



Est. 1873

# REPORT TO MAYOR AND COUNCIL

**PRESENTED:** JUNE 26, 2017 - REGULAR AFTERNOON MEETING  
**FROM:** COMMUNITY DEVELOPMENT DIVISION  
**SUBJECT:** AGRICULTURAL LAND COMMISSION APPLICATION NO. 100320  
 (HOLMES / DCH EXCAVATING LTD. / 2755 – 216 STREET)

**REPORT:** 17-73  
**FILE:** 07-24-0028

## PROPOSAL:

Non-farm use application to the Agricultural Land Commission submitted by Jennifer Watts to permit a trucking and excavation company to operate at 2755 - 216 Street.

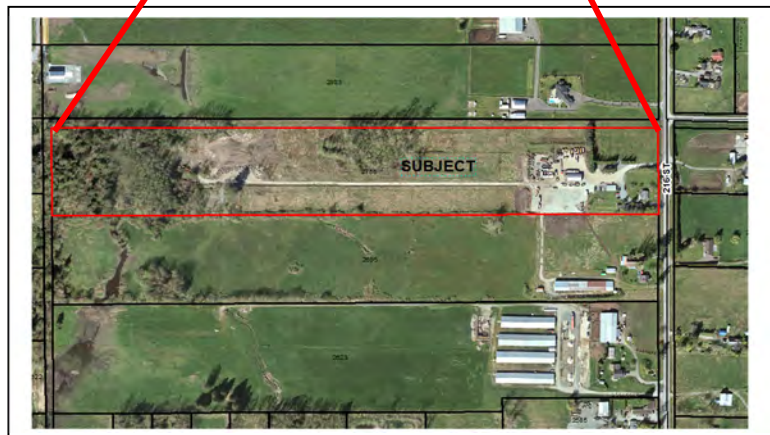
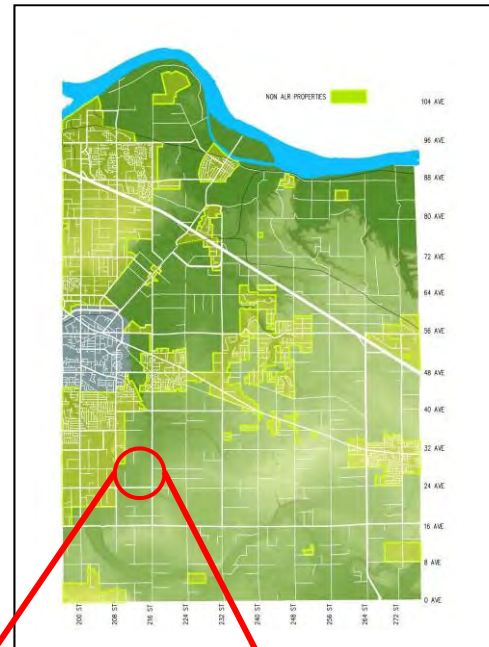
## RECOMMENDATION SUMMARY:

That Council consider the application for non-farm use and select one of the following:

- a. Refer the application to the Agricultural Land Commission for consideration based on agricultural merits; or
- b. Not refer the application to the Agricultural Land Commission, noting other options available to the applicant as referenced in this report.

## RATIONALE:

The proposed non-farm use application does not comply with the Township's Zoning Bylaw. The application is being forwarded to Council for consideration of referral to the provincial Agricultural Land Commission.



**RECOMMENDATION:**

**That** Council consider the non-farm use application submitted by Jennifer Watts to the Agricultural Land Commission to permit continued operation of a trucking and excavation business, DCH Excavating Ltd., on a portion of the property located at 2755 - 216 Street within the Agricultural Land Reserve, and select one of the following:

- a) Refer the application to the Agricultural Land Commission for consideration based on agricultural merits; or
- b) Not refer the application to the Agricultural Land Commission, noting other options available to the applicant as referenced in this report.

