

**DATE:** September 23, 2021**FILE:** 3110-20/ALR 2C 21**TO:** Chair and Directors  
Electoral Areas Services CommitteeSupported by James Warren  
Deputy Chief Administrative Officer**FROM:** James Warren  
Deputy Chief Administrative Officer*J. Warren***RE: Agricultural Land Reserve Non-Adhering Residential Use  
7912 Island Highway North (Fox)  
Puntledge – Black Creek (Electoral Area C)  
Lot 2, Sections 31 and 32, Township 6 and Block 29, Comox District, Plan  
5183, PID 005-950-066****Purpose**

To consider an Agricultural Land Reserve (ALR) application (Appendix A) to allow for an owner to reside in an existing house while constructing a new house and to retain the old house as an additional residence.

**Recommendation from the Deputy Chief Administrative Officer:**

THAT the Agricultural Land Commission be advised that the Comox Valley Regional District supports Agricultural Land Reserve Non-Adhering Residential Use application ALR 2C 21 (Fox) concerning a residential use located on Lot 2, Sections 31 and 32, Township 6 and Block 29, Comox District, Plan 5183, PID 005-950-066 (7912 Island Highway North);

AND FINALLY THAT the application ALR 2C 21 (Fox) regarding a non-adhering residential use on a property within the Agricultural Land Reserve be forwarded to the Agricultural Land Commission for final consideration.

**Executive Summary**

- The subject property is a 10 hectare lot within the ALR. The owner is seeking to construct a new house while living in the existing house. Upon occupancy, the owner would like to retain the older house for residential purposes. This requires approval of an ALR Non-Adhering Residential Use application.
- The Agricultural Advisory Planning Commission (AAPC) recommended the application be forwarded to the Agricultural Land Commission (ALC).
- Based on its consistency with the Agricultural Areas policies of the Official Community Plan (OCP), staff recommends the application be supported and forwarded to the ALC.

Prepared by:

Concurrence:

Concurrence:

*J. MacLean**T. Trieu**A. Mullaly*Jodi MacLean, RPP, MCIP  
PlannerTon Trieu, RPP, MCIP  
Manager of Planning ServicesAlana Mullaly, RPP, MCIP  
General Manager of Planning  
and Development Services

**Government Partners and Stakeholder Distribution (Upon Agenda Publication)**

Applicant	✓
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**Background/Current Situation**

The subject property is a 10 hectare lot located in Black Creek (Figures 1 and 2). The property is developed with a house and several farm buildings, and has farm status under the *Assessment Act*. The owner is seeking to (1) construct a new house while living in the old house, and (2) keep the old house as a second dwelling on the lot. According to the applicant, it is their intention to make the old house available to their grown children as a means of keeping them working on the farm or otherwise for farm labourers.

Agricultural Land Reserve

The *Agricultural Land Commission Act* and ALR Regulations currently allow each lot within the ALR to have a residential density of one house with a secondary suite within that house. The Ministry of Agriculture, Food and Fisheries released new regulations that will come into force on December 31, 2021, addressing additional residences. The new regulations will remove the requirement for Agricultural Land Commission approval on secondary dwellings that are under 90 square metres. Because the floor area of the old house which the applicant is seeking to retain is 160 square metres, this application is required.

Should the request to retain the old house be refused, the applicant would have the option to decommission the house so it can be used as an accessory building; or remove the additions and seal off floor area so that it falls under 90 square metres; or otherwise demolish the house.

Official Community Plan

The property is designated Agricultural Areas within the OCP, Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”. Concerning additional dwellings the OCP encourages owners to locate and group buildings, including dwellings, to preserve contiguous tracts of land and to consider the long term agricultural potential of the land, avoiding arable soils, avoiding long driveways, the siting of buildings deep into the property. The proposed location of the new house is in the front one hectare of the lot, grouped with the other buildings. This location does not create a new independent homesite on the lot and allows for shared residential infrastructure, such as the driveway access. This location is consistent with the OCP policies.

Zoning Bylaw

The property is zoned Rural ALR in Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019”. The zone limits residential density to one single detached dwelling and one secondary suite plus additional dwelling units where the additional dwelling units are specifically permitted under the *Agricultural Land Commission Act*, regulations and orders. Therefore, approval of this application is required for the proposal to proceed.

