



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

June 6, 2006

Reply to the attention of Brandy Ridout
ALC File #V-36569

Otto and Mary Blaskovits
1360 Latta Road.
Kelowna, B.C. V1P 1A5

Dear Mr. and Mrs. Blaskovits:

Re: Application to subdivide in the Agricultural Land Reserve

Please find attached the Minutes of Resolution #255/2006 outlining the Commission's decision as it relates to the above noted application.

If you wish to proceed on the basis of the Commission's alternate decision, please undertake the following steps:

1. Commence approval procedures of other agencies that must approve the subdivision.
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 the application for deposit of the subdivision plan.

Please quote your application number in any future correspondence.

Yours truly

PROVINCIAL AGRICULTURAL LAND COMMISSION

per:

Erik Karlsen, Chair

cc: City of Kelowna (# A05-0016)

BR/lv/Enclosure:
36569d1.

Provincial Agricultural Land Commission
Application #G-36569
Resolution #255/2006

A05-0016



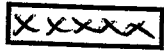
Subject Property



0.8 ha area approved for subdivision



Location of buffer vegetation



Location of fencing

OPTION #1

7.3m

20

LATA RD

0.80ha
 (1.97 ac)
 Proposed Parcel

A1
 Proposed Remainder Lot
 7.18 ha
 (17.73 ac)

CD6

PLAN 2261

City of Kelowna - Accuracy and correctness not guaranteed.

Map: 423 x 456 m -- Scale 1:2,500

65 Meters

2005-09-15

Certain layers such as lots, zoning and dp areas are

[tp://kelintranetb/servlet/com.esri.esrimap.Esrimr](http://kelintranetb/servlet/com.esri.esrimap.Esrimr)

Sketch Plan of Proposed Subdivision



*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.

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 _____

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on May 25, 2006

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

For Consideration

Application # G-36569
Applicants Otto and Mary Blackovits
Proposal To subdivide a 0.8 ha homesite lot from the 8 ha subject property under the Homesite Severance Policy.
Legal PID: 011-078-774
Location Lot C, Section 31, Township 27, Osoyoos Division Yale District, Plan 2261
1360 Latta Road, Kelowna

Site Inspection

A site inspection was conducted on May 24, 2006. Those in attendance were:

- Commissioners: Sue Irvine, Sharon McCoubrey, and Sid Sidhu
- Staff: Brandy Ridout and Martin Collins
- Applicants: Otto and Mary Blackovits

Mr. and Mrs. Blackovits confirmed that they received the staff report dated May 16, 2006. No errors or omissions were noted.

The Commission noted that the proposed 0.8 ha lot was somewhat larger than other Homesite Severance lots in the area and that it contained three dwellings. No homes would be retained on the remainder.

The property had good agricultural capability and was in agricultural production.

Discussion:

The Commission was concerned that the applicants intended to sever all of the existing dwellings (three in total) from the agricultural property. Although the applicants suggested that the consolidation of the Black Mountain Irrigation District right of way compensated for the larger than typical homesite severance lot, the Commission had no certainty that the consolidation would be fulfilled, or whether it was a substantive benefit to the subject property.

Typically the Commission permits homesite lots smaller than 0.4 ha (unless there are topographical considerations), and severs only one home despite the fact that there are often two on the property.

The Commission was not prepared to allow the subdivision as proposed believing it to be excessive and deleterious to the agricultural remnant because it was likely that two homes would be constructed on the 7.2 ha remainder (as per Kelowna's zoning bylaw).

However, the Commission was prepared to offer a number of subdivision options that it believed recognized its commitment to the principle of the *Homesite Severance Policy* while mitigating the impacts of subdivision on the property. Each of the options is subject to fencing and installing vegetative buffering along the boundary of the new lot as well as the standard Homesite Severance conditions.

IT WAS

MOVED BY: Commissioner McCoubrey

SECONDED BY: Commissioner Irvine

THAT the application for a 0.8 ha homesite severance be refused as proposed on the grounds the size of the proposed lot is excessive and severs all of the existing dwellings from the agricultural remainder.

