

January 23, 2025

ALC File: 100023

**Vanessa Linowski**  
**Delivered Electronically**

Dear Vanessa Linowski:

**Re: Reasons for Decision - ALC Application 100023**

Please find attached the Reasons for Decision of the Okanagan Panel for the above noted application (Resolution #42/2025). As agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with s. 11(2)(b) of the ALR General Regulation.

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.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
  - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or

- Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

Please direct further correspondence with respect to this application to [ALC.Okanagan@gov.bc.ca](mailto:ALC.Okanagan@gov.bc.ca)

Yours truly,



**Vidula Kulkarni, Land Use Planner**

Enclosures:           Reasons for Decision (Resolution #42/2025)  
                              Schedule A: Decision Map

cc: City of Salmon Arm (File ALC-423).

Attention: Kathy Frese

100023d1



**AGRICULTURAL LAND COMMISSION FILE 67024**  
**REASONS FOR DECISION OF THE OKANAGAN PANEL**

Non-Adhering Residential Use Application Submitted Under s.20.1(2) of the  
*Agricultural Land Commission Act*

**Applicants:** Jayme John Franklin,  
Ava Marina Franklin

**Agent:** Vanessa Linowski

**Property:** Parcel Identifier: 007-816-162  
Legal Description: The South 1/2 of the South  
1/2 of the South East 1/4 of Section 20  
Township 20 Range 9 West of the 6th  
Meridian Kamloops Division Yale District  
Except Plans B949 39285 and KAP70592  
Civic: 1240 60 St. NE, Salmon Arm, BC  
Area: 5.9 ha (5.87 ha within the ALR)

**Panel:** Joe Deuling, Okanagan Panel Chair  
Erin Carlson

**OVERVIEW**

- [1] The Property is located partially within the Agricultural Land Reserve (ALR) as defined in s. 1 of the *Agricultural Land Commission Act* (ALCA).
- [2] In 2021, the Applicants applied to the Agricultural Land Commission (the “Commission” or “ALC”) under ALC Application #62300 to continue to reside in the ~116 m<sup>2</sup> existing residence (the “Existing Residence”) while constructing a new ~372 m<sup>2</sup> residence (the “New Principal Residence”) on the Property. The Commission approved the application subject to several conditions to ensure that the Existing Residence will be removed following the completion of the New Principal Residence (ALC Resolution #401/2021).
- [3] In 2023, the Applicants submitted a reconsideration request stating that they wished to retain the Existing Residence and reduce the total floor area to 90 m<sup>2</sup> consistent with the ALR Use Regulation. The Commission refused to reconsider the application as it was a new proposal and stated that the Applicants would need to submit a new non-adhering residential use application requesting to retain the existing residence and reduce the total floor area. As a result, ALC Application 100023 has been submitted.
- [4] The Applicants are applying to the Agricultural Land Commission (the “Commission” or “ALC”) under s. 20.1(2) of the ALCA to retain the Existing

Residence as an additional residence and to reduce the total floor area to 90 m<sup>2</sup> consistent with the ALR Use Regulation (the "Proposal").

[5] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA:

6 (1) The following are the purposes of the commission:

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

(2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:

- (a) the size, integrity and continuity of the land base of the agricultural land reserve;
- (b) the use of the agricultural land reserve for farm use.

**EVIDENTIARY RECORD**

[6] The Proposal, along with related documentation from the Applicants, Agent, local government, and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision.

**BACKGROUND**

[7] In 2021, the Applicants applied to the Agricultural Land Commission (the (ALC Application #62300) to reside in the ~116 m<sup>2</sup> Existing Residence while constructing the ~372 m<sup>2</sup> New Principal Residence on the Property. On August 19, 2021, the Panel approved the application by ALC Resolution #401/2021 subject to the following conditions:

- a. Siting of the new ~372 m<sup>2</sup> principal residence in accordance with Schedule A of Resolution #401/2021;
- b. Placement of 200 m<sup>3</sup> of fill for the purpose of constructing the new principal residence and associated infrastructure be sited in accordance with Schedule A of Resolution #401/2021;
- c. Registration of a covenant, within 90 days of the date of the decision, in favour of the Commission requiring the demolition of the Existing

Residence within 60 days of issuance of the occupancy permit for the new ~372 m<sup>2</sup> principal residence;

- d. The submission of a signed affidavit within 90 days of the date of the decision committing to demolition of the Existing Residence;
- e. To ensure that the Existing Residence is demolished in accordance with the conditions of the decision, the submission of a financial security (in addition to the financial security required by the City of Salmon Arm) in the form of an Irrevocable Letter of Credit (the "ILOC") in the amount of \$15,000 to be payable to the Minister of Finance c/o the Agricultural Land Commission within 90 days of the date of the decision.