Canada Land Inventory

According to the Canada Land Inventory, the land at the front of the lot has an improved soil class of 3PA(80%):3PD(20%) while the mid and rear portions of the lot are class 2 (Figure 3) with various limitations. Class 3 soils have moderately severe limitations that restrict the range of crops or require special conservation practices. Class 2 soils have moderate limitations that restrict the range of crops or require moderate conservation practices. Subclass A refers to a limitation due to soil moisture deficiency; subclass P a limitation due to stoniness; T topography; C an adverse climate; D an undesirable soil structure and/or low perviousness; and W excess water.

**Policy Analysis**

Section 20.1 of the *Agricultural Land Commission Act* (the Act) states that an owner may construct, alter or use only one residence per parcel. Section 25 of the Act allows an owner to make an application to allow for a use that is not otherwise permitted by the Act or its regulations. Section 34 requires that the local government decide whether to forward the application to the ALC for a decision and, if it does, allows the local government to provide comments and recommendations to the ALC.

**Options**

The Comox Valley Regional District (CVRD) Board may support forwarding the application to the ALC or refuse to forward the application. The board may also provide comments and recommendations concerning the application for ALC consideration. Staff recommends forwarding the application to the ALC.

**Financial Factors**

Fees have been collected for this nonfarm use application in accordance with Section 34.1 of the *Agricultural Land Commission Act*.

**Legal Factors**

This report and the recommendations contained herein are in compliance with the *Agricultural Land Commission Act*, regulation and CVRD bylaws.

**Regional Growth Strategy Implications**

The Regional Growth Strategy, Bylaw No. 120, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010” (RGS) designates the subject property as being within the Agricultural Areas designation. Within this designation, the intent of the RGS is “to reinforce the policies and procedures within the ALR in order to support agricultural practices”.

**Intergovernmental Factors**

A referral was issued to the Ministry of Agriculture, Food and Fisheries for comment on this application. The Regional Agrologist responded with comments that the “current/anticipated amount of agricultural production is unlikely to require a large amount of labour” (Appendix B).

**Interdepartmental Involvement**

This ALR application has been circulated to CVRD departments. No concerns were identified.

**Citizen/Public Relations**

The AAPC reviewed the application at its meeting on September 9, 2021, with the applicant in attendance. The AAPC recommended supporting the application noting the existing house is unsuitable to accommodate the large family and is not practical to further renovate, as well as the upcoming allowance for a second dwelling.

ALR non-adhering residential use applications are not subject to public notification or consultation requirements.

Attachments: Appendix A – ALC application submission ALR 2C 21  
Appendix B – Letter from Regional Agrologist dated September 15, 2021

