

DATE: April 10, 2019

TO: Chair and Directors
Electoral Areas Services Committee

FROM: James Warren
General Manager of Corporate Services Branch

FILE: 3110-20/ALR 1A 19

Supported by James Warren
General Manager of Corporate
Services Branch

J. Warren

RE: Agricultural Land Reserve Non-Farm Use – 3771 Minto Road (Pearson)
Baynes Sound – Denman / Hornby Islands (Electoral Area A)
SW ¼ Section 32, Township 11, Nelson District, Plan 551, PID 009-005-013

Purpose

To consider an application (Appendix A) to place imported fill on a farm within the Agricultural Land Reserve (ALR) for the purpose of raising a field.

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District forward to the Agricultural Land Commission the Agricultural Land Reserve non-farm use (placement of fill) application ALR 1A 19 (Pearson) concerning the use of imported fill for the purpose of raising a field located on the SW ¼ Section 32, Township 11, Nelson District, Plan 551, PID 009-005-013;

AND FINALLY THAT the Comox Valley Regional District recommend to the Agricultural Land Commission that any approval of Agricultural Land Reserve non-farm use (placement of fill) application ALR 1A 19 (Pearson) include a condition that a Stormwater Management Plan be prepared by a Qualified Professional and be implemented to ensure the natural hydrologic regime is maintained and agricultural best practices are followed.

Executive Summary

- The proponent began to import fill onto a farm to raise fields as a drainage improvement.
- Following a complaint and a compliance review by Agricultural Land Commission (ALC) staff, it was determined that an ALR non-farm use application is required to allow for this amount of fill from another site to be placed on the agricultural land. Accordingly, the property owner submitted this application.
- The application seeks to add ~7,500 m³ of fill over 5.5 hectares to raise the field by 0.5 metres.
- A ditch system around the field conveys the water to the roadside ditch along Minto Road and eventually into Roy Creek downstream.
- The Ministry of Agriculture's Regional Agrologist reviewed the application and recommended further analysis of the fill material and a site analysis of the property's drainage be conducted by qualified professionals.
- Staff recommends forwarding the application to the ALC with the recommendation that a condition of approval be the implementation of a Stormwater Management Plan, prepared by a Qualified Professional, which ensures the natural hydrologic regime is maintained and follows agricultural best practices.

- Based on direction from a previous ALR non-farm use (placement of fill), staff is scheduled to report back to the Electoral Areas Services Committee regarding public outreach and education addressing the placement of fill on agricultural land.

Prepared by:

J. MacLeanJodi MacLean, MCIP, RPP
Rural Planner

Concurrence:

T. TrieuTon Trieu, MCIP, RPP
Manager of Planning Services

Concurrence:

S. SmithScott Smith, MCIP, RPP
General Manager of
Planning and Development
Services Branch**Stakeholder Distribution (Upon Agenda Publication)**

Applicant	✓
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Background/Current Situation

The subject property is a 20 hectare lot at the corner of Minto Road and Ibbotson Road in the Royston area (Figures 1 and 2). While the eastern half of the property is mostly forested, the western half is cleared and used for field crops and pasture. The property has farm classification under the *Assessment Act*.

Fill was brought onto the property in the winter for the purpose of raising a field. Following a neighbourhood complaint regarding the effects of this work on ditches and downstream watercourses leading into Roy Creek, a bylaw compliance file was opened. The ALC Compliance and Enforcement Officer reviewed the work and determined that ALC authorization in the form of a non-farm use application is required with respect to the fill's impact on agricultural land.

According to the applicant, they are restricted from accessing one of the fields due to excessive water “until June or July” and that it is “wet again by September”. In order to make better use of the ~5.5 hectare field near the middle of the property along Minto Road, the applicant is proposing to add ~7,500 m³ of fill which will raise the field by no more than 0.5 metres and grade it with a ~0.5 per cent slope. Ditches between the fields convey water to the Ministry of Transportation and Infrastructure’s roadside ditches. The property generally slopes northeastwards from the height of land near Ibbotson Road to roadside ditches along Minto Road. Water flows through ditches to Roy Creek.

