



Agricultural Land Commission
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December 21, 2006

Reply to the attention of Brandy Ridout
ALC File: #V - 37026

Istvan and Kirsten Sara
275 Upper Bench Rd.
Penticton, BC V2A 8T2

Dear: Mr and Ms Sara

Re: Application to subdivide land within the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 653/2006 outlining the Commission's decision as it relates to the above noted application.

Please carefully review the attached Homesite Severance Policy, in particular Sections 3 and 6, and ensure that all of the conditions of approval have been completed prior to (or concurrent with) sending two (2) paper prints of the final survey plans to this office. When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the plan.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

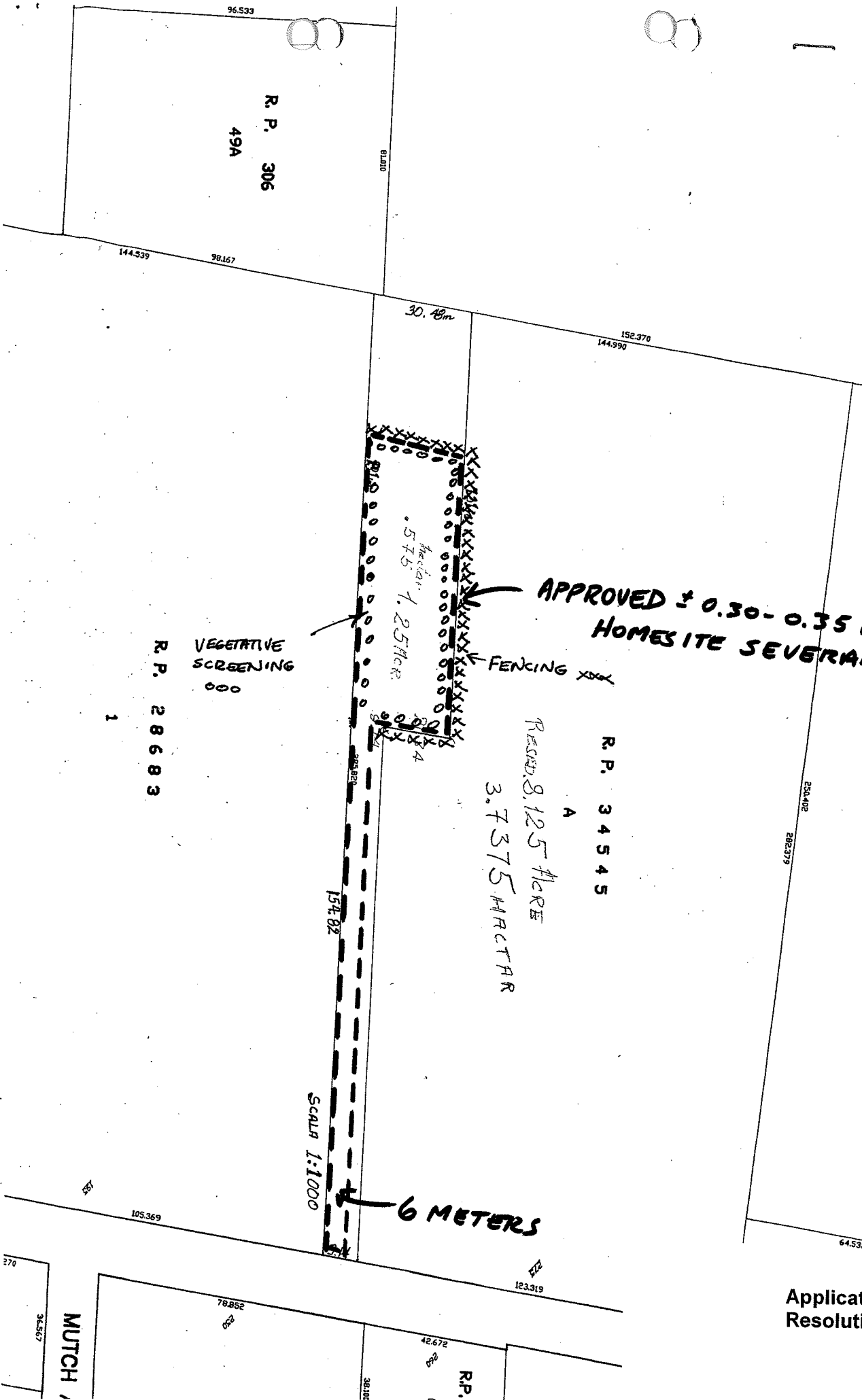
Per:

Erik Karlsen, Chair

cc: City of Penticton (#ALR-06-8092)

MC/lv/Encl: Minutes/Sketch Plan /Homesite Severance Policy
37026d1

RECEIVED
PROV. AGRICULTURAL
LAND COMMISSION
OCT. 23 2006



APPROVED ± 0.30-0.35 ha
HOMESITE SEVERANCE

R.P. 34545
A
RESID. 8.125 HCTRE
3.7375 HCTAR

VEGETATIVE
SCREENING
OOO

FENCING XXX

Area 1.25 HCTRE

30.49m

SCALE 1:1000

6 METERS

R.P. 28683
1

MUTCH

Application T- 37026
Resolution # 654/2006



*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

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.