AND THAT any one of the following three options would be approved on the grounds the applicant qualifies for consideration under the *Homesite Severance Policy*:

1. The subdivision of the proposed 0.8 ha lot subject to the registration of a restrictive covenant in the Commission's favour limiting the number of dwellings on the agricultural remnant property to a single home.
2. An alternate building lot (between 0.2 ha and 0.4 ha in size) elsewhere on the property.
3. The subdivision of a smaller homesite lot containing only one of the existing homes.

The Commission's approval is also subject to the following conditions:

- the construction of a fence and installation of buffering along the perimeter of the new lot for the purpose of limiting its impact on the remaining farm unit. Fencing and buffering plans should be submitted to the Commission for approval.
- 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.

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 #255/2006



Staff Report
Application # G – 36569
Applicant: Otto & Mary Blaskovits
Location: Kelowna

DATE RECEIVED: March 23, 2006

DATE PREPARED: May 16, 2006

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Regional Research Officer

PROPOSAL: To subdivide a 0.8 ha homesite lot from the 8 ha subject property under the *Homesite Severance Policy*.

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

BACKGROUND INFORMATION:

The proposed homesite lot is 0.8 ha and will include a panhandle in order to contain the house the applicant grew up in.

Local Government:

City of Kelowna

Legal Description of Property:

PID: 011-078-774

Lot C, Section 31, Township 27, Osoyoos Division Yale District, Plan 2261

Purchase Date:

May 1965

Location of Property:

1360 Latta Road, Kelowna

Size of Property:

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

Present use of the Property:

Orchard, two residences, and accessory buildings

BACKGROUND INFORMATION (continued):

Surrounding Land Uses:

WEST: Berry farm
SOUTH: Orchard
EAST: Rangeland
NORTH: Orchard

Agricultural Capability:

Data Source: Agricultural Capability Map # 82E.094
The majority of the property is identified as having Prime Dominant ratings.

Official Community Plan and Designation:

Kelowna 2020 - Official Community Plan
Future Land Use Designation: "Rural/Agricultural"

Zoning Bylaw and Designation:

Zoning Bylaw No. 8000
Designation: Agriculture 1 (A1)
Minimum lot size: 2 ha

PREVIOUS APPLICATIONS:

Application #22451-0

Applicant: L.O.R.A.,
Decision Date: August 24, 1988
Proposal: To exclude 186 parcels of land totalling 1220 ha in area.
Decision: Refused. Decision to refuse upheld by ELUC.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

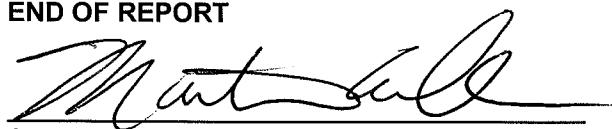
City of Kelowna Council: Supports.

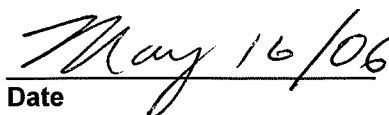
Agricultural Advisory Committee: Supports. At the AAC's meeting with the applicant, it was noted that the location of the buildings and the septic field necessitate the proposed lot size and configuration. In addition, the applicant stated that he was raised in the residence on the property and so wishes to continue to live in it. The applicant intends to purchase an old right of way (approximately 0.4 ha) to add to the property.

STAFF COMMENTS:

- The applicant has provided a title from May 19, 1965 indicating that he was the owner from that date.
- A site visit and meeting with the applicant may assist the Commission in determining the impact of the 0.8 ha proposed lot on agriculture and if there is an alternative location.

END OF REPORT

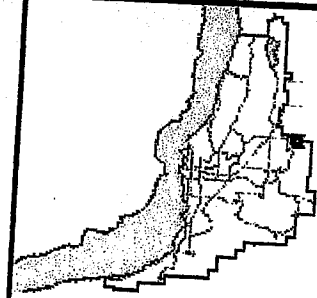

Signature


Date

A05-0016



Subject Property 7.97 ha (19.7 ac)



7.3m

111m

0.80 ha
(1.97 ac)
Proposed
Parcel

114m

63m

LATTARD

A1
Proposed Remainder Lot
7.18 ha
(17.73 ac)

CD6

PLAN 2261

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Sketch Plan of Proposed Subdivision