The applicant states the origin of the fill is the new “The Ridge” subdivision off Buckstone Road in the City of Courtenay which is outside the ALR. According to the Canada Land Inventory (Figure 3), the new subdivision has a soil classification of 5PA which refers to land with limitation from stoniness (P) and a soil moisture deficiency (A) that restrict its capability to producing perennial forage crops or other specially adapted crops. The area where the fill is being placed has an unimproved soil classification of 3PW-4AP, but is improvable to Class 2AP-3AP. Land with class 3-4 soils have limitations that require moderately intensive or special management practices or have a severely restricted range of crops, or both. The subclass W refers to a limitation resulting from excess water (e.g. poor drainage, high water table, seepage, and/or runoff from surrounding areas).

Planning Analysis**Agricultural Land Reserve**

Sections 35 and 36 of the *ALR Use Regulation* prescribe the permitted conditions for placing fill on an ALR property. In this case, the extent of the fill activities assessed by ALC staff who determined

that this non-farm use (placement of fill) application is required. Should the application be forwarded to the ALC by the Comox Valley Regional District (CVRD), the ALC may grant permission with or without limits or conditions, or refuse permission. If permission is refused, or the CVRD opts not to forward the application, the property owner must remove the imported fill that has already been deposited on the property.

Official Community Plan

The subject property is designated ‘agricultural areas’ within the Official Community Plan (OCP), Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”. The objective of this designation is *“To promote agriculture and aquaculture as an important economic sector of the Comox Valley”* and Policy 58 (13) directs the CVRD to *“Protect farming integrity and function of land designated agricultural area”*. Improving the utility of the land as a productive field, is consistent with this direction.

Policy 58 (7) directs that, with respect to drainage, new development demonstrate sustainable on-site services in accordance with agricultural, environmental and industry best practices. Likewise, policy 6 (1), concerning Natural Environment (watershed management/protection), directs that applicants should *“hire a qualified professional, where appropriate, to assess potential water quality and quantity impacts, and submit an on-site drainage report...to ensure the pre-development or natural hydrologic regime is maintained or restored by the development, prior to development approval”*. The OCP’s definition of “development” includes the disturbance of soils and the construction of drainage systems. As noted in the application submissions, and evidenced in the work conducted so far, the new drainage is being directed via ditches off the property to the Ministry of Transportation and Infrastructure ditches. As this is not consistent with the natural hydrologic regime of the land and is relying on off-site services, it would be appropriate to require a professional drainage plan which provides recommendations that will allow the raising of the fields while not relying on off-site services to accommodate the drainage.

The area that is proposed to undergo land alteration, subject to this application, is not identified as being within an environmentally sensitive area subject to the Aquatic and Riparian Habitat Development Permit Area.

Zoning

The subject property is zoned Rural-ALR. Section 303(2)(ii) of the Zoning Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, states: *“All land development works shall be carried out in accordance with all Comox Valley Regional District, Provincial and Federal requirements.”* Pursuant to the ALR Use Regulations, land development works means levelling, berming, constructing reservoirs, and constructing works ancillary to clearing, draining, irrigating levelling or berming agricultural land. This ALR non-farm use application is the correct application to bring the land development works into compliance with the CVRD and provincial requirements.

Policy Analysis

Section 20(2) of the *Agricultural Land Commission Act* (ALCA) enables a property owner to apply to the ALC to seek approval for non-farm use of agricultural land. Section 25(3) of the ALCA states that this type of application may not proceed to the ALC unless authorized by a resolution from the local government.

Options

The CVRD board may support forwarding the application ALR 1A 19, concerning importing the fill for the purpose of raising the fields, to the ALC or refuse to forward the application. The board may

also provide recommendations concerning the application for ALC consideration. Staff recommends forwarding the application to the ALC.

Financial Factors

Fees of \$1,500 (\$300 for the CVRD and \$1,200 for the ALC) for this application have been collected for this non-farm use application in accordance with Section 35 of the ALCA.

Legal Factors

This report and the recommendations contained herein are in compliance with the ALCA, 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 for comment on this application. The Regional Agrologist responded in a letter dated March 27, 2019 (Appendix B). She indicates that further analysis of the fill material is required before being able to determine whether it is suitable for its intended use and encourages “*the applicant to contract a qualified professional to conduct a site analysis to determine the best approach to dealing with the perched water table.*”

Interdepartmental Involvement

This ALR application has been circulated to CVRD departments and no concerns were expressed.

Citizen/Public Relations

On February 5, 2018, the Electoral Areas Services Committee directed staff to report back with a plan for public outreach and education to be developed in consultation with ALC staff, Ministry of Agriculture staff, and the Agricultural Advisory Planning Commission (AAPC) regarding the ALC’s fill import regulations. This work is on-going and will be considered by the AAPC in the coming year.

