



Agricultural Land Commission
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November 17, 2006

Reply to the attention of Gordon Bednard
ALC File: F-36807

Elizabeth Schuler
1039 - 27th Avenue S
Creston, BC V0B 1G1

Dear Madam:

Re: Application to Subdivide land in the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 557/2006 outlining the Commission's decision as it relates to the above noted application. Also please find attached a copy of the Commission's Homesite Severance policy for your information and guidance regarding procedures and approval conditions.

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.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

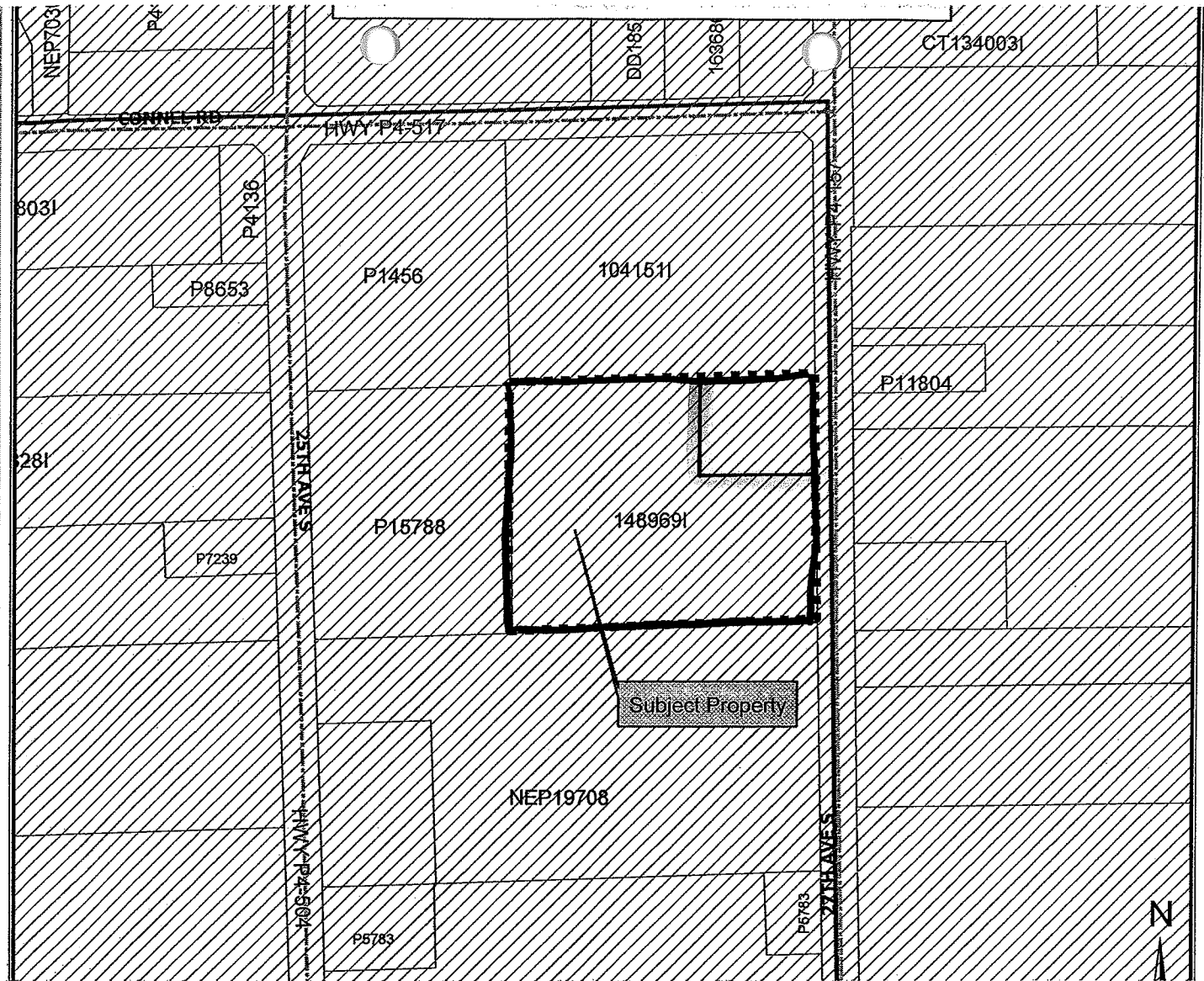
A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a white background.

