



Agricultural Land Commission
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August 25, 2006

Reply to the attention of Roger Cheetham

Laura Williams
3355 Gibbins Road
North Cowichan, BC V9L 6E5

Dear Sir/Madam:

RE: Application #J-36738
Lot 1, Range 3, Plan 14766;

The Provincial Agricultural Land Commission (the "Commission") has now concluded its review of your application to subdivide one (1) lot of approximately 3.4 ha from the property in accordance with its *Homesite Severance Policy* (copy attached). The application was submitted pursuant to section 21(2) of the *Agricultural Land Commission Act* (the "ALCA").

The Commission wishes to thank you for taking the time to meet with its representatives on 2nd August 2006. The Commission found the meeting and site visit informative. In particular the Commission noted that the property has significant agricultural potential and that the proposed subdivision would take in an area between the house and the Trans Canada Trail that has agricultural potential and has been farmed.

The Commission writes to advise that it has refused the application as presented. It considered that the size of the subdivision for the Homesite was significantly larger than that required to accommodate the home, gardens and septic field. The Commission considered that the splitting of the area with agricultural potential into two lots approximately 3.4 and 5.5 ha in size would reduce agricultural options and was not in the interests of agriculture. It did not consider that the provision of access to the Trans Canada Trail to be an agricultural consideration.

It has, however, approved a Homesite Severance subdivision not exceeding 1 ha for the existing dwelling to include the garden and septic drainage system, subject to:

- the submission of detailed plans. It is a condition of the approval that the homesite lot not be sold for five (5) years except in the case of estate settlements. The Commission requires your commitment in this regard which can be done by signing below and returning to our office a copy of the letter. The Commission requires your commitment prior to it approving deposit of the subdivision plan.
- compliance 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. The Commission suggests you contact the District of North Cowichan at your earliest convenience.

The decision noted above is recorded as Resolution # 408/2006.

If you wish to proceed on this basis please undertake the following steps:

1. Commence approval procedures of other agencies that must approve the subdivision.
2. Have a surveyor prepare the subdivision plan.
3. Obtain recent State of Title Certificate for the property.
4. Prepare a "Transfer of an Estate in Fee Simple" document indicating the transfer of the remainder of the property from you to the purchaser.
5. Prior to approaching the Registrar of Land Titles to register the subdivision please submit the following to this office:
 - a) two (2) paper prints of the plan of subdivision
 - b) the State of Title Certificate
 - c) a copy of the "Transfer of an Estate in Fee Simple" document
 - d) your signed commitment that the homesite lot will not be sold for five (5) years except in the case of estate settlements.

When all the required documentation has been received the Commission will authorize the Registrar of Land Titles to accept the application for deposit of the subdivision plan.

Please quote your application number in any future correspondence.

Yours truly

PROVINCIAL AGRICULTURAL LAND COMMISSION

per:

Erik Karlsen, Chair

pc: Municipality of North Cowichan (#3025-20-06-01)
Harry Williams, RPBio PAg., 370 Brae Road, Duncan V9L 3T8