**EXECUTIVE SUMMARY:**

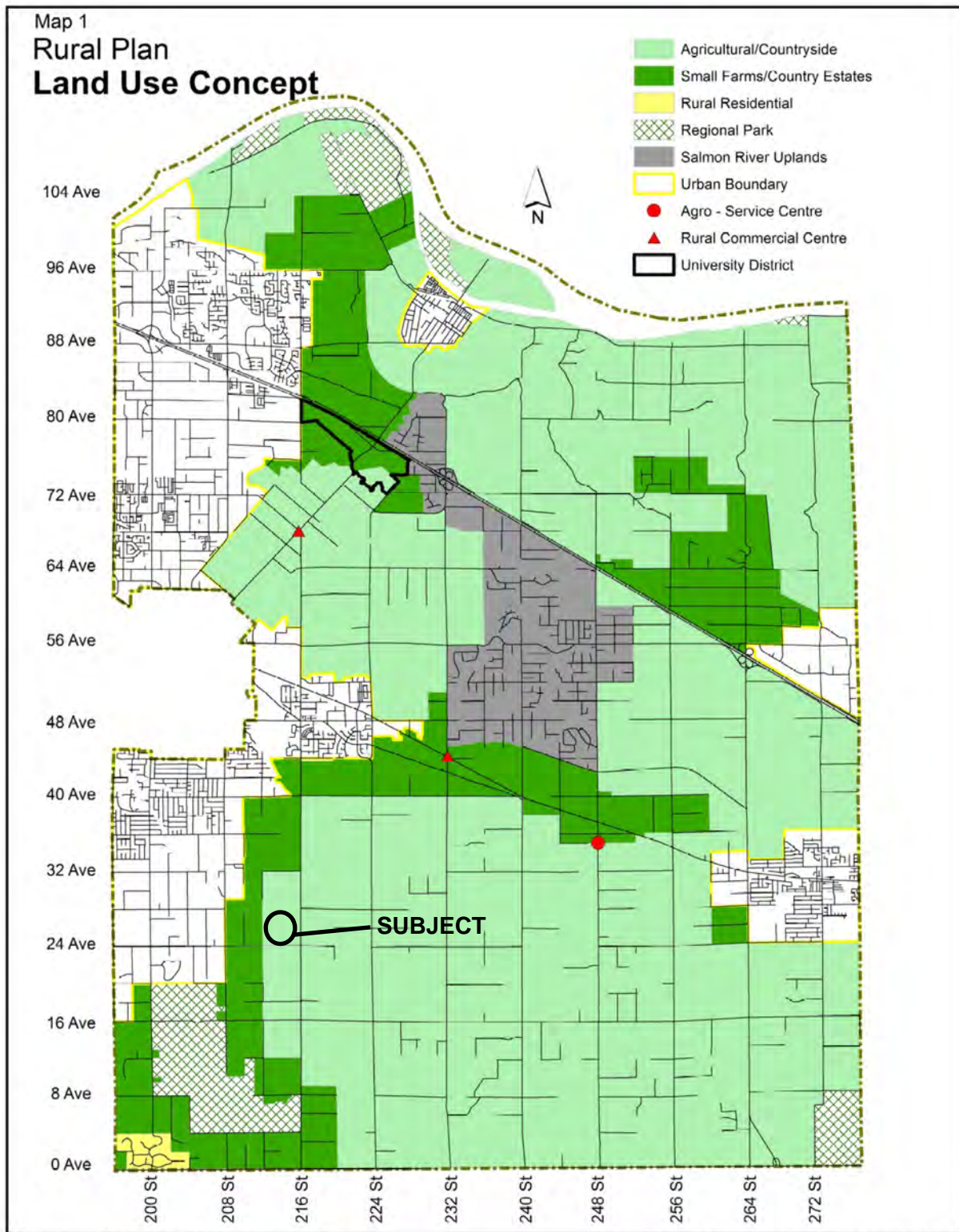
The Township of Langley is in receipt of a non-farm use application proposing continued operation of a trucking and excavation business, DCH Excavating Ltd., on a 0.8 ha (2 ac) portion of property located at 2755 - 216 Street, within the Agricultural Land Reserve (ALR).