At the time of application submission and processing, the AAPC had yet to meet.

Attachments: Appendix A – “ALC application submission ALR 1A 19”

Appendix B – “Letter from Jill Hatfield P.Ag., Regional Agrologist, BC Ministry of Agriculture, dated March 27, 2019”

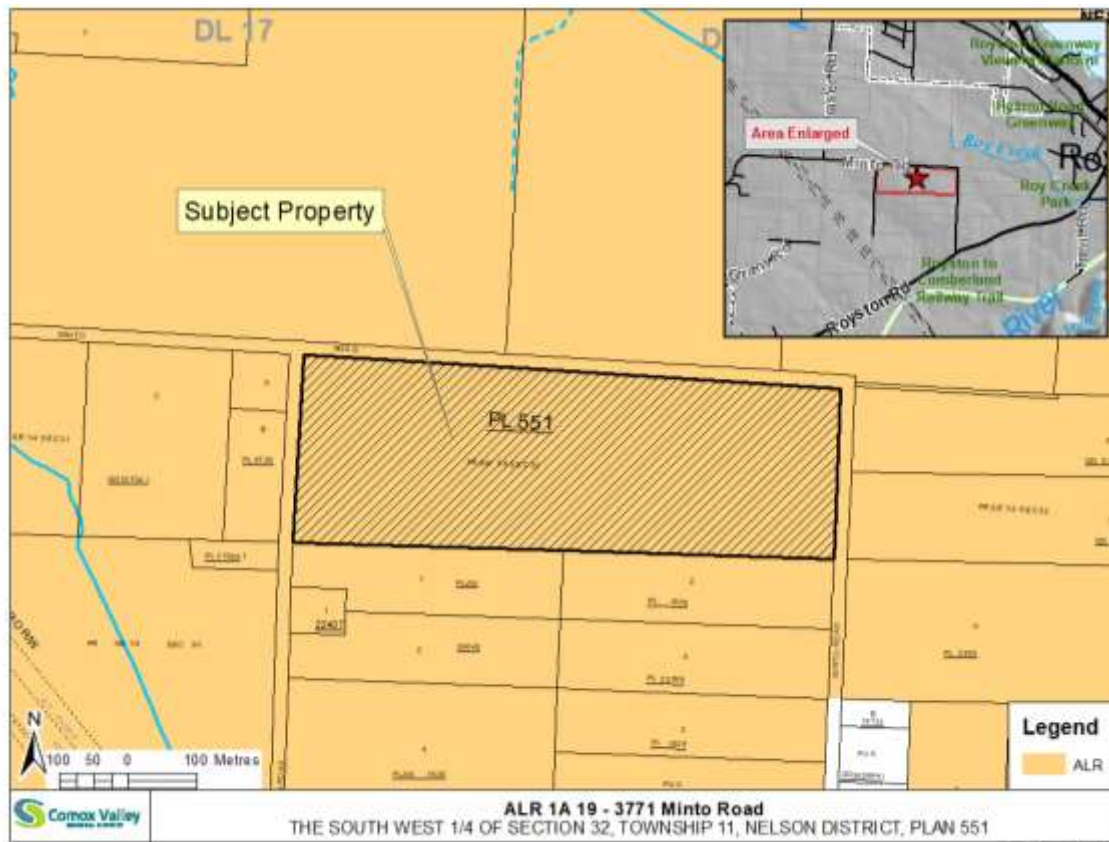


Figure 1: Subject Property



Figure 2: Air Photo (2016)

