that the Affordable Housing Report has demonstrated the need for senior's affordable housing on Denman Island, given the growing senior demographic and lack of subsidized housing units that allow for "aging in place".

[19] On July 12, 2016 the Panel requested further information from the Islands Trust regarding an analysis of non-ALR land in the vicinity of the Property in order to justify the location of the Proposal. On July 21, 2016, the Panel received a report titled *Contextual Analysis of Adjacent Non-ALR Lands* (the "Land Analysis") from Islands Trust. In addition to providing zoning context maps to illustrate zoning and land uses surrounding the Property, the Land Analysis provides the following justification for the proposed seniors housing location:

The subject property is one of very few, and possibly the only property, which is undeveloped and within reasonable walking distance of the village core and the services it offers, and which possesses the area necessary for the onsite waste treatment system that would be required. This is necessitated by the fact that no community water or waste services are available on Denman Island.

It is also located within easy walking distance of the Denman West ferry terminal which provides access to Vancouver Island and the larger communities to the north and south via the Island Link Bus which makes a stop at the Buckley Bay Petro Canada gas station adjacent to the Buckley Bay ferry terminal.

In many ways the subject property is in a near ideal location for a senior's housing development offering as it does easy walkable access to almost all of the services available on Denman Island including easy access to a connector to larger service centres such as Courtenay for other services, which might be medical in nature.

The Panel finds that that the Land Analysis and collective approval of the residents and Island Trust has provided justification to accommodate senior's affordable housing on the Property, given the limited supply of available land on Denman Island, the proximity of the Property to local amenities and access to larger service centers.

[20] The Proposal includes the construction of four duplexes (eight dwelling units) designated for affordable seniors housing. While the Panel is agreeable to allowing the Proposal for affordable seniors housing, the Panel cautions the Applicant that it is unlikely that the Commission would consider further exclusion or non-farm use for a similar purpose. In this regard, the Panel advises the Applicant to carefully consider the long-term demand for affordable seniors housing on Denman Island and plan for density accordingly. While the Proposal is to exclude to accommodate eight dwelling units, the Panel would have no objection to increasing the number of dwelling units, if a higher density would mitigate further applications to the ALC.

[21] As the Proposal is not consistent with the current Official Community Plan (OCP) or zoning bylaw, the Property would require rezoning or amendments to the OCP and zoning designations. Prior to exclusion from the ALR, the Panel requires assurances that the Property will be re-zoned for the specific use of affordable seniors housing to ensure that the Property is used for the intended purpose of the Proposal. The Panel encourages the Islands Trust to consult with ALC staff in the development of any OCP amendments or re-zoning amendments required.

[22] At the Site Visit, the Agent stated that a housing agreement would be implemented to stipulate that the Property could only be used for affordable seniors housing by way of zoning and a covenant. The Panel appreciates that the Applicant has given thought to ensuring the land is used for its intended purpose upon exclusion from the ALR, and as such the Panel requires that the agreement be registered on title.

[23] The ALC is not in favour of excluding land for community use by individual applications and any future exclusion must be part of a larger planning process.

DECISION

[24] For the reasons given above, the Island Panel approves the Proposal to exclude 1.6 ha for the establishment of affordable seniors housing for Denman Island residents.

[25] The Proposal is approved subject to the following conditions:

- a. the Commission receive and approve a vegetative buffer and fencing plan between the Property and adjacent agricultural lands, and that the buffer be on the non-ALR side;
- b. photographic evidence of the fencing and vegetative buffer;
- c. re-zoning of the Property to allow for affordable seniors housing;
- d. the Commission receive and approve a housing agreement to be registered on Title ensuring that the land use, tenancy selection and occupancy support the continuing use of the land for affordable seniors housing; and
- e. the conditions be completed within three (3) years from the date of release of this decision.

[26] 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.

[27] These are the unanimous reasons of the Island Panel of the Agricultural Land Commission.

[28] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

[29] This decision is recorded as Resolution #389/2016 and is released on November 15, 2016.

CERTIFICATION OF DECISION

A handwritten signature in black ink, appearing to be 'Jennifer Dyson', written over a horizontal line.



Jennifer Dyson, Panel Chair, on behalf of the Island Panel

END OF DOCUMENT

ALC Application 54694 (Severn)
Conditionally Approved Exclusion
Resolution # 389/2016



Legend:

-  Property Boundary
-  Conditionally Approved Exclusion