The Act provides processes for landowners, local governments and First Nations to apply to the Commission to remove land from the ALR, to subdivide land, or to use land in the ALR for non-farm purposes.

Discussion

In assessing agricultural capability, the Commission confirmed that the land had good capability for agriculture and a long history of agricultural use (though many orchard trees have been removed). The Commission did not believe that any external factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture.

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land and the provisions of Homesite Severance Policy. The Commission considered the subdivision of a 0.6 ha lot to be excessive when compared with similar Homesite Severance subdivisions in the south Okanagan. In particular the Commission noted that the panhandle access was proposed to be 10 meters wide (half a legal road width), and that the lot encompassed land not necessary for the house site and septic field and yard. While the Commission preferred that an alternate homesite be subdivided on Upper Bench Road because of concerns about conflict between the subsequent owners of the homesite and the farm property, it was prepared to allow a smaller homesite lot in the originally requested location.

Based on the above;

IT WAS

MOVED BY: Commissioner Sid Sidhu
SECONDED BY: Commissioner Sue Irvine

THAT the application to subdivide a 0.6 ha lot under Homesite Severance Policy be refused as proposed on the grounds a 0.6 ha lot would reduce the agricultural capability of the remnant by an excessive amount. However, the Commission allowed the subdivision of a lot no larger than 0.4 ha with panhandle access (no wider than 6 meters) to Upper Bench Rd. under the provisions of Homesite Severance Policy;

AND THAT the approval is subject to the following conditions:

- the preparation of a subdivision plan to delineate the area to be subdivided as per the attached sketch ,
- the construction of a fence (as shown on the attached sketch) to limit trespass,
- the planting of vegetation for buffering on the property boundary(s) noted on the attached sketch,
- compliance with sections 3 and 6 of Homesite Severance Policy

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Resolution #653/2006

AND THAT the approval is granted to the applicant only.

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 # 653/2006



Staff Report
Application # V – 37026
Applicant: Istvan and Kirsten Sara

DATE RECEIVED: October 23, 2006

DATE PREPARED: December 4, 2006

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Land Use Planner

PROPOSAL: To subdivide a 0.6 ha lot from the 3.8 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:

Local Government:

The Corporation of the City of Penticton

Legal Description of Property:

PID: 002-938-286

Lot a, District Lot 203, Similkameen Division Yale District, Plan 34545

Purchase Date:

June 1970

Location of Property:

275 Upper Bench Road N.

Size of Property:

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

Present use of the Property:

Residence, garage, workshop, outbuildings, and orchard.

Agricultural Capability:

Data Source: Agricultural Capability Map # 82E.053

The majority of the property is identified as having Prime Dominant ratings.

Official Community Plan and Designation:

OCP Bylaw No. 20 (2002)

Designation: AG

BACKGROUND INFORMATION (continued):

Surrounding Land Uses:

WEST: Orchard
SOUTH: Vineyard
EAST: Upper Bench Road, orchard and residence
NORTH: Orchard

Zoning Bylaw and Designation:

Zoning Bylaw No. 87 (1965)
Designation: A - Agriculture
Minimum Lot Size: 2 ha

RELEVANT APPLICATIONS:

Application #34712-0

Applicant: John & Joyce Duncan
Decision Date: February 28, 2003
Proposal: To subdivide a 0.5 ha lot from a 2.4 ha subject property under the *Homesite Severance Policy*.
Decision: The Commission allowed the subdivision of a 0.5 ha homesite subject to the consolidation of the remnant 1.9 ha with the adjoining 1.6 ha parcel (also owned by the applicants).

Application #37027-0

Applicant: Light, John and Margaret
Proposal: To subdivide a 0.5 ha lot from the 3.5 ha subject property under the *Homesite Severance Policy*.
Decision: Currently under consideration

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

City of Penticton Council: Forwarded the application with a recommendation of support.

Agricultural Advisory Committee: Recommends that the application be referred with support.

STAFF COMMENTS:

- The Commission typically prefers to allow a smaller homesite lot in order to minimize the impact on agriculture. A site visit will allow the Commission to evaluate the impact subdivision of a 0.6 ha lot would have on the agricultural remainder.
- The applicant appears to qualify under the *Homesite Severance Policy* as they have provided documentation proving ownership from June 15, 1970.

ATTACHMENTS:

- ALR Base Map #82E/12 (1:50,000)
- ALR Constituent Map #10 (1:10,000)
- Airphoto & airphoto with proposed lot outlined

END OF REPORT

Signature

Date



Dec 4, 06