[8] The covenant, affidavit, and financial security required by Resolution #401/2021 were due by November 17, 2021; however, they were not submitted to the ALC within the 90-day period, or to date.

[9] The City of Salmon Arm Request for Decision report dated May 21, 2024 that accompanied the Application states: *"Type B Permit was issued August 2021 by the City as an agreement to allow the owner to occupy the existing residence. The applicant provided a \$5,000.00 security deposit and the permit*

*was valid for 1 year. The owner was required to decommission or demolish the existing unit before the security is returned".*

- [10] The Applicant submission indicates that the New Principal Residence was built in 2021.
- [11] On December 31, 2021, the ALR Use Regulation was amended to include section 34.3(1)(c)(i) that allows an additional residence with a maximum 90 m<sup>2</sup> total floor area, in addition to a principal residence of 500 m<sup>2</sup> on ALR parcels less than 40 ha, without application to the Commission.
- [12] On June 30, 2023, the Applicants submitted a reconsideration request of Resolution #401/2021 stating that they wished to retain the Existing Residence and reduce it to 90 m<sup>2</sup>.
- [13] In a letter dated October 25, 2023, the Okanagan Panel refused to reconsider the application as it was a new proposal and stated that the Applicants would need to submit a new non-adhering residential use application requesting to retain the existing residence and reduce the total floor area. Additionally, the Panel noted that construction of the New Principal Residence was actioned without compliance with the conditions of Resolution #401/2021.



- [14] The City of Salmon Arm’s Request for Decision Report dated May 21, 2024 (the “City Staff Report”) indicates that the Property is designated as Acreage Reserve in the City’s Official Community Plan and zoned as Rural Holding (A-2). The A2 zone allows for one Rural Detached Dwelling to a maximum of 90 m<sup>2</sup> and one Single Family Dwelling per parcel. The Applicants are requesting to convert the Existing Residence (a Single Family Dwelling) to a Rural Detached Dwelling by reducing the floor area in order to be compliant with the zoning bylaw.

### **ANALYSIS AND FINDINGS**

- [15] Despite the requirement to comply with the conditions of Resolution #401/2021, the Applicant constructed the 372 m<sup>2</sup> New Principal Residence and retained the 116 m<sup>2</sup> Existing Residence. The timelines to submit the affidavit, covenant, and financial security for Resolution #401/2021 have lapsed, and Resolution #401/2021 has expired. Therefore, the Panel finds that the New Principal Residence was constructed contrary to the ALCA and a decision of the Commission.
- [16] Section 20.1 (1) of the ALCA permits one principal residence up to 500 m<sup>2</sup> total floor area (“TFA”) and section 34.3(1)(c)(i) of the ALR Use Regulation permits one additional residence up to 90 m<sup>2</sup> TFA for ALR parcels 40 ha or less.

- [17] The Applicants have submitted the Application to retain the Existing Residence and reduce it to 90 m<sup>2</sup> as permitted under section 34.3(1)(c)(i) of the ALR Use Regulation.
- [18] The Applicants submit that they are working on reestablishing farm use on the Property. The Applicants wish to increase the farm activity on the Property but lack labor. They indicate that the Proposal would allow them to search for permanent tenants who would be able to manage the farm.
- [19] *ALC Information Bulletin 05: Residences in the ALR ("IB-05")* provides the Commission's definition of "**total floor area of an additional 90 m<sup>2</sup> or 186 m<sup>2</sup> residence**". TFA of a 90 m<sup>2</sup> (for parcels 40 ha or less) or 186 m<sup>2</sup> (for parcels greater than 40 ha) additional residence permitted in the ALR Use Regulation, pursuant to Commission Resolution No. 106N/2023, is measured to the inner surface of exterior walls, to account for prefabricated construction methods, including corridors, hallways, landings, foyers, staircases, stairwells, enclosed or partially enclosed (covered roof and/or sidewalls) balconies (Commission Resolution No. 109N/2024), enclosed porches or verandas, basements, attached garages and unenclosed carports as part of the total floor area, with the following exceptions:
- a. attached garages are excluded from the total floor area calculation if the additional residence occupies the second storey above a one storey garage (i.e., a carriage house) if:

- i. the garage is for the storage or parking of motor vehicles for the principal residence;
  - ii. the garage is one large space accessed by garage doors;
  - iii. the TFA of the garage located on the first storey must be no greater than the maximum allowable TFA of the additional residence located on the second storey (90 m<sup>2</sup> for parcels less than 40 ha or 186 m<sup>2</sup> for parcels greater than 40 ha);
  - iv. There is no internal connection between the garage and an additional residence (i.e., the garage must not be intended for the additional residence); and,
  - v. the additional residence when above a garage must be clustered close to the principal residence (i.e., next to the principal residence) (Commission Resolution No. 110N/2024), and
- b. attics, with attic meaning the unfinished space between the roof and the ceiling of the top storey of a building or between a partial wall and a sloping roof. This exception only applies if this unfinished space is created by the use of roof trusses. The unfinished attic space created by the use of attic trusses or rafters in the construction of a residence is not excluded from the calculation of total floor area, and
- c. crawl spaces.

