



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

January 24, 2006

Reply to the attention of Brandy Ridout
ALC File #V-36404

Edgar & Yolanda Liebel
4810 - 25th Street
Osoyoos, BC V0H 1V6

Dear Mr. and Mrs. Liebel:

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 #10/2006 outlining its decision.

If you wish to proceed with subdivision, 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 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

cc: Regional District of Okanagan-Similkameen - A-05-01215-000

BR/lv/Encl.
36404d1

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



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.]

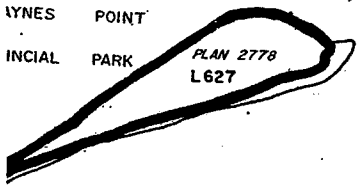
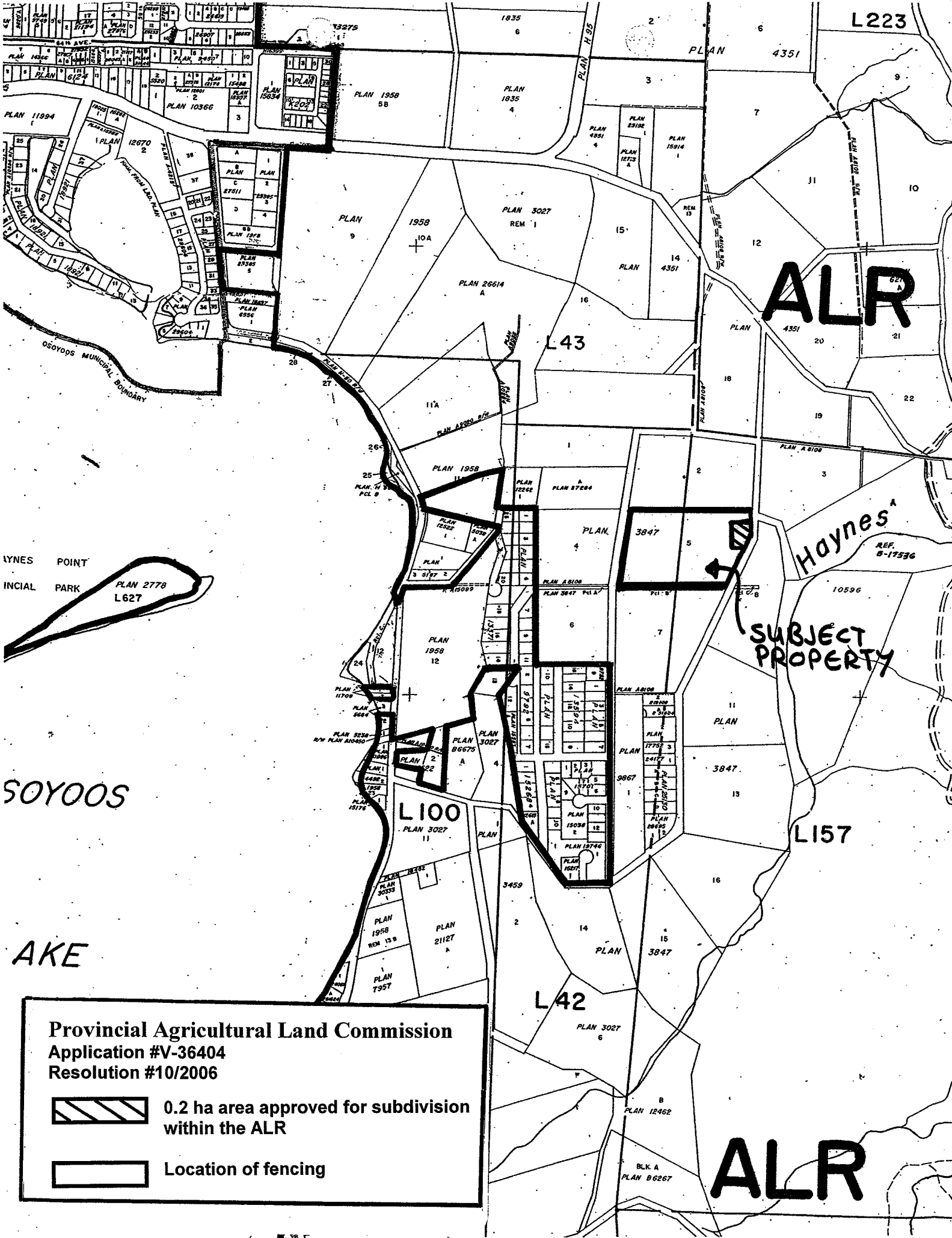
In considering the application, the Commission may make its approval subject to sale of the remainder within a specified period of time.

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.




SOYOOS

LAKE

Provincial Agricultural Land Commission
Application #V-36404
Resolution #10/2006

 0.2 ha area approved for subdivision within the ALR

 Location of fencing

ALR

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-36404
Applicant(s) Edgar & Yolanda Liebel
Proposal To subdivide the 4.7 ha property into a 0.4 ha lot and a 4.3 ha lot.
Legal PID: 010-707-298
Lot 5, District Lots 42, 100 & 157, Similkameen Division Yale District, Plan 3847
Location 4810-25th 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: Edgar Liebel

Mr. Liebel confirmed that he received the staff report dated December 22, 2005 and noted that the requested lot is in fact 0.4 ha, not 0.2 ha as identified in the staff report.

