

Date: March 14, 2007

File No.: A06-0028

To: City Manager

From: Planning & Development Services Department

Purpose: To obtain approval from the Agricultural Land Commission to allow a two lot +/- 1 ha lot subdivision (in lieu of a homesite severance subdivision) under Section 21(2) of the *Agricultural Land Commission Act*.

OWNERS: Cheryl Diane Turton

APPLICANT: Cheryl Turton

AT: 2796 K.L.O. Road

EXISTING ZONE: A1 Agriculture 1 Zone

REPORT PREPARED BY: Corine (Cory) Gain, MCIP, CPT

The subject property is located in East Kelowna on the north side of K.L.O. Road west of the intersection of K.L.O., McCulloch and East Kelowna Roads.

The applicant reports that there is a 1905 heritage home, a garage and a substantial accessory building located on the property. The flat property is currently planted as an orchard. The property boundary at K.L.O. Road drops steeply southward to the road surface. Access to the property is via Neid Road to the northeast corner of the property.

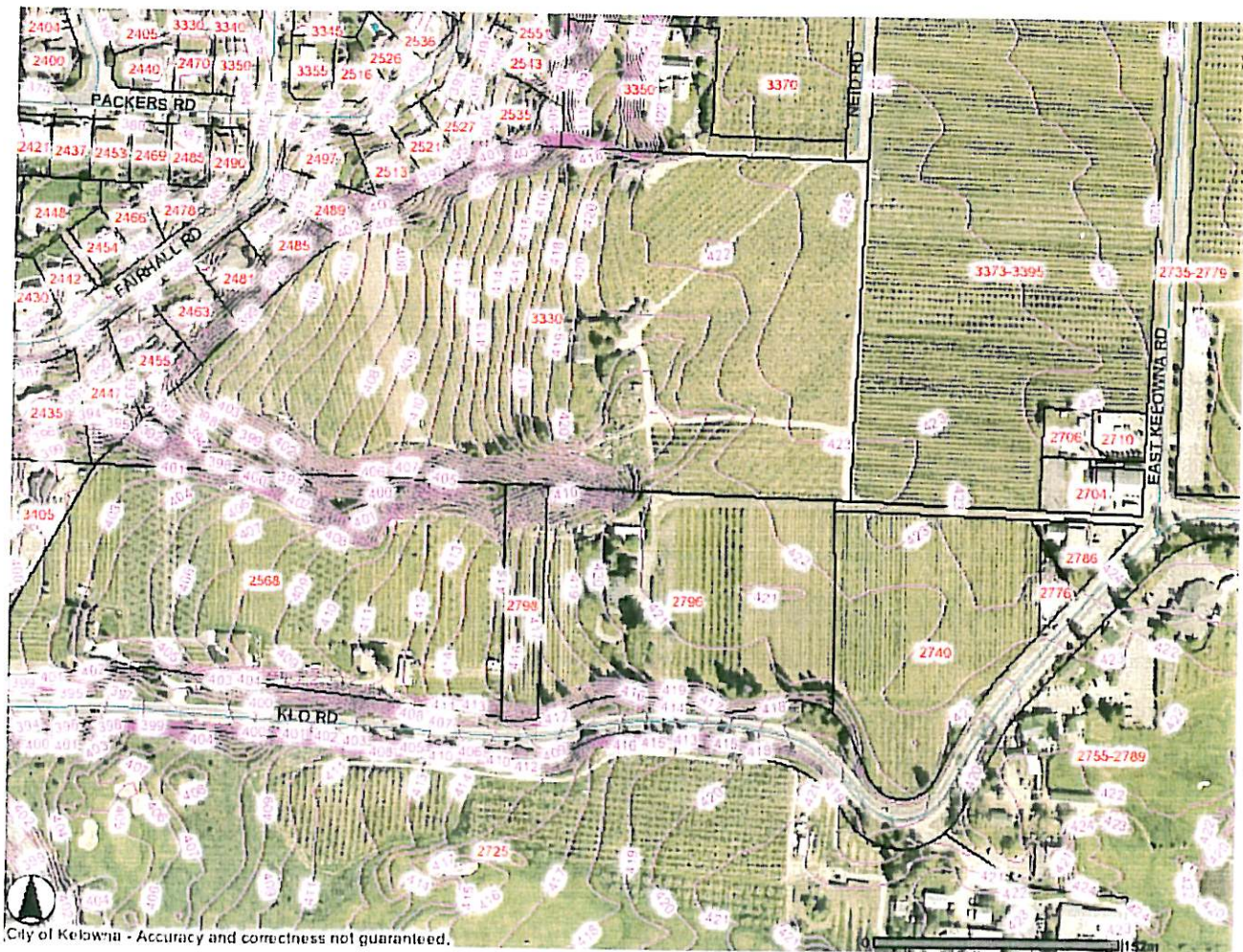
Parcel Size: 2.35 ha (5.80 ac.)
Elevation: Approx. 410 m to 422 m GSC