[20] The Applicants submitted additional information on September 4, 2024 and, September 19, 2024. The additional information states that the Applicants wish to remove the walls of a ~26 m<sup>2</sup> bedroom and convert it into a covered

porch. In addition, there is no basement but there is a crawl space which would be excluded from the TFA. The Applicants submit that conversion of the bedroom to a covered porch would make the Existing Residence consistent with the ALR Use Regulation.

- [21] The Panel finds that the Existing Residence would meet the TFA in ALC IB-05 if the exterior walls of the ~26m<sup>2</sup> bedroom are removed, the porch is unenclosed, and all other criteria of IB-05 TFA are met.
- [22] The Panel also considered that the Applicants constructed their New Principal Residence without completion of any of its conditions. Given that the New Principal Residence is already constructed, it is less than 500 m<sup>2</sup>, and is in the approved location, the Panel is amenable to granting permission for the New Principal Residence in addition to retaining the Existing Residence reduced to a maximum of 90 m<sup>2</sup>.
- [23] However, the Panel is not satisfied with the Applicants previous non-compliance with conditions of a Commission decision and will therefore provide new conditions with reduced timelines, given that the New Principal Residence has been constructed, and to ensure condition compliance in a timely manner.
- [24] In accordance with ALC *Policy L-26: Non-Adhering Residential Use Applications* the Commission will require a covenant committing to removal or reducing the Existing Residence, and the posting of a financial security in the amount

of \$50,000. Without limiting other potential repercussions to the applicant or property owner, the Commission may access some or all of the financial security upon a failure to comply with decision.

### **DECISION**

[25] For the reasons given above, the Panel approves the Proposal to retain the New Principal Residence and Existing Residence as an additional residence by reducing its total floor area to a maximum of 90 m<sup>2</sup> subject to the following conditions:

#### **General**

- (a) Siting of the New Principal Residence and Existing Residence in accordance with Schedule A;
- (b) The Existing Residence be reduced to a maximum of 90 m<sup>2</sup> and meet the "total floor area of an additional 90 m<sup>2</sup> or 186 m<sup>2</sup> residence" as defined in *ALC Information Bulletin 05: Residences in the ALR*.
- (c) Submission of a copy of the issued occupancy permit for the New Principal Residence within 30 days of its issuance.

#### **Due by April 23, 2025, or prior to issuance of an occupancy permit for the New Principal Residence, whichever comes first**

- (d) Submission of a \$50,000 financial security made payable to the Minister of Finance c/o the Agricultural Land Commission;

- i. The financial security is to ensure the approval is conducted in accordance with information submitted with the Application and with the conditions of this decision;
  - ii. For greater clarity, some or all of the financial security will be accessible to, and used by the Commission as a penalty upon default of the landowners to comply with the approval contained herein; and,
  - iii. Release of the financial security will be dependent on receipt of evidence that the New Principal Residence is constructed in the size, siting, and manner consistent with this decision, and that the Existing Residence has either been removed or converted per the building plans submitted in fulfillment of condition f. of this decision.
- (e) The registration of a covenant in favour of the Commission requiring:
- i. Removal of the Existing Residence within 6 months of issuance of the occupancy permit for the New Principal Residence, OR
  - ii. Completion of conversion of the Existing Residence to an additional residence with a total floor area of up to 90 m<sup>2</sup> in accordance with section 34.3(1)(c)(i) of the ALR Use Regulation within six months of issuance of the occupancy permit for the New Principal Residence.
  - iii. Release of the covenant will be dependent on receipt of evidence that the Additional Residence has a total floor area of 90 m<sup>2</sup> or less, or has been removed to the satisfaction of the ALC.

**Due by July 23, 2025, or prior to issuance of an occupancy permit of the New Principal Residence, whichever comes first**

- (f) The submission of, and the ALC's acceptance of, building plans that confirms that the size of the Existing Residence structure will be reduced to meet the definition of "total floor area of an additional 90 m<sup>2</sup> or 186 m<sup>2</sup> residence" as defined in *ALC Information Bulletin 05: Residences in the ALR*.

**Due within six months of issuance of an occupancy permit of the New Principal Residence-**

- (g) Confirmation from a qualified professional (e.g., Architect) that the Existing Residence has been removed or reduced to meet the definition of "total floor area of an additional 90 m<sup>2</sup> or 186 m<sup>2</sup> residence" as defined in *ALC Information Bulletin 05: Residences in the ALR*.

[26] Should the above conditions of approval not be completed to the satisfaction of the ALC within the timeframe(s) specified, the approval will expire, and a new application may be required.

[27] 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.

