



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

November 9, 2005

Reply to the attention of Ron Wallace

Irvine & Carolynn Kelly
6629 Sidley Mountain Road
Bridestville, BC – V0H 1B0

Dear Sir/Madam:

**Re: Application #Q-35970
District Lot 3501, Similkameen Division of Yale District**

Further to your letter of 15 August 2005, the Commission, acting under section 33 of the *Agricultural Land Commission Act*, has reconsidered the above noted application.

The Commission, by Resolution **#563/2005**, has allowed your request to subdivide 1 ha off the above noted property subject to a no build covenant being registered on the remnant parcel that restricts the placement or construction of a dwelling for a period of five years from the date of this decision. The Commission felt the registration of this covenant would be consistent with your family's intent to farm the property and not to sell it for residential purposes. To this end the Commission is prepared to consider the discharge the covenant after a period of five years, 12 October 2010.

This approval is granted provided that your subdivision is in substantial compliance with the plan attached hereto.

The land referred to in the application continues to be subject to the provisions of the Act and regulations except as provided by this approval.

This approval in no way relieves the owner or occupier of the responsibility of adhering to all other legislation that may apply to the land. This includes zoning, subdivision, or other land use bylaws, and decisions of any authorities that may have jurisdiction. Before your development can proceed, other approvals may be necessary and we urge you to check with Regional District of Kootenay Boundary.

When the final survey plans and restrictive covenant as agreed to by the Commission and as required for Land Title purposes, have been prepared, please send two paper prints and two copies of the final approval covenant to this office well in advance of commencing registration procedures. The Commission will then authorize the Registrar of Land Titles to accept the application for deposit of the subdivision plan concurrent with the registration of the covenant.

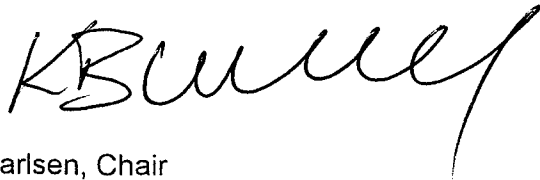
Page 2 - #35970

Please quote the above application number in any future correspondence.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written in a cursive style.

Erik Karlsen, Chair

cc Regional District of Kootenay Boundary – D-2947s-06976-000
Approving Officer, Ministry of Transportation, Nelson
BC Assessment, Nelson

RW/lv/Encl./35970d2

DL 776^S **PROPOSED SUBDIVISION MAP**

DL 1290

DL 775^S

ALR

DL 912^S

007-862-237

DL 3501

38

1 ha Lot

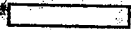

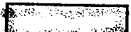
1
024-657-557

TP 66

DL 490^S

S 12

Provincial Agricultural Land Commission
Application: 35970-1
Resolution #563/2005

-  Subject property.
-  1 ha area approved for subdivision
-  Location of "No-Build" covenant

**LAND TITLE ACT
FORM C
(Section 219.81)
Province of
British Columbia
GENERAL INSTRUMENT - PART 1**

(This area for Land Title Office use) PAGE 1 of 9 PAGES

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID) (LEGAL DESCRIPTION)

See schedule

3. NATURE OF INTEREST:*

DESCRIPTION ENTITLED TO INTEREST	DOCUMENT REFERENCE (page and paragraph)	PERSON
Section 215 Restrictive Covenant	Entire Document	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms _____ D.F. No.
 (b) Express Charge Terms X Annexed as Part 2
 (c) Release _____ There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

7. ADDITIONAL OR MODIFIED TERMS:*

8. EXECUTION(S):**This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Execution Date

Officer Signature(s)

Party(ies) Signature(s)

Y M D

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

** If space insufficient, enter "SEE SCHEDULE" attach schedule in Form E.
 If space insufficient, continue executions on additional page(s) in Form D.

