



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

November 1, 2005

Reply to the attention of Ron Wallace

Joseph Frumento
RR5, 1357 Maple Bay Road
Duncan, BC – V9L 4T6

Dear Sir:

Re: Application #J-36237
Lot F, Section 4, Range 2 and 3, Comiaken District, Composite Plan 3078,
EXCEPT With Exceptions

The Provincial Agricultural Land Commission (the "Commission") has now concluded its review of your application to subdivide the above noted property into three lots (two lots of roughly 2.0 ha and the remnant of 9.3 ha). The application was submitted pursuant to section 21(2) of the *Agricultural Land Commission Act*.

The Commission wishes to thank you for taking the time to meet with its representatives on September 29, 2005.

The Commission noted that the subject property is located in an agricultural area with various sized agricultural lots. It was felt the introduction of two residential lots would reduce the agricultural potential of the property and likely be followed by similar requests from adjacent property owners.

For these reasons, the Commission refused your application as proposed.

However, from the on-site meeting with the Commissioners you expressed that part of the purpose for this application is to help settle your estate. To this end the Commission is prepared to enter into a lease agreement with you to retain a leasehold interest on the home and homesite, without subdividing the property. The temporary parcel would enable you to settle your estate while continuing to live in your home. The duration of this lease will be for the time that you continue to live on the property.

The decision noted above is recorded as Resolution **#523/2005**.

The material attached hereto is a guide outlining the procedural requirements involved in registering a lease with explanatory plan. If you are interested in the above please complete and forward to the Commission a draft version of the lease agreement for review. The Commission will then instruct you of any changes necessary and initiate final registration of the explanatory plan.

J Frumento – Nov. 1/05
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Please quote the above noted application in any further correspondence.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a light blue horizontal line.

Erik Karlsen, Chair

cc: District of North Cowichan – 3025-20-05.05

RW/lv/36237d1

(GUIDE FOR LEASE with Explanatory Plan to be attached as Schedule "A" to be altered/amended/additional clauses inserted, as required by parties)

FORM 17
APPLICATION

Nature of interest:
Charge

Lease
(Nature of Charge)

True
Value: _____

HEREWITH FEES OF \$ _____

Full name, address, telephone number of person presenting application:

(Signature of applicant, or solicitor
or authorized agent)

THIS INDENTURE made _____ 19 _____,

UNDER THE LAND TRANSFER FORM ACT, PART 2,

BETWEEN:

(hereinafter called the "Landlord")

OF THE FIRST PART

AND:

(hereinafter called the "Tenant")

OF THE SECOND PART

AND:

PROVINCIAL AGRICULTURAL LAND COMMISSION, having its
office at 4940 Canada Way, in the Municipality of
Burnaby, in the Province of British Columbia,

(hereinafter called the "Commission")

OF THE THIRD PART

W H E R E A S:

A. The Landlord is the registered and beneficial owner of those lands and premises in the in the Province of British Columbia, and more particularly known

of British Columbia, and more particularly described as:

That part of

(insert legal description of part of Lands to be leased)

(delete either "heavy black line" or "red" to conform to method used by Surveyor on Explanatory Plan; a Reference Plan is required by LTO if there is an existing Explanatory Plan referred to in a legal description of the "Lands")

shown outlined in heavy black line/red on Explanatory Plan certified correct by _____ B.C.L.S., on the _____ day of _____, 19 _____, a print of said Explanatory Plan being annexed hereto and marked Schedule "A" comprising _____ hectares, more or less,

(hereinafter referred to as the "Leased Premises")

TO HOLD the Leased Premises for the term of _____ years from the _____ day of _____, 19 _____, to the _____ day of _____, 19 _____, unless sooner terminated under the terms of this Lease.

OR

TO HOLD for the term from the _____ day of _____, 19 _____, until the death of the survivor of the said _____ and _____ unless sooner terminated under the terms of this Lease.

THE TENANT PAYING THEREFORE an annual rent of \$ _____ in lawful money of Canada in annual instalments of \$ _____ in advance, such instalments to become due and payable on the _____ day of _____ in each and every year during the term hereof, the first of such instalments to be paid on or before the _____ day of _____, 19 _____.