[28] These are the unanimous reasons of the Panel.



[29] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

[30] **Resolution #42/2025**

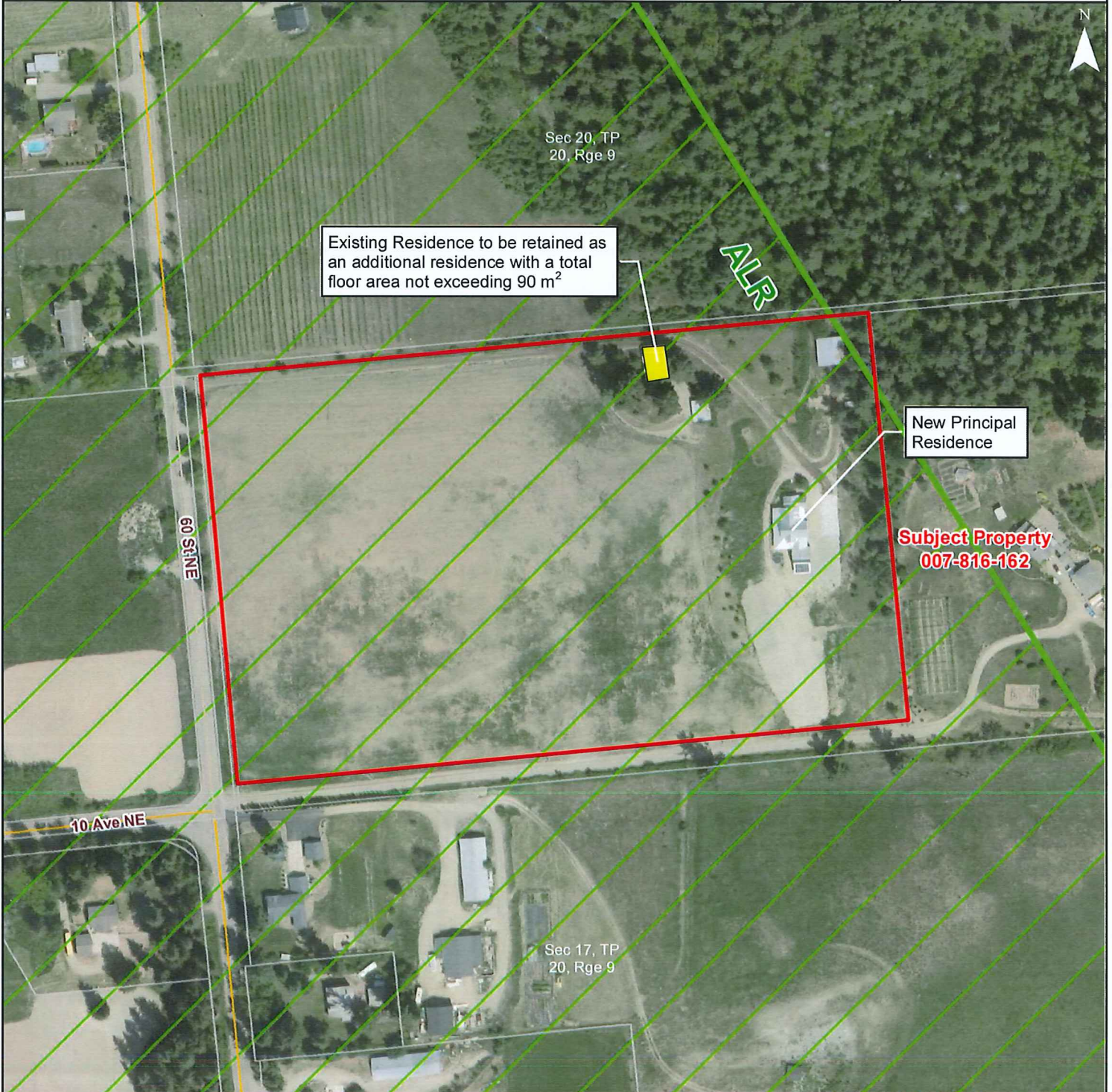
Released on January 23, 2025

A handwritten signature in black ink, appearing to read 'Joe Deuling', is positioned above the printed name. The signature is stylized and cursive.

**Joe Deuling, Panel Chair**

On behalf of the Okanagan Panel





ALC FILE NO:  
100023

RESOLUTION NO:  
42/2025

MAP PRODUCED:  
January 23, 2025

MAP SCALE:  
1:2,500

DATA SOURCES & NOTES:  
ALC, BCGW and ESRI / Columbia-Shuswap RD. Contains information licensed under Open Government License - British Columbia.

Map for reference only. Accuracy not guaranteed.

- Conditionally Approved Non-Adhering Residential Use
- Subject Property
- Agricultural Land Reserve
- PMBC Parcel Cadastre

0   25   50   75   100   125

Metres

