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CITY OF KELOWNA  
MEMORANDUM

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**Date:** March 14, 2006  
**File No.:** A06-0025  
**To:** City Manager  
**From:** Planning & Development Services Department  
**Purpose:** To obtain approval from the Agricultural Land Commission to allow an approximately .3 ha. lot subdivision (in lieu of a homesite severance subdivision) from the subject property under Section 21(2) of the *Agricultural Land Commission Act*.  
**OWNERS:** Frank Schell as executor for the estate of Steven Feth      **APPLICANT:** Benson Edwards LLP on behalf of Carrie Feth  
**AT:** 1304 Morrison Road  
**EXISTING ZONE:** A1 Agriculture 1 Zone  
**REPORT PREPARED BY:** Corine (Cory) Gain, MCIP, CPT

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1.0 RECOMMENDATION

THAT Agricultural Land Reserve Application No. A06-0025 for property located at 1304 Morrison Road and legally described as: Lot 10 Section 36 Township 26 Osoyoos Division Yale District Plan 425 requesting permission to subdivide a .3 ha. lot in lieu of a homesite severance subdivision from the 4.05 ha. property pursuant to Section 21(2) of the *Agricultural Land Commission Act* be supported by Municipal Council;

AND THAT Municipal Council forward the subject application to the Agricultural Land Commission.

3.0 SUMMARY

The Applicant is requesting permission to subdivide a .3 ha. lot in lieu of a homesite severance subdivision from the 4.05 ha. property. A copy of ALC Policy #11 is attached to this report. Benson Edwards LLP are acting on behalf of the Executor of the Estate of Steven Feth and his daughter Carrie Feth in this request for a subdivision in lieu of a homesite severance.

3.0 AGRICULTURAL ADVISORY COMMITTEE

THAT the Agricultural Advisory Committee SUPPORT Application No. A06-0025 for 1304 Morrison Road by Benson Edwards, LLP to obtain approval from the Agricultural Land Commission to allow an approximately .3 ha. lot subdivision (in lieu of a homesite severance subdivision) from the subject property under Section 21(2) of the *Agricultural Land Commission Act*.

4.0 SITE CONTEXT

The subject property is located in North East Rutland at 1304 Morrison Road.

There are three existing single family dwellings including one dwelling with a very substantial 'garage' addition and one small accessory building (small detached garage) located on the property. The property is characterized by a slope that ranges from 0% to 14% as it falls from the east down to the west. To the rear of the largest of the existing single family dwellings is a retaining wall that separates the main residential area from the orchard land. What appears to be the oldest dwelling on the property is located directly to the north of the extended garage/storage area addition to the principle dwelling at Morrison Road. A third single family dwelling unit is located at the south west corner of the property fronting on Wallace Road.

Parcel Size: 4.05 ha. (10.0 ac.)  
 Elevation: Approx. 422 m to 450 m GSC

**Zoning of Adjacent Property**

North	A1 – Agriculture 1 & RR1 Rural Residential 1
East	RR1 Rural Residential 1
South	A1 – Agriculture 1
West	A1 – Agriculture 1

5.0 SITE MAP: Subject Property: 1485 McKenzie Road



### **BCLI Land Capability for Agriculture (1: 20,000)**

*The westerly portion of the parcel is identified on the BC Land Capability for Agriculture Map as having an unimproved rating of 0:3AD: (7:3D 3:\*3D) indicating the following:*

- *Westerly portion of the property (approximately 40% of the property to the west of a diagonal line drawn from the northwest corner to about 2/3 along the length of the southerly boundary of the property): 100% Class 3AD: "Land in this Class has limitations that require special management practices or moderately restrict the range of crops, or both"; "Soil Moisture Deficiency – Crops are adversely affected by droughtiness cause by low soil water holding capacity or insufficient precipitation" and "Undesirable Soil Structure and/or Low Perviousness: Soils are difficult to till, require special management for seedbed preparation, pose trafficability problems have insufficient aeration, absorb and distribute water slowly, and/or have rooting zone depth restricted by conditions other the high water table, bedrock or permafrost."*
- *North-eastern 60% of the property: 100% 4A: "Land in this class has limitations that require special management practices or severely restrict the range of crops, or both" and "Soil Moisture Deficiency – Crops are adversely affected by droughtiness cause by low soil water holding capacity or insufficient precipitation".*

*The improved ratings are:*

- *Westerly portion of the property (approximately 40% of the property to the west of a diagonal line drawn from the northwest corner to about 2/3 along the length of the southerly boundary of the property): 70% Class 3D: "Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both" and "Undesirable Soil Structure and/or Low Perviousness" and 30% Class \*3D (referring to both organic and mineral soils).*
- *North-eastern 60% of the property: 100% Class \*2A: "Land in this class has minor limitations that require good ongoing management practices for slightly restrict the range of crops or both" and "Soil Moisture Deficiency": Crops are adversely affected by droughtiness caused by low soil water holding capacity or insufficient precipitation".*

### **Soil Classification (1: 20,000)**

*The soil classification for the westerly portion of the property (approximately 40% of the property to the west of a diagonal line drawn from the northwest corner to about 2/3 along the length of the southerly boundary of the property) is 0GL, denoting that 100% of the soils in this area are "Glenmore". "Glenmore" soils are characterized by land that is nearly level to moderately sloping stratified glaciolacustrine sediments. The texture of the soil is described as "100 cm or more of silt loam or silty clay loam or clay loam". The soils are also characterized by well to moderately well drained. The classification is further described as "Eluviated Dark Brown".*

*The soil classification for the north-eastern 60% of the property is 0OY, denoting that 100% of the soils in this area are "Oyama". "Oyama" soils are characterized by land that is very gently to extremely sloping fluvioglacial deposits. The texture of the soil is described as "100 cm or more of sandy loam or loamy sand grading to sand" with rapid drainage. The classification is further described as "Orthic Dark Brown".*

6.0 POLICY AND REGULATION

6.1 City of Kelowna Strategic Plan

A primary goal of the Strategic Plan is to preserve viable agricultural holdings as an integral part of our community.

6.2 Kelowna 2020 – Official Community Plan

Discourages the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

6.3 City of Kelowna Agriculture Plan

The Plan states: "The City of Kelowna should continue to support the concept of home site severance consistent with the Land Commission Policy #025/78 (*now Policy #11*), to allow farmers to retire or sell the property and retain the homesite, and thereby make the balance of the property available for others to expand or enter the farm business.

7.0 WORKS AND UTILITIES COMMENTS

Works and Utilities has no comments at this point in time with regard to this application, however, a comprehensive report will be provided at the time of development application if and when the Agricultural Land Commission agrees to the proposed development.

8.0 PLANNING AND DEVELOPMENT SERVICES COMMENTS

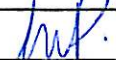
The applicant seeks permission to subdivide a .3 ha. lot in lieu of a homesite severance lot from the 4.05 ha. parent property. The property has been owned by the deceased father of the applicant (and thereafter by his estate) since 1967. While the OCP and Agricultural Plan do not support applications for subdivision of land within the ALR, there is statement in the Agricultural Plan that supports homesite severance applications where the ALC policies and regulations can be satisfied. The applicant has requested special consideration of this subdivision application in lieu of the Agricultural Land Commission's Homesite Severance Policy on the premise that the daughter of the owner has resided on the property for all of her life.

A similar application for property located between Morrison and McKenzie Roads for a subdivision within the ALR in lieu of a homesite severance submitted in October 2003 serves as a precedent for this application. The application was approved by the Agricultural Land Commission by Resolution 411/2004 in October 2004 to create a .2 ha. parcel homesite severance lot.

The applicant has provided confirmation that the remainder property (after Home Site Severance) has been listed for sale as per the correspondence dated February 15, 2007 attached to this report.

  
\_\_\_\_\_  
R. G. Shaughnessy  
Subdivision Approving Officer

Approved for inclusion



Mary Pynenburg, MRAIC MCIP  
Director of Planning & Development Services

RGS/cg

**ATTACHMENTS**

ALC Application by Land Owner (2 pages)  
Certificate of Indefeasible Title dated June 13, 1967  
Correspondence from Benson Edwards LLP dated November 29, 2006 (2 pages)  
Letter from Jack Peters, Sales Agent, Royal LePage Kelowna dated February 15, 2007  
Location Map  
Proposed Subdivision Plan  
ALC Policy #11 Homesite Severance on ALR Lands (2 pages)  
*Local Government Act* Section 946 Subdivision to provide a residence for a relative  
Excerpts from Zoning Bylaw 8000 (4 pages)  
ALR Map  
Orthophoto (1: 3 796) with 5 m Contours  
Generalized Zoning Map  
Future Land Use Map  
Contour Map (1 m Contours)  
Slope Map  
Land Capability Map  
Soil Classification Map  
Photographs (#1 - 7) of the property taken by Staff on November 17, 2006 (7 pages)

292770F



LAND REGISTRY ACT  
FORM F (Section 143)

No. 292770F  
E12485

Register, Vol. ....