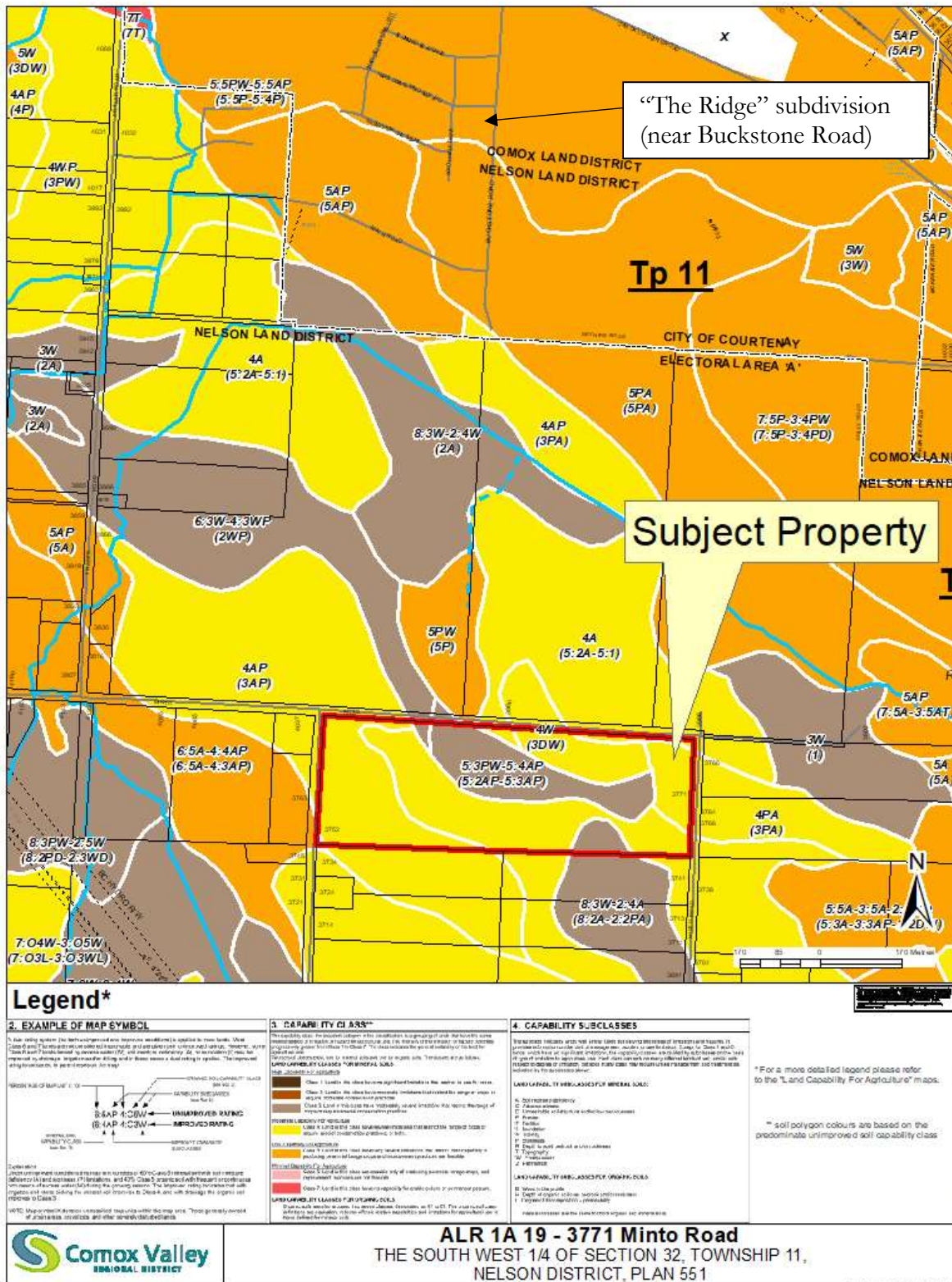


Figure 3: Canada Land Inventory Soil Classification,
 Labelled with Unimproved and (Improved) Soil Ratings



Provincial Agricultural Land Commission - Applicant Submission

Application ID: 58406

Application Status: Under LG Review

Applicant: Susan Pearson

Local Government: Comox Valley Regional District

Local Government Date of Receipt: 01/28/2019

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

Proposal Type: Non-Farm Use (Placement of Fill)

Proposal: Since 2005 we have been plowing and seeding the field in fall rye. We were not able to get onto the field until June/July because of the water issues. By the end of September it was wet again. Because of this we were not able to plant a permanent crop. We were wanting to raise the fields and re-ditch the perimeter to be able to plant a hay field.

Mailing Address:

3752 Ibbotson Road
Courtenay, BC
V9N 9P6
Canada

Parcel Information

Parcel(s) Under Application

1. **Ownership Type:** Fee Simple

Parcel Identifier: 009-005-013

Legal Description: SW 1/4 Section 32 Township 11 Nelson District Plan 551

Parcel Area: 26 ha

Civic Address: 3771 Minto Road, Courtenay, V9N 9P8

Date of Purchase: 07/15/2009

Farm Classification: Yes

Owners

1. **Name:** Susan Pearson

Address:

3752 Ibbotson Road
Courtenay, BC
V9N 9P6
Canada

Current Use of Parcels Under Application

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

We have a 10 acre hay field that is leased. We have 100 laying chickens, raise 150 meat birds and 125 laying birds per year.

