



**Agricultural Land Commission**  
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March 6, 2007

Reply to the attention of Brandy Ridout  
ALC File: #V - 36830

David & Patricia Gartrell  
3117 Gartrell Road  
Summerland, BC V0H 1Z4

Dear Sir/Madam:

Re: **Application to Subdivide Land within the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 30/2007 outlining the Agricultural Land Commission's decision as it relates to the above revised proposal outlined in your December 21, 2006 letter.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

cc: The Corporation of the District of Summerland

Enclosure: Minutes

MC/lv  
36830d2



A meeting was held by the Provincial Agricultural Land Commission on February 14, 2007 in Penticton, B.C.

<b>PRESENT:</b>	Sue Irvine	Chair, Okanagan Panel
	Sharon McCoubrey	Commissioner
	Sid Sidhu	Commissioner
	Jennifer Carson	Staff
	Martin Collins	Staff

**For Consideration**

Application: # V- 36830  
 Applicant: David & Patricia Gartrell  
 Proposal: The application originally requested to subdivide the farm home on a 0.3 ha lot from the 7 ha subject property under Homesite Severance Policy. The application was refused because the applicants did not qualify for consideration under the Policy.

The reconsideration request is for the same subdivision, but the applicants are offering to register a covenant against the title of the remnant agricultural parcel, restricting the number of homes to "one", thereby ensuring that no productive land will be lost. The new home on the property will be constructed on the historic homesite. In addition the applicant is willing to register a covenant against the 0.3 ha homesite lot, preventing it from being sold outside the family. The covenant would limit the potential for conflicts between the residential lot and the surrounding orchard.

Legal: PID: 007-062-486  
 District Lot 508, Block 3, Osoyoos Division of Yale District, Plan 43, EXCEPT Plan 3450A, DD5847, 268, B3704, 3442, 4339, B4335 and B7177  
 Location: 3117 Gartrell Road

**Context**

The proposal was considered by the Commission (as per Section 33 of the *ALC Act*) because it was substantively different from the original subdivision proposal, in that it offered to mitigate the impact of the subdivision on the agricultural resource by registering covenants against the titles of the resulting properties that;

- restricts the construction of another dwelling on the 6.7 ha agricultural remnant, thereby ensuring that no further cultivable land would be alienated for a second homesite,
- restricts the sale of the 0.3 ha homesite lot to only a family member, thereby limiting the potential for conflict between the resident and the farm operator.

The revised proposal was again 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

### **Assessment of Agricultural Capability and Suitability**

The Commission confirmed that the subject parcel had very good capability and suitability for agricultural uses, based on its existing and historic cultivation, and other available information about soil capability and climate.

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

The Commission also assessed the impact of the revised proposal against the long term goal of preserving agricultural land. The Commission has the following comments on the revised, covenant based, proposal.

The Commission does not find the revised proposal to be effective in allaying its concerns about the negative effects of subdivision on the productive capacity of the property. It is the Commission's experience that the registration of the covenants as offered by the applicant, restricting a second home on the agricultural remnant, or sale of the homesite lot to only a family member, would be ineffective in preventing either the construction of another dwelling on the farm parcel, or ensuring that conflicts would not occur. The Commission has some experience in this regard, and does not believe that covenants can be effectively enforced, or maintained in the long term, to ensure compliance with their original intent.

The Commission believes that it is possible to transfer farms between generations without subdividing the farm home. Indeed, to maintain the productive capacity of the farm, subdividing the farm home from the cultivated remainder cannot continue at every generational transfer. Also, permitting subdivision for inter-generational family transfer and other non agricultural rationale does raise expectations of other landowners in farm areas, and can result in many similar proposals that cumulatively will increase residential pressures in farm areas, and erode productive capacity of farmland.

## **Conclusions**

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the revised subdivision proposal will negatively affect the agricultural potential of the property.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

**IT WAS**

**MOVED BY:** Commissioner S. Irvine

**SECONDED BY:** Commissioner S. Sidhu

THAT the proposal to subdivide a 0.3 ha lot from the 7 ha property, and register a covenant against the title of the agricultural remnant to prohibit additional dwellings, and register a covenant against the title of the 0.3 ha homesite lot restricting its sale to a relative of the applicant, be refused.