From Certificate No. 167458E

- This certificate of indefeasible title is void as against the title of any person adversely in actual possession of and rightly entitled to the land included in same at the time of the application upon which this certificate was granted, and who continues in possession, and is subject to—
- (a) The subsisting exceptions or reservations contained in the original grant from the Crown;
  - (b) Any Dominion or Provincial tax, rate, or assessment at the date of the application for registration imposed or made a lien or which may thereafter be imposed or made a lien on the land;
  - (c) Any municipal charge, rate, or assessment at the date of the application for registration imposed or which may thereafter be imposed on the land, or which had theretofore been imposed for local improvements or otherwise and which was not then due and payable, including any charge, rate, or assessment imposed by any public corporate body having taxing powers over an area in which the land is situated;
  - (d) Any lease, or agreement for lease, for a period not exceeding three years, where there is actual occupation under the same;
  - (e) Any public highway or right-of-way, water-course, or right of water, or other public easement;
  - (f) Any right of expropriation by Statute;
  - (g) Any lien, or charge, or any assignment for the benefit of creditors or receiving order or authorized assignment under the *Bankruptcy Act*, registered since the date of the application for registration;
  - (h) Any condition, exception, reservation, charge, lien, or interest noted or endorsed thereon;
  - (i) The right of any person to show that the whole or any portion of the land is by wrong description of boundaries or parcels improperly included in this certificate;
  - (j) The right of any person to show fraud, wherein the registered owner or wherein the person from or through whom the registered owner derived his right of title otherwise than *bona fide* for value has participated in any degree;
  - (k) Any restrictive condition, right of reverter, or obligation imposed on the land by the *Forest Act* when noted and endorsed thereon.

# Certificate of Indefeasible Title

Date of application for registration, the 13th day of June 1967.

This is to certify that

STEPHEN FETH, "orchardist"  
R.R. #2, Box 10, Kelowna, B.C.

is absolutely and indefeasibly entitled in fee-simple, subject to such charges, liens, and interests as are notified by endorsement hereon, and subject to the conditions, exceptions, and reservations set out hereon, of that piece of land situate in the Vernon Assessment District and Black Mountain Irrigation District

and Province of British Columbia, and more particularly known and described as:—

Lot Ten (10)  
 Section Thirty-six (36)  
 Township Twenty-six (26)  
 Osoyoos Division Yale District  
 Plan Four hundred and twenty-five (425)

THIS CERTIFICATE MAY BE AFFECTED BY THE LAND ACT AMENDMENT ACT, 1961.

THE FOLLOWING PIECES OF LAND HAVE BEEN TRANSFERRED			
LAND	GRANT NO.		

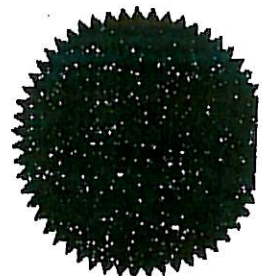
Subject to Provincial Home Acquisition Act, and D.F. 24921, Expend 104-1170

CANCELLED 1967  
By [Signature]

CANCELLED: 7 19 1971  
NS0639 F 7

In witness whereof I have hereunto set my hand and seal of office at KAMLOOPS, British Columbia, this 16th day of June 1967

[Signature]



(OVER)

# BENSON EDWARDS LLP

Barristers & Solicitors • Patent & Trade-mark Agents

Planning and Corporate Services  
City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

November 29, 2006  
Our File No.: 31007

RECEIVED

DEC 01 2006

CITY OF KELOWNA  
PLANNING DEPT.

Attention: Corine Gains

Dear Ms. Gains

**Re: 1304 Morrison Road - Application for Subdivision Within the ALR in Lieu of  
Homesite Severance**

Further to your letter of November 15, 2006 and our telephone conversation of November 16, 2006 we are providing additional information.

The information below is also indicated on the attached site plan, but we include it here as the site plan is increasingly crowded.

1. The large house bordering on both Wallace Road and Morrison Road is approximately 1,500 square feet. The house itself was constructed in 1973, and the garage has been upgraded and expanded consistently since that time. This primary residence is approximately 40 feet from Morrison Road and 35 feet from Wallace Road. To the best of Mr. Schell's knowledge, the property line is at or near these roads. While this home was built in 1973, Mr. Feth had purchased the property itself in 1967. A copy of the certificate of indefeasible title evidencing this is attached to the Application.
2. The small house bordering on Morrison Road is approximately 900 square feet in size. The age of this building is not know, as it was on the property when Mr. Feth originally purchased same. It is therefore at least 39 years old, and likely older. This house is approximately 40 feet from Morrison Road, which is where the property line is to the best of Mr. Schell's knowledge.
3. The small house bordering on Wallace road is approximately 1,100 square feet. The exact date of construction of this building is unknown, but Mr. Schell believes it to have been moved onto the property in the late 1970s. This house was moved onto the property already having been built and used for a number of years by the previous owner. Unfortunately, Mr. Schell does not have a record of precisely when it was first constructed or when it was first relocated to the Feth property. This house is approximately 40 feet from Morrison Road, which is where the property line is to the best of Mr. Schell's knowledge.

In relation to the intention with respect to the two dwellings that will be located on the remainder parcel after the proposed subdivision, as indicated in the Application, the intention is to sell the remainder so that it may be actively farmed. Upon sale, it will be at the

discretion of the new purchasers to use the two dwellings as they see fit. It is possible that one of the residences will be used as a primary residence and the other as a residence for workers, however we cannot predict the uses of the buildings with any certainty. The only certainty is that the purchasers will be purchasing agricultural land within the ALR with all the benefits and constraints attendant thereto. Accordingly, we have no reason to suspect that the buildings will be used in a way that is inconsistent with the agricultural purposes of the remainder.

We have not provided any photographs of the subject property, as we understand from your letter that you have attended to the property for this purpose. If you would like any further photographs, we will be happy to provide same.

You had inquired as to whether there is any other property currently owned by the deceased Mr. Feth. As set out in the Application, no other land is owned by the deceased Mr. Feth in the ALR. Mr. Feth had owned two other parcels within the ALR, one at 1451 Belgo Road and one at 1893 and 1895 Morrison Road. These properties were, much like the subject property, fallow orchard that Mr. Feth had intended to replant at higher density, such plans having been cut short by his ill health and subsequent passing. These two properties were disposed of by his estate prior to this application for subdivision within the ALR. If there is any further information that may be provided in relation to these properties, please do not hesitate to contact us.

Further to our telephone conversation, we confirm that Carrie Feth does not have another residence in Kelowna. Upon the passing of her father, Carrie purchased 2 properties from the estate which she has been using as rental properties, while herself residing on the property that is the subject of this application. The 2 properties are found at 275-277 Merrifield Road and 173-175 Hardie Road. The main house that is sought to be subdivided is the place where Carrie was born and where she currently lives. In short, the family home on the subject property has been and continues to be Carrie's home.

The subject property was purchased by Mr. Feth in 1967 and the Application is for subdivision within the ALR in lieu of a homesite severance. The purpose of the application is to continue to allow Carrie to reside in the family while allowing the remainder to be sold for active agricultural use.

We hope this removes any lingering concerns your office may have. If you have any questions, or we may provide any further information, please do not hesitate to contact us.

Yours truly,

**BENSON EDWARDS LLP**

Per: 

**Rose Shawlee**  
**Articled Student**

cc: client





Kelowna  
Independently Owned and Operated  
#1 - 1890 Cooper Road  
Kelowna, B.C.  
V1Y 8B7  
Tel: (250) 860-1100  
Fax: (250) 860-0595

February 15, 2007

To whom it my concern,

Re: Feth Estate – 1304 Morrison Road Kelowna B.C. V1X 4W2

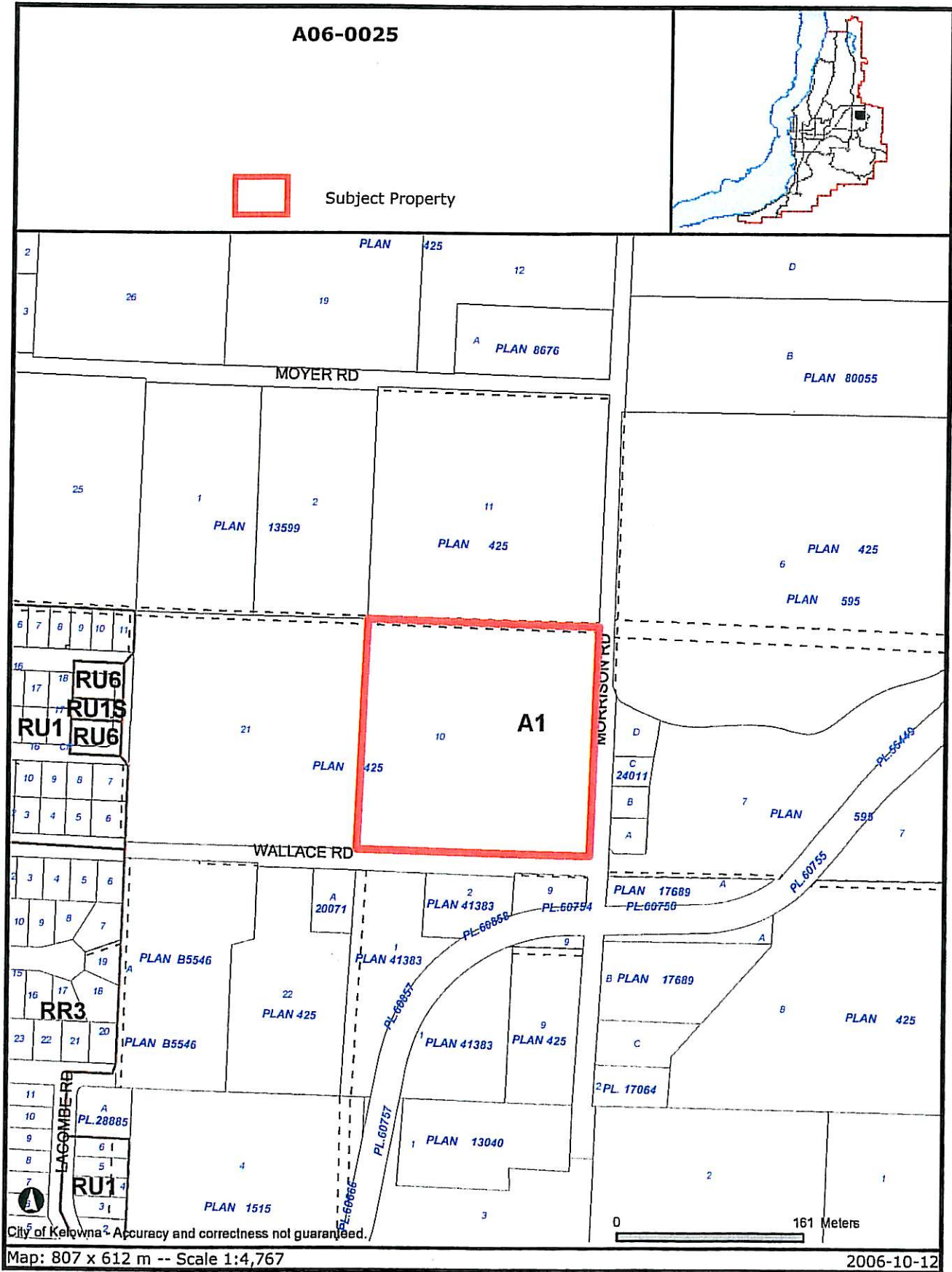
I, Jack D. Peters, Sales Representative with Royal Lepage Kelowna, confirm that I have been instructed by Mr. Frank Schell, Executor, to list the property to be known as:

The remainder portion of : Lot 10, Plan 425, Section 36, Township 26, ODYD  
PID # 012-394-262

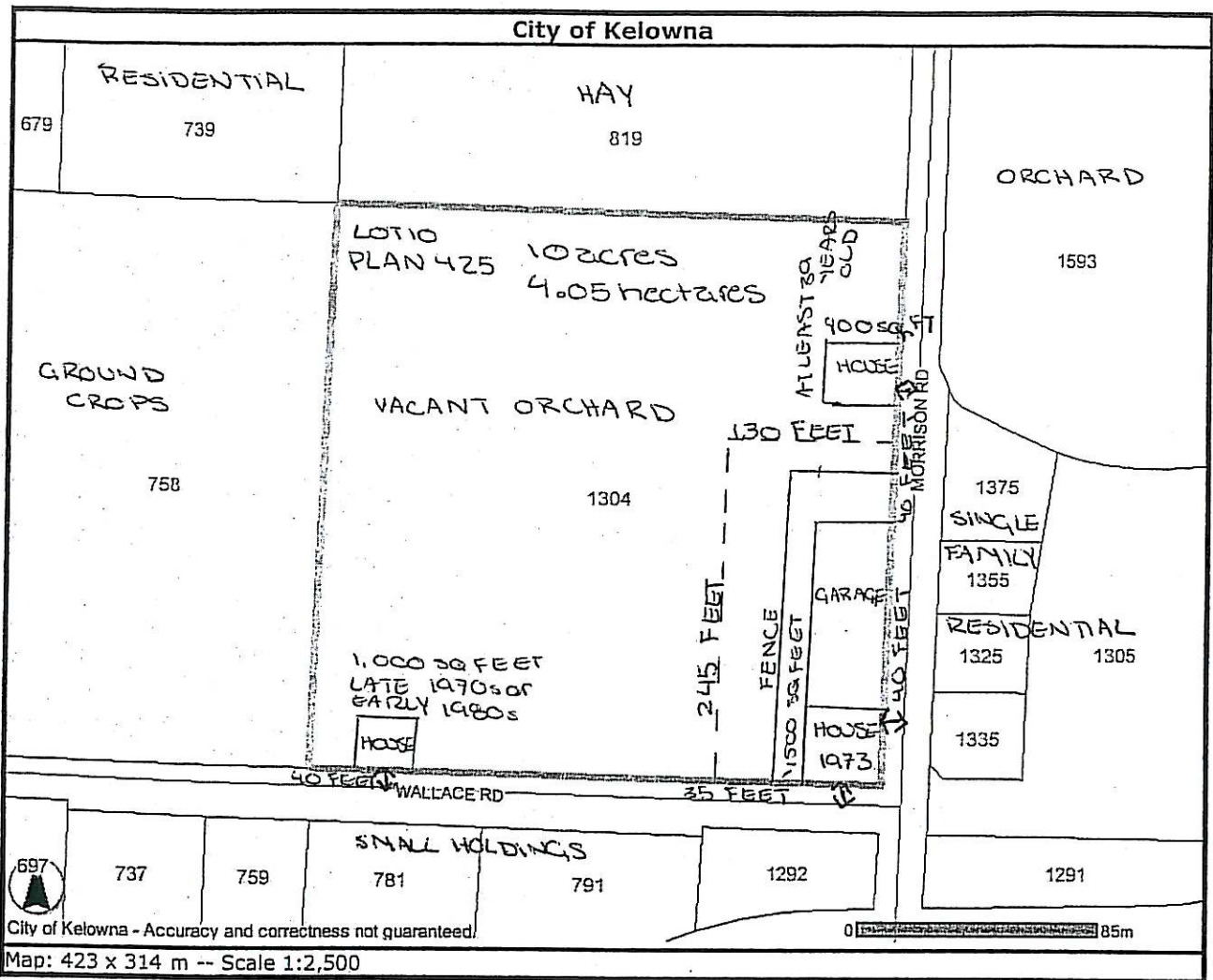
The property being the net remainder of the Home Site severance of the land.

JACK PETERS  
Sales Agent  
Royal Lepage Kelowna  
1-1890 Cooper Rd Kelowna  
B.C. V1Y 8B7

P: 250-860-1100  
F: 250-860-0595  
C: 250-215-3925



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
 The City of Kelowna does not guarantee its accuracy. All information should be verified.



This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.


PROPOSED SUBDIVISION OF LOT 10  
SECTION 36 TOWNSHIP 26 OSOYOOS DIVISION  
YALE DISTRICT PLAN 425

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 <b>Agricultural Land Commission Act</b>	<b>Policy #11 March 2003</b>  <b>HOMESITE SEVERANCE ON ALR LANDS</b>
<p><i>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.</i></p>	

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.

**Subdivision to provide residence for a relative**

- 946.(1) If the requirements of this section are met, an approving officer may approve the subdivision of a parcel of land that would otherwise be prevented from subdivision by a provision in
- (a) a bylaw under this Act other than a bylaw under subsection (4), or
  - (b) a regulation under the *Local Services Act* that establishes a minimum parcel size.
- (2) An application for subdivision of a parcel under this section may only be made if all the following requirements are met:
- (a) the person making the application has owned the parcel for at least 5 years before making the application;
  - (b) the application is made for the purpose of providing a separate residence for the owner or for the owner's mother, father, mother-in-law, father-in-law, daughter, son, daughter-in-law, son-in-law or grandchild;
  - (c) the subdivision would not be a subdivision that an approving officer is prevented from approving by subsection (3).
- (3) Despite subsection (1), an approving officer must not approve a subdivision under this section in any of the following circumstances:
- (a) if
    - (i) the parcel proposed to be subdivided is classified as farm land for assessment and taxation purposes, and after creation of the parcel subdivided for the purpose of providing a residence as stated in subsection (2) (b), the remainder of the parcel proposed to be subdivided would be less than 2 hectares;
    - (ii) if the parcel proposed to be subdivided
      - (i) is not within an agricultural land reserve established under the *Agricultural Land Commission Act*, and was created by subdivision under this section, including subdivision under section 996 of the *Municipal Act*, R.S.B.C. 1979, c. 290, as it read before it was repealed and replaced by section 13 of the *Municipal Amendment Act (No. 2)*, 1989;
      - (ii) if the parcel proposed to be subdivided
        - (i) is within an agricultural land reserve established under the *Agricultural Land Commission Act*, and was within the previous 5 years created by subdivision under this section, including subdivision under section 996 of the *Municipal Act*, R.S.B.C. 1979, c. 290, as it read before it was repealed and replaced by section 13 of the *Municipal Amendment Act (No. 2)*, 1989.
        - (ii) is within the previous 5 years created by subdivision under this section, including subdivision under section 996 of the *Municipal Act*, R.S.B.C. 1979, c. 290, as it read before it was repealed and replaced by section 13 of the *Municipal Amendment Act (No. 2)*, 1989.
- (4) Subject to subsections (5) and (6), a local government may, by bylaw, establish the minimum size for a parcel that may be subdivided under this section, and different sizes may be specified for different areas specified in the bylaw.
- (5) A bylaw under subsection (4) does not apply to land within an agricultural land reserve established under the *Agricultural Land Commission Act*, with the exception of land to which section 23 (1) or (2) of that Act applies.
- (6) Any parcel created by subdivision under this section must be at least 1 hectare unless a smaller area, in no case less than 2 500 m<sup>2</sup>, is approved by the medical health officer.
- (7) For 5 years after subdivision under this section,
- (a) the use of the parcel subdivided for the purpose of providing a residence as

Nov  
01/02

Nov  
01/02

Mar  
31/04

Mar  
31/04

- stated in subsection (2) (b) must be residential use only, and
    - (b) the use of the remainder of the original parcel must not be changed from the use of the original parcel, unless the use is changed by bylaw.
  - (8) For a parcel of land that is not within an agricultural land reserve established under the *Agricultural Land Commission Act*, or that is within such a reserve but is land to which section 23 (1) or (2) of that Act applies, approval of subdivision under this section may only be given on the condition that
    - (a) the owner of the original parcel covenants with the local government, in respect of each of the parcels being created by the subdivision, that the parcel
      - (i) will be used as required by subsection (7), and
      - (ii) will not be subdivided under this section, and
    - (b) the covenants referred to in paragraph (a) be registered under section 219 of the *Land Title Act* at the same time that application is made to deposit the subdivision plan.
  - (9) If a subdivision referred to in subsection (8) is approved, the approving officer must state on the note of approval required by section 88 of the *Land Title Act* that the approval is subject to conditions established by subsection (8).

