



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

October 25, 2005

Reply to the attention of BRANDY RIDOUT

Charles and Jo Ann Johnson
PO Box 37
Grindrod, BC - V0E 1Y0

Dear Mr. and Mrs. Johnson:

Re: Application #T-36214
PID: 015-092-569

That Part of the South ½, Section 25 which is not contained within the limits of District Lot 526 Township 19, Range 9, W6M, Kamloops Division Yale District, EXCEPT Plan 20070

The Provincial Agricultural Land Commission (the "Commission") has now concluded its review of your application to subdivide one (1) lot of approximately 1.0 ha from the 37.7 ha subject property in accordance with its *Homesite Severance Policy* (copy attached). 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 October 14, 2005. The meeting and site visit were very informative and allowed the Commissioners to address their main concern with the proposed subdivision, namely the large size of the requested homesite lot. The Commission noted that the proposed lot was designed to facilitate the placement of a new septic field in the westerly portion of the lot as the current location of the septic field was unsuitable due to soil type.

As the remainder of the subject property contains good quality land in the Agricultural Land Reserve (ALR), the registration of a restrictive covenant prohibiting a dwelling on the ALR portion was discussed during the site visit. At that time, the Commission noted your interest in taking measures to preserve the long-term agricultural potential of the remainder of the property if the proposed subdivision was to proceed.

The Commission writes to advise that it approved your application subject to:

- the subdivision being in substantial compliance with the attached plan
- the registration of a restrictive covenant against the title of the remainder prohibiting the construction or placement of a dwelling on the ALR portion
- that the homesite lot not be sold for five (5) years except in the case of estate settlements. The Commission requires your commitment in this regard, which can be done by signing below and returning to our office a copy of the letter. The Commission requires your commitment prior to it approving deposit of the subdivision plan
- that you obtain Commission approval for an increase in the size of the homesite lot or a change in its location deemed necessary by other approval agencies, and
- compliance 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. The Commission suggests you contact the Regional District of North Okanagan at your earliest convenience.

The decision noted above is recorded as Resolution #544/2005.

If you wish to proceed on this basis please undertake the following steps:

1. Commence approval procedures of other agencies that must approve the subdivision.
2. Have a restrictive covenant prepared for the Commission's approval (sample attached).
3. Have a surveyor prepare the subdivision plan.
4. Obtain recent State of Title Certificate for the property.
5. Prepare a "Transfer of an Estate in Fee Simple" document indicating the transfer of the remainder of the property from you to the purchaser.
6. 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) four (4) signed copies of the approved restrictive covenant
 - c) the State of Title Certificate
 - d) a copy of the "Transfer of an Estate in Fee Simple" document
 - e) 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 the application for deposit of the subdivision plan concurrent to the registration of the approved restrictive covenant.

Please quote your application number in any future correspondence..

Yours truly

PROVINCIAL AGRICULTURAL LAND COMMISSION

per:



Erik Karlsen, Chair

cc: Regional District of North Okanagan - 05-0420-F-ALR
Browne Johnson & Associates, P.O. Box 362, Salmon Arm, BC - V1E4N5

BR/lv/Encl.
36214d1



*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:

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

**LAND TITLE ACT
FORM C
(Section 219.9)
Province of
British Columbia
GENERAL DOCUMENT**

**PROHIBIT DWELLING
Page 1 of 9**

(This area for Land Title Office use)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Agricultural Land Commission
133 - 4940 Canada Way
Burnaby, B. C.
V5G 4K6
Tel: (604) 660-7000

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

See schedule

3. NATURE OF INTEREST:*

INTEREST	DESCRIPTION	DOCUMENT REFERENCE	PERSON	ENTITLED	TO
		(page and paragraph)			
	Restrictive Covenant Pursuant to s.19 Of the Agricultural Agricultural Land Commission Act		Transferee		

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms _____ D.F. No.
(b) Express Charge Terms _____ Annexed as Part 2
(c) Release _____ There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

6. TRANSFEREE(S): *name(s), occupation(s), postal address(es), postal code(s)

Agricultural Land Commission, a corporation created by an act of the legislature of the Province of British Columbia, having an office at 4940 Canada Way, Burnaby, British Columbia, V5G 4K6.