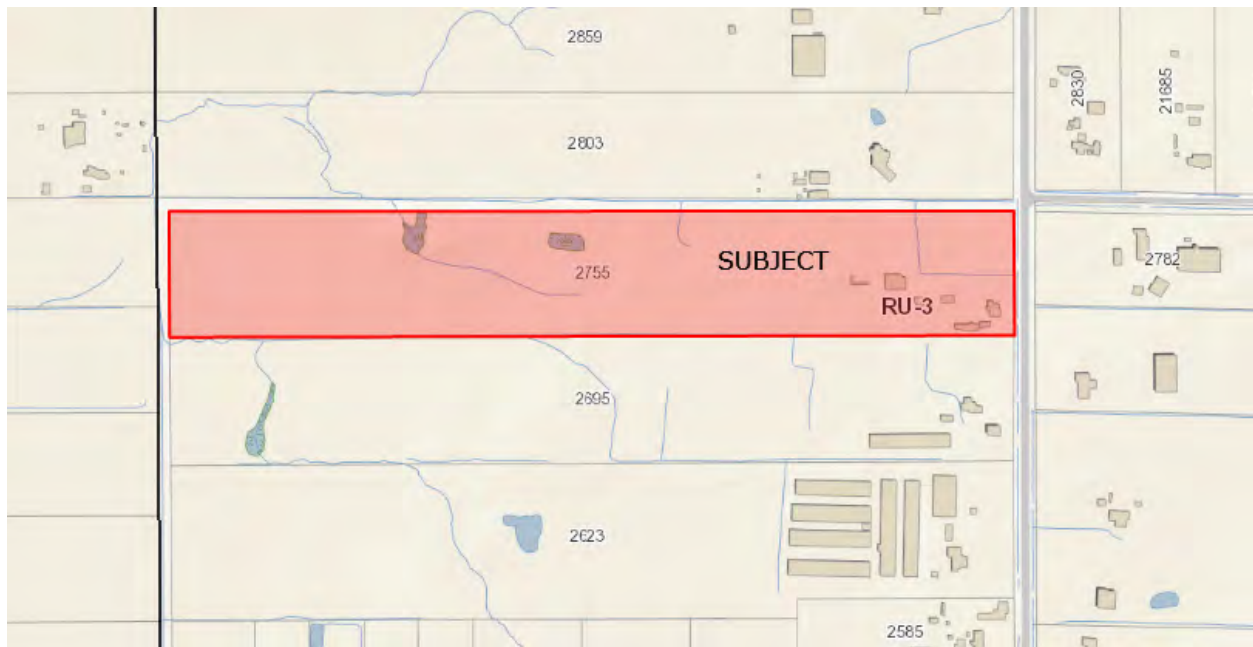
The business is currently licenced as an accessory home occupation (limited to an office use). The business has expanded its operational footprint over time on a small portion of the subject rural property. The current operation does not comply with the Township Zoning Bylaw provisions to qualify as an “accessory home occupation”. Should the non-farm use application be approved for referral to the Agricultural Land Commission (ALC) and subsequently approved by the ALC, further applications may be necessary for land use amendments in consideration of the Regional Growth Strategy, the Rural Plan and the Township’s Zoning Bylaw (subject to approval of the Minister of Agriculture) to enable continued operation of the business.

The applicant’s use of the land may predate the Official Community Plan (1979), Rural Plan (1993), Zoning Bylaw (1987) and the Agricultural Land Reserve (1972). In the event that the applicant can demonstrate historical use of the property, they may be able to continue as a legal non-conforming use with respect to the Zoning Bylaw and the Agricultural Land Reserve Act and Regulation without advancing any further applications. It is noted that as an alternative to a non-farm use application, the applicant could present evidence to the ALC, as requested in their letter to the applicant dated March 15, 2016 (Attachment C), that demonstrates historical non-farm use of the property.

