



Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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January 25, 2006

Reply to the attention of Brandy Ridout
ALC File #V-36329

George, Orlando, Leonilde Antunes
14805 89th Street
Osoyoos, BC V0H 1V2

Dear Sirs/Madam:

Re: **Application to Subdivide in the Agriculture Land Reserve**

The Provincial Agricultural Land Commission (the "Commission") has concluded its review of the application and encloses for your review the Minutes of Resolution #11/2006 outlining its decision.

If you wish to proceed with the alternate subdivision approval, please undertake the following steps:

1. Commence approval procedures of other agencies that must approve the subdivision. If an increase in the size of the homesite lot or a change in its location is deemed necessary by another agency, please advise this office as soon as possible.
2. Have a surveyor prepare the subdivision plan.
3. Obtain a 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 registration of the subdivision plan.

Yours truly

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

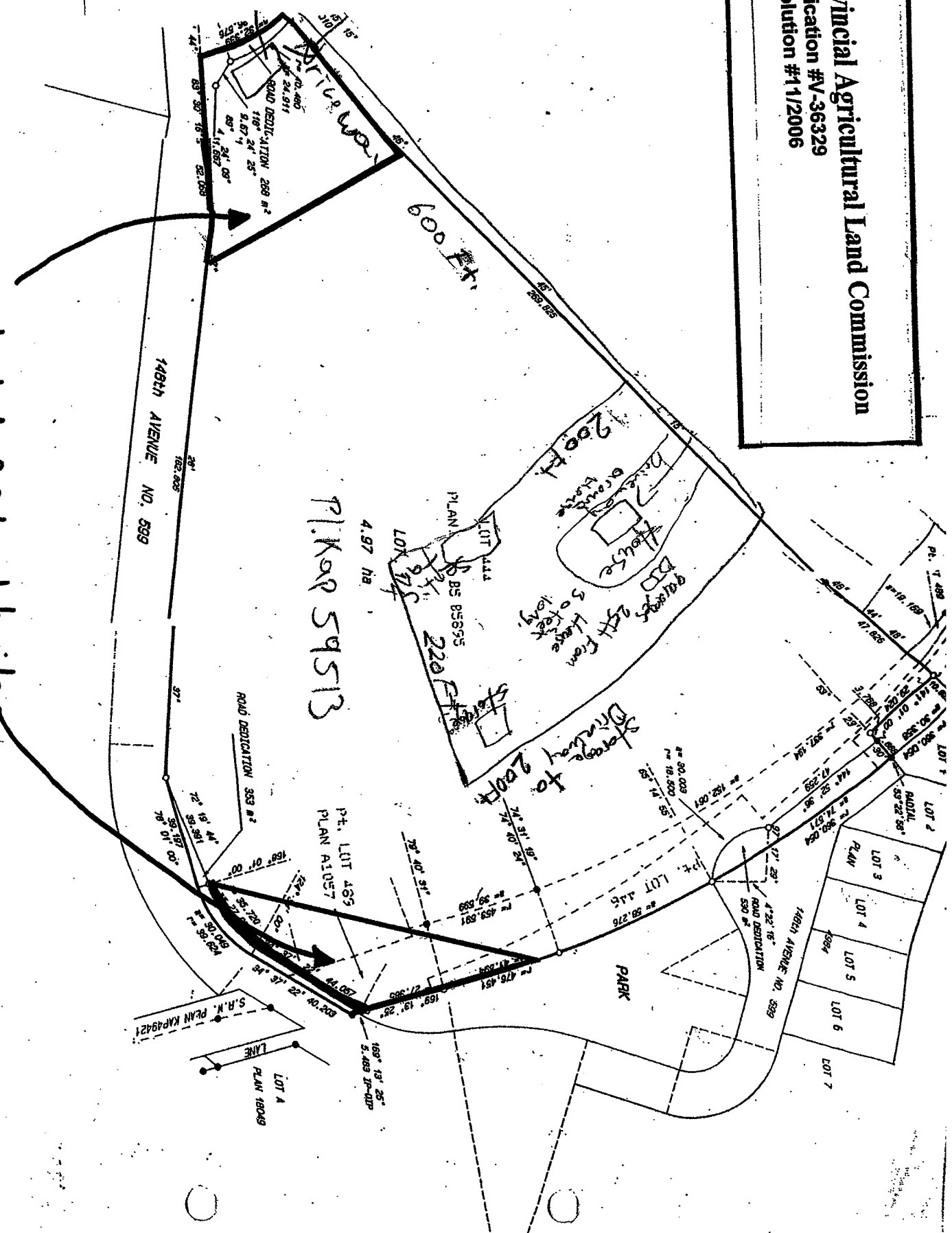
Erik Karlsen, Chair

pc: Regional District of Okanagan-Similkameen - A 05-05979.010

BR/lv/Encl.
36329d1

Provincial Agricultural Land Commission
 Application #V-36329
 Resolution #11/2006

Potential 0.2 ha lot site



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



**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.

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on January 19, 2006 at the Ministry of Agriculture and Lands office located at 4607 - 23rd Street, Vernon, BC.