Zoning of Adjacent Property

North	A1 – Agriculture 1
East	A1 – Agriculture 1
South	A1 – Agriculture 1
West	A1 – Agriculture 1

5.0 SITE MAP:

Subject Property: 2796 K.L.O. 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 a rating of 0:3AD: (0:3) indicating the following:

Unimproved:

100% 3AD: "Land in this class has moderately severe limitations that restrict the range of crops or require special conservation practices", "Soil Moisture Deficiency – Crops are adversely affected by droughtiness caused by low soil water holding capacity or insufficient precipitation, or both" and "Undesirable Soil structure and/or low perviousness: soils are difficult to till, require special management for seedbed preparation, pose traffic ability problems, have insufficient aeration, absorb and distribute water slowly, and/or have rooting zone depth restricted by conditions other than high water table, bedrock or permafrost".

Improved:

100% 3: "Land in this class has moderately severe limitations that restrict the range of crops or require special conservation practices".

The easterly portion of the parcel is identified on the BC Land Capability for Agriculture Map as having a rating of 0:5A (0:*3P) indicating the following:

Unimproved:

100% 5A: "Land in this class has very severe limitations that restrict its capability to producing perennial forage crops or other specially adapted crops".

Improved:

100% 3P: "Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both" and "Stoniness: Soils are limited by the presence of coarse fragments which significantly hinder tillage, planting and/or harvesting".

Soil Classification (1: 20,000)

The westerly portion of the subject property is identified on the BC Soil Capability for Agriculture Map as having a rating of 0GL. The easterly portion of the property is identified as having a rating of 0R indicating the following:

Westerly portion: 100% GL: "Glenmore – Land: Nearly level to moderately sloping stratified glaciolacustrine sediments; Texture: 100 cm or more of silt loam, silty clay loam or clay loam; Drainage: Well to moderately well; and Classification: Eluviated Dark Brown".

Easterly portion: 100% R: "Rutland – Land: Very gently to strongly sloping fluvioglacial deposits; Texture: 10 to 25 cm of sandy loam or loamy sand over gravely loamy sand or very gravely sand; Drainage: Rapid; and Classification: 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 Subdivision application if and when the Agricultural Land Commission agrees to the proposed development.

8.0 PLANNING AND DEVELOPMENT SERVICES COMMENTS

This property was the subject of a previous application submitted by the same property owner in 2001/02 under application number A01-0112 for a lot line adjustment subdivision between the subject property and the property immediately to the west at 2798 K.L.O. Road. While the Agricultural Advisory Committee supported the proposal to subdivide the property subject to the resulting parcel being large enough to satisfy the requirements of the Subdivision Approving Officer [with reference to OCP (Sanitary Sewer Policy 11.5.6) and Subdivision Servicing Bylaw], the Agricultural Land Commission refused the previous application by Resolution # 106/2002.

A copy of the existing Agricultural Land Reserve Use, Subdivision and Procedure Regulation Part 5 – Permitted Subdivisions is attached for your reference to provide an explanation of the context of that previous application. Section 10(1)(c)(ii) and (iii) states:

"Despite section 18(b) of the [*Agricultural Land Commission*] Act, an approving officer under the *Land Title Act*, the *Local Government Act*, of the *Strata Property Act* or a person who exercises the powers of an approving officer under any other Act may authorize or approve a plan of subdivision without the approval of the commission if the proposed plan achieves one or more of the following:... (c) involves not more than 4 parcels, each of which is a minimum of 1 ha, and results in all of the following:...

- (ii) boundary adjustments that, in the opinion of the approving officer, will allow for the enhancement of the owner's overall farm or for the better utilization of farm buildings for farm purposes; and
- (iii) no parcel in the reserve of less than 1 ha"

Further subsections (2) and (3) state:

- "(2) An approving officer who declines to authorize or approve a plan must give notice of that decision to the person who made the application.
- (3) A person who receives a notice under subsection (2) may apply to the commission with respect to the proposed subdivision."

An excerpt from the January 22, 2002 staff report is included here for your reference:

"The Planning & Development Services Department does **not** support the application.