- f) to pay and discharge any Sheriff's executions filed against the Leased Premises for which the Tenant is responsible and also any liens or other charges attached thereto by reason of any act or omission on the Tenant's part, whether caused by any work, services, or materials which the Tenant has had performed or supplied in connection with any building or improvement on the Leased Premises, or by any failure to pay and sales tax or any succession duty or probate fees for which the Tenant or the Tenant's estate is responsible;
- g) to indemnify and save the Landlord harmless from any and all liabilities, damages, expenses, causes of action, suits, claims or judgments arising from injury to persons or damage to property on the Leased Premises, except such as may arise out of the act, failure to act, or negligence of the Landlord or the Landlord's agents;
- h) not to assign or transfer this Lease or sublet the Leased Premises or any part thereof, and notwithstanding any Act or rule of law or regulation now or hereafter in force to the contrary, the Landlord and the Commission, or either of them, may in their sole discretion withhold such consent;

(clause h) MUST
be included

(clause i) or
variation thereof
MUST be included -
insert "residential"
or whatever use
permitted by the
Commission)

- i) not to occupy or use the Leased Premises or permit the Leased Premises to be occupied or used for any purpose other than _____ or farm use.

(delete clause d)
if Lease is for life)

d) if the Tenant shall hold over after the expiration of the term hereby granted and the Landlord shall accept rent, the Tenant shall be deemed to be a monthly Tenant only, at a rent payable monthly in advance at the rate of one-twelfth (1/12th) of the annual rent immediately therefore payable and otherwise upon and subject to the same terms as herein contained insofar as the same may be applicable to a tenancy from month to month;

(clause e) MUST
be included)

e) this Lease and everything herein contained shall extend to, bind and enure to the benefit of the heirs, executors, administrators, successors and assigns of each of the parties hereto, subject to the written consent of both the Landlord and the Commission being obtained, as herein provided, to any assignment or sub-lease by the Tenant, and, where there is more than one Landlord or Tenant or where the Landlord or Tenant is a male, female, or corporation, the provisions herein shall be read with all grammatical changes thereby rendered necessary. All covenants herein contained shall be deemed joint and several.

IN WITNESS WHEREOF the Landlord and Tenant have hereunto set their respective hands and seals and the Commission has hereunto caused its corporate seal to be

APPROVED under the Land Title Act for the purpose of leasing for a period of _____ years from
(insert number)

(insert date of commencement of term of this Lease)

or

for the period from the _____
(insert date of first day of term)

of this Lease) until the death of the survivor of the
said _____ and his wife
_____.

(insert appropriate
Approving Officer
shown on Explanatory
or Reference Plan)

APPROVING OFFICER
Ministry of Transportation and Highways/
or
Municipality of _____/
or
District of _____/etc.

Dated: _____

(attach Affidavit of Witness as to the Landlord's signature(s)
unless witness is a solicitor or notary public under the Notaries
Act and has complied with Section 44. of the Land Title Act)

NOTES TO GUIDE

1. The Surveyor is to consult with the Approving Officer (as specified in Section 77 of the Land Title Act) to determine any requirements he may have with respect to the proposed Lease and Explanatory Plan.

2. On the Explanatory Plan (or Reference Plan if a requirement of the LTO by reason of the fact that the legal description of the applicant's lands already include a reference to an existing Explanatory Plan), to be prepared in accordance with Section 70 of the Land Title Act by a B.C. Land Surveyor, THE LAND SURVEYOR SHOULD BE INSTRUCTED TO INSERT THE FOLLOWING:

(Lease for
specific
period of
years)

- a) "EXPLANATORY PLAN TO ACCOMPANY LEASE OF PART OF (insert entire legal description appearing on Certificate of Title), FOR LEASEHOLD PURPOSES. LEASE AND APPROVAL OF THE APPROVING OFFICER AND PROVINCIAL AGRICULTURAL LAND COMMISSION TO EXPIRE ON (insert date of last day of term of Lease), OR ON THE SURRENDER, CANCELLATION, OR OTHER DETERMINATION OF THE LEASE, WHICHEVER SHALL FIRST OCCUR."
(This will appear on the top left of the Plan)

OR

(Lease for
life)

- "EXPLANATORY PLAN TO ACCOMPANY LEASE OF PART OF (insert legal description appearing on top left of Explanatory Plan), FOR LEASEHOLD PURPOSES. LEASE AND APPROVAL OF APPROVING OFFICER AND PROVINCIAL AGRICULTURAL LAND COMMISSION TO EXPIRE ON THE DEATH OF THE SURVIVOR OF _____
and _____
OR ON THE SURRENDER, CANCELLATION, OR OTHER DETERMINATION OF THE LEASE, WHICHEVER SHALL FIRST OCCUR."
(This will appear on the top left of the Plan)

- b) "EXPLANATORY PLAN No. _____"
(This will appear on the top right of the Plan)

6. Commission to arrange for one copy of the draft Lease and Explanatory Plan to be returned to the applicant, his solicitor or notary, with any necessary amendments endorsed thereon, or confirm to the applicant that the documents are satisfactory as to form for execution.
7. Upon confirmation by the Commission, the applicant should send the following to the Commission:
 - i) Original and 3 copies of the Lease, all executed by the Landlord and Tenant, with white prints attached to the original and all copies. (The original and 2 copies executed by the Commission will be returned.)
 - ii) Three additional white prints of the Explanatory Plan.
 - iii) One original transparency, and additional reproductions of the Plan as required by the Land Title Office.
8. The Commission will execute the original and all copies of the Lease and return the Lease (original and all copies, save one) and the original transparency of the Explanatory Plan, and all copies, to the applicant's solicitor or notary public.
9. The applicant to have the Lease executed by the Approving Officer.
10. Applicant to register the Lease and deposit the Explanatory Plan in the Land Title Office, pursuant to Section 99(1)(k) of the Land Title Act.
11. Upon registration, the applicant to make application for and send to the Commission a copy of new State of Title Certificate showing particulars of registration of the Lease.

