



Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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July 12, 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: **Request to Reconsider Application to Subdivide in the Agriculture Land Reserve**

Please find attached the Minutes of Resolution #364/2006 outlining the Commission's decision as it relates to the above noted application.

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 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

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

BR/lv/Encl.
36404d2

HOMESITE SEVERANCE

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 Sec. 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".

Homesite Severance

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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 996 of the *Municipal Act* insofar as compliance with local bylaws is concerned.

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)

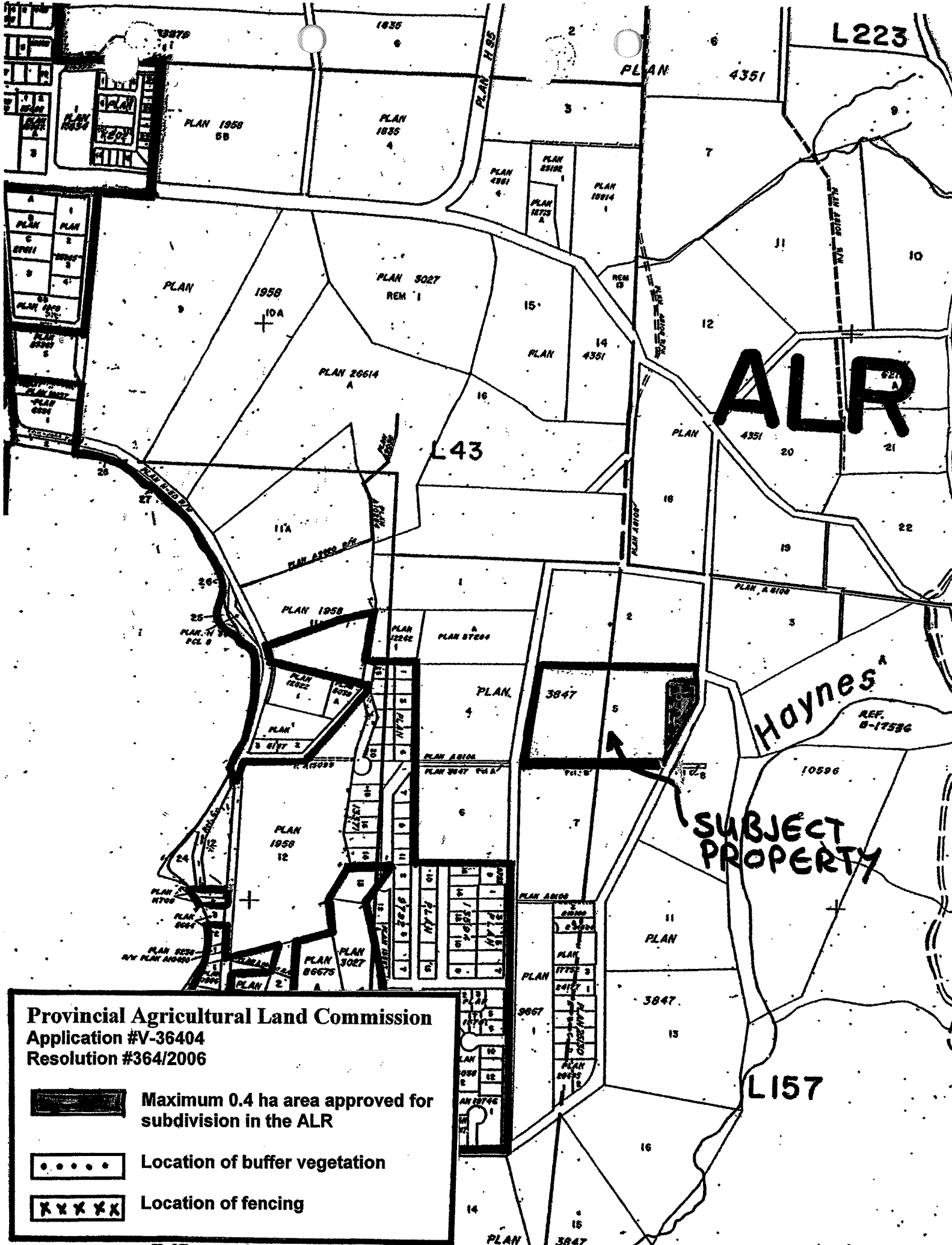
Signature

Witnessed By (Please Print Name)

Occupation of Witness

Signature of Witness

Date



Provincial Agricultural Land Commission
 Application #V-36404
 Resolution #364/2006



Maximum 0.4 ha area approved for subdivision in the ALR



Location of buffer vegetation



Location of fencing

ALR

Haynes^A

SUBJECT PROPERTY

L43

L223

L157

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A teleconference was held by the Provincial Agricultural Land Commission on July 10, 2006.

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

For Consideration

A letter was received June 26, 2006 from Renate Bublick at Cedar creek Estate Winery requesting that the Commission reconsider its decision recorded as Resolution #10/2006.

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|-------------------|--|
| Application # | V-36404 |
| Applicants | Edgar & Yolanda Liebel |
| Legal | PID: 010-707-298 Lot 5, District Lots 42, 100 & 157, Similkameen Division Yale District, Plan 3847 |
| Location | 4810-25th Street, Osoyoos |
| Original proposal | To subdivide the 4.7 ha property into a 0.4 ha lot and a 4.3 ha lot under the <i>Homesite Severance Policy</i> . |
| Decision | Refused as proposed, would allow the subdivision of a 0.2 ha homesite lot as it would leave more land with the remaining farm unit. |
| Current proposal | To reconsider the refusal of the subdivision of a 0.4 ha lot. Cedar creek Estate Winery has submitted a letter stating that they would like to purchase the remainder of the property and agree that the areas the applicant wants as part of the homesite lot provide no added value for the planting of their new vineyards. |

Discussion

The Commission's main concern with the original application was that a 0.4 ha homesite lot would leave less land with the remaining farm unit than a 0.2 ha lot. However, the letter from Cedar creek Estate Winery stated that the additional approximately 0.2 ha area would provide no added value to their planned vineyard. As such, the Commission would allow the subdivision of the approximately 0.4 ha lot originally proposed by the applicant.

IT WAS

| | |
|---------------------|---------------------|
| MOVED BY: | Commissioner Irvine |
| SECONDED BY: | Commissioner Sidhu |

THAT the current proposal be approved subject to:

- the subdivision being in substantial compliance with the plan submitted with the application
- the construction of a fence and installation of a vegetative buffer around the new homesite lot for the purpose of limiting its impact on the remaining farm unit. Fencing and buffering plans that will achieve this effect should be submitted to the Commission for approval before being undertaken.

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 #364/2006**