The Commission discussed with the applicant its concern regarding the size of requested lot (0.4 ha), noting that a smaller lot was more desirable in that it would leave a larger farm unit.

Discussion

The Commission noted that the applicant meets the conditions set out under the *Homesite Severance Policy* and its concern regarding the size of the requested lot.

IT WAS

MOVED BY: Commissioner Sidhu
SECONDED BY: Commissioner McCoubrey

THAT the application be refused as proposed

AND THAT the subdivision of a 0.2 ha lot be approved, pursuant to the *Homesite Severance Policy*, subject to:

- 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 #10/2006**



Staff Report
Application # V – 36404 –0
Applicant: Edgar & Yolanda Liebel

DATE RECEIVED: December 7, 2005

DATE PREPARED: December 22, 2005

TO: Chair and Commissioners – Okanagan Panel

FROM: Simone Rivers, Regional Research Officer

PROPOSAL: To subdivide the 4.7 ha property into a 0.4 ha lot and a 4.3 ha lot.

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

BACKGROUND INFORMATION:

The remainder of the property will also have a house on it. The applicant purchased the property in 1971.

The subject parcel is adjacent to but not included within the proposed Town of Osoyoos Boundary Extension Project currently under consideration.

Local Government:

Regional District of Okanagan-Similkameen

Legal Description of Property:

PID: 010-707-298

Lot 5, District Lots 42, 100 & 157, Similkameen Division Yale District, Plan 3847

Purchase Date

March 1971

Location of Property:

4810-25th Street, Osoyoos

Size of Property:

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

Present use of the Property:

Orchard, 2 homes and outbuildings.

Present use of the Property:

Orchard, 2 homes and outbuildings.

Surrounding Land Uses:

WEST: Orchard (ALR)
SOUTH: Orchard (ALR)
EAST: Orchard (ALR)
NORTH: Orchard (ALR)

Agricultural Capability:

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

Official Community Plan and Designation:

Osoyoos Rural Official Community Plan Bylaw No. 2260, 2004 designates the parcel as Agriculture (AG)

Zoning Bylaw and Designation:

Osoyoos Rural Zoning Bylaw No. 2261, 2004 designates the parcel as Agriculture Two (AG2). Minimum parcel size: 0.2 ha when the Provincial Agricultural Land Commission permits a subdivision under the homesite severance policy when community water, but no sewer services are provided.

RELEVANT APPLICATIONS:

Application #26697-0

Applicant: Fernando and Maria DeMatos
Decision Date: May 15, 1992
Proposal: To exclude the 2.7 ha property for subdivision into residential building lots.
Decision: Refused on the grounds that the property has good agricultural capability.

Application #25688-0

Applicant: Martins
Decision Date: February 13, 1992
Proposal: To subdivide a 0.2 ha parcel off of the subject property in order to construct a retirement home.
Decision: Refused on the grounds that the parcel possesses good agricultural capability which would be reduced by this subdivision.

Application #23203-1

Applicant: Whilhemine Fruhstorfer
Decision Date: October 19, 1989
Proposal: Subdivide a 0.16 ha homesite. The applicant has owned the property since 1964.
Decision: Refused on the grounds that the remainder of the property after subdivision of the homesite would be too small to be a viable farm. However, if the remainder could be consolidated with an adjacent property or bound to another property by a restrictive covenant then the Commission would allow the proposed lot.

Application #02721-0

Applicant: F. Fruhstorfer
Proposal: To subdivide 0.2 ha from the subject property and to construct a hillside apartment.
Decision: Allowed subdivision of the property subject to consolidation but refused the request to construct the apartment.

Application #20734-0

Applicant: Erna E Sellmer
Decision Date: January 14, 1987
Proposal: To exclude 0.84 ha because topography makes it difficult to operate machinery and the parcel is too small to be a viable orchard.
Decision: Refused as proposed, allowed subdivision of the property into two lots of 0.4 ha.

Application #24411-0

Applicant: Fernando and Maria DeMatos
Decision Date: May 16, 1990
Proposal: To exclude two properties totally 6.8 ha in order to subdivide a 0.2 ha lot from each property.
Decision: Refused on the grounds that the property is an existing orchard of high capability land.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Local Government Report:

The proximity of the property to the Town of Osoyoos lends itself to considerable development pressure. The OCP and zoning bylaws would support a homesite parcel with a minimum parcel size of 0.2 ha and up to 0.7 ha, while allowing the remainder parcel to be sufficient in size for fruit and vegetable farming in agreement with the OCP.

STAFF COMMENTS:

There have been no previous subdivision requests involving the subject property; however, several homesite severance requests on adjacent parcels have been turned down on the grounds that the remainders of the properties would have been too small to continue to support viable agricultural operations.

Staff recommend a site visit in order to determine the impact the homesite severance would have on the agricultural viability of the remainder of the property.

END OF REPORT

Simone Rivers
Signature

Jan 3, 2006
Date