



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

March 22, 2007

Reply to the attention of Jennifer Carson
ALC File: #MM - 36926

Matthew Malkin
35418 Nakiska Court
Abbotsford, BC V3G 1J6

Kelly Malkin
5133 Bates Road
Abbotsford, BC V4X 1W3

Dear Sirs:

Re: **Application to Subdivide land in the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 61/2007 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

Please send two (2) paper prints of the final survey plans to this office. When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the plan. It will also confirm for the Registrar the area excluded from the ALR.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

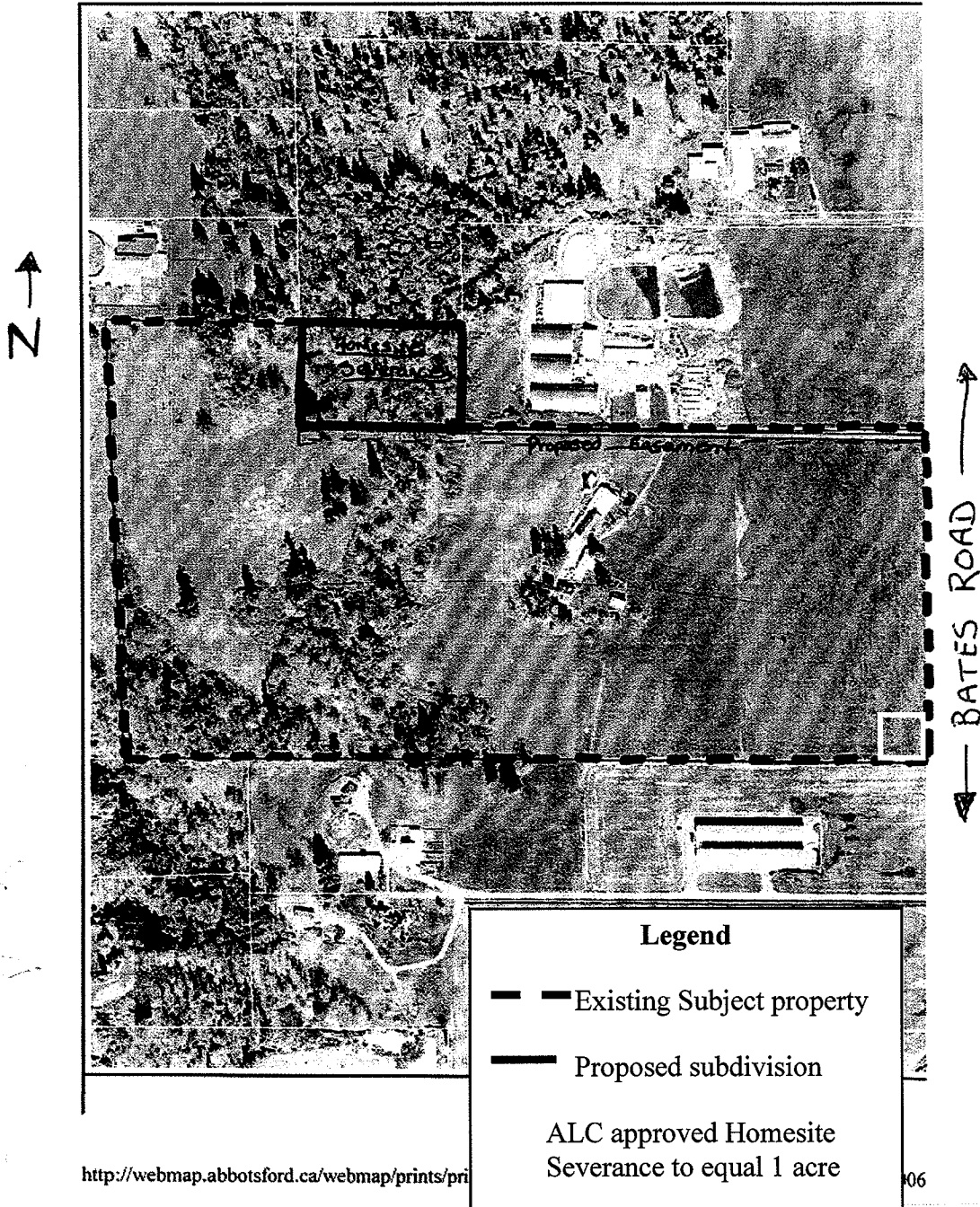
Erik Karlsen, Chair

cc: City of Abbotsford (#A06-015)

Enclosure: Minutes/Sketch Plan

JC/lv
36926d1

**Sketch of Homesite Severance for ALC Application #O-36926 Allowed by the
Agricultural Land Commission (Resolution #61/2007)**





MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on February 20, 2007 in Langley, B.C.