**FORM D
EXECUTIONS CONTINUED**

OFFICER SIGNATURE(S)	EXECUTION DATE (Y/M/D)	PART(IES) SIGNATURE(S)
_____ Solicitor/Notary Public	_ / _ / _	_____ by its authorized signatories

(name)

(name)

_____ Solicitor/Notary Public	_ / _ / _	_____ by its authorized signatories
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(name)

(name)

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**FORM E
SCHEDULE**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:

(PARCEL IDENTIFIER)	(LEGAL DESCRIPTION)
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TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor is the registered and beneficial owner of certain lands and premises set forth in the schedule attached hereto as Form E (the "Lands");
- B. The Transferor wishes to subdivide the Lands by depositing in the Land Title Office a subdivision plan (the "Subdivision Plan"), a true copy of which is attached hereto as Schedule •;
- C. The Transferor has agreed to execute and deliver this restrictive covenant pursuant to section 215 of the Land Title Act in favour of the Transferee.

THEREFORE in consideration of the premises and of the sum of one dollar (\$1.00) of lawful money of Canada, now paid by the Transferee to the Transferor, the receipt of which is hereby acknowledged, and other good and valuable consideration, the parties covenant and agree as follows:

Alternative 1:

If there is existing vegetation on the Lands that will suffice for the purposes of a Buffer, the following wording may be utilized:

1. The Transferor shall not without the prior written consent of the Transferee, which consent may be arbitrarily withheld, cut down, trim, prune, defoliate, clear, alter, remove or in any way tamper with or work on any trees, shrubs, plants, bushes, ground cover, vegetation or any other form of plant life within the Buffer Area so that the trees, shrubs, plants, bushes, ground cover, vegetation or other forms of plant life remain in a naturally vegetated state as an effective separation in perpetuity between the Lands and the adjoining lands located [*insert north, south, east, west boundary or other appropriate description*] to the Lands (the "Adjoining Lands") [*which are in an agricultural land reserve OR upon which farming or agricultural activities are being conducted - use the appropriate description*].

Note: Where there is a body of water (slough, creek, river, lake, pond or drainage ditch) either existing or planned wording may have to be added to incorporate reference to that body of water. Please consult your solicitor.

Alternative 2:

If the Buffer is to comprise a mixture of existing vegetation and new vegetation, the wording will have to be tailored to the specific facts. For example, as follows:

[1.] The Transferor forthwith after the execution of this Instrument, at the Transferor's sole cost, shall establish a buffer (the "Buffer") on that portion of the Lands (the "Buffer Area") shown hatched on the reference plan prepared by • B.C.L.S. dated • and deposited in the • Land Title Office under plan number • , a copy of which is annexed hereto as Schedule • , to screen and provide a physical separation between the Lands and the adjoining lands located [*insert north, south, east, west boundary or other description*] to the Lands (the "Adjoining Lands") which are in an agricultural land reserve or upon which farming or agricultural activities are being conducted.

2. The Buffer shall consists of such of the existing trees, shrubs, plants, bushes, ground cover, vegetation or any other form of plant life within the Buffer Area as designated by the Transferor [*or if appropriate, the designated vegetation may be described in this clause*] and the Transferor shall install, plant and establish, in addition, such additional trees, shrubs, plants, bushes, ground cover, vegetation or other forms of plant life and any fences, berms, stakes, guy wires or other works and improvements* as may be necessary in order to establish a Buffer of the type designated as [*A.1, A.2, A.3, A.4, A.5 and A.6 - insert appropriate buffer type*] in Schedule A: Buffer Types to the Provincial Agricultural Land Commission Landscaped Buffer Specifications of March 1993, as amended from time to time (the "Landscaped Buffer Specifications"), and shall in all other respects comply with the requirements of the Landscaped Buffer Specifications.

**Note: As an alternative, the covenant could specifically require certain specific additional types of trees, shrubs, plants, bushes, ground cover, vegetation or other forms of plant life and fences, berms, stakes, guy wires or other works and improvements to be included in order to satisfy the buffering requirement. If fences are to be included, please see the wording in Example (a). Please have your solicitor draft the appropriate wording.*

3. The Transferor, at the Transferor's sole cost, shall maintain, trim, prune, thin, clear, repair and, where necessary or desirable, plant or replace any trees, shrubs, plants, bushes, ground cover, vegetation or any other form of plant life and any fences, berms, stakes, guy wires or other works or improvements in the Buffer Area or comprising the Buffer in order to maintain the Buffer as an effective separation between the Lands and the Adjoining Lands.