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7. Upon confirmation by the Commission, the applicant should send the following to the Commission:
 - i) Original and 2 copies of the Lease, all executed by the Landlord and Tenant, with white prints attached to the original and all copies. (The original, executed by the Commission will be returned.)
 - ii) One original transparency, and additional reproductions of the Plan as required by the Land Title Office.
8. The Commission will execute the original and all copies of the Lease and return the Lease and the original transparency of the Explanatory Plan, and all copies, to the applicant's solicitor or notary public.
9. The applicant to have the Lease executed by the Approving Officer.
10. Applicant to register the Lease and deposit the Explanatory Plan in the Land Title Office, pursuant to Section 99(1)(k) of the Land Title Act.
11. Upon registration, the applicant to make application for and send to the Commission a copy of new State of Title Certificate showing particulars of registration of the Lease.



Staff Report
Application # J – 36237-0
Applicant: Joseph & Christine Frumento

DATE PREPARED: September 16, 2005

TO: Chair and Commissioners – Island Panel

FROM: Ron Wallace, Regional Research Officer

PROPOSAL: To subdivide the 13.5 ha parcel into three lots (two lots of roughly 2.0 ha and the remnant of 9.3 ha). The applicant wishes to subdivide for the intent of:

- maximize value of property;
- allow division of land among heirs; and
- develop property while allowing the existing residence to remain in its natural woodland setting.

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

BACKGROUND INFORMATION:

The same owner made a similar application (#31487) in 1997 to subdivide the subject property into three lots. This proposal was refused as noted below.

Local Government:

The Corporation of the District of North Cowichan

Legal Description of Property:

1. PID: 004-737-156
Lot F, Section 4, Range 2 and 3, Comiakem District, Composite Plan 3078, EXCEPT With Exceptions

Purchase Date

09/15/1976

Location of Property:

1357 Maple Bay Road, Duncan, BC

Size of Property:

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

Present use of the Property:

The main use of the property is as a rural residential lot. There is a house, cottage and small barn on the property. The balance of the site is woodlands and meadowlands.

Surrounding Land Uses:

WEST: Quamichan Lake
SOUTH: Rural residential, hayfields/pasture land
EAST: Residential & woodlands
NORTH: Hayfields/pasture land

Agricultural Capability:

Data Source: Agricultural Capability Map #92B.082
The majority of the property is identified as having Secondary ratings.

Official Community Plan and Designation:

The area is designated rural in the OCP. The Strategic Plan for Agriculture discourages the further parcelization of land in order to protect the existing land base.

Zoning Bylaw and Designation:

Agriculture (A2), minimum lot size is 2 ha.

PREVIOUS APPLICATIONS:

Application #29610-0

Applicant: Frumento, Joseph & Christine
Decision Date: April 19, 1995
Proposal: To widen Maple Bay Road. Area of road dedication is 0.178 ha. The two properties affected are 12.6 ha and 0.4 ha in size.
Decision: The Commission allowed the proposal subject to the consolidation of the 0.4 ha right-of-way with the 12.6 ha lot.

Application #31487-0

Applicant: Frumento, Joseph & Christine
Decision Date: September 26, 1997
Proposal: To subdivide the subject property in three lots of 2.8 ha, 7.9 ha and 2.0 ha for the purpose of providing the applicant's son and daughter with a separate residence.
Decision: Refused on the grounds that subdivision would reduce the range of agricultural options that could be pursued on the property and that it would raise expectations that other ALR parcels within the region would be available for subdivision.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Municipality of North Cowichan Council

"that Council advise the ALC that it does not support the application to subdivide 1357 Maple Bay Road as it is inconsistent with the Agricultural Plan and the OCP standards for rural development."

Agricultural Advisory Committee

The AAC advise the Technical Planning Committee that it does not support the proposed subdivision for 1357 Maple Bay Road since the primary motivation is not to encourage or enhance

agriculture but to promote residential development. Such rationale could be used in all ALR applications to the demise of agricultural potential in the area.

