



**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

April 18, 2007

Reply to the attention of Jennifer Carson  
ALC File: O-37219

Watson Barnard  
1524 - 56th Street  
Delta, BC  
V4L 2A8

Dear Mr. Barnard:

**Re: Application to Subdivide land in the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 142/2007 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

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:

Erik Karlsen, Chair

cc: The Corporation of Delta (LU005042)  
Dairylike Farms Ltd C/O Ottho Law Group - 4873 Delta Street, Delta, BC V4K2T9

Enclosure: Minutes /Sketch

JC/37219d1



**A meeting was held by the Provincial Agricultural Land Commission on April 11, 2007 in Surrey, B.C.**

<b>PRESENT:</b>	Sylvia Pranger	Chair, South Coast Panel
	Michael Bose	Commissioner
	John Tomlinson	Commissioner
	Erik Karlsen	Commissioner
	Colin Fry	Staff
	Tony Pellett	Staff
	Jennifer Carson	Staff

### **For Consideration**

Application: # O- 37219  
Applicant: Dairylike Farms Ltd  
Agent: Watson Barnard  
Proposal: To subdivide the 32.6 to create two (2) lots, one (1) at 1.0 ha and the other one (1) at 31.6 ha.  
Legal: PID: 013-228-773  
South 1/2 of the North East 1/4, Section 3, Township 4, New Westminster District, EXCEPT Part on Plan LMP45328  
Location: 5285 - 104th Street, Delta

### **Context**

This application was considered in accordance with the *Homesite Severance Policy* which states the following:

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.

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.

## **Discussion**

### **Assessment of Impact on Agriculture**

The Commission assessed the impact of the proposal against the long term goal of preserving agricultural land. As the farm buildings and maximum amount of land is being kept with the larger parcel, it is felt by the Commission, that this application is minimizing its negative impact on agriculture.

### **Assessment of Other Factors**

Ms. Joyce van Malenstyn has owned and lived on the property since 1965 making her eligible for consideration under the *Homesite Severance Policy*. The Commission would appreciate every attempt be made to reduce the lot size in accordance with the *Homesite Severance Policy* in order to retain as much land as possible with the farm. The Commission also recognizes the Fraser Health Authority has minimum lot size requirements for sewage disposal. As a result, the Commission would prefer the lot to be as small as possible as determined by the Fraser Health Authority.

## **Conclusions**

The Commission is satisfied that the proposal is consistent with the *Homesite Severance Policy*.

### **IT WAS**

**MOVED BY:** Commissioner Bose  
**SECONDED BY:** Commissioner Tomlinson

THAT the application be allowed subject to the following conditions:

- the subdivision be as small as possible as determined by the Fraser Health Authority requirements for sewage disposal and in any event not exceeding 1 ha
- a covenant placed on the homesite parcel alerting prospective buyers of the parcel's close proximity to agriculture
- compliance with the *Homesite Severance Policy*
- the subdivision must be completed within 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 # 142/2007**





**Staff Report**  
**Application # O – 37219**  
**Applicant: Dairylike Farms Ltd**  
**Agent: Watson Barnard**

**DATE RECEIVED:** February 2, 2007

**DATE PREPARED:** February 5, 2007

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

**FROM:** Jennifer Carson, Land Use Planner

**PROPOSAL:** To subdivide the 32.6 ha under the *Homesite Severance Policy* to create two (2) lots, one (1) at 1.0 ha and the other one (1) at 31.6 ha. This application is made pursuant to section 21(2) of the *Agricultural Land Commission Act*.

**BACKGROUND INFORMATION:**

The Van Malenstyn family has owned and farmed the property since 1957. Mrs. Joyce Van Malenstyn would like to retire and allow her son to continue operating the farm.

**Local Government:**

The Corporation of Delta

**Legal Description of Property:**

PID: 013-228-773

South 1/2 of the North East 1/4, Section 3, Township 4, New Westminster District, Except Part on Plan LMP45328

**Purchase Date:**

June 1965

**Location of Property:**

5285 - 104th Street, Delta

**Size of Property:**

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

**Local Government Staff:**

Recommend that it be approved.