PRESENT:	Sue Irvine	Chair, Okanagan Panel
	Sharon McCoubrey	Commissioner
	Sid Sidhu	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

For Consideration

Application # V-36329
Applicant(s) George, Orlando, and Leonilde Antunes
Proposal To subdivide a 0.4 ha lot containing the existing home from the 5 ha property, under *Homesite Severance Policy*.
Legal PID: 023-827-505
Lot 1, District Lot 2450S, Similkameen Division Yale Land District, Plan KAP59513
Location 14805 - 89th Street, Osoyoos

Site Inspection

A site inspection was conducted on January 17, 2006. Those in attendance were:

- Commissioners: Sue Irvine, Sharon McCoubrey, and Sid Sidhu
- Staff: Brandy Ridout and Martin Collins
- Applicant: George Antunes

Mr. Antunes confirmed that he received the staff report dated November 15, 2005 and did not identify any errors. As Orlando and Leonilde Antunes have owned and lived on the property since 1972, they qualify under the *Homesite Severance Policy*. It was established that George Antunes shares joint title of the subject property with his parents.

While onsite, the Commission discussed its concern about the location of the requested homesite lot. It noted that the location of a homesite lot designed to contain the existing house and associated buildings would negatively impact the suitability of the remainder as an agricultural parcel.

Discussion

The Commission discussed one of the primary concerns related to homesite severance lots, namely that the remainder constitutes a suitable agricultural parcel. In this case, the Commission was concerned that the size of the requested lot (0.4 ha) and its location would negatively impact the agricultural suitability of the remainder.

The Commission recalled the section of the *Homesite Severance Policy* that deals with cases 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". It noted that in certain cases, the Commission may approve the creation of a parcel elsewhere on the subject property.

IT WAS

MOVED BY: Commissioner Irvine

SECONDED BY: Commissioner McCoubrey

THAT the application be refused as proposed

AND THAT the Commission would allow the subdivision of a 0.2 ha lot elsewhere on the property subject to the following conditions:

- the submission of a sketch plan, acceptable to the Commission, showing the proposed location of the 0.2 ha lot, and
- the construction of a fence around the new homesite lot for the purpose of limiting its impact on the remaining farm unit. Fencing plans should be submitted to the Commission for approval.

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 #11/2006



Staff Report
Application # V – 36329-0
Applicants: George, Orlando, and Leonilde Antunes
Location: West side of Osoyoos Lake

DATE RECEIVED: October 26, 2005

DATE PREPARED: November 15, 2005

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Regional Research Officer

PROPOSAL: To subdivide a 0.4 ha lot containing the existing home from the 5 ha property, under *Homesite Severance Policy*.

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

BACKGROUND INFORMATION:

Local Government:

Regional District of Okanagan-Similkameen

Legal Description of Property:

PID: 023-827-505

Lot 1, District Lot 2450S, Similkameen Div Yale Land District, Plan KAP59513

Purchase Date:

September 1970

Location of Property:

West side of Osoyoos Lake, 14805 89th St.

Size of Property:

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

Present use of the Property:

Tree Fruit orchard, with home and outbuildings

BACKGROUND INFORMATION (continued):

Surrounding Land Uses:

WEST: Orchards within the ALR
SOUTH: 4 ha orchard within the ALR
EAST: Suburban residential lakeshore lots (in the ALR)
NORTH: 4 ha orchard within the ALR

Agricultural Capability:

Data Source: Agricultural Capability Map # 82 E.003
The majority of the property is identified as having prime dominant ratings.

Official Community Plan and Designation:

Osoyoos Rural Official Community Plan Bylaw #2260 (2004)

Zoning Bylaw and Designation:

Osoyoos Rural Zoning Bylaw #2261 (2004)
Designation: Agriculture Two (AG2)
Minimum lot size: 4 ha for fruit/vegetable farming, 10 ha for commercial operations of vine growing.

PREVIOUS APPLICATIONS:

Application #25687-0

Applicant: Matthews
Decision Date: October 21, 1991
Proposal: To subdivide the old railway right of way and consolidate with adjacent properties.
Decision: Allowed - proposal would increase the size and functional utility of several orchard parcels.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Regional District of Okanagan Similkameen: Forwarded the application without comment (as per policy).

STAFF COMMENTS:

Staff recommends that the Commission consider the following:

- The application is consistent with *Homesite Severance Policy* in that the applicant has owned and lived on the property continuously since September 1970.
- The homesite may be somewhat larger than typical. A site visit will ascertain the necessity of a 0.4 ha lot.
- The landowner consolidated about 0.4 ha of abandoned railway right of way on the easterly edge of the property in 1997.

END OF REPORT



Signature



Date

Antunes - 36329

myTELUS®

maps & directions

Hwy 97 - north

Ⓡ on 148th Ave.

Ⓛ on 89th St.