PRESENT:	Sylvia Pranger	Chair, South Coast Panel
	Michael Bose	Commissioner
	John Tomlinson	Commissioner
	Terra Kaethler	Staff
	Jennifer Carson	Staff

For Consideration

Application: # MM- 36926
Applicant: Kelly Malkin
Agent: Matthew Malkin
Proposal: To subdivide a 2 ha homesite lot from the 26.2 ha subject property under the *Homesite Severance Policy*.
Legal: PID: 007-376-987
Lot E, New Westminster District Group 2, Except Firstly: Parcel "1" (Reference Plan 917), Secondly: Parcel "2" (Plan with fee deposited 52138F) and Thirdly: Part subdivided by Plan 10006, District Lot 45, Plan 1059
Location: 5133 Bates Road, Abbotsford

Site Inspection

A site inspection was conducted on Monday, February 19, 2007. Those in attendance were:

- Sylvia Pranger Chair, South Coast Panel
- Michael Bose Commissioner
- John Tomlinson Commissioner
- Terra Kaethler Staff
- Brian Underhill Staff
- Jennifer Carson Staff
- Matthew Malkin Agent, son of the applicant

Mr. Malkin met with the Commission on the subject property to speak about the application. The homesite severance is proposed for his mother Kelly Malkin who resides in the existing house. The proposed site was chosen by the agent due to its being less agriculturally capable than the rest of the property.

Mr. Malkin has indicated that he has been in discussion with the owners of the neighboring properties about his proposal, notably the owner of the property to the north of the subject property. There was also discussion between property owners about the two properties being amalgamated. Mr. Malkin's future plans with the property are to plant 9 acres of the property as a vineyard and in the lower area of the property to plant blueberries. Mr. Malkin also expressed a desire to live on the property with his family. Many different scenarios were presented by Mr. Malkin as to the placement of the road, and the potential circumstances that may arise in the future.

Mr. Malkin confirmed that the staff report dated November 7, 2007 was received and no errors were identified.

Context

This application was considered in accordance with the *Homesite Severance Policy*. The *Homesite Severance Policy* states the following:

The purpose of this policy is to provide a consistent approach to situations where property under application has been the principal residence of the applicant as owner-occupant since December 21, 1972 and the applicant wishes to dispose of the parcel but retain a homesite on the land.

Persons making use of this policy should understand clearly that:

- a. no one has an automatic right to a "homesite severance";
- b. the Commission shall be the final arbiter as to whether a particular "homesite severance" meets good land use criteria; (see #4 below)
- c. a prime concern of the Commission will always be to ensure that the "remainder" will constitute a suitable agricultural parcel. (see #5 below).

Without limiting the generality of the foregoing, the following guidelines apply to "homesite severance" applications.

1. A once only severance may be permitted where the applicant submits documentary evidence that he or she has continuously owned and occupied the property as his or her principal place of residence since 21 December 1972.
2. Where an applicant for a "homesite severance" has had a previous subdivision application approved by the Commission resulting in the creation of a separate parcel, the Commission may consider the previous approval as having fulfilled the objectives of the Homesite Severance Policy and may deny any further consideration under the Homesite Severance Policy.
3. An application for a "homesite severance" will be considered only where the applicant submits documentary evidence showing a legitimate intention to sell the remainder of the property upon the approval of the "homesite severance" application. [An interim agreement for sale, a prospective buyer's written statement of intent to purchase, a real estate listing, or some other written evidence of pending real estate transaction would be acceptable as documentation.]

In considering the application, the Commission may make its approval subject to sale of the remainder within a specified period of time.

A Certificate of Order authorizing the deposit of the subdivision plan will be issued to the Registrar of Land Titles only when a "transfer of estate in fee simple" or an "agreement for sale" is being registered concurrently.

4. There will be cases where the Commission considers that good land use criteria rule out any subdivision of the land because subdivision would compromise the agricultural integrity of the area, and the Commission must therefore exercise its discretion to refuse the "homesite severance".

Where the Commission decides to allow a "homesite severance", there are two options:

- a. the existing homesite may be created as a separate parcel where it is of a minimum size compatible with the character of the property (plus a reasonable area, where required, for legal access purposes); or
- b. where the location of the existing homesite is such that the creation of a parcel encompassing the homesite would, in the Commission's opinion, create potential difficulty for the agricultural operation or management of the "remainder", the Commission may, as it deems appropriate, approve the creation of a parcel elsewhere on the subject property.

5. The remainder of the subject property after severance of the homesite must be of a size and configuration that will, in the Commission's opinion, constitute a suitable agricultural parcel. Where, in the Commission's opinion, the "remainder" is of an unacceptable size or configuration from an agricultural perspective, there are three options:

- a. the Commission may deny the "homesite severance";
- b. the Commission may require that the "remainder" be consolidated with an adjacent parcel; or
- c. the Commission may require the registration of a covenant against the title of the "remainder" and such a covenant may prohibit the construction of dwellings.