RS1979-290-996; 1989-33-13; 1999-14-40 (B.C.Reg. 70/2000); 2000-7-177; 2002-36-87; 2004-12-29.

## Section 11 – Agricultural Zones

BL8404 amended the following Title:

### 11.1 A1 – Agriculture 1

#### A1s – Agriculture 1 with Secondary Suite

BL8760 replaced the Purpose.

BL9120 replaced the Purpose as follows:

##### 11.1.1 Purpose

The purpose is to provide a zone for rural areas and agricultural uses as well as other complementary uses suitable in an agricultural setting. A maximum of one single dwelling house is permitted. In addition a secondary suite may permitted when in accordance with relevant provisions of this bylaw including subsection 6.5 and 9.5

##### 11.1.2 Principal Uses

The principal uses in this zone are:

- (a) agriculture
- (b) animal clinics, major where in existence prior to July 1<sup>st</sup>, 1998
- (c) aquaculture
- (d) greenhouses and plant nurseries

BL8760 added paragraph (e) and renumbered the subsequent paragraphs:

- (e) intensive agriculture

BL9120 deleted paragraphs (f) mobile homes and (g) single detached housing and added (g) single dwelling housing and renumbered the subsequent paragraphs:

- (g) single dwelling housing
- (f) utility services, minor impact

##### 11.1.3 Secondary Uses

The secondary uses in this zone are:

- (a) agricultural dwellings, additional
- (b) agri-tourist accommodation
- (c) animal clinics, major
- (d) animal clinics, minor
- (e) bed and breakfast homes
- (f) care centres, intermediate

BL8760 added "forestry" and renumbered the subsequent sections:

- (g) forestry

BL8654 deleted paragraph (g) and renumbered the subsequent sections

- (h) group homes, minor
- (i) home based businesses, major
- (j) home based businesses, minor
- (k) home based businesses, rural
- (l) kennels and stables
- (m) wineries and cideries

BL8881 added second kitchen.

BL9120 replaced paragraph (n) as follows:

- (n) second kitchen (A1 only)

BL8404 added the following line:

- (o) secondary suite (A1s only)



BL9120 added subsection 11.1.4 Buildings and Structures Permitted and renumbered the subsequent paragraphs as follows:

11.1.4 Buildings and Structures Permitted

- (a) one **single detached house** (which may contain a **secondary suite** in the A1s zone);
- (b) one **mobile home**;
- (c) permitted **accessory buildings** or **structures** (which may contain a **secondary suite** in the A1s zone).

11.1.5 Subdivision Regulations

- (a) The minimum **lot width** is 40.0 m.

BL8862 replaced paragraph (b) as follows:

- (b) The minimum **lot area** is 4.0 ha except the minimum **lot area** is 2.0 ha when located within the **Agricultural Land Reserve**. That Lot B, Section 34, Township 29, ODYD, Plan KAP66973 be exempted from the minimum lot area requirements of this zone for a period of 3 years, effective July 30, 2002



- 1.8.2 A principal or **secondary use** is permitted on a **lot** less than the minimum **lot** size in that **zone**, provided that the **lot** was created before adoption of this Bylaw and the **development** otherwise complies with all the regulations of this Bylaw.

**BL8367 added sub-section 1.8.3 as follows:**

- 1.8.3 Where a **lot** is created with Agricultural Land Commission approval for severance of a home-site or a **lot** to be used in lieu, then the regulations of the RR2 **zone** will apply.

**BL8743 added sub-section 1.8.4 as follows:**

- 1.8.4 A **lot** having less than the required minimum **lot** size in a **zone** may be rezoned to add the "s" notation to the **zone** classification to permit a **secondary suite** as a **secondary use**, provided the **lot** was created before adoption of City of Kelowna Zoning Bylaw No. 8000 and the **development** otherwise complies with all regulations of the Zoning Bylaw.

## 1.9 Applications in Process

- 1.9.1 A completed application for a **building permit** which is received prior to the effective date of this Bylaw shall be processed in accordance with the **City** of Kelowna Zoning Bylaw (1976) No. 4500, as amended. Such applications shall be approved or rejected within 12 months of this Bylaw coming into effect and, if rejected, any future **development** must comply with this Bylaw.

## 1.10 General Interpretation

- 1.10.1 Any enactments referred to herein are a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the **Council** of the **City** of Kelowna, as amended, revised, consolidated or replace from time to time.
- 1.10.2 The headings given to sections, paragraphs, and sub-sections in this bylaw are for convenience of reference only. They do not form part of this bylaw and will not be used in the interpretation of this bylaw.
- 1.10.3 The Schedules attached to this bylaw form part of this bylaw.

**BL8760 Added the following section:**

## 1.11 Review of Agriculture Zone

- 1.11.1 The City of Kelowna will initiate a review of the Agriculture zone, and related regulations, in conjunction with the Ministry of Agriculture, Food and Fisheries by no later than December 31, 2003.

## 6.12 Rooftop Screening

6.12.1 Rooftop, mechanical, and electrical equipment in **zones** other than **agricultural zones** shall be screened from view from a public roadway or **adjacent** property at grade.

## 6.13 Utility Cabinets

6.13.1 Minor utility cabinets for the provision of telephone, power, cable television or other utility services, when located outside a statutory right-of-way, shall comply with the following:

- (a) a cabinet less than 1.8 m in **height** with no horizontal dimension exceeding 1.0 m need not comply with any **yard** requirements in any **zone**;
- (b) a cabinet less than 1.8 m in **height** with a horizontal dimension between 1.0 m and 2.0 m must be set back at least 1.0 m from a **lot line**; and
- (c) a cabinet greater than 1.8 m in **height** or with a horizontal dimension exceeding 2.0 m shall comply with the setbacks for accessory **structures** in that **zone**.

BL9120 deleted "6.14 Stream Protection Leave Strips" and replaced as follows:

## 6.14 Riparian Management Area (RMA) Setbacks

BL9120 replaced paragraph 6.14.1 as follows:

6.14.1 In all **zones** where **Riparian Management Area** setbacks are required along **watercourses**, as specified by Official Community Plan Bylaw No. 7600, the specified setback distance shall be measured from the **top-of-bank**, or from the **natural boundary** where the **top-of-bank** is not clearly defined. The specified setback distance shall be measured to the nearest part of the building or structure including roofs, eaves, and any over-hanging components or cantilevered portions of a building.

BL9120 replaced paragraph 6.14.2 as follows:

6.14.2 No alteration of land shall be permitted within a **Riparian Management Area** without an authorized Development Permit.

BL9120 and BL9530 replaced paragraph 6.14.3 as follows:

6.14.3 When new lots are created abutting a **watercourse** where a **Riparian Management Area** setback is required, the land within the **RMA** may be used for calculating the minimum lot area and for the determination of permitted **density** and **lot coverage**.

BL9120 replaced paragraph 6.14.4 and BL9530 deleted paragraph 6.14.1 in its entirety.

BL8367 added a new Section 6.15:

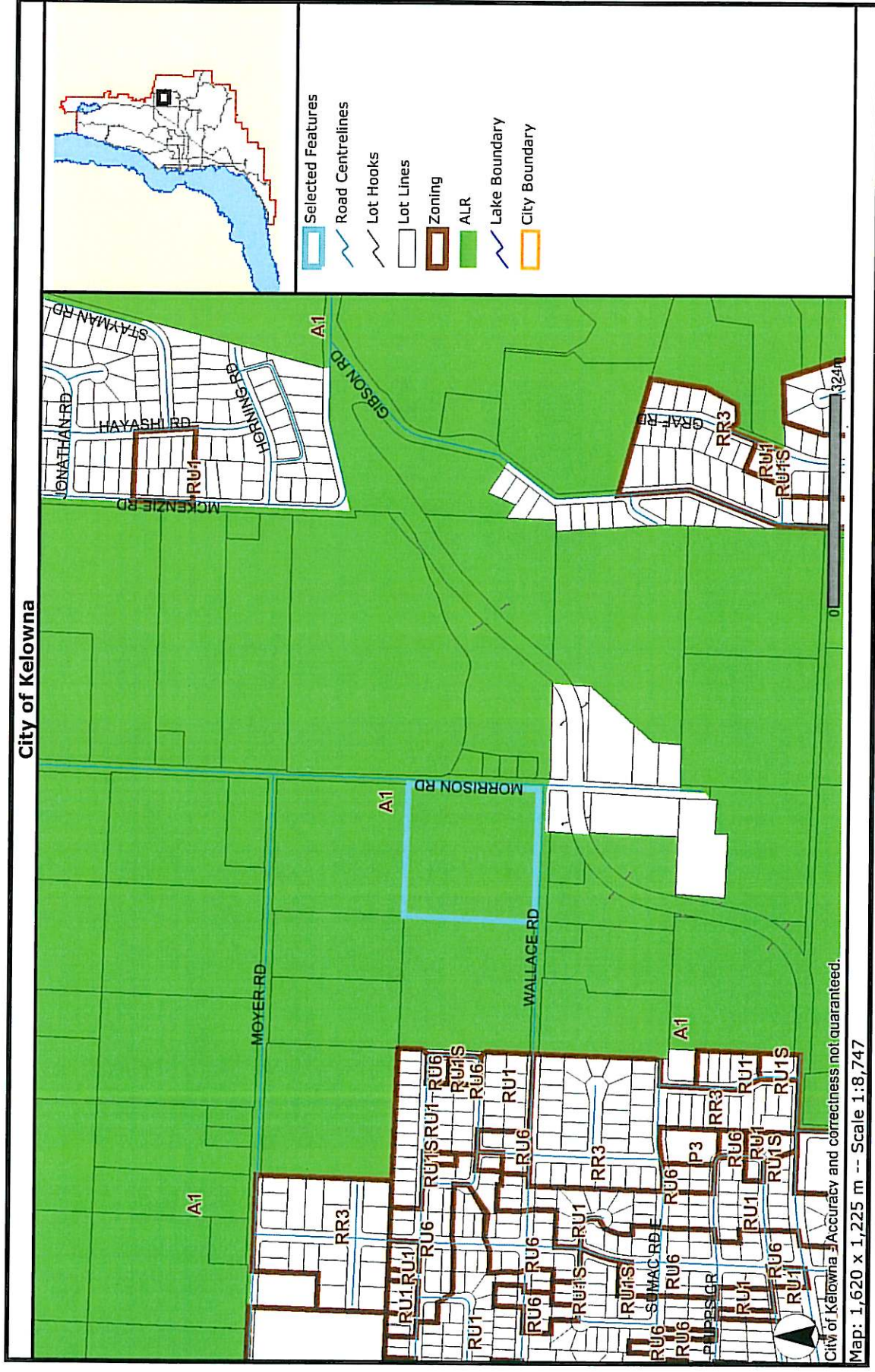
## 6.15 Storage of Materials

6.15.1 No storage of materials shall be permitted in any **front yard**.

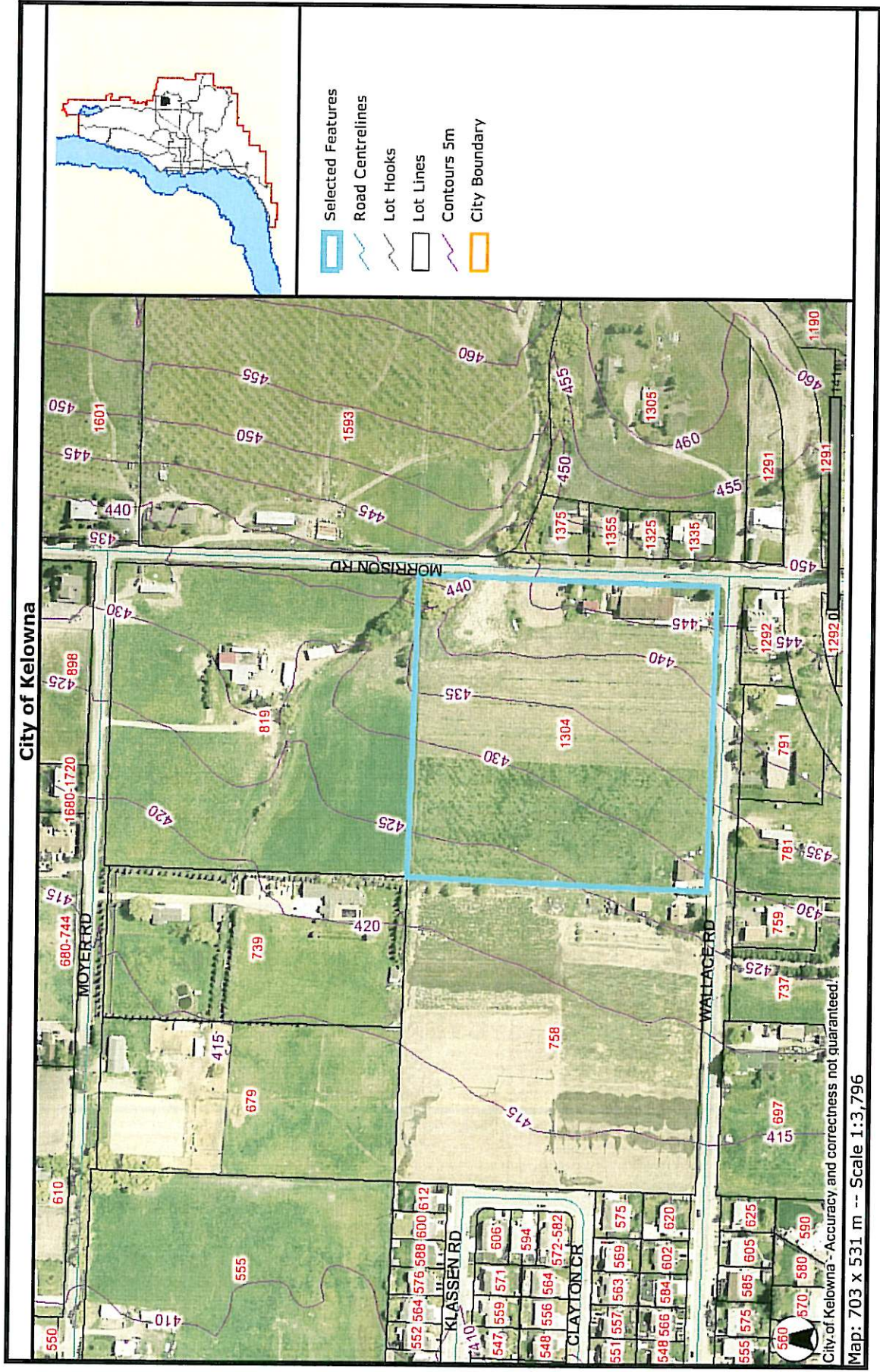
BL8571 added a new Section 6.16:

## 6.16 Minimum Lot Size – Septic Disposal System

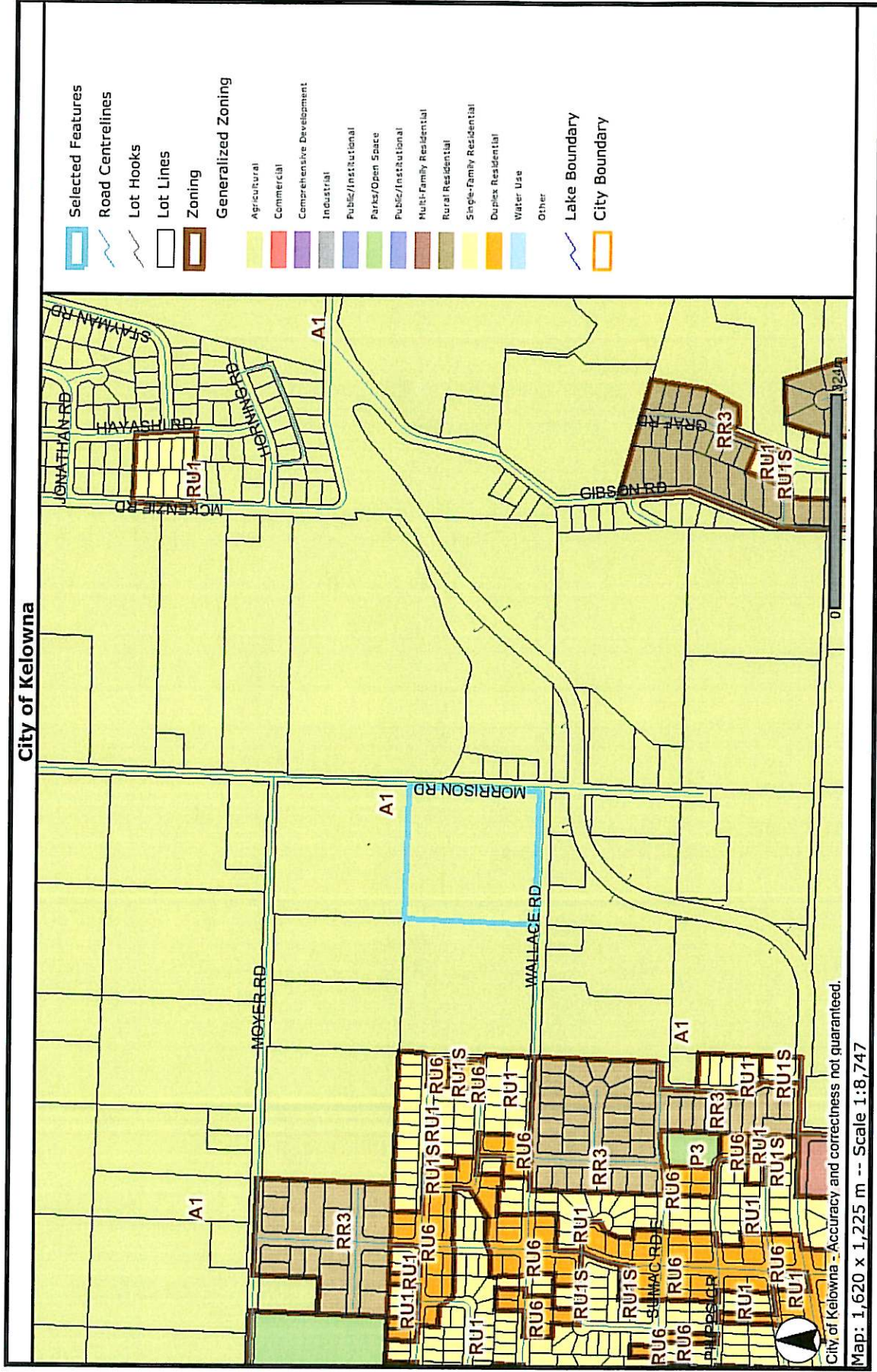
6.16.1 For any rural residential, residential, industrial, commercial, institutional or comprehensive land use, no **lots** shall be created that are less than 1.0 Ha in area unless they are serviced by a community sanitary sewer system. The only exception to this provision are subdivisions approved by the Provincial Agricultural Land Reserve Commission for a homesite severance or a **subdivision** in lieu of a homesite severance, or an institutional **lot** for utility services or park or open space where there will be no requirement for sewage disposal.



