



Agricultural Land Commission
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October 18, 2006

Reply to the attention of Brandy Ridout
ALC File #G-36829

Grant Maddock
Protech Consultants (1989) Ltd
200 – 1461 St. Paul Street
Kelowna, BC, V1Y2E4

Dear Mr. Maddock:

Re: Application to subdivide land in the Agricultural Land Reserve

Please find attached the Minutes of Resolution #480/2006 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

If your client wishes 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 surveyor prepare a 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, and
 - e) photographs of the installed fence and vegetative buffer and a sketch showing its location.

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.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

cc: City of Kelowna (A06-0004)

BR/eg/Encl.: Minutes
Sketch Plan
Homesite Severance Policy

36829d1

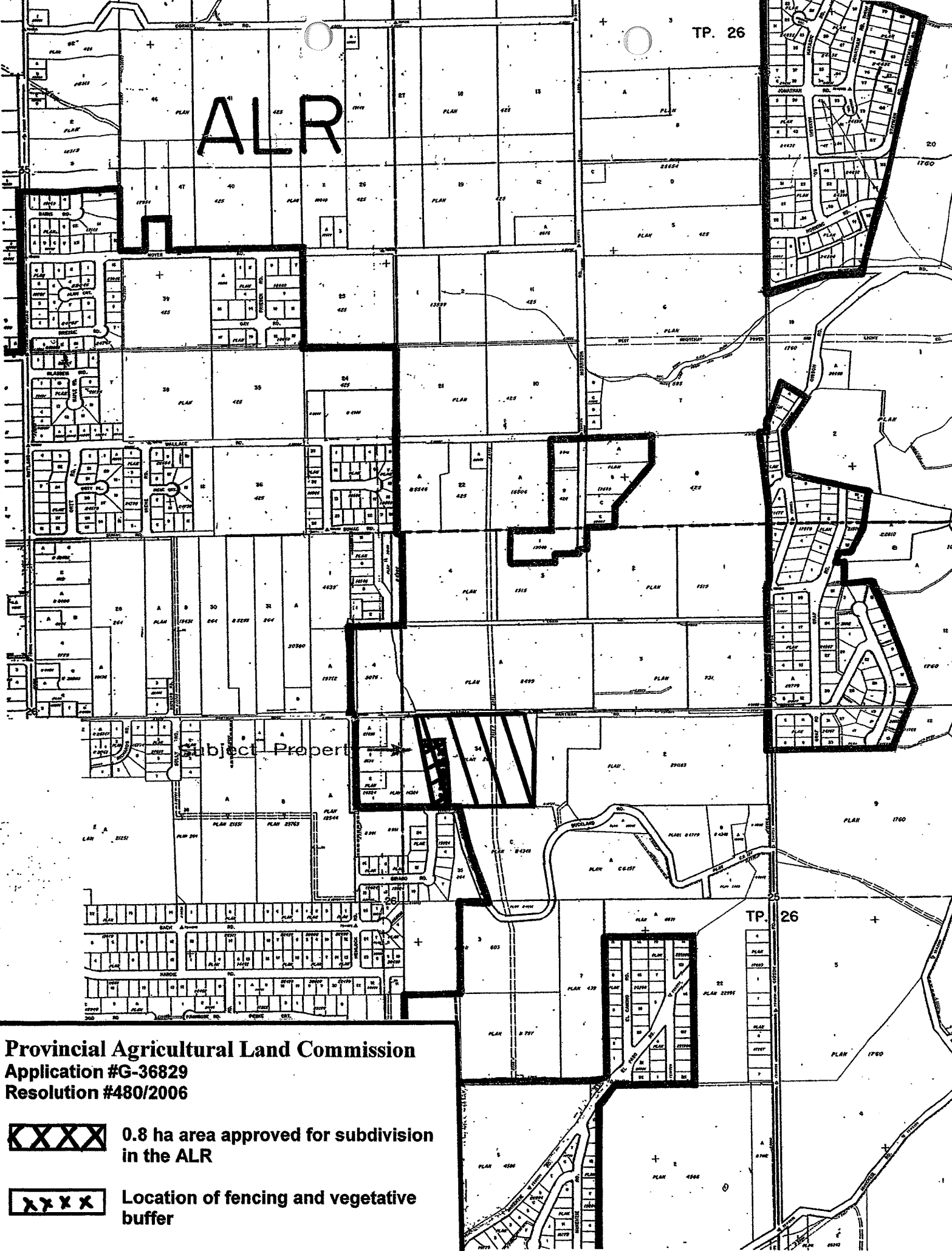
ALR

Subject Property

Provincial Agricultural Land Commission
Application #G-36829
Resolution #480/2006

 0.8 ha area approved for subdivision in the ALR

 Location of fencing and vegetative buffer





*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

A meeting was held by the Provincial Agricultural Land Commission on September 29, 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
	Martin Collins	Staff
	Terra Kaethler	Staff

