



**Agricultural Land Commission**  
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April 20, 2007

Reply to the attention of Terra Kaethler  
ALC File: #C - 09134

Erich and Ruth Schulz  
Bear Hill Raspberry Farm  
5939 Bear Hill Rd  
Victoria, BC V9E 2J3

Dear Mr. and Mrs. Schulz:

Re: Request to remove Restrictive Covenant from the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 93/2007 outlining the Commission's decision as it relates to the above noted application.

The Commission suggests you have a lawyer draft the proposed covenant and a discharge of covenant document (regarding the existing covenant) for submission to this office. The Commission will review the documents and if acceptable will direct you to have the final documents prepared in registerable form for execution.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

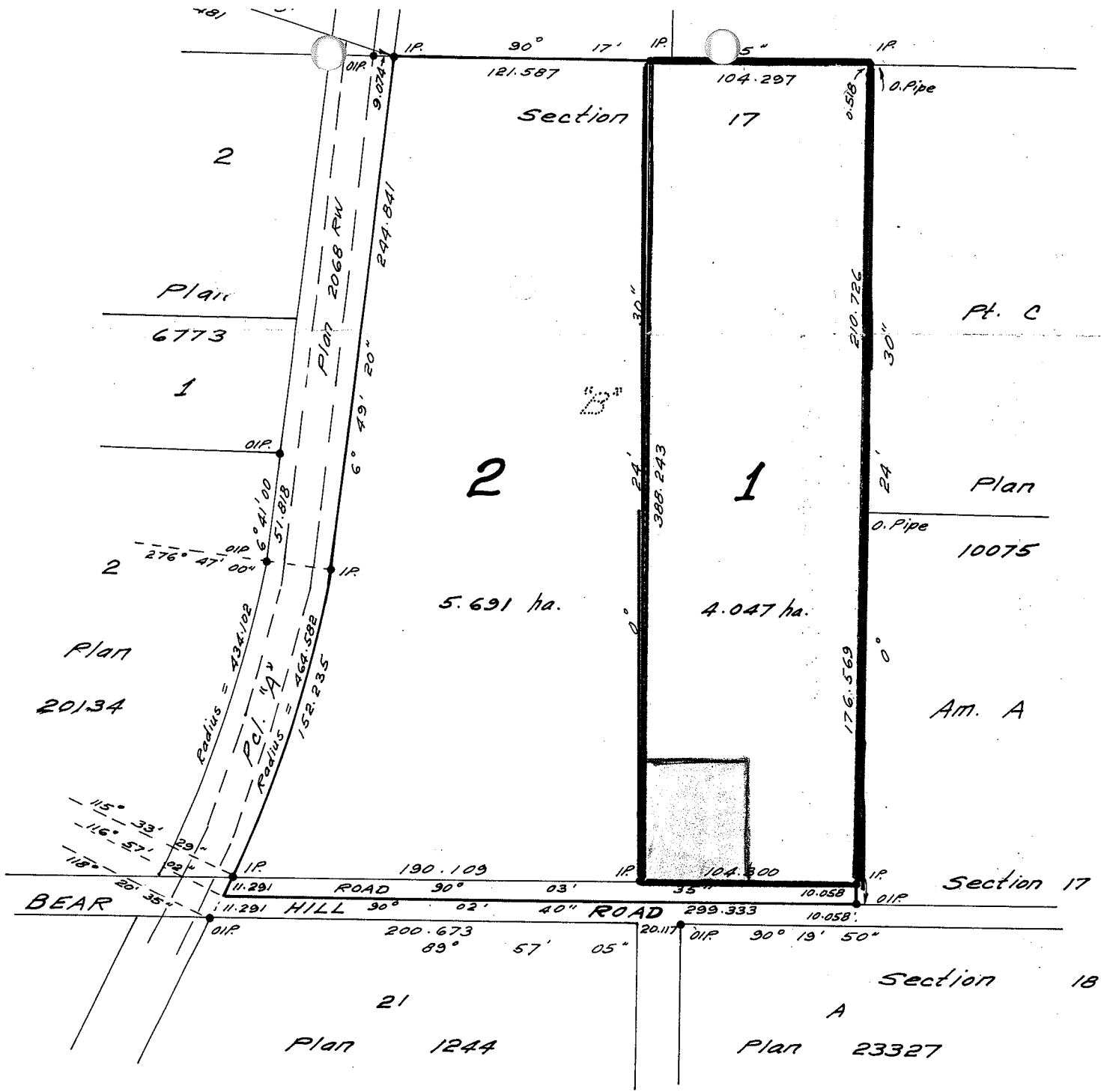
Per:

Erik Karlsen, Chair

cc: Capital Regional District

Enclosure: Minutes/Sketch Plan

TK/lv  
09134d2.