**CARRIED**

**Resolution # 30/2007**



**Staff Report**  
**Reconsideration of Application # V – 36830**  
**Applicant: David & Patricia Gartrell**

**DATE RECEIVED:** The request for reconsideration was received December 27, 2006

**DATE PREPARED:** January 30, 2007

**TO:** Chair and Commissioners – Okanagan Panel

**FROM:** Martin Collins, Regional Planner

**PROPOSAL:** The application originally requested to subdivide the farm home on a 0.3 ha lot from the 7 ha subject property under Homesite Severance Policy. The application was refused because the applicants did not qualify for consideration under Homesite Severance Policy because they did not own (or were not in the process of purchasing) the property prior to December 1972.

The applicants are requesting the same 0.3 homesite subdivision in order to achieve an intergenerational transfer, but offer to register a covenant against the title of the remnant (6.7 ha) farm parcel restricting the number of homes to "one", thereby ensuring that no productive land will be lost. In addition the applicant is willing to register a covenant against the homesite lot preventing it from being sold outside the family.

This application is being reconsidered pursuant to section 33 of the *Agricultural Land Commission Act*.

**BACKGROUND INFORMATION:**

The applicant indicates that the purpose of the subdivision is to allow for an intergenerational transfer and has offered mitigation in the way of covenants to ensure that the area of productive land remains constant, and to ensure that farm/residential conflict, and future subdivision pressures will not occur

**Local Government:**

The Corporation of the District of Summerland

**Legal Description of Property:**

PID: 007-062-486  
District Lot 508, Block 3, Osoyoos Division of Yale District, Plan 43, EXCEPT Plan 3450A, DD5847, 268, B3704, 3442, 4339, B4335 and B7177;

**Purchase Date:**

12/01/1980

**Location of Property:**

3117 Gartrell Road

**Size of Property:**

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

**Present use of the Property:**

Apple orchard with primary residence, and abandoned, original residence (to be the site of the new home)

**Surrounding Land Uses:**

**WEST:** Apple orchard, Gartrell Road, barn, grassland's nursery  
**SOUTH:** Apple orchard, residence, cold storage building  
**EAST:** Apple orchard, residence and outbuildings  
**NORTH:** Sewer Plan, cherry and apple nursery and orchard

**Agricultural Capability:**

Data Source: Agricultural Capability Map # 82E.052  
The majority of the property is identified as having prime dominant ratings.

**Official Community Plan and Designation:**

The property is designated as farmland in the Summerland OCP

**Zoning Bylaw and Designation:**

District of Summerland Zoning Bylaw No. 99-001 Designation: A1 - Agriculture  
Minimum Lot Size: 2.0 ha

**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:**

The District of Summerland supported the application with conditions.

**STAFF COMMENTS:**

Staff notes that the primary considerations of the Commission in refusing the application are: the potential loss of productive land, and the potential conflict between a new non farm owner, and the orchard operator. To a lesser extent the Commission was concerned about the potential for the decision to set a negative precedent. In view of the above, staff suggests that the Commission consider the following options;

- Typically covenants are not successful at halting the construction of additional dwellings. However, the District of Summerland has a vigilant building permit process and it is


unlikely that an additional dwelling could be constructed, nor would they be given the family's long term interest in this land. If no additional dwellings are constructed, no productive land would be lost.

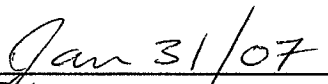
- The registration of a covenant to keep the parcel in the family may be unenforceable, although in theory enforcement lies with the Commission. Conceivably a bank might not finance a property with such a covenant. Another, similar option that has been used in the past is to allow subdivision, but register a covenant restricting the residential and remnant farm parcel from being sold separately (with the exception of to a family member). This has the same effect as keeping the property in the family, while allowing financing for construction etc. The transfer the property within the family would require a resolution of the Commission to release the covenant, but would be allowed if it was consistent with the terms of approval (i.e. within the family). The Commission has previously used this technique on Al Clarke's property to allow him to get insurance for a separate business enterprise. The success of this technique depends on subsequent Commissions being able to remain consistent with the decision (over time) and resist subsequent request to allow the parcels to be sold separately, or outside the family.
- The above techniques could be used to mitigate the most obvious negative impacts of the subdivision. However, another concern is the potential for this decision to be used as a template to allow for intergeneration farm transfers throughout the ALR. Staff considers the impact of the subdivision (as noted above) to be minimal because of the significant restrictions.

**ATTACHMENTS:**

- December 21, 2007 letter from the Gartrells to the Commission,
- Devin Jell's Nov 8, 2007 letter to the District of Summerland,
- The Commission's September 29<sup>th</sup>, 2006 minutes
- ALC maps and sketch plan

**END OF REPORT**

  
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Signature

  
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Date