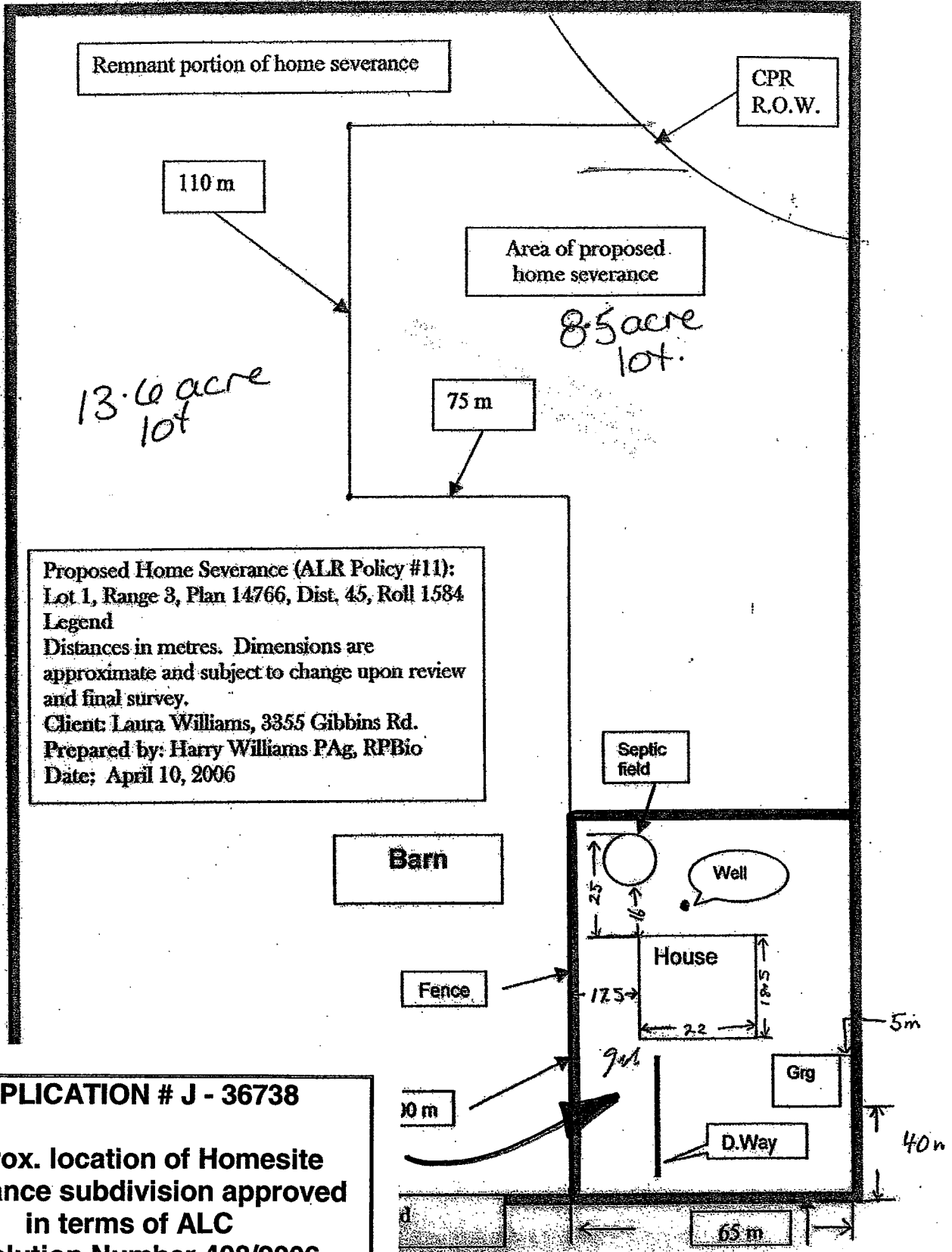
RC/lv/Encl.:

Sketch Plan

Homesite Severance Policy

36738d1

North



Proposed Home Severance (ALR Policy #11):
Lot 1, Range 3, Plan 14766, Dist. 45, Roll 1584
Legend
Distances in metres. Dimensions are approximate and subject to change upon review and final survey.
Client: Laura Williams, 3355 Gibbins Rd.
Prepared by: Harry Williams PAg, RPBio
Date: April 10, 2006

APPLICATION # J - 36738
Approx. location of Homesite Severance subdivision approved in terms of ALC Resolution Number 408/2006

THAT the staff report be received and the application be refused as presented.
That a Homesite Severance subdivision not exceeding 1 ha for the existing dwelling to include the garden and septic drainage system, be approved subject to the submission of detailed plans. The approval is subject to the filing of a written undertaking or standard notarized contractual commitment with the Commission prior to the issuance of a Certificate of Order that stipulates that the Homesite is not to be resold for five years except in the case of estate settlements.

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

CARRIED

HOMESITE SEVERANCE

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.

An application under Sec. 21(2) of the Agricultural Land Commission Act is required.

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".