6. A condition of every "homesite severance" approved by the Commission shall be an order stipulating that the homesite is not to be resold for five years except in the case of estate settlements. Prior to the issuance of a Certificate of Order authorizing deposit of the subdivision plan, the owner shall file with the Commission a written undertaking or standard notarized contractual commitment to this effect.

Discussion

Assessment of Agricultural Capability

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The ratings are interpreted using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system, or the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system.

The improved ratings of the agricultural capability of the subject property are:

Class 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

Class 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.

Subclasses

A	soil moisture deficiency	D	undesirable soil structure
T	topography	W	excess water

Organic Soils - Organic soils are grouped into seven classes, designated as O1 to O7. The organic soil class definitions are equivalent in terms of their relative capabilities and limitations for agricultural use to those defined for mineral soil.

Subclasses

L	degree of decomposition - permeability
W	excess water

Assessment of Agricultural Suitability

The Commission assessed whether the external factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission does not believe there are external factors that render the land unsuitable for agricultural use.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. The Commission felt that the amount of land used to create the road along the northern boundary of the property would have an adverse effect on the agricultural capability of the property. However, the applicant qualifies for consideration under the *Homesite Severance Policy*. In accordance with the *Homesite Severance Policy* the Commission prefers the smallest lot size possible and thus would prefer a 0.4 ha (1 acre) lot on the south-eastern corner of the property instead of where it was proposed in the northern portion of the property.

Conclusions

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the proposal will impact agriculture.
4. That the applicant qualifies for consideration under the *Homesite Severance Policy*.
5. In order to minimize the adverse impact on agriculture, the Commission prefers a 0.4 ha homesite located at the south eastern corner of the property.

IT WAS

MOVED BY: Commissioner Tomlinson

SECONDED BY: Commissioner Pranger

THAT the application be refused as proposed. However, the Commission would allow a homesite severance of 0.4 ha on the south-eastern corner of the property.

AND THAT the approval of the alternate subdivision is subject to the following conditions:

- The construction of a fence around the homesite lot save and except the Bates Road frontage
- the planting of vegetation for buffering for the purpose of separation of residential and farm lands
- Compliance with the *Homesite Severance Policy*
- The Commission's decision is specific to the applicant, Mrs. Kelly Malkin.
- the subdivision must be completed within three (3) years from the date of this decision.
- the homesite is not to be resold for five years except in the case of estate settlements.

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.

CARRIED

Resolution # 61/2007



Staff Report
Application # MM – 36926
Applicant: Kelly Malkin
Agent: Matthew Malkin
Location: Abbotsford

DATE RECEIVED: September 6, 2006

DATE PREPARED: November 7, 2006

TO: Chair and Commissioners – South Coast Panel

FROM: Brandy Ridout, Land Use Planner

PROPOSAL: To subdivide a 2 ha homesite lot from the 26.2 ha subject property under the Homesite Severance Policy.

This application is made pursuant to section 21(2) of the *Agricultural Land Commission Act*.

BACKGROUND INFORMATION:

As the present homesite is in the centre of the property, the applicant is proposing an alternate location for the homesite lot. The alternate location is hilly, has a ravine, and a very small buildable area. The applicant is planning to sell the remainder of the property, with the existing house, to her son, who plans to continue farming the remainder. An easement is being proposed to provide access to the new lot.

Local Government:

City of Abbotsford

Legal Description of Property:

PID: 007-376-987

Lot E, New Westminster District Group 2, EXCEPT Firstly: Parcel "1" (Reference Plan 917), Secondly: Parcel "2" (Plan with fee deposited 52138F) and Thirdly: Part subdivided by Plan 10006, District Lot 45, Plan 1059

Purchase Date:

December 1969

Location of Property:

5133 Bates Road, Abbotsford

BACKGROUND INFORMATION (continued):

Size of Property:

26.2 ha (The entire property is in the ALR).

Present use of the Property:

Grazing cattle upper area, crop, former dairy farm, hay and silage

Surrounding Land Uses:

WEST: Broiler Farm/Hobby Farm
SOUTH: Broiler Farm
EAST: Dairy Farm
NORTH: Dairy Farm

Agricultural Capability:

Data Source: Agricultural Capability Map # 92G/1c
The majority of the property is identified as having Prime Dominant ratings.

Zoning Bylaw and Designation:

City of Abbotsford Zoning Bylaw (1996)
Designation: Agricultural Two Zone (A2)
Minimum Lot Size 16 ha

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

City of Abbotsford Council: The application be forwarded.

STAFF COMMENTS:

Suggests the Commission may want to conduct a site visit to determine the impact subdivision of a 2 ha homesite lot would have on the agricultural capability of the remainder (a smaller lot is typically preferable).

ATTACHMENTS:

- ALR Base Map #92 G/1
- Air photo showing proposed subdivision
- Colour air photo

END OF REPORT

Signature

Date



Nov 7, 06