7. ADDITIONAL OR MODIFIED TERMS:*

8. EXECUTION(S):**This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Execution Date

Officer Signature(s)

Party(ies) Signature(s)

Y M D

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:

(PARCEL IDENTIFIER) (LEGAL DESCRIPTION)

THEREFORE in consideration of the premises and of the sum of one dollar (\$1.00) of lawful money of Canada, now paid by the Transferee to the Transferor and the Mortgagee, the receipt of which is hereby acknowledged, and other good and valuable consideration the parties covenant and agree as follows:

(Delete reference to mortgagee if not applicable).

1. In this Indenture the following definitions shall apply where the context allows:
 - (a) "enactment" means an enactment as defined in the Interpretation Act of Canada and an enactment as defined in the Interpretation Act of British Columbia;
 - (b) "transfer" includes a conveyance, a grant, an assignment and a grant of a leasehold interest;
 - (c) "transferee" includes a grantee, an assignee and a lessee.

2. The Transferor shall not build, erect or place and shall not allow to be built, erected or placed any residential dwelling of any kind whatsoever on:
 - (i) the Lands;
 - (ii) that part of the Lands [being Lot(s) _____, Plan _____] shown hatched on the Subdivision Plan attached hereto as the second schedule.

(Strike out & initial whichever of (i) or (ii) is applicable)

3. The covenants in this Indenture shall be covenants running with the Lands and shall be binding on the successors in title and assignees of the Lands.

4. None of the covenants herein shall be personal or binding upon the Transferor, save and except during the Transferor's seisin or ownership of any interest in the Lands.

5. The Transferor covenants with the Transferee that the Transferor has done no acts to charge or encumber the Lands, save the charges or encumbrances set forth in the first schedule attached thereto.