**ATTACHMENTS:**

1. Base Map
2. Agricultural Capability Map
3. Aerial Photograph
4. Proposed Subdivision Layout

**END OF REPORT**

  
\_\_\_\_\_  
Signature

2/6/07  
\_\_\_\_\_  
Date

**TERMS OF INSTRUMENT - PART 2  
COVENANT - SECTION 219 of the *LAND TITLE ACT***

THIS Agreement dated for reference the 24th day of November, 2004

BETWEEN:

**FRIESLAND DEVELOPMENT LTD.** (Inc. No. BC0663570), 1709 Cameron Road, RR 1, Agassiz, BC V0M 1A0

(the "Grantor")

AND:

**PROVINCIAL AGRICULTURAL LAND COMMISSION**, of 133-4940 Canada Way, Burnaby, BC V5G 4K6

(the "ALC")

GIVEN THAT:

A. The Grantor is the registered owner in fee simple of lands in the District of Kent legally described as PID: 004-399-811, Parcel "T" (Reference Plan 811) DL 19 Gp 1 YDYD (the "Lands");

B. The Grantor is or has subdivided the Lands pursuant to a Plan of Subdivision completed and certified correct on the 28th day of May, 2004 and the 30th day of May, 2004 by K. Mitchell Power, British Columbia Land Surveyor, to create the following lots:

Lots 1 to 13, inclusive, DL 19 Gp 1 YDYD Plan BCP \_\_\_\_\_

(herein individually called a "Lot" and referred to by Lot number and collectively called the "Lots");

C. A Covenant under Section 219 of the *Land Title Act* is required by the ALC as a condition of the ALC's consent to approval of the subdivision of the Lands to create the Lots; and

D. The Grantor has agreed to grant to the ALC, and the ALC has agreed to accept, the 219 Covenants contained in this Agreement over the Lots;

NOW THEREFORE THIS AGREEMENT is evidence that in consideration of payment of \$10.00 by the ALC to the Grantor and other good and valuation consideration, the receipt of which is

acknowledged by the Grantor, the Grantor covenants and agrees with the ALC in accordance with s. 219 of the *Land Title Act* as follows:

1. **Covenants** - The Grantor covenants and agrees with the ALC, as covenants in favour of the ALC pursuant to Section 219 of the *Land Title Act*, it being the intention and the agreement of the Grantor that the provisions hereof be annexed to and run with and be a charge upon the Lots as set out below, that from and after the date hereof:

- (a) For all of the Lots, the Grantor, for itself and for its successors in title and assigns, hereby acknowledges that the Lots border or are otherwise adjacent to active farms, where some or all of the following agricultural practices may occur:
  - i) Noise from farm operations at various times of the day, including propane cannons and other devices to deter wildlife;
  - ii) Farm smells and chemical spray;
  - iii) Aesthetic appearance of fields (unkept fields, storage of materials, etc.); and/or
  - iv) Light from greenhouses; and
  
- (b) For Lots 7 to 13, inclusive, only, the Grantor, for itself and its successors in title and assigns, hereby agrees to establish a 3 metre wide buffer area as measured eastward from the western boundary of each of Lots 7 to 13, inclusive, and extending the entire length of the western boundary of such Lots (the "Buffer Area"), and further acknowledges and agrees that:
  - i) The Grantor will not construct, erect or place any building or structure within the Buffer Area;
  - ii) The Grantor will build a uniformly designed solid wood fence measuring not less than 1.8 metres in height along the western boundary of Lots 7 to 13, inclusive (the "Fence");
  - iii) The Grantor is responsible for the care, keep and maintenance of the Fence at its cost, and will not remove all or any portion of the Fence without the prior written consent of the ALC;
  - iv) The Grantor will, within the Buffer Area, plant cedar hedging to in-fill sparsely vegetated areas or areas where no vegetation exists;
  - v) The Grantor will not remove any vegetation within the Buffer Area; and

- vi) The Grantor is responsible for the care, keep and maintenance of all vegetation (including cedar hedging) within the Buffer Area at its cost.
2. **Registration** - The Grantor agrees to do everything necessary to ensure that this Agreement is registered against title to the Lots with priority over all financial charges, liens and encumbrances that are registered, or the registration of which is pending at the time of the application for registration of this Agreement, except those in favour of the ALC.
  3. **Runs with the Lots** - The covenants set forth herein shall charge the Lots pursuant to section 219 of the *Land Title Act* and shall run with the Lots and bind the Lots and every part or parts thereof, and shall attach to and run with the Lots and each and every part to which the Lots may be divided or subdivided, whether by subdivision plan, strata plan or otherwise howsoever. The covenants and statutory right of way sets forth herein shall not terminate if and when a purchaser becomes the owner in fee simple of the Lots or any part of them, but shall charge the whole of the interest as such purchaser and shall continue to run with the Lots and bind the Lots and all future owners of the Lots and any part of them.
  4. **Interpretation** - Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so required.
  5. **Further Assurances** - The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.
  6. **Waiver** - Waiver by the ALC of a default by the Grantor shall be in writing and shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.
  7. **Powers Preserved** - This Agreement does not:
    - (a) affect or limit the discretion, rights or powers of the ALC under any enactment (as defined in the *Interpretation Act*, R.S.B.C. 1979, c. 206, on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Land; or
    - (b) affect or limit any enactment relating to the use or subdivision of the Lots.
  8. **References** - Every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licenses and invitees of such party, wherever the context so requires or allows.

9. **Enurement** - This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
10. **Execution** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**END OF DOCUMENT**