The Subdivision Approving Officer may approve a plan of subdivision [without the approval of the Agricultural Land Commission] if the subdivision complies to section 2(b) of the Subdivision and Land Use Regulation #448/98. However the proposed subdivision will create a lot less than 8093.5 m² in area and will not allow for a more efficient use of farm land or farm buildings for farm practices.

Recent amendments to the OCP (Sanitary Sewer Policy 11.5.6) and Zoning Bylaw limit the size of newly created rural parcels on septic systems to a minimum of 1.0 ha. In order to comply with the required minimum parcel size this proposal would need to be amended to make the proposed easterly lot a minimum of 1.0 ha with the balance of the site as a 1.24 ha parcel, but this may not have any benefit to farming."

The applicant was unsuccessful in their previous application to the Agricultural Land Commission on the basis of the above regulations. This second attempt to accomplish a subdivision of the subject property makes reference to another set of policies being the homesite severance policies.

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 ALC homesite severance policies cannot be satisfied by the proposed subdivision. The applicant has requested special consideration of this subdivision application in lieu of the Agricultural Land Commission's Homesite Severance Policy but has not provided any supporting reasons for the request other than the verbal explanation provided at the Agricultural Advisory Committee meeting that they would like to provide the opportunity for their son to build a home and continue to reside in the area.

The Agricultural Advisory Committee at its meeting of February 15, 2007 made reference to the decision of that same committee of January 10th, 2002 on the previous application. The AAC continues to support the previous resolution as follows:

"That the Agricultural Advisory Committee supports application No. A01-112 by Ted & Cheryl Turton to obtain approval from the Land Reserve Commission to subdivide the subject property within the Agricultural Land Reserve with the suggestion that the newly proposed lot be large enough to meet with the approval of the Subdivision Approving Officer."

The final decision of the Land Reserve Commission by Resolution #106/2002, refused the application on the basis that the Commission believed that the proposal was not in keeping with its mandate. The following explanation was provided:

"The Commission appreciated the opportunity to view your property and to hear your concerns about the configuration and location of the existing 0.34 ha lot, which if developed for a residence, would reduce the amenity of the existing heritage home Bed and Breakfast. The Commission was concerned, however, with the City's requirements that the newly configured lot would be increased to 1 ha. This fact, the division of the largest productive portion of your property by the new lot, and the proximity of the newly created lot adjacent to cultivated land to the east, raised further concerns about the impact of additional residences and the long term retention of this block of land for agriculture."

The minimum 2.0 hectare lot size requirement of the A1 Agriculture zone cannot be achieved by a subdivision of this 2.35 hectare property. The Subdivision Approving Officer has advised that he continues to be unwilling to entertain a subdivision of the subject property on the basis that there is

no clear benefit to agriculture. The applicant has requested that the subject application be considered despite the issues outlined above.

The Planning and Development Services Department maintains its established position of **non-support** of the subdivision of the subject property.


R. G. Shaughnessy
Subdivision Approving Officer

Approved for inclusion



Mary Pynenburg, MRAIC MCIP
Director of Planning & Development Services

RGS/cg

ATTACHMENTS

Photographs (#1 - 6) of the property taken by Staff on February 1, 2007 (3 pages)
ALC Application by Land Owner (2 pages)
Site plans showing proposed subdivision line (2)
Location Map
Excerpts from Zoning Bylaw 8000 Section 11 (5 pages)
ALC Policy #11 Homesite Severance on ALR Lands (2 pages)
Local Government Act Section 946 Subdivision to provide a residence for a relative
Location Map
ALR Map
Future Land Use Map
Generalized Zoning Map
Orthophoto (1: 5,919)
Orthophoto (1: 4,115) with 1 m Contours
Orthophoto (1: 2,104)
Contour Map (1 m Contours)
Slope Map
Land Capability Map
Soil Classification Map
Excerpt from ALR Use, Subdivision & Procedure Regulation, Part 5 – Permitted Subdivisions
April 17, 2002 decision letter from the Land Reserve Commission

PHOTOGRAPHS – FEBRUARY 1, 2007



Looking west from K.L.O. toward the southeast corner of the property along the southern boundary.



Looking east along K.L.O. Road near the southeast corner of the subject property.



Looking north at the southern boundary of the subject property from K.L.O. Road.



Looking west toward the southern boundary of the property at K.L.O. Road.