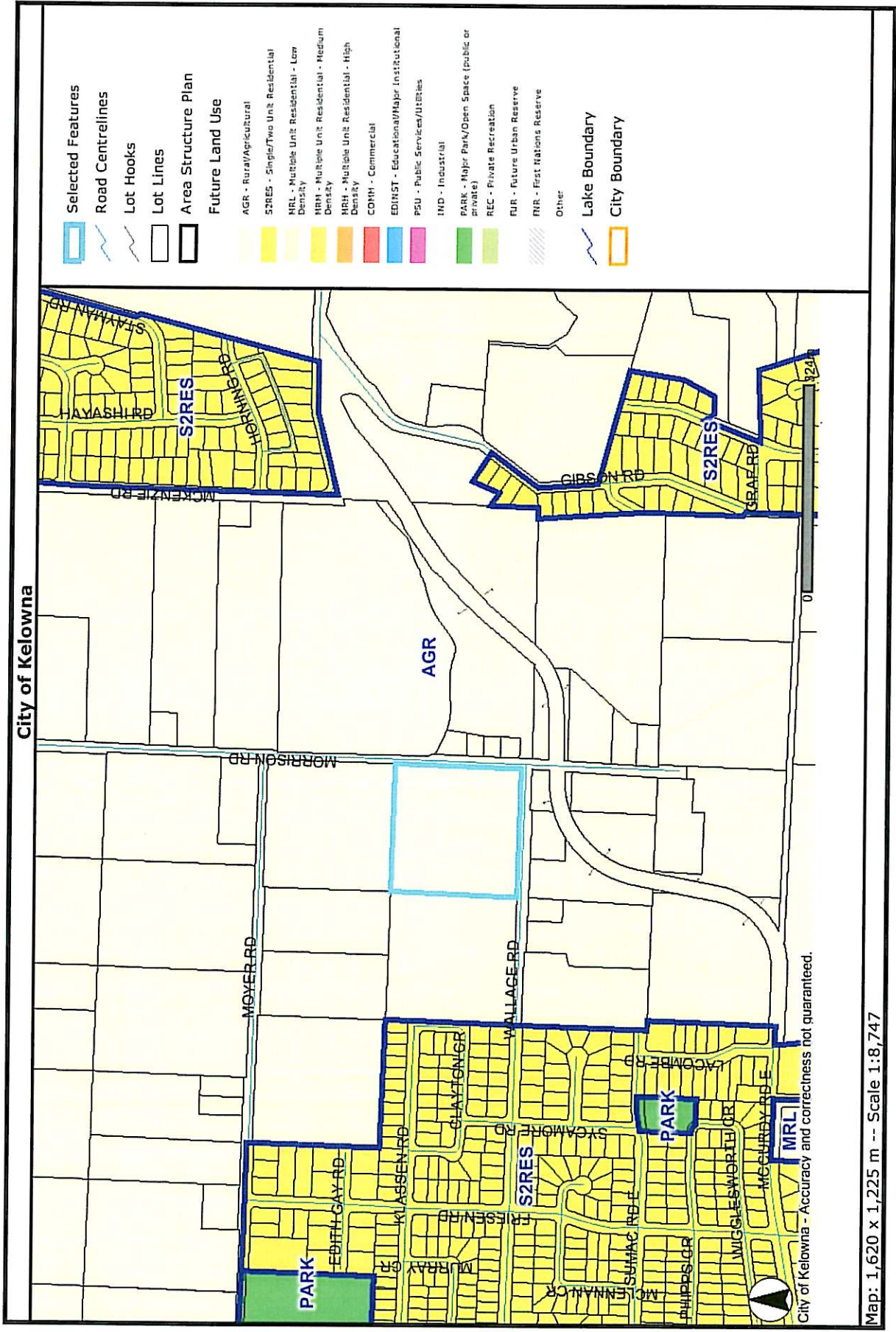
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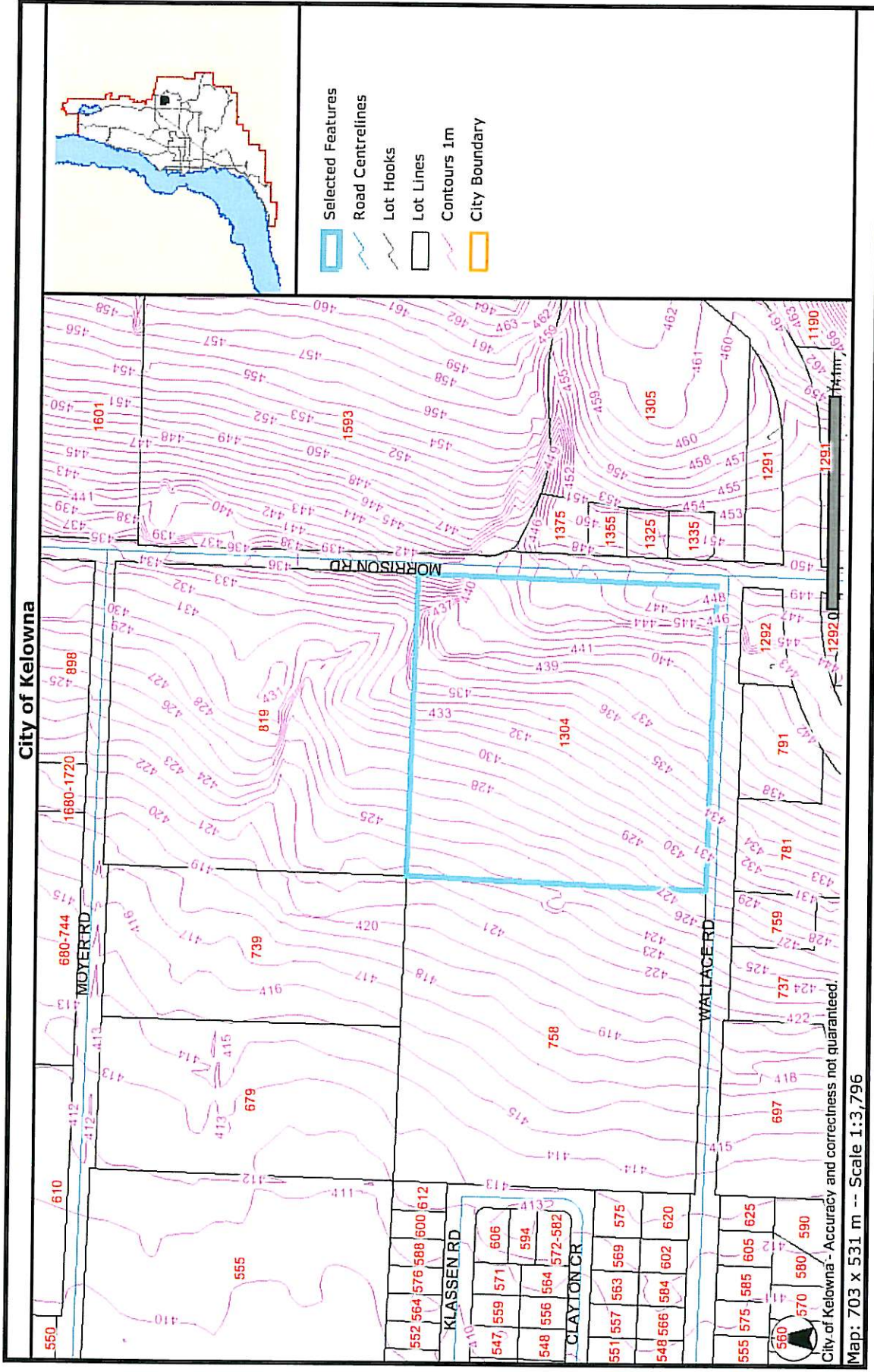
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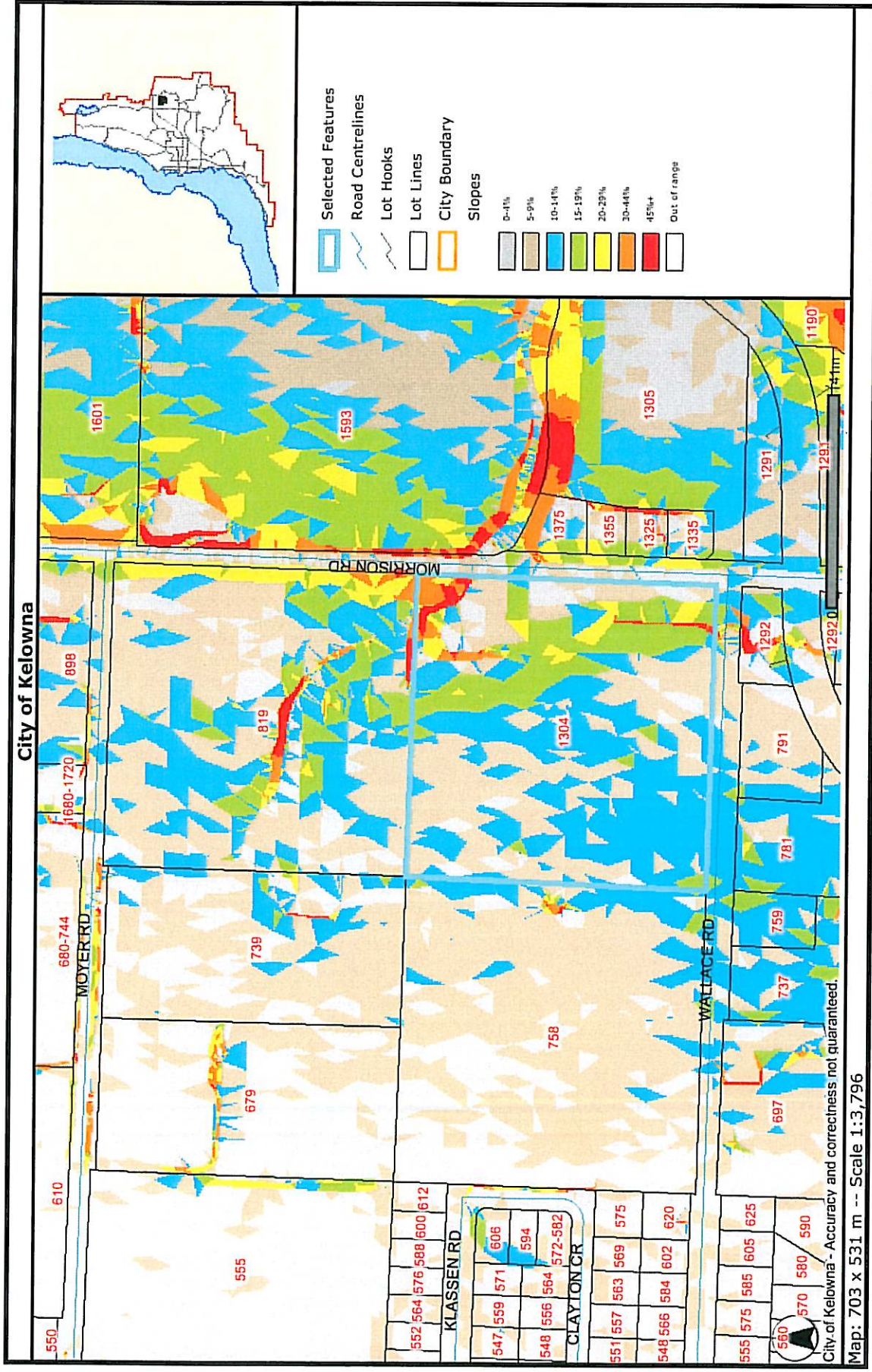