**PURPOSE:**

This report is to provide Council with information and a recommendation with respect to a non-farm use application submitted under Section 20(3) of the ALC Act. Consideration of the application by Council is required prior to it being forwarded for consideration by the ALC.





**ZONING BYLAW NO. 2500**





Site Plan – Provided by Applicant

**REFERENCE:**

<b>Owner</b>	Gertrude Holmes 2755 – 216 Street Langley, BC V2Z 1P4
	Donald Holmes 4985 – 204 Street Langley, BC V3A 7J9
<b>Applicant:</b>	Jennifer Watts 2755 – 216 Street Langley, BC V2Z 1P4
<b>Legal Description:</b>	Lot 11 Section 24 Township 7 NWD Plan 25013
<b>Location:</b>	2755 - 216 Street
<b>Area:</b>	9.67 ha (23.89 ac)
<b>Existing Zoning:</b>	Rural Zone RU-3
<b>Minimum Parcel Size:</b>	8.0 ha (19.8 ac)
<b>Rural Plan Designation:</b>	Agricultural / Countryside

**BACKGROUND / HISTORY:**

The subject property is located in the ALR in southwest Langley and is zoned Rural Zone RU-3. The ALC has advised the owner of the property that their trucking and excavating company (DCH Excavating Ltd.) has been operating on the property in contravention of the Agricultural Land Commission Act and the Agricultural Land Reserve Use, Subdivision and Procedure Regulations. The property owners have applied to the ALC for a non-farm use approval in order to continue operation of the business on the site.

The applicant asserts that the business has been conducted on an ongoing basis prior to 1972 when it was called Dawn Acres. In 1986 when Mr. Holmes took over the business from his parents it was renamed to DCH Excavating Ltd. Section 528 of the Local Government Act contains “grandfathering” provisions concerning non-conforming uses which provide for existing uses to continue after a bylaw is adopted which results in the use no longer conforming to the bylaw. The Township Zoning Bylaw No. 2500 was adopted February 3, 1987. Staff note that as an alternative to a non-farm use application, the applicant could present evidence to the ALC as requested in a letter to the applicant from the ALC dated March 15, 2016 (Attachment C) that demonstrates historical non-farm use of the property.

The ALC Act allows Council the opportunity to provide recommendations on non-farm use applications made to the ALC. Information available to Council to consider making recommendations are policies contained in the Township’s Official Community Plan, Rural Plan and Zoning Bylaw; as well as other site-specific information.

### **DISCUSSION / ANALYSIS:**

The applicant has applied under Section 20(3) of the ALC Act for a non-farm use for property located at 2755 – 216 Street. The applicant is proposing to continue operation of an existing trucking and excavation company, DCH Excavating Ltd., on a 0.8 ha (2 ac) portion of the subject property as shown on the site plan. The remaining 8.9 ha (21 ac) portion of the property is leased for cattle pasture and the lessee has provided a letter of support (Attachment A) for the non-farm use application.

The subject 9.67 ha (23.89 ac) site is located in the ALR in southwest Langley. The property is designated “Agricultural / Countryside” in the Township’s Rural Plan, and is zoned Rural RU-3. The property contains a single family dwelling, a mobile home and accessory buildings located on the eastern portion of the subject site, with access provided from a driveway on 216 Street. The operational area of the property is indicated in Township air photos dating back to 1994 (Attachment B). The applicant indicates that the western portion of the property is open space with grass cover used for grazing cattle.