Registered Owner

*[Signature]*  
 Laszlo George Herman

*[Signature]* Witness BCLS  
 Occupation

1881 San Luis Place VI  
 Address

**Provincial Agricultural Land Commission**  
 Application # C-09134  
 Resolution #93/2007



Subject property



Area approved for amended covenant to allow buildings



# MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on March 15, 2007 in Courtenay, B.C.

<b>PRESENT:</b>	Lorne Seitz	Chair, Island Panel
	David Craven	Commissioner
	Donald Rugg	Commissioner
	Terra Kaethler	Staff

## For Consideration

Application: # C- 09134  
 Applicant: Erich and Ruth Schulz  
 Proposal: Original subdivision of a 4 ha lot of Parcel B (DD35720-I), Section 17, Range 3E, South Saanich District was allowed by the Commission in 1980 upon the condition that a covenant be registered on title restricting any building or further subdivision on the newly created property (Lot 1). The owners are now requesting that the covenant be removed to allow them to build a homesite on the subject property.

Legal: Lot 1, Parcel B (DD35720-1), Section 17, Range 3E, S. Saanich District  
 Location: Victoria, B.C.

## Site Inspection

A site inspection was conducted on March 14, 2007. Those in attendance were:

- Lorne Seitz                      Chair, Island Panel
- David Craven                    Commissioner
- Donald Rugg                    Commissioner
- Terra Kaethler                 Staff
- Roger Cheetham                Staff

The applicants were not available to meet at the scheduled time, however the Commission walked the property and observed that the property was a working farm and the applicants have been farming for many decades. The property had good soil capability, and was surrounded by agricultural uses and large properties. The Commission also visited the applicants' residence and confirmed that it was a steep parcel some distance from the farm.

## Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

**Discussion**

The Commission recognized that the applicants have farmed the subject property for over 25 years and improved the land for berry production. The applicants have stated that they are committed to continue farming on the property, but would like the option to build a homesite on the property, as their current residence is on a steep parcel of land and becoming too difficult for them to manage.

The Commission discussed that the soil capability of the property is identified as being improvable to Class 2. Therefore, the Commission did not consider that lifting the restrictive covenant was warranted as it may negatively impact the subject property and could potentially encourage residential development or subdivision in this area.

However, the Commission would consider an amended covenant on the property to allow for a dwelling and any farm buildings to be placed in an area of approximately 0.4 ha in the southwest corner to the property, adjacent to Bear Hill Road, as identified in the attached sketch. The Commission determined that an approval on this basis would minimize the impact to the property, and would allow the applicants to continue farming.

**IT WAS**

**MOVED BY:** Commissioner Rugg  
**SECONDED BY:** Commissioner Seitz

THAT the application be refused as proposed,

AND THAT an amendment to the restrictive covenant be allowed to state:

1(a) The Covenantor will not build, erect or maintain nor permit to be built, erected, or maintained *buildings* of any kind whatsoever on the part of the Covenantor's Lands, *except for an area not exceeding 0.4 ha of the southwest corner of the lot.*

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 # 93/2007**



**Staff Report**  
**Application # C – 09134**  
**Applicant: Erich and Ruth Schultz**

**DATE RECEIVED:** May 29, 2006

**DATE PREPARED:** March 2, 2007

**TO:** Chair and Commissioners – South Coast Panel

**FROM:** Terra Kaethler, Land Use Planner

**PROPOSAL:** Original subdivision of a 4 ha lot was allowed by the Commission in 1980 upon the condition that a covenant be registered on title restricting any building or further subdivision on the newly created property (Lot 1).

The applicants have owned and farmed the property since 1980 and are requesting that the covenant be removed to allow them to build a home site on the subject property. Their current residence is on a steep parcel of land to the South.

**BACKGROUND INFORMATION:**

The Commission reviewed this file at the January panel meeting, but determined that a site visit would be necessary to render a decision.

**Local Government:**

Capital Regional District

**Legal Description of Property:**

Lot 1, Parcel B (DD35720-I), Section 17, Range 3E, South Saanich District

**Location of Property:**

5939 Bear Hill Road, Victoria

**STAFF COMMENTS:**

Should the Commission be inclined to remove the covenant, the Commission might consider restricting the building area to the southern boundary along Bear Hill Road, to reduce the impact on the agricultural capability of the property.

**ATTACHMENTS:**

- Letter from owners (May 25<sup>th</sup>, 2006)
- Original Restrictive Covenant (1980)
- Map of property (supplied by applicant)
- Ministry of Agriculture and Lands Letters of support (2)
- Photographs of property (2)

END OF REPORT

A handwritten signature in black ink, appearing to read 'Terra Kaethler', is written over a horizontal line.

A handwritten date '3/5/07' in black ink is written over a horizontal line.