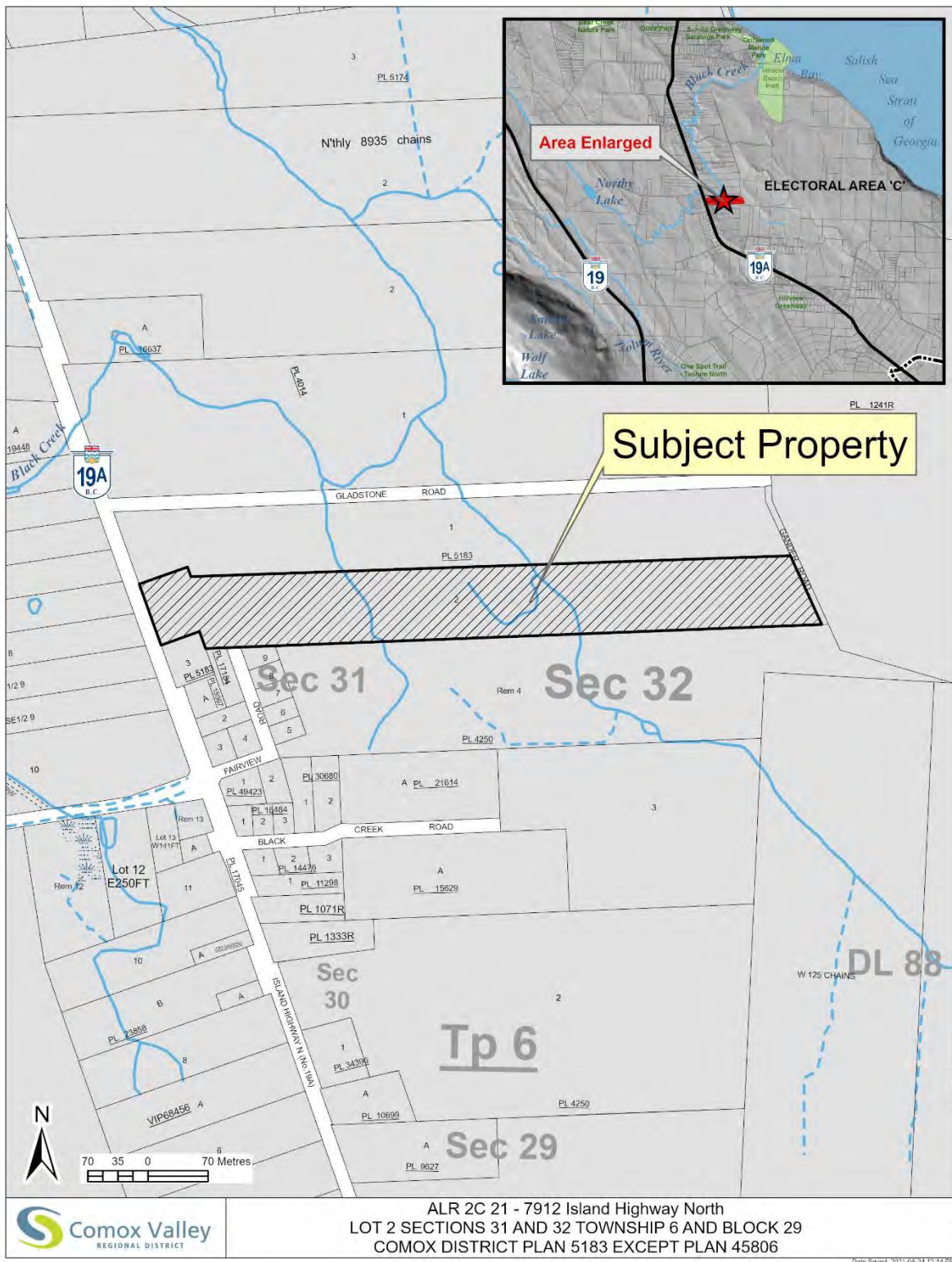


Figure 1: Subject Property



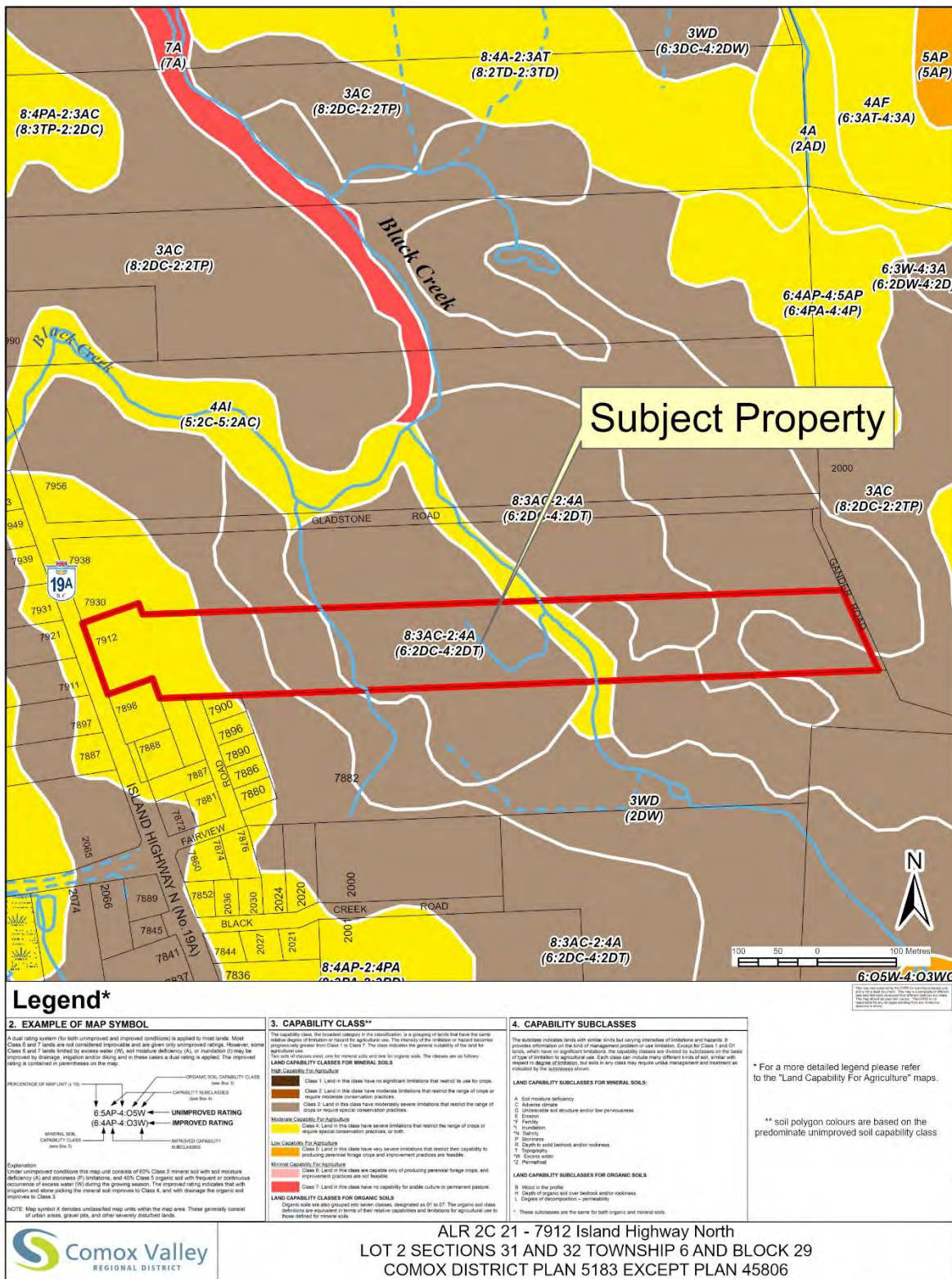


Figure 3: CLI Soil Classification

# Provincial Agricultural Land Commission - Applicant Submission

**Application ID:** 63587

**Application Status:** Under LG Review

**Applicant:** Matthew Fox

**Local Government:** Comox Valley Regional District

**Local Government Date of Receipt:** 07/23/2021

**ALC Date of Receipt:** This application has not been submitted to ALC yet.

**Proposal Type:** Non-Adhering Residential Use - Additional Residence for Farm Use

**Proposal:** We would like to build a larger house that our family will fit in a little further back from the highway but still keep the smaller older house for family, and future use as we grow the farm.

**Mailing Address:**

7912 Island Highway  
Black Creek, BC  
V9J 1G5  
Canada

## Parcel Information

### Parcel(s) Under Application

1. **Ownership Type:** Fee Simple

**Parcel Identifier:** 005-950-066

**Legal Description:** LOT 2, SECTIONS 31 AND 32, TOWNSHIP 6, AND BLOCK 29, COMOX DISTRICT, PLAN 5183 EXCEPT PART IN PLAN 45806

**Parcel Area:** 9.9 ha

**Civic Address:** 7912 Island Highway, Black Creek, V9J1G5

**Date of Purchase:** 06/28/2021

**Farm Classification:** Yes

**Owners**

1. **Name:** Matthew Fox

**Address:**

7912 Island Highway  
Black Creek, BC  
V9J 1G5  
Canada

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## Current Use of Parcels Under Application

**Applicant:** Matthew Fox

**1. Quantify and describe in detail all agriculture that currently takes place on the parcel(s).**

*Currently the property has been used for hay by the last owner. It was used for hay this season.*

**2. Quantify and describe in detail all agricultural improvements made to the parcel(s).**

*I have order (can give receipt) and put a deposit on 800 trees and 250 blue berries plants to put on about 6-8 acres of the land next spring (2022). The rest we will continue to use for hay. We have started small hobby farm with chickens and will add larger animals next year as well.*

**3. Quantify and describe all non-agricultural uses that currently take place on the parcel(s).**

*We live on the property with our seven children. We would like to build another home on the property as our main residence and keep the old house.*