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

The field in question was cleared of cottonwood, alder and broom in 2005. An excavator was hired to clear the stumps. From then until 2013 the field was plowed and seeded in fall rye each year. The hay field was plowed and replanted in 2009. A new chicken barn was built in 2014, and a new hay barn in 2017.

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

Housing

Adjacent Land Uses

North

Land Use Type: Agricultural/Farm

Specify Activity: Beef operation and leased land

East

Land Use Type: Agricultural/Farm

Specify Activity: hobby farm

South

Land Use Type: Agricultural/Farm

Specify Activity: hobby farm - sheep and chickens

West

Land Use Type: Residential

Specify Activity: residential

Proposal

1. What is the purpose of the proposal? Describe any benefits to agriculture that the proposal provides.

Since 2005 we have been plowing and seeding the field in fall rye. We were not able to get onto the field until June/July because of the water issues. By the end of September it was wet again. Because of this we were not able to plant a permanent crop. We were wanting to raise the fields and re-ditch the perimeter to be able to plant a hay field.

2. Proposal dimensions

Total fill placement area (to one decimal place) 5.5 ha

Maximum depth of material to be placed as fill 0.5 m

Volume of material to be placed as fill 7500 m³

Estimated duration of the project. 8 Months

3. Has a Professional Agrologist reviewed the project and provided a written report? If yes, please

Applicant: Susan Pearson

attach the Professional Agrologist report in the "Upload Attachments" section.

No

4. What alternative measures have you considered or attempted before proposing to place fill?

We have ditched the field, but were not able to get onto the field before June of each year with tractors. It was too swampy. All other options were too costly.

5. Describe the type of fill proposed to be placed.

The fill is coming from a subdivision development about 2 miles away. It is what has been excavated on undeveloped land to build homes, so it is gravel, loam and top soil with no contamination.

6. Briefly describe the origin and quality of fill. Has the fill been assessed by a qualified professional to verify its agricultural suitability? If yes, please attach the assessment report in the "Upload Attachments" section.

It is coming from Buckstone Developments on Fraser Road. No, it has not been assessed.

7. Describe the type of equipment to be used for the placement of fill. If applicable, describe any processing to take place on the parcel(s) and the equipment to be used.

There is an excavator, a bulldozer and a packer. No processing will take place as the soil is immediately usable.

8. What steps will be taken to reduce potential negative impacts on surrounding agricultural lands?

There will be no negative impacts on surrounding agricultural lands, as there is a ditch on Minto Road and the road itself between our property and the surrounding properties.

9. Describe all proposed reclamation measures. If a reclamation plan from a qualified professional is available, please summarize the reclamation and attach the full plan in the "Upload Attachments" section.

The land was first cleared of all bush, broom and alder. Then the topsoil was peeled back. The fill will be placed and then the topsoil put back on and leveled, ready to be planted in the spring.

Applicant Attachments

- Site Photo - Pictures
- Site Photo - pictures
- Site Photo - pictures
- Site Photo - pictures
- Site Photo - pictures
- Site Photo - pictures
- Site Photo - pictures
- Other correspondence or file information - letter
- Proposal Sketch - 58406
- Site Plan / Cross Section - 58406
- Certificate of Title - 009-005-013

ALC Attachments

None.

Decisions

None.

Applicant: Susan Pearson

Susan Pearson
3752 Ibbotson Rd
Courtenay, BC V9N 9P6

January 17, 2019

Agricultural Land Commission
201-4940 Canada Way
Burnaby, BC V5G 4K8

Dear Sir or Madam:

I am applying to place soil on my property as per ALC C&E File 111641. I have contracted Leighton Contracting (2009) LTD to perform this service. As per my submission, I am writing why and where this soil will be placed, along with some background information.