### **Adjacent Uses and Property Sizes:**

- |        |  |
|--------|--|
| North: | An unconstructed road dedication (28 Avenue), beyond which is a property zoned Rural Zone (RU-3) within the ALR, 8.0 ha (20 ac) in size, designated Agricultural / Countryside in the Rural Plan                     |
| West:  | An unconstructed road dedication (212 Street), beyond which are two (2) rural properties zoned Rural Zone (RU-1) within the ALR, 3.9 ha (9.7 ac) in size, designated Small Farms / Country Estates in the Rural Plan |
| South: | A property zoned Rural Zone (RU-3) within the ALR, also owned by the proponent, 9.67 ha (23.89 ac) in size, designated Agricultural / Countryside in the Rural Plan  |
| East:  | 216 Street, beyond which are two (2) properties zoned Rural Zone (RU-3) within the ALR, 5.3 ha (17.1 ac) and 12 ha (30 ac) in size, designated Agricultural / Countryside in the Rural Plan                          |

### **Planning Considerations:**

The Regional Growth Strategy (RGS) is a long term land use plan implemented by Metro Vancouver that shapes growth throughout the Lower Mainland. The RGS designation for the subject property is Agriculture. The RGS states “Agricultural areas are intended primarily for agricultural uses, facilities and supporting services with an emphasis on food production where appropriate. These areas reinforce provincial and local objectives to protect the agricultural land base of the region.” The Township’s Official Community Plan (OCP) must align with the RGS, therefore, any amendments to the OCP would also require an amendment to the RGS.

The OCP provides guidance on land use changes in the ALR. The Regional Context Statement Section 1.1.7(3) of the OCP provides guidance for redesignating land from Agriculture to Industrial as outlined below:

- a) the proposed use is consistent with the general intent of the ‘Industrial’ land use designation contained in the Township of Langley’s OCP;'
- b) the subject site is no more than 10 hectares in size;
- c) the subject site is contiguous with the existing Urban Containment Boundary specified in the Regional Growth Strategy; and
- d) the subject site is not contiguous with a site previously re-designated pursuant to Revised Context Statement Section 1.1.7.

The property is designated “Agricultural/Countryside” in the Township’s Rural Plan. Section 5.5.1 of the Rural Plan states:

*“In areas designated Agriculture/Countryside, agricultural uses and considerations shall have priority over non-agricultural uses, where such uses would have an adverse impact on agriculture. Non-agricultural uses that do not comply with provisions of this plan are not permitted.”*

The Rural Plan provides limited support for existing industrial uses in rural areas that Council may wish to reference in consideration of this application. Section 5.14.2 of the Rural Plan states:

*“Industrial development shall not be permitted in the rural area, but shall be directed to areas designated industrial growth and, where it meets the criteria, the Agro- Service Centre. Expansion of existing industrial uses on their present sites may be considered, subject to review of impacts on surrounding land and uses.”*

The subject property’s RU-3 zoning lists various permitted uses, including:

- accessory buildings and uses
- accessory home occupations subject to Section 104.3
- accessory parking of commercial vehicles subject to Section 108
- agricultural uses

An “accessory home occupation” is defined as follows:

*“means an occupation, profession or hobby craft which is incidental and subordinate to the use of a dwelling for residential purposes and which does not change the residential appearance or character of the dwelling or neighbourhood in which it is located.”*

For the subject property, the following provisions outlined in Section 104.3 of the Zoning Bylaw apply to an accessory home occupation use:

- not permitted within a secondary residential suite
- owner of the accessory home occupation shall live in the same dwelling as the accessory home occupation
- accessory home occupation shall not change the residential appearance or character of the dwelling or neighbourhood in which it is located
- accessory home occupation, including the accessory storage of good or materials, shall be operated and/or contained completely within one or more enclosed buildings that is/are located on the same lot as the accessory home occupation
- the maximum total gross floorspace limited to 186 m<sup>2</sup> (2,002 ft<sup>2</sup>)
- limited to a maximum of 4 employees (including up to 3 non-resident employees)
- limited to a maximum of 3 commercial vehicles associated with the accessory home occupation



The subject trucking and excavating business does not comply with the requirements for a home occupation as outlined in Section 104.3 of the Zoning Bylaw. The current business licence is limited to office use for the operation. The Zoning Bylaw limits the allowable business floor space to 186 m<sup>2</sup> (2,002 ft<sup>2</sup>) and specifies that all operations are to be conducted within the dwelling or an accessory building. Given the lot size is greater than 8.0 ha the proponent is able to park up to three (3) commercial vehicles.