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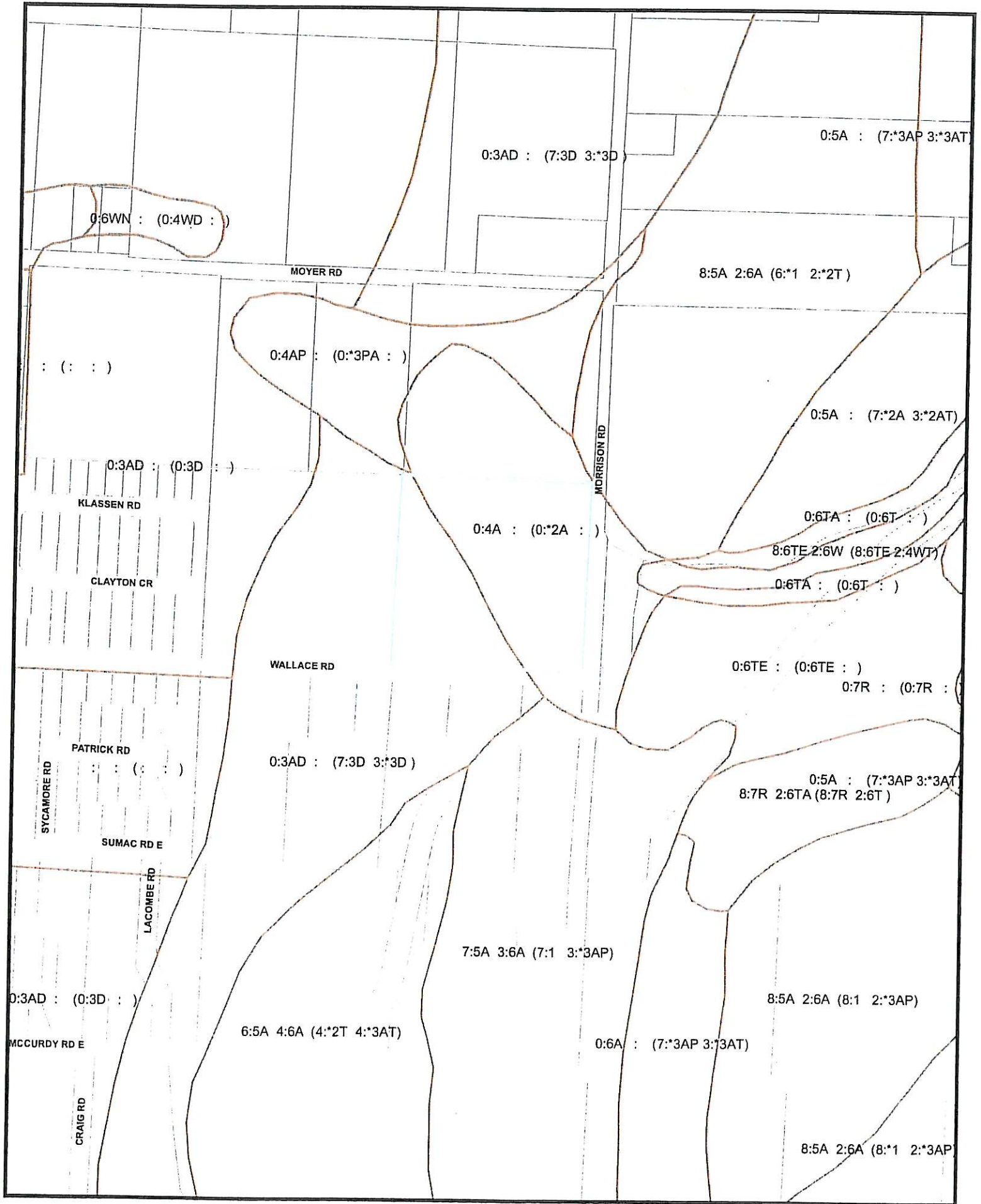
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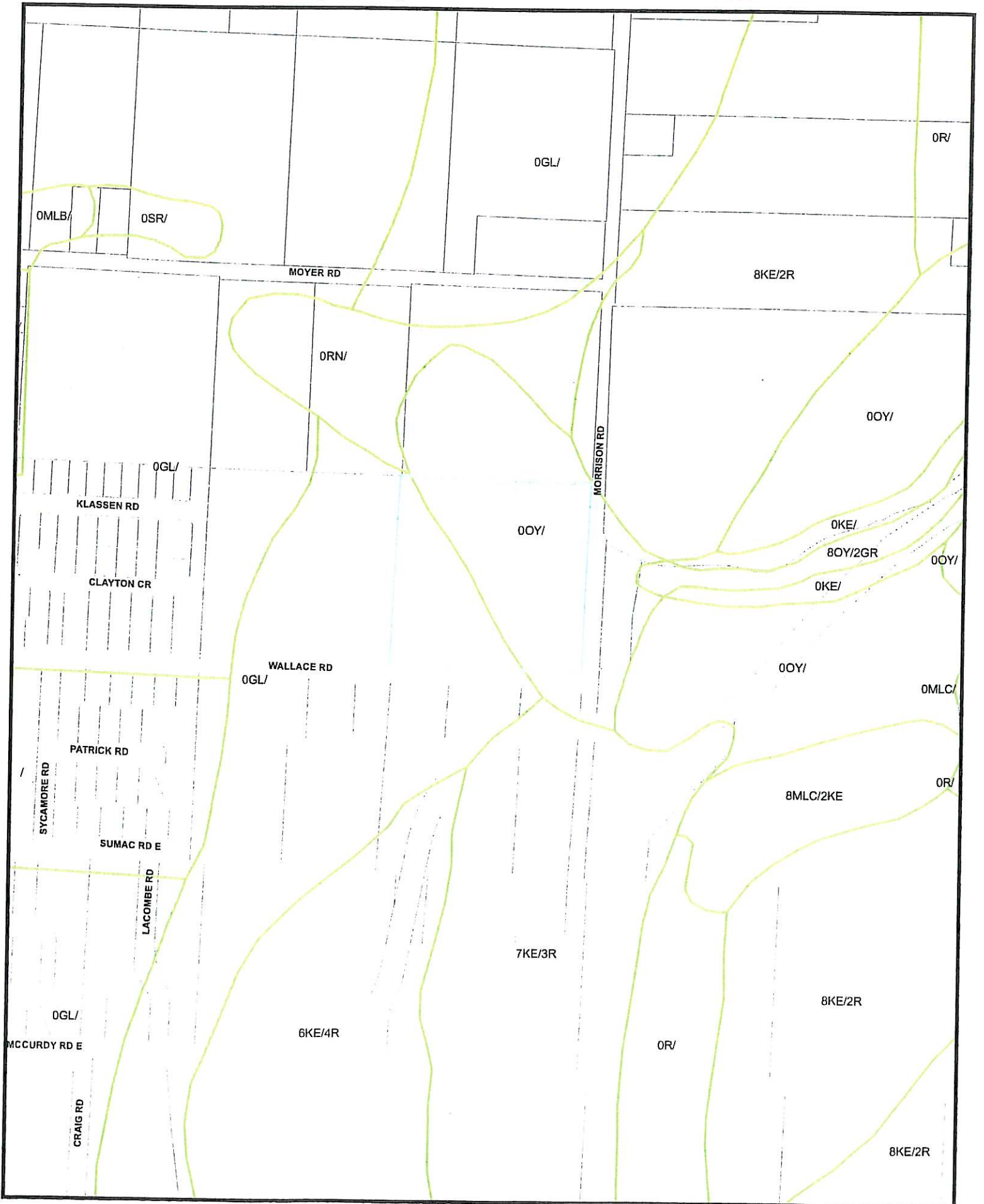
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# Land Capability = Brown/ Soil Class = Green