My father bought this property in 1969 as a dairy operation. He sold the dairy and 80 acres across the road and built his home on this acreage in 1981. Since then, he has farmed pigs and sheep on the available land. I moved onto the farm in 1998 to help him carry on and assist with the day to day operations. I started raising meat birds and laying chickens and we shared the sheep responsibilities. He passed away in 2009 and I continued with the sheep for a few years and then realized I couldn't do both the farming and work full-time. I have carried on with the fowl operations and leased out the viable hay field. Now that I have retired, I have more of an opportunity to utilize the remaining portions of the acreage. In assessing the potential of other areas on our property, we have had difficulties with certain areas. I would like to create more usable portions of the farmland to leave in succession to my children.

The reason I have chosen this route is that since 2005, we have been trying to work this land. We have plowed and seeded the field in fall rye. Because of the nature of the soil, we were unable to get onto the field until June or July. The water issues made the location too wet to bring equipment on. There was only a short window of time that we could effectively use this location as it was wet again by September. We have not been able to plant a permanent crop and use the land efficiently. We decided the best course of action would be to bring soil onto the location and therefore to raise the field. During this process we would re-ditch and reroute water away from the field. These actions would create a workable agricultural land that would be more productive. One of the reasons that I chose to work with Leighton Contracting was that they are working on a site that is 2 kilometers away from the location that the soil is to be placed. It is only a 5 minute drive from where the soil is coming from to where it will be placed.

The location that we are placing the soil has been outlined in attached drawings. The fields off of Minto Road are the lowest part of the land and very swampy in nature. This location will not affect any neighbouring properties as it is contained by a ditch as well as a road. I conclude that I have been clear in outlining the requests for the application, as well as some reasoning behind the request and I hope this information will suffice.

Sincerely Yours,



Susan Pearson

1880 TSON ROAD

MINTO ROAD

HAY FIELD
10 ACRE

PASTURE

6 ACRE
FIELD

4 ACRE
FIELD

2 ACRE
FIELD

HOUSE

TREED.

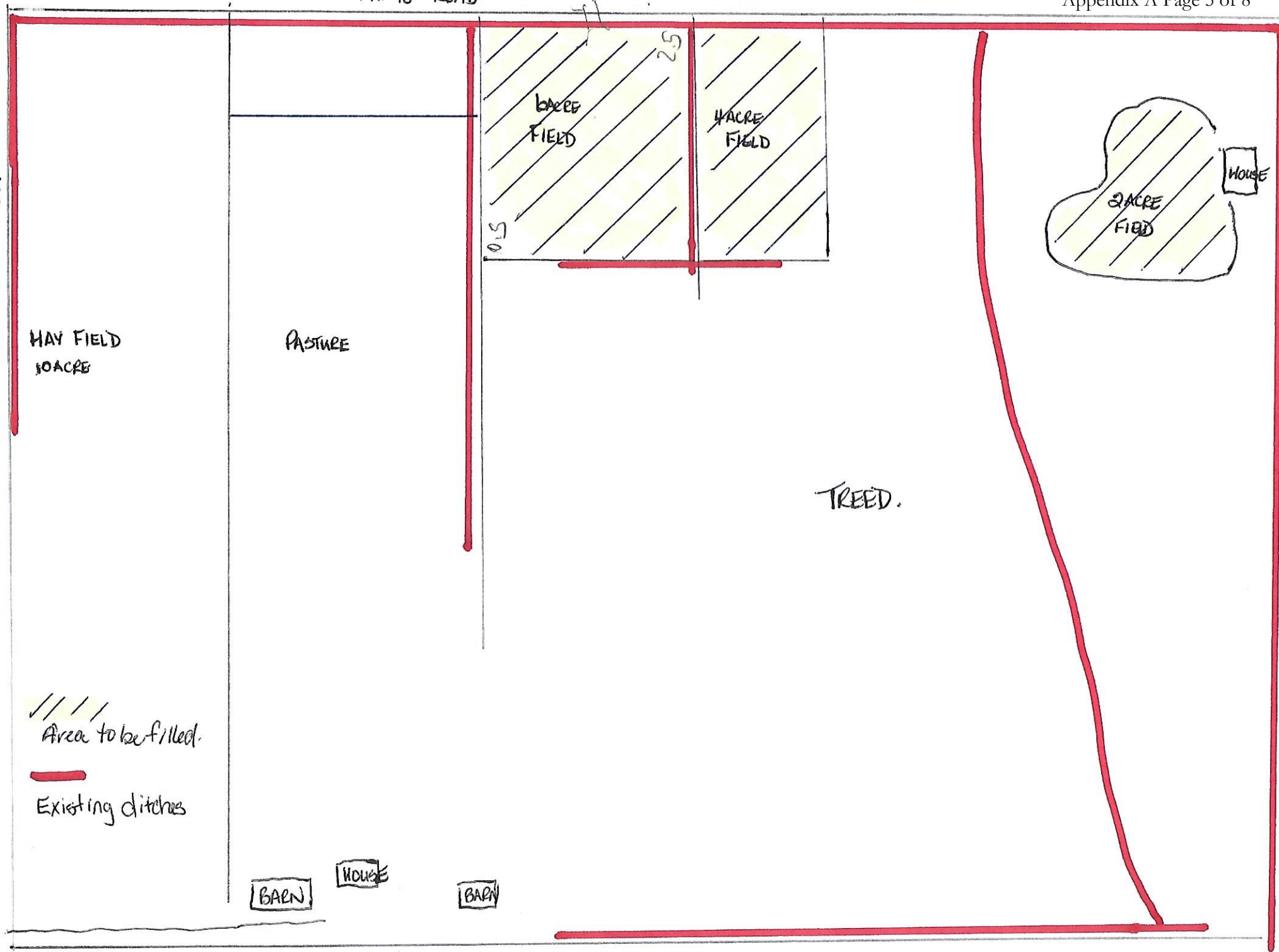
Area to be filled.