The ALC also allows for a small scale home based business to operate on ALR land with the intent of providing supplementary income to a farm operation. Section 3(1)(c) of the ALR Regulation speaks to home occupation use as a non-farm use on ALR land. Home occupation, accessory to a dwelling, is an allowable outright use in the ALR provided that it is no more than 100 m<sup>2</sup> (1,076 ft<sup>2</sup>) or a size specified in a local government bylaw. Should Council refer the application to the ALC, and should the ALC approve the proposed non-farm use application, the applicant will need to apply for land use amendments in consideration of the Regional Growth Strategy, Rural Plan and the Zoning Bylaw, the last of which would be subject to approval of the Minister of Agriculture.

#### **Agricultural Advisory and Economic Enhancement Committee:**

In accordance with past practice the application will be forwarded to the Agricultural Advisory and Economic Enhancement Committee (AAEEC) for information purposes.

#### **Servicing:**

The site is located in Rural Service Level 4 requiring the provision of rural services (septic and well). Should the ALC approve the application, a condition of subsequent rezoning application would be confirmation from a professional engineer as to the adequacy of the existing systems to accommodate the proposed industrial use.

#### **POLICY CONSIDERATIONS:**

The Rural Plan designates the subject property Agricultural / Countryside. The Plan contemplates industrial uses in the rural area by encouraging such uses that are oriented toward agro-industrial services and to locate in areas contiguous with the urban containment boundary. The site's Rural RU-3 zoning does not permit operation of a sizeable commercial trucking and excavation business. Should the ALC consider this application favourably, the proponent would need to apply for land use amendments in consideration of the Regional Growth Strategy, Rural Plan and the Zoning Bylaw for continued operation of the business on the subject site.

Alternatively, staff note that in the event that the applicant can demonstrate historical use of the property to the satisfaction of the ALC, they may be able to continue as legal non-conforming use without advancing any further applications.

Respectfully submitted,

Daniel Graham  
 PLANNING TECHNICIAN  
 for  
 COMMUNITY DEVELOPMENT DIVISION

ATTACHMENT A Letter of Support  
 ATTACHMENT B Historical Aerial Photographs 1994 – 2016  
 ATTACHMENT C Letter from ALC to Applicant (March 15, 2016)

This report constitutes the "Local Government Report" as required under Section 12 or 29 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation.

## **HONORABLE GERRY ST. GERMAIN P.C.**

To whom it may concern:

I am writing this letter in support of the non-farm use proposal by Gertrude and Donald Holmes Jr. who own the property located at 2755 216 Street, Langley BC.

The property is 23.89 acres with approximately 2 acres of the property being used for commercial purposes. The company, DCH Excavating Ltd., owned and operated by Don Jr., has been in operation since 1986, with Don Sr. and Gertrude's prior company, Dawn Acres being operated on the property prior to that.

I currently lease a large portion of this land from Don and Gertrude for my cattle. The operations of DCH Excavating do not impact my cattle operations, nor do they impact any of the other pastures in the surrounding area.

Don is very environmental conscious and takes extreme care in ensuring there is no negative impact to the land due to the trucks and excavating equipment.

The location of the operations of DCH currently allow the company to be readily available to both the Township of Langley and the City of Langley in emergency situations, and to not allow the company to continue to operate from its long-term location would create a hardship for the company as it is unlikely that it would be able to find another property in the area from which it could operate its operations in the same way it is currently being operated, and has for decades.

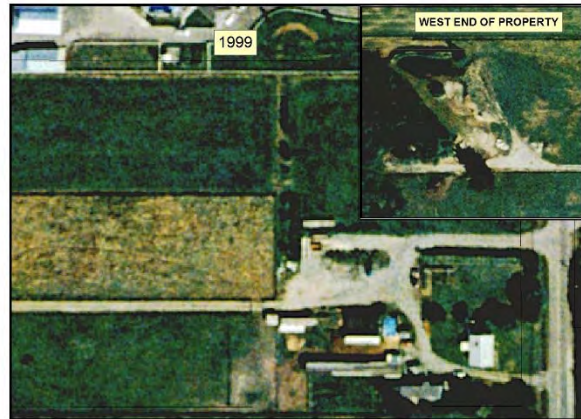
Thank you for your time in this matter and please feel free to contact me if you have any further questions.