4. Without limiting the provisions of section 3, the Transferor, at the Transferor's sole cost, shall forthwith after a written demand by the Transferee do such maintenance, trimming, pruning, thinning, clearing, repair, planting or replacing and shall do such other things or perform such other work as the Transferee shall require in

the written demand in order to maintain the Buffer as an effective separation between the uses on the Lands and the agricultural and farming uses on the Adjoining Lands.

5. If the Transferor fails or refuses to do any of the things required under sections 1, 2 and 3 or fails or refuses to do any thing or perform any work required in a written demand under section 4, the Transferee may, but shall not be obligated to, do or perform such thing or work and may for that purpose, without giving notice to the Transferor, enter on the Lands and the Buffer Area with such personnel, equipment, machinery and materials as may be necessary or desirable. The costs incurred by the Transferee in doing such things or performing such work shall be a debt due to the Transferee by the Transferor and the Transferor shall forthwith upon written request from the Transferee pay to the Transferee the costs incurred by the Transferee.

6. The Transferor shall not do or permit to be done anything on the Buffer Area which will interfere with the effectiveness of the Buffer in providing separation between the Lands and the Adjoining Lands and for greater certainty, but without in any way limiting the generality of the foregoing, the Transferor shall not construct, erect, instal, build or place any building, structure, erection, fixture or improvement on the Buffer Area, except for any fencing required under this Instrument, and shall not permit the Buffer Area to be used for any purpose whatsoever except for providing the Buffer to provide separation between the Lands and the Adjoining Lands without the prior written consent of the Transferor, which consent may be arbitrarily withheld.

7. The covenants in this Instrument shall be covenants running with the Lands and shall be binding on the successors in title and assignees of the Lands.

8. None of the covenants herein shall be personal or binding upon the Transferor, save and except during the Transferor's seisin or ownership of any interest in the Lands.

9. The Transferor covenants with the Transferee that the Transferor has done no acts to charge or encumber the Lands, save the charges or encumbrances set forth in Schedule • attached hereto.

10. The Transferor will, upon the request of the Transferee, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, documents and assurances whatsoever as may be necessary or desirable for the better and more perfect and absolute performance of the grants, covenants, provisos and agreements in this Instrument.

11. This Instrument shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

12. Words importing the male gender include the female gender and either includes the neuter and vice versa and words importing the singular number include the plural number and vice versa.

Schedule •

Subdivision Plan

This is the second schedule to a certain Instrument dated for reference the • date of •, 19•, made between • and • .

END OF DOCUMENT

[NOTE: if this is not the last schedule, place the words "END OF DOCUMENT" at the end of the last schedule.]

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

Minutes of a meeting held by the Provincial Agricultural Land Commission (the "Commission") on October 12, 2005 in Castlegar, B.C.

PRESENT: Monika Marshall Chair
 Cheryle Huscroft Commissioner
 Carmen Purdy Commissioner

STAFF: Ron Wallace, Regional Research Officer

For Consideration

Ron Wallace presented the applicant's letter dated 15 August 2005 requesting reconsideration of their application, #Q-35970. The request is to allow the proposed subdivision of 1 ha from the subject property, District Lot 3501, for the applicant's son to purchase without the requirement of consolidating the remainder of the property with the adjacent property to the east, Lot 1 Section 7 Township 66 SDYD Plan KAP65918. This would enable their son to be better able to afford the eventual purchase of the whole farm.

Commission Discussion

In reviewing this request for reconsideration, the Commission would support the proposed subdivision subject to a no build covenant for a residential dwelling being registered on the remnant parcel for five years from the date of the decision. The Commission felt the registration of this covenant would be consistent with the applicant's intent to farm the property and not to sell it for residential purposes. The Commission held the view that if reasonable evidence was provided to confirm that the balance of the land was being farmed, then the discharge of the covenant from the title of the property would not be unreasonably withheld.

IT WAS

MOVED BY: Commissioner Huscroft

SECONDED BY: Commissioner Purdy

THAT the Kelly's letter dated 15 August 2005 requesting reconsideration of the application to subdivide 1 ha off the subject property without the condition for consolidation be received. The Commission approved the request for subdivision subject to a no build covenant being registered on the remnant parcel that restricts the placement or construction of a dwelling for a period of five years from the date of this decision, following which, a request to consider the discharge of the covenant will be entertained.

This approval is subject to compliance with any other enactment, legislation or decision of any agency having jurisdiction.

CARRIED