Existing ditches

BARN

HOUSE

BARN



3771 Minto Rd - Fill Site
Grading Plan





Facing west



Facing east



Facing south



Pile of broom, alder and brush cleared off field



Scraping off topsoil



Scraping off topsoil



March 27, 2019

Jodi MacLean
Rural Planner
Planning and Development Services Branch
Comox Valley Regional District

Dear Jodi McLean:

Re: 3110-20 / ALR 1A 19 ALR Application (Non-Farm Use) Pearson-3771 Minto Road

Thank you for the March 13, 2019 referral regarding the placement of fill on a 5.5 hectare portion of a 20 acre property at the corner of Minto Road and Ibbotson Road.

No site visit was arranged to meet the applicants and look at the proposed soil fill location. Therefore the comments provided below are more general in nature using digitally available resources and providing suggestions on the process to determine the best approach evaluating the Non-Farm Use soil fill application.

Generally it is recommended that a site assessment for capability and suitability should be conducted prior to placement of any fill. Below is the available agricultural capability from BC Land Capability for Agriculture map sheet 92F.066. The soil suitability information is from the Soils of Southeast Vancouver Island, BC Soil Survey Report No.57.

- Capability Class 50%:3PW 50%:4AP: Improvable to 50%:2AP: 50%:3AP
 - 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
 - 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 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.
 - The limiting subclasses associated with this parcel of land are P (stoniness), W (excess water) and A (soil moisture deficiency).
- Suitability Soil Name: 50% Parksville & 50% Brigantine Soils (gravelly phase):
 - Parksville Soils: Described as a poorly drained sandy loam mainly used for hay and pasture. With irrigation and drainage can be used for a wide range of crops.
 - Brigantine Soils: Imperfectly drained, sandy loam with some gravelly areas. Adequate drainage, irrigation and fertilization are necessary for good production of a wide range of crops.

It appears from the soil ratings above that the existing soils are suitable for producing the crops currently grown and productivity could be improved with improvements in drainage, irrigation and fertility management. Analysis of the fill material from "The Ridge" subdivision off Buckstone Road was not provided. Without this information it is difficult to say if this material is suitable for the intended use.

Perched water tables are not an uncommon feature in this area. It is worth noting in Figure 2: Air Photo (2016) a water impoundment feature on the property across Minto road from the subject parcel. Without some investigation it is difficult to know if this water impoundment could be contributing to the perched water table on the subject parcel or if the excess moisture is more related overland flow in combination with undesirable soil structure and or low perviousness. Ditching along Minto road may also be limiting or contributing to the drainage problem on this section of the property. These questions should be considered and alternative solutions evaluated. If any of these factors are contributing to the perched water table on the subject area, placing fill may not resolve the problem and could create unintended consequences.

I would encourage the applicant to contract a qualified professional to conduct a site analysis to determine the best approach to dealing with the perched water table. This should also include ensuring that any fill to be used on the property is comparable in quality to the existing soils.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jill Hatfield", is written over a faint, rectangular official stamp.

Jill Hatfield P.Ag.
Regional Agrologist
BC Ministry of Agriculture