1:5,000

Land Capability = Brown/ Soil Class = Green



1:5,000

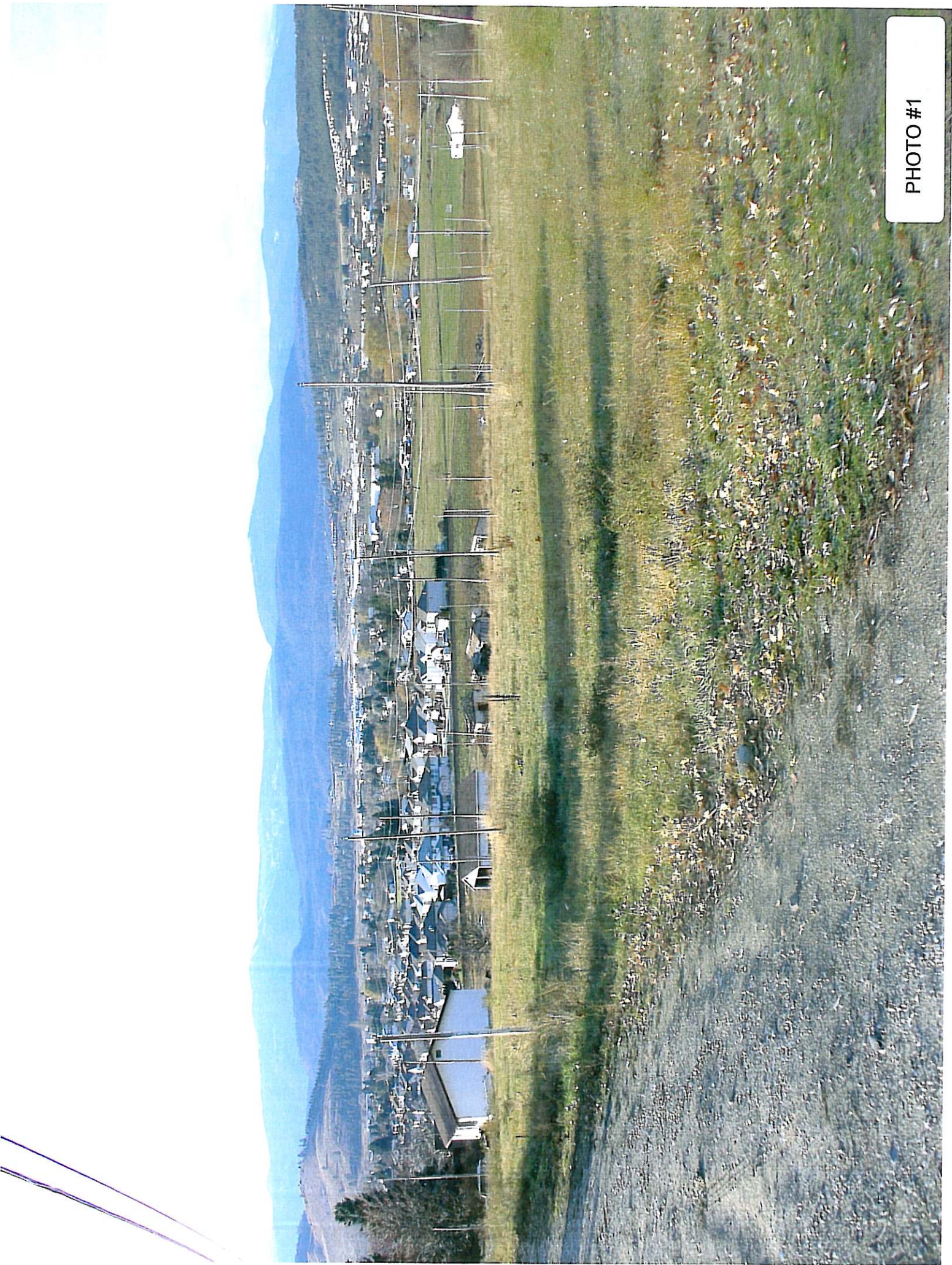


PHOTO #1



PHOTO #2



PHOTO #3



PHOTO #4

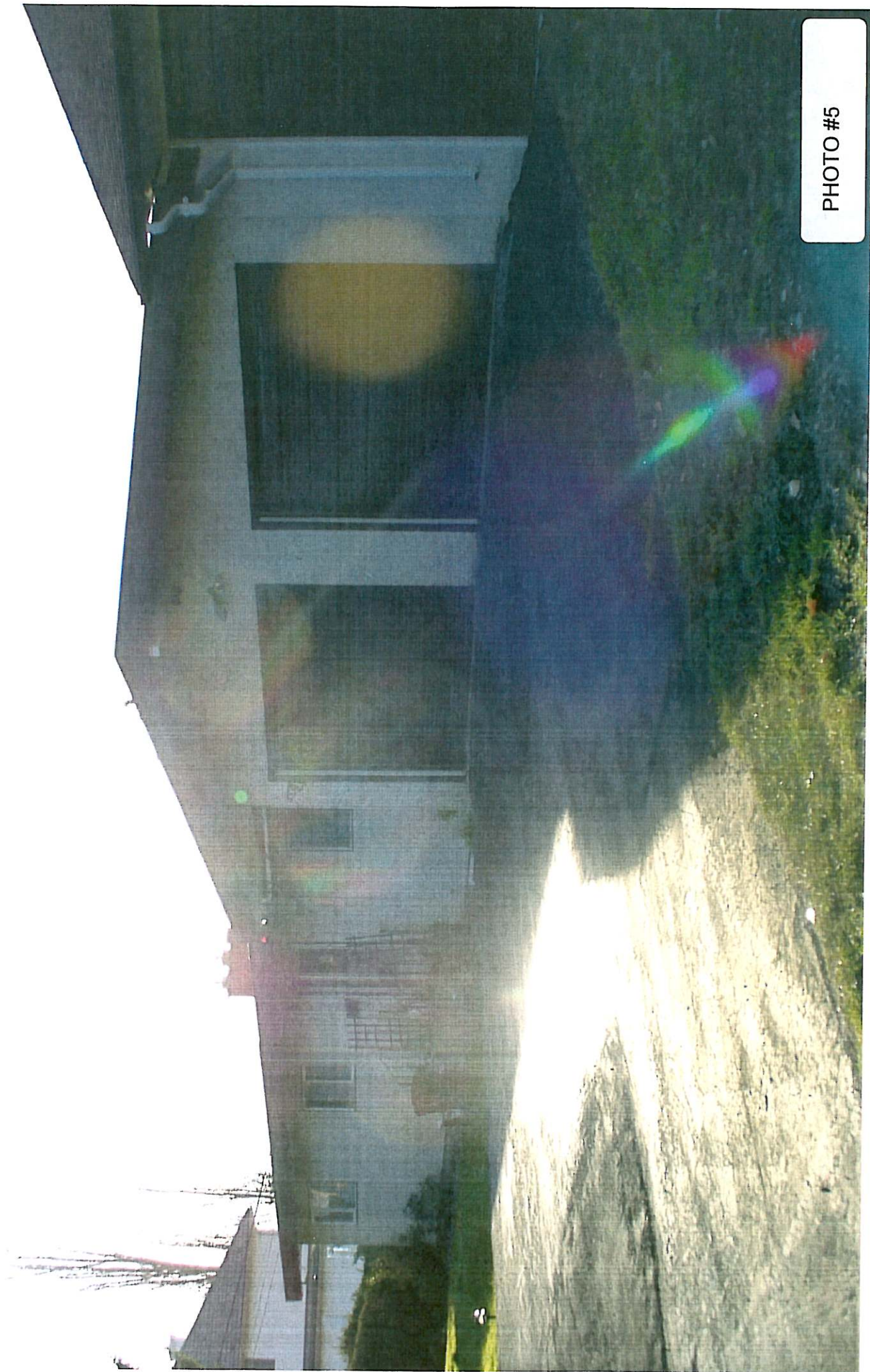


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PHOTO #6



PHOTO #7