A handwritten signature in blue ink, appearing to read "Gerry St. Germain P.C.", with a stylized flourish at the end.

Honorable Gerry St. Germain, P.C.  
604-816-4724

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**F.3**  
**ATTACHMENT B**









March 15, 2016

Reply to the attention of Dave Birchmore  
ALC File # 47101

Gertrude Marguerite Helen Holmes  
2755 - 216th Street  
Langley, BC  
V2Z 1P4

Dear Mrs. Holmes:

**Re: Contravention of the Agricultural Land Commission Act at:**  
**Civic: 2755 216<sup>th</sup> Street, Langley BC**  
**Legal: LOT 11 SECTION 24 TOWNSHIP 7 NEW WESTMINSTER DISTRICT**  
**PLAN 25013**  
**PID: 006-816-398**  
**(The "Property")**

It has been noted that you have placed or have allowed to be placed, fill on the above mentioned property without authorization from the Agricultural Land Commission (ALC). It is also noted a trucking and excavating company (DCH Excavating Ltd.) has been operating on your property in contravention of the *Agricultural Land Commission Act (the "Act")* and *Agricultural Land Reserve Use, Subdivision and Procedure Regulations (the "Regulations")*

Please be advised that section 20 of the Act states "A person must not use agricultural land for a non-farm use unless permitted by this Act, the regulations or an order of the commission." Furthermore, section 20(2) states "For the purposes of subsection (1), except as provided in the regulations, the removal of soil and the placement of fill are non-farm uses." The operation of a trucking excavation company is a non-farm use and is not permitted.

Based on all the information currently available, I consider that you are in contravention of the *Agricultural Land Commission Act*.

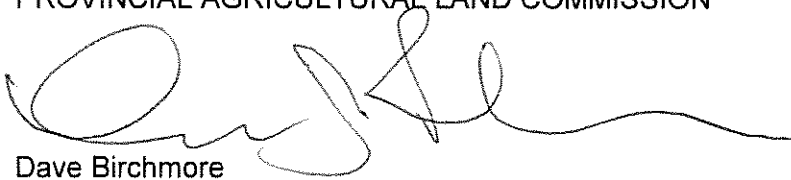
On January 20, 2016 during my site inspection I met with Bill DeWitt who was speaking on behalf of the owner of DCH Excavating Ltd (Donald Holmes). He explained to me that he represents the company. Mr. DeWitt and I spoke in depth about the future of your property and the presence of the company on the property. The ALC requires the following information from you in accordance with *Agricultural Land Commission Act (the "Act")* and *Agricultural Land Reserve Use, Subdivision and Procedure Regulations (the "Regulations")*

- The ALC needs written confirmation from you the owner that Bill DeWitt will be acting as your agent during this investigation
- The ALC requires written confirmation that remediation of the rear property will be completed by October 31, 2016
- The ALC requires the Township of Langley's approval before moving on with remediation of the property and the business operating on the said property

- The ALC needs a notarized document stating that you the owner of the property have known that a Trucking or Excavating Company has always operated on the said property prior to 1972 and hence for after
- The ALC requires any documents that verify your statement that a Trucking or Excavating Company has operated on the property prior to 1972 for example; business license, pictures, signed affidavits from former employees etc...

Please respond by April 11, 2016 to the questions provided above and how you will be bringing your property into compliance with the Act. Your plan should include any details and timelines that you will need in order to address this issue and remediate the problem.

Sincerely;  
PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Dave Birchmore', with a long horizontal flourish extending to the right.

Dave Birchmore  
Agricultural Compliance and Enforcement Officer

CC: Mike Morin Township of Langley Soil Bylaws