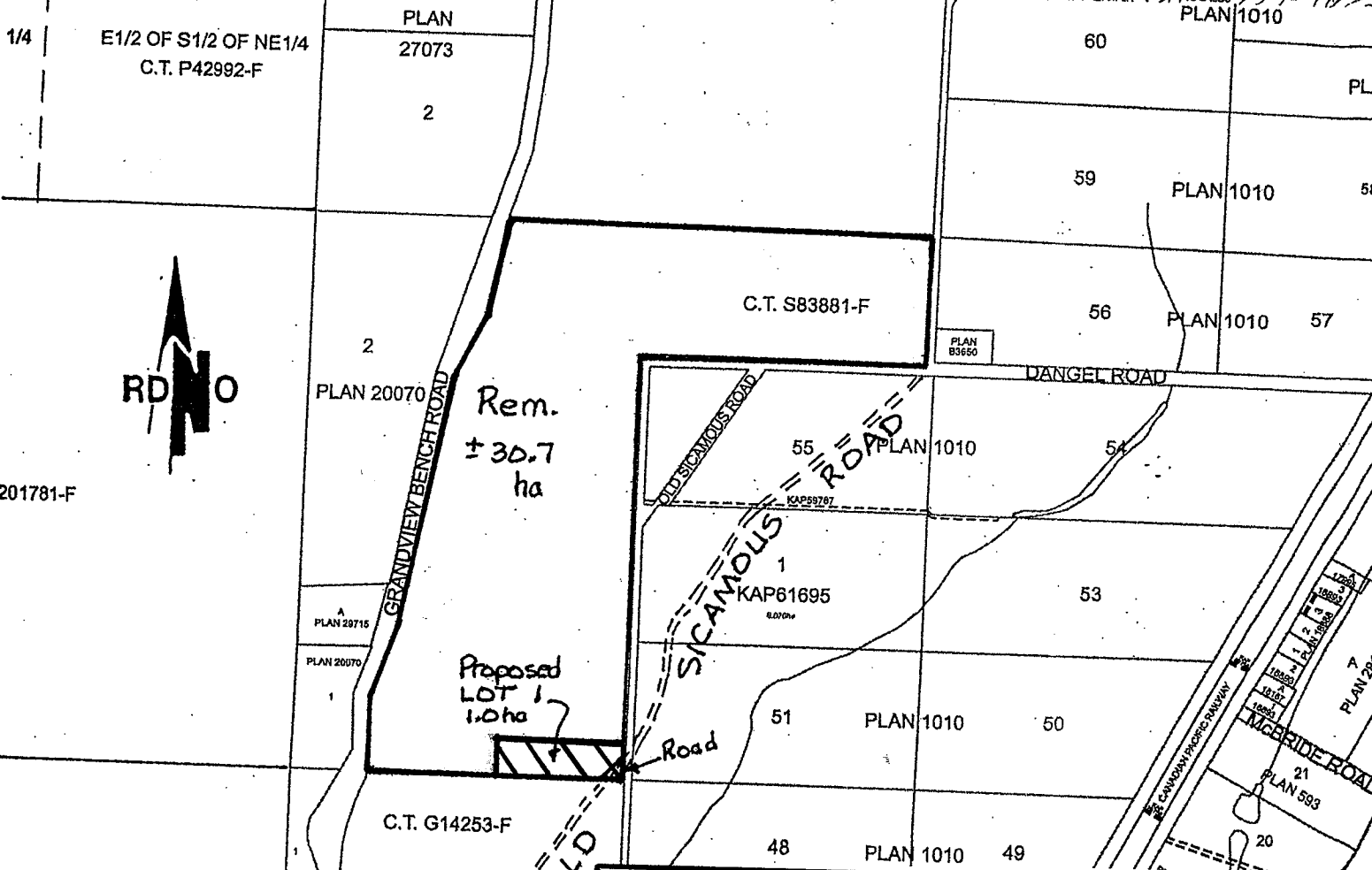
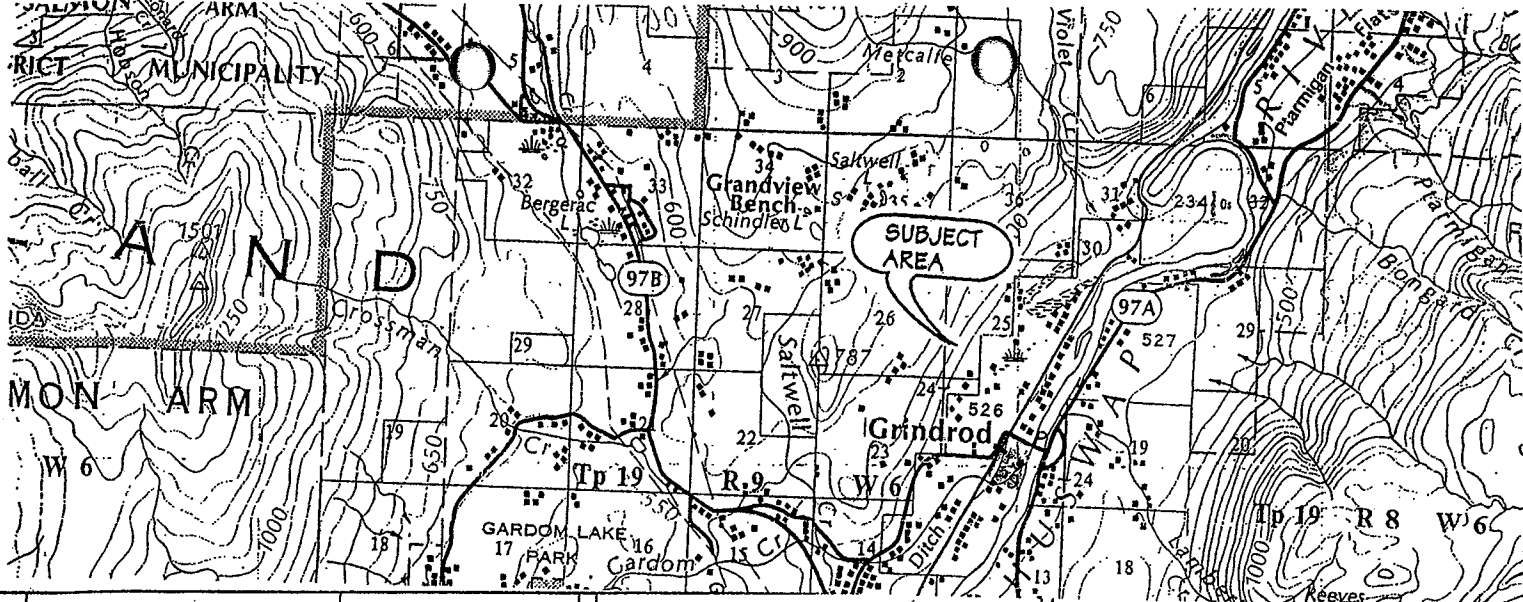
6. The Lands shall remain in the Agricultural Land Reserve of the Regional District and remain subject to the provisions of the Act and the Regulations thereto.

