



**Agricultural Land Commission**  
133-4940 Canada Way  
Burnaby, British Columbia V5G 4K6  
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Fax: 604-660-7033  
www.alc.gov.bc.ca

August 30, 2006

Reply to the attention of SIMONE RIVERS  
ALC File: #B-36784

Eva Catherine Whalen  
6035 Old Babine Lake Road  
Smithers, BC V0J 2N7

Dear Madam:

**Re: Application to Subdivide Land in the Agricultural Land Reserve (ALR)**

The Provincial Agricultural Land Commission (the "Commission") has now concluded its review of your application to subdivide one (1) lot of approximately 2.5 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 writes to advise that it approved your application subject to:

- the subdivision being in substantial compliance with the attached plan.
- 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.
- that you obtain Commission approval for an increase in the size of the homesite lot or a change in its location deemed necessary by other approval agencies.
- 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 Bulkley-Nechako Regional District at your earliest convenience.

The decision noted above is recorded as Resolution # 424/2006.

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: S. Howard & Associates, PO Box 536, Smithers, BC, V0J 2N0  
Regional District of Bulkley-Nechako (1025)  
Axel Peterson, PO Box 354, Smithers, BC, V0J 2N0  
Brad Peterson, 6223 Old Babine Lake Road, Smithers, BC V0J 2N7

RC/lv/Enclosure:

Sketch Plan

Homesite Severance Policy

36784d1





*Agricultural Land  
Commission Act*

**Policy #11  
March 2003**

## **HOMESITE SEVERANCE ON ALR LANDS**

*This policy provides advice to assist in the interpretation of the Agricultural Land Commission Act, 2002 and Regulation. In case of ambiguity or inconsistency, the Act and Regulation will govern.*

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 Section 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".

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 946 of the *Local Government 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 # B – 36784**  
**Applicant: Eva Catherine Whalen**  
**Agent: S. Howard & Associates**

**DATE RECEIVED:** June 28, 2006

**DATE PREPARED:** July 20, 2006

**TO:** Chair and Commissioners – North Panel

**FROM:** Simone Rivers, Land Use Planner

**PROPOSAL:** To subdivide a 2.5 ha lot from the 44 ha lot. The applicant has owned the land since 1969 and therefore may qualify for consideration under the Commission's Homesite Severance Policy.

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

**BACKGROUND INFORMATION:**

The proposed subdivision would separate the homesite from the parcel. The farm and farm buildings would remain with the remainder.

**Local Government:**

Regional District of Bulkley-Nechako

**Legal Description of Property:**

PID: 015-104-362

The West ½ of District Lot 1195, Range 5 Coast District, Except Parcel A (see J10999) and Except Plan 6801

**Purchase Date:**

1969

**Location of Property:**

4.5 km north east of Smithers on Old Babine Lake Road, near the junction with McCabe Road

**Size of Property:**

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



**Present use of the Property:**

Existing residence, farm buildings/sheds, hay fields

**Surrounding Land Uses:**

**WEST:** Residential (ALR)  
**SOUTH:** Creek (ALR)  
**EAST:** Hay fields (ALR)  
**NORTH:** Residential (ALR)

**Agricultural Capability:**

Data Source: Agricultural Capability Map # 93L/14  
The majority of the property is identified as having Secondary ratings.

**Official Community Plan and Designation:**

Smithers-Telkwa rural Official Community Plan Bylaw No. 546 (1987) designates the property as Rural Agricultural (Ru-A)

**Zoning Bylaw and Designation:**

Regional District of Bulkley-Neckako Zoning Bylaw No. 700 (1993) designates the property as Agricultural (Ag1).  
Minimum lot size: 16ha

**PREVIOUS APPLICATIONS:**

**Application #23881-0**

**Applicant:** Peterson, Axel Erik Karl  
**Decision Date:** November 15, 1989  
**Proposal:** To subdivide the subject properties into two equal parcels. This would create four separate lots.  
**Decision:** Refused. Subject property has reasonable agricultural capability and is located in an active agricultural area. Subdivision would reduce the long term agricultural value of these lands.

**RELEVANT APPLICATIONS:**

**Application #13489-0**

**Applicant:** Morris, William and Anna  
**Decision Date:** January 28, 1982  
**Proposal:** To subdivide one parcel of 16 ha from the 64 ha parcel.  
**Decision:** Allowed subject to consolidation of District Lot 1194 with District Lot 1193.

**Application #13859-0**

**Applicant:** Hayes, William and Lorraine  
**Decision Date:** March 16, 1982  
**Proposal:** To subdivide two parcels of 2 ha and one parcel of 12.7 ha from the 16.7 ha property.  
**Decision:** Refused. The Commission was unwilling to allow the establishment of rural residential parcels which would ultimately create problems for the existing agricultural units in the area.



**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:**

**Regional District of Bulkley-Nechako Board:** The board forwarded the application with a recommendation of support.

**Leah Sheffield, Resource Stewardship Agriologist, Ministry of Agriculture and Lands:** *"I do not have any objections to this homesite severance application. The proposed lot has been situated such that on-going agricultural use and development of the parent parcel will not be impeded"*

**ATTACHMENTS:**

- Maps – ALR Application #1025 – Electoral Area "A" – Specific Location
- ALR Application #1025 – Electoral Area "A" – Surrounding Development

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END OF REPORT

Simone Rives  
Signature

Aug 8, 2006  
Date