**Adjacent Land Uses**

**North**

**Land Use Type:** Agricultural/Farm

**Specify Activity:** Residential and hobby farm

**East**

**Land Use Type:** Agricultural/Farm

**Specify Activity:** Residential and hobby farm

**South**

**Land Use Type:** Agricultural/Farm

**Specify Activity:** Residential and hobby farm

**West**

**Land Use Type:** Agricultural/Farm

**Specify Activity:** Residential and hobby farm

**Proposal**

**1. What is the purpose of the proposal?**

*We would like to build a larger house that our family will fit in a little further back from the highway but still keep the smaller older house for family, and future use as we grow the farm.*

**2. Describe the necessity for an additional residence for farm use and how it will support agriculture in the short or long term.**

*We have order 800 fruit trees and 250 blueberry plants for next year which in five years or so will require extra help and time (Deposit has been paid and can be sent for proof if needed). We also will continue to hay the other part of the field for potential cows next year and over the years to come if the fruit trees are successful, continue to grow the orchard. We would like to be able to keep the old house to help out with the farm.*

**3. Describe the size, type and number, as well as occupancy of all residential structures currently located on the property.**

*Currently there is only the one residential house which is approximately 160 square metres.*

**4. What is the total floor area of the proposed additional residence in square metres?**

*420 m<sup>2</sup>*



**5. Describe the rationale for the proposed location of the additional residence.**

*We have a large family and do not fit in the current small house. We also would like to build further away from the highway so that it is quieter. As we expand the farm in the future, we would like to sell our produce from one of the barns and keep our main residence further away from the commercial side of the farm.*

**6. What is the total area of infrastructure necessary to support the additional residence?**

*A new septic, garage (part of the house) and a small drive way. Approximately 400m<sup>2</sup>*

**7. Do you need to import any fill to construct the additional residence or infrastructure?**

*No*

**Applicant Attachments**

- Proposal Sketch-63587
- Certificate of Title-005-950-066

**ALC Attachments**

None.

**Decisions**

None.

**Farm property**

**Old House**

**New House**

**Road**

**7912 Island Hwy, Black Creek**

**For Reference Barn is  
- 48' long**





September 15, 2021

Jodi MacLean  
Planner  
Comox Valley Regional District  
**Sent by email**

Dear Jodi:

**Re: File: 3110-20/ALR 2C 21– Non-Adhering Residential Use (NARU) Application at 7912 Island Highway North – The Subject Property**

Thank you for providing the Ministry of Agriculture, Food and Fisheries (Ministry) the opportunity to comment on File 3110-20/ALR 2C 21 that proposes to construct an additional residence on the Subject Property. From an agricultural perspective, the Ministry offers the following comments:

- The majority of the 9.9 ha Subject Property is currently used for hay production. However, the owners have purchased 810 fruit trees, 50 grape plants and 250 blueberry plants which will be planted on approximately 2.5 ha of the Subject Property in spring 2022. The owners also intend to create an apiary in 2022.
- The purpose of retaining the existing 160 square metre residence is for the owner's children to one day inhabit the residence and assist with the agricultural operation.
- The new residence is proposed to be constructed within the approximately 1 ha of existing farm/residential building footprint that contains several structures located at the front of the Subject Property adjacent to the Island Highway.
- While it is anticipated that the owner's children will assist with the operation of the farm, it appears that the additional residence is primarily being requested for family estate planning reasons as opposed to farm use needs. Further, the current/anticipated amount of agricultural production is unlikely to require a large amount of labour.

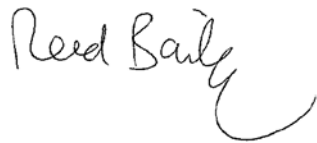
For your information, on July 21, 2021, the Ministry announced new rules under the *Agricultural Land Commission Act Use Regulation* which allow, under specific conditions, both a principal residence and a small secondary residence, without application to the ALC. These new ALR rules

come into effect December 31, 2021. For more information on these changes, including house and parcel size specifications, please review the Ministry's [News Release](#) and the [Order-in-Council](#).

Please contact Ministry staff if you have any questions regarding the above comments.

Thank you for the opportunity to provide comments from an agricultural perspective with respect to this file.

Sincerely,



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Cc: Shannon Lambie, Regional Planner – Agricultural Land Commission