First Schedule




Charges Against Lands

This is the first schedule to a certain Indenture dated for reference the _____ day of _____, 20____, made between _____ and the Agricultural Land Commission and _____ as "Mortgagee". (*Delete reference to mortgagee if not applicable*)

(Insert Charges Against Lands)



Provincial Agricultural Land Commission
Application #T-36214-0
Resolution #/2005

-  Subject property
-  1 ha area approved for subdivision within the ALR in accordance with the *Homesite Severance Policy*
-  Location of a restrictive covenant prohibiting the construction or placement of a dwelling on the ALR portion of the property



Staff Report
Application # T – 36214
Applicant: Charles and Jo Ann Johnson
Agent: Browne Johnson & Associates
Location: Grindrod

DATE PREPARED: August 30, 2005

DATE PREPARED: October 4, 2005

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Regional Research Officer

PROPOSAL: To subdivide a 1.0 ha lot from the 37.7 ha property pursuant to the *Homesite Severance Policy*. The 1.0 ha lot would encompass the existing dwelling and outbuildings. Only about half of the property is in the ALR, but the proposed lot is located on the arable floodplain area and encompasses the existing dwelling and outbuildings.

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

BACKGROUND INFORMATION:

No previous applications have been considered on the property.

Local Government:

Regional District of North Okanagan

Legal Description of Property:

PID: 015-092-569

That Part of the South ½, Section 25 which is not contained within the limits of District Lot 526 Township 19, Range 9, W6M, Kamloops Division of Yale District, EXCEPT Plan 20070

Purchase Date:

June 1971

Location of Property:

72 Old Sicamous Road

Size of Property:

37.7 ha (approximately half the property is in the ALR)

BACKGROUND INFORMATION (continued):

ALR Area:

Approximately 18 ha

Present use of the Property:

House, barn, shop and sheds, hayfields, pasture and forested areas

Surrounding Land Uses:

WEST: Grandview Bench Road - forested (non-ALR)

SOUTH: Agriculture (ALR)

EAST: Agriculture (ALR)

NORTH: Some agriculture, some forested (ALR)

Agricultural Capability:

Data Source: Agricultural Capability Map # 82L/11

The majority of the property is identified as having prime dominant ratings.

Official Community Plan and Designation:

Electoral Area "F" Official Community Plan Bylaw no. 1934 (2005)

Designation: "Agriculture/ALR"

Zoning Bylaw and Designation:

Zoning Bylaw No. 1888

Designation: Non-Urban Zone (N.U.)

Minimum Parcel Size 7.2 ha.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

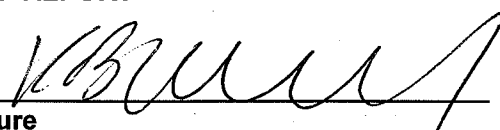
Regional District of North Okanagan forwarded the application to the ALC without comment.

STAFF COMMENTS:

Staff recommends that subdivision be allowed, on the grounds the applicant appears to qualify for consideration under *Homesite Severance Policy*. It is also noted that a 1.0 ha parcel is larger than typical and reflects Ministry of Health requirements for minimum subdivision. In other instances the Commission has required that the subdivision be smaller, to ensure that farm structures are retained with the farm remnant, and to ensure that an excessive amount of arable land is not alienated by the homesite.

Staff also recommends that standard Homesite Severance conditions also apply, including fencing the perimeter of the homesite lot.

END OF REPORT


Signature


Date

Const 33

Const 30

Const 29

Const 26

ALR

ALR

ALR

ALR

ALR

ALR

ALR

82 L 11/19

82 L 11/12

82 L 1

82 L 1

19 R 9 W 6

Gardom

Subject Property

Const

Base
Map # 82L/11

Scale: 1:50,000

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N