Homesite Severance

Agricultural Land Commission

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.
7. Where a "homesite severance" application has been approved by the Commission, local governments and approving officers are encouraged to handle the application in the same manner as an application under Section 996 of the *Municipal Act* insofar as compliance with local bylaws is concerned.

I/we being the registered owner(s) of the property which is the subject of this application and for whom the homesite lot was approved, hereby agree not to sell, transfer, or otherwise dispose of the homesite lot for five (5) years from the date of registration of the subdivision plan creating the homesite lot, save and except for estate purposes following the death of the owner, or any one of the owners, if there are more than one.

Owner's Name (Please Print)

Signature

Owner's Name (Please Print)

Signature

Witnessed By (Please Print Name)

Occupation of Witness

Signature of Witness

Date

Staff Report
Application # J – 36738-0
Applicant: Laura Williams
Agent: Harry Williams

DATE RECEIVED: May 31, 2006

DATE PREPARED: July 20, 2006

TO: Chair and Commissioners – Island Panel

FROM: Simone Rivers, Regional Research Officer

PROPOSAL: To subdivide the 8.9 ha lot into a 3.4 ha lot and a 5.5 ha lot. The applicant has owned the property since 1952 and is asking for consideration under *Homesite Severance Policy*.

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

BACKGROUND INFORMATION:

The applicant proposed to continue living in her house on the 3.4 ha property and her son would build a house and live on the 8.9 ha property. In the long term the applicant would sell the 3.4 ha property to another son.

Local Government:

The Corporation of the District of North Cowichan

Legal Description of Property:

Lot 1, Range 3, Plan 14766, District 45

Purchase Date:

1952

Location of Property:

3355 Gibbins Road, Duncan

Size of Property:

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

Present use of the Property:

Hobby farm, residential

Surrounding Land Uses:

WEST: Residential, equestrian centre adjacent to NW corner of property
SOUTH: Forested ALR land (south of Gibbins Road)
EAST: Hobby farm (flower garden, horses)
NORTH: Forested family land

Agricultural Capability:

Data Source: Agricultural Capability Map # 92B.072
The majority of the property is identified as having Prime Dominant ratings.

Zoning Bylaw and Designation:

Zoning Bylaw No. 2950 Designation: A
Minimum Lot Size 2 ha (4.94)

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Municipality of North Cowichan Council: Council forwarded the application with the following resolution *"That Council forward the application to subdivide 3355 Gibbins Road to the Commission for consideration under the homesite severance policy, advising that the policies in North Cowichan's Official Community Plan and the Strategic Agriculture Plan support maintaining larger parcels of agriculture land and discourage the creations of new lots for relatives"*

Agricultural Advisory Committee: The AAC minutes recorded the following comments and resolution: *"Members questioned the economic vitality of a small agri/forestry operation. Further parcelization of the land is not a positive approach. There seems no apparent reason for the proposed subdivision on the basis of topography, land form, etc. Apart from the desire to build a home and farm, there is no real commitment in the proposal to agriculture"*
Recommendation: That the AAC advise the Technical Planning Committee that it does not support the subdivision application. The Committee directed staff to investigate alternate housing arrangements (i.e. addition to the existing residence.)

Technical Planning Committee: The following comments and recommendation were made in the minutes. *"The applicant's son indicated that farming on small parcels can be productive if based on specialty crops. Mr. Williams noted that the parcel size and configuration are reflective of the homeowner's wish to have access to the CPR at the rear of the property. The Chairman reminded the Committee that current policy does not support further parcelization of ALR lands. he noted that the ALC may be more receptive if the propose subdivision was reconfigured to maintain more land with the larger property."*
Recommendation Resolution - Same as above noted council resolution.

ATTACHMENTS:

- Municipality of North Cowichan Report - May 4, 2006
- Additional notes from Harry Williams (Laura Williams' son) - including site plan
- Letter to the Commission dated June 22, 2006 from the applicant (Laura Williams)
- ALR Context Map: 92B.072 - 1:20,000

END OF REPORT

Signature

Date



July 20/06