Erik Karlsen, Chair

cc: Regional District of Central Kootenay (#A0613C-02109000)

Encl: Minutes/Sketch Plan
Homesite Severance Policy

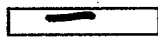
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Provincial Agricultural Land Commission

Application: F-36807

Resolution # 557/2006



Subject property.



Approved subdivision under the Homesite Severance Policy. Lots remain within the ALR.

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 does not believe the proposal would impact existing or potential agricultural use of surrounding lands.

Conclusions

1. That the applicant qualified for consideration under the Homesite Severance policy
2. That the proposal will not impact agriculture.

IT WAS

MOVED BY: Commissioner Carmen Purdy
SECONDED BY: Commissioner Monika Marshall

THAT the application be allowed as presented.

AND THAT the approval is subject to the following conditions:

- the subdivision be in substantial compliance with the plan submitted with the application
- compliance with the Homesite Severance Policy

AND THAT the approval is granted to the applicant only and is valid for three (3) years from the date of this decision.

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 # 557/2006

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 <p>Agricultural Land Commission Act</p>	<p style="text-align: right;">Policy #11 March 2003</p> <p style="text-align: center;">HOMESITE SEVERANCE ON ALR LANDS</p>
<p><i>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.</i></p>	

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.



Staff Report
Application # F – 36807
Applicant: Elizabeth Schuler

DATE RECEIVED: July 11, 2006

DATE PREPARED: September 5, 2006

TO: Chair and Commissioners – Kootenay Panel

FROM: Simone Rivers, Land Use Planner

PROPOSAL: To subdivide 0.4 ha from the 2.3 ha property as a homesite severance.

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

BACKGROUND INFORMATION:

The applicant has owned the property since June 1956 and therefore qualifies for consideration under the Commission's *homesite severance policy*.

Local Government:

Regional District of Central Kootenay

Legal Description of Property:

PID: 015-729-206

That part of Lot 2, District Lot 491, Kootenay District, Plan 1456, which lies East of a line parallel to and 580 feet distant from the Easterly Boundary of the said lot EXCEPT Part included in Plan NEP20124

Purchase Date:

June 1956

Location of Property:

1039-27 Avenue South, Creston

Size of Property:

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

Present use of the Property:

Residence, outbuildings, vegetable, flower and fruit trees

Surrounding Land Uses:

WEST: Orchards
SOUTH: Orchards
EAST: Orchards
NORTH: Orchards

Agricultural Capability:

Data Source: Agricultural Capability Map # 82 F/01
The majority of the property is identified as having Prime Dominant ratings.

Zoning Bylaw and Designation:

Regional District of Central Kootenay Zoning Bylaw 1675 (2004) designates the property as: Ag1 (Agriculture 1)
Minimum Lot Size: 4 ha

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Local Government Planning Staff: No objections conditional on the provisions of RDCK Zoning Bylaw 1675, Division 6, Section 603(5) being met. This section allows a reduction of the minimum lot size for a single lot subdivision within any agricultural zone subject to:

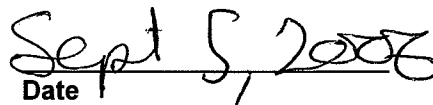
- the lot being no smaller than 0.4 ha;
- the lot serviced by community water system;
- and the remainder of the lot consolidated with an adjacent property that has agricultural tax assessment.

ATTACHMENTS:

- Letter from applicant explaining reason for proposal (Dated May 3, 2006)
- Orthophoto (Submitted by Central Kootenay Regional District)
- Sketch of Proposed Subdivision (Submitted by the applicant)
- ALR Context Map - BCGS 82F.008 - 1:20,000 (Created by ALC Staff)

END OF REPORT


Signature


Date