Local Government Staff

That Council either deny the application or advise the ALC that it does not support the application on the basis that it is inconsistent with the Agricultural Plan and the OCP standards for rural development.

STAFF COMMENTS:

Staff recommends that the Commission consider the following:

- The owner made a similar application in 1997 to subdivide the subject property into three lots as noted above. This application was refused.
- The subject property is located in an agricultural area (ALR) with similar sized parcels. Subdivision of this property would likely be followed by similar requests from adjacent parcels.
- The area of the property is designated rural in the OCP. The Strategic Plan for Agriculture discourages the further parcelization of land in order to protect the existing land base.

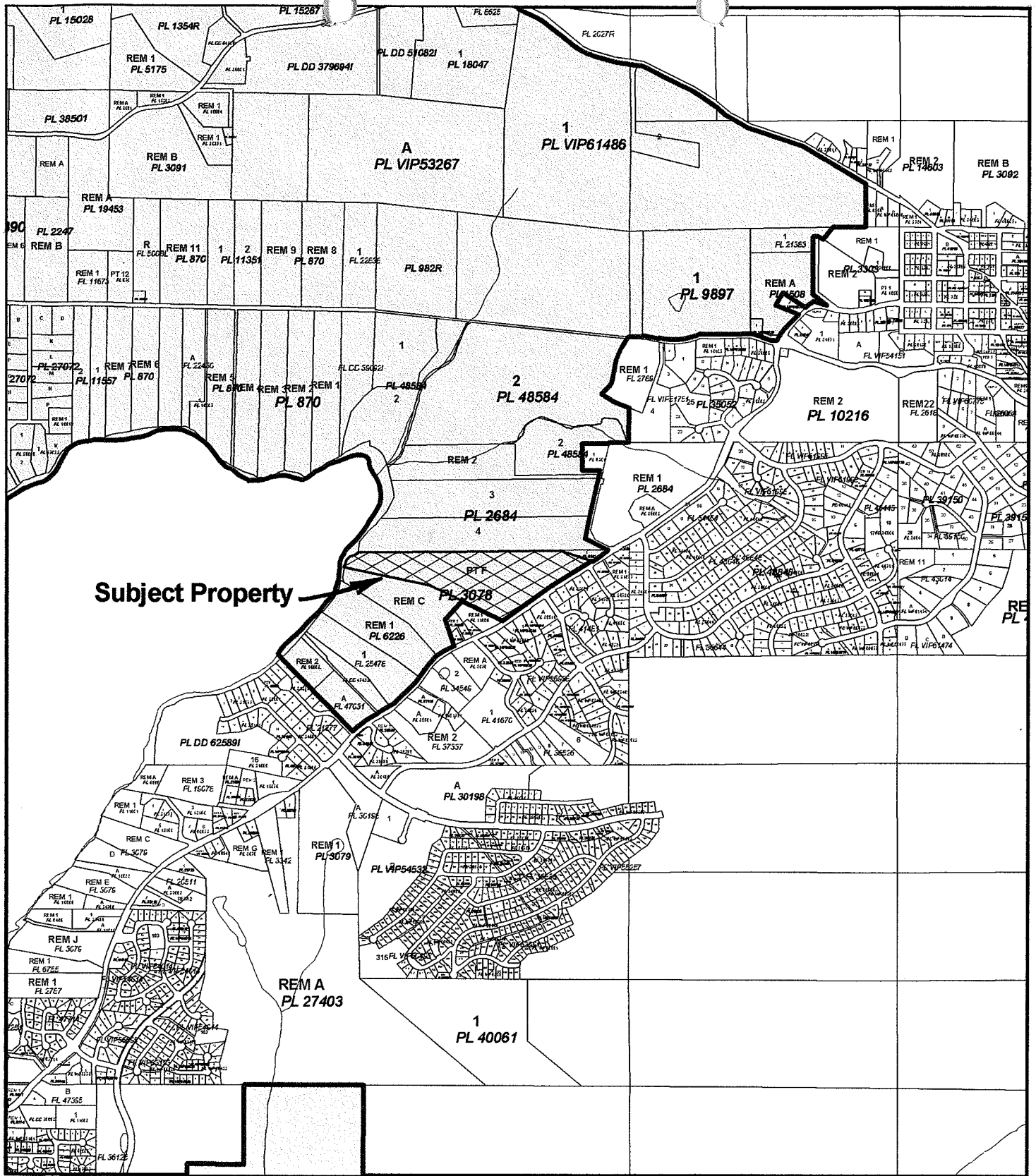
END OF REPORT



Signature

20 Sept 2005

Date



Subject Property



**ALC CONTEXT MAP
Application # 36237**

Map Scale: 1: 20000

**ALC File #: 21-05-36237
BCGS Map Sheet #: 92B.082
Regional District: Cowichan Valley**