For Consideration

Application: # G- 36829
Applicant: Herman & Grace Brundula
Proposal: To subdivide the parent 4.8 ha parcel into a 1.2 ha homesite severance parcel.
Remaining parcel size is 3.7 ha.
Legal: PID: 012-574-121
Block 34, Section 25 & 26, Township 26, Osoyoos Division Yale District, Plan 264, EXCEPT Plans 3596, 5136, 14324 and 35135
Location: 688 Webster Road

Site Inspection

A site inspection was conducted on September 28, 2006. Those in attendance were:

- Commissioners Sidhu, Irvine & McCoubrey
- Agricultural Land Commission Staff: Martin Collins and Terra Kaethler
- Agent: Grant Maddock

Discussion

In general, the Commission prefers to allow the creation of homesite lots that are as small as possible so as to leave as much land with the agricultural remainder. However, in this case, the applicant indicated that the low lying area being requested for subdivision was susceptible to frosts. The Commission believed that retaining the northerly 0.4 ha portion of the proposed 1.2 ha lot with the agricultural remnant would provide a building site and thereby reduce use of better agricultural land for the location of structures.

As such, the Commission would allow the subdivision of a 0.8 ha lot subject to the installation of a vegetative buffer and fencing.

IT WAS

MOVED BY: Commissioner Irvine
SECONDED BY: Commissioner McCoubrey

THAT the application be refused as proposed

AND THAT the Commission would allow the subdivision of a 0.8 ha homesite lot subject to the following conditions:

- the subdivision be in substantial compliance with the attached sketch
- the installation of a vegetative buffer and fencing around the new homesite lot for the purpose of limiting its impact on the remaining farm unit. Buffering and fencing plans should be submitted to the Commission for approval.
- compliance with the *Homesite Severance Policy*

AND THAT the approval is granted to the applicant only and is valid for three (3) years from the date of this decision.

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 #480/2006



Staff Report
Application # G – 36829
Applicant: Herman & Grace Brundula
Agent: Protech Consultants (1989) Ltd
Location: Webster Rd. in Rutland

DATE RECEIVED: July 17, 2006

DATE PREPARED: September 14, 2006

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Land Use Planner

PROPOSAL: To subdivide a 1.2 ha homesite severance lot from the 4.8 ha parcel.

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

BACKGROUND INFORMATION:

Only one previous application has been considered on the property. The property was one of the many included into the 1988 L.O.R.A. exclusion application. The application was refused.

Local Government:

City of Kelowna

Legal Description of Property:

PID: 012-574-121

Block 34, Section 25 & 26, Township 26, Osoyoos Division Yale District, Plan 264, Except Plans 3596, 5136, 14324 and 35135

Purchase Date:

October 1972

Location of Property:

688 Webster Road

Size of Property:

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

Present use of the Property:

Residence, Commercial Woodworking Shop and three outbuildings

Surrounding Land Uses:

WEST: Residential/orchard
WEST: School
EAST: Orchard
NORTH: Orchard

Agricultural Capability:

Data Source: Agricultural Capability Map # 82E.084 &.094
The majority of the property is identified as having prime dominant "tree fruit" ratings.

Official Community Plan and Designation:

Designation: Rural/Agriculture

Zoning Bylaw and Designation:

Designation: Agriculture 1 Zone

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.

RECOMMENDATIONS/COMMENTS:

City of Kelowna: Forwarded the application with a recommendation of support.

City of Kelowna Planning & Corporate Services Department: Recommend that the application not be supported.

Agricultural Advisory Committee: Supports the proposed application.

STAFF COMMENTS:

Staff suggests that the Commission consider the following:

- The proposed homesite severance (at 1.2 ha) is larger than typically permitted in the Okanagan (usually 0.4 ha or smaller is the desired size)
- The proposed homesite incorporates a commercial woodworking shop, which is permitted by the zoning bylaw, but has no approval from the Commission for a non-farm use.
- The 1.2 ha homesite would come under further pressure to subdivide in the future due to its relatively large size.
- Although the applicant indicates that the low lying 1.2 ha homesite area is susceptible to frosts, the northerly 0.4 ha portion, if retained with the agricultural remnant could be a house or outbuilding site, reducing the homesite pressure on the hillside remnant.
- In other Homesite Severance applications the Commission has restricted the new building site location on the agricultural remnant (by way of a covenant) to ensure that the impact of the new home is mitigated on the arable area. This may be a consideration as the applicant is requesting a far larger subdivision (even if it were reduced to 0.8 ha) than is typically permitted for Homesite Severance.

ATTACHMENTS:

- ALR Constituent 13 & 18
- Airphoto (supplied by City)
- Sketch of proposed subdivision (supplied by applicant)
- City of Kelowna Staff Report

END OF REPORT



Signature

Sept 14, 06

Date