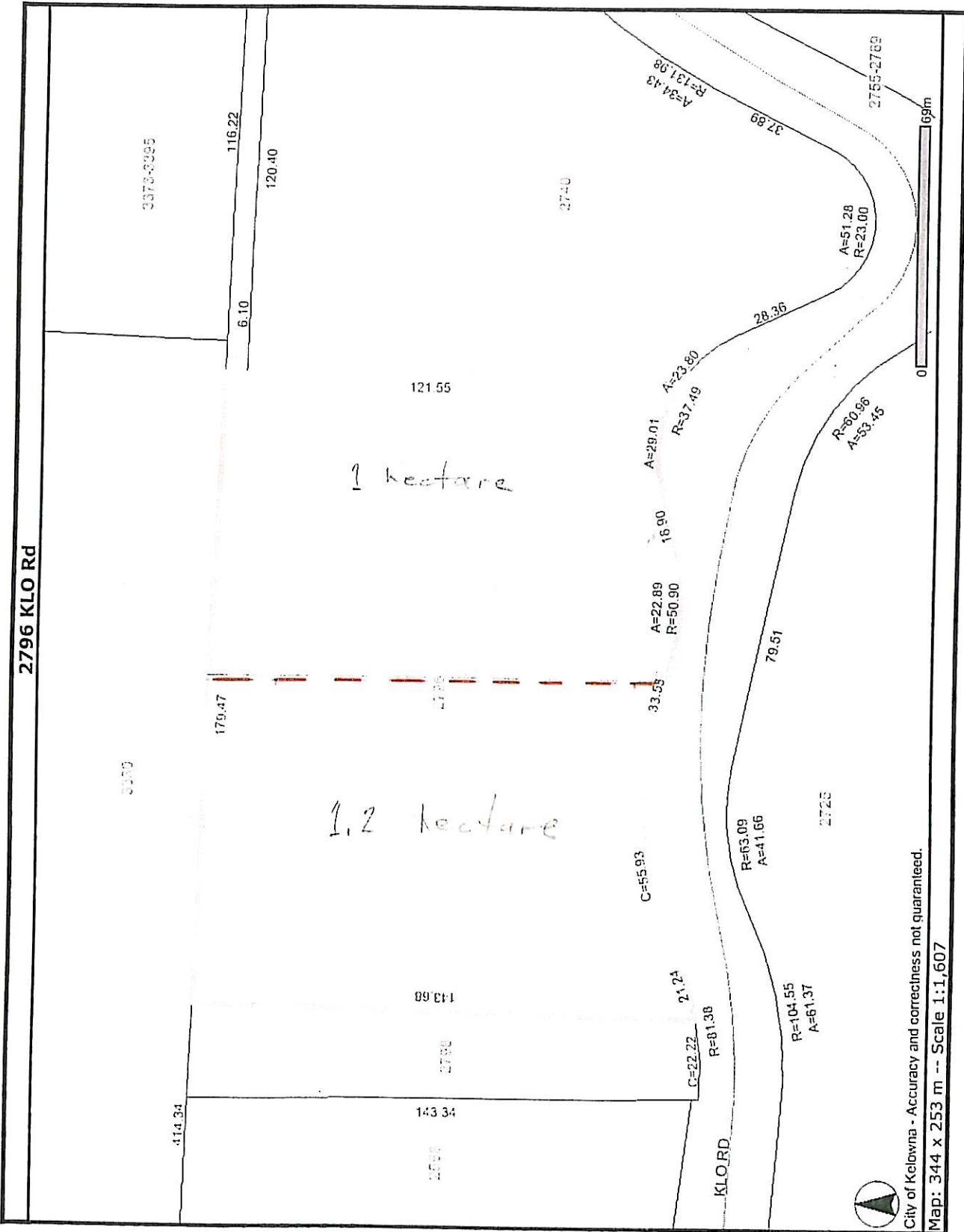


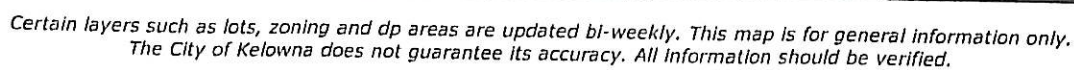
Looking west along the southern boundary of the property at K.L.O. Road.



Looking south to the subject property in the distance from Neid Road.







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 be 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 1st, 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

11.1.6 Development Regulations

- (a) The maximum **site coverage** is 10% for residential **development**, and it is 35% for **agricultural structures** except it may be increased to 75% for greenhouses with closed wastewater and storm water management systems.
- (b) The maximum **height** is the lesser of 9.5 m or 2½ **storeys**, except it is 13.0 m for accessory **buildings** and 16.0 m for **agricultural structures**.
- (c) The minimum **front yard** is 6.0 m.
- (d) The minimum **side yard** is 3.0 m, except it is 4.0 m from a **flanking street**.
- (e) The minimum **rear yard** is 10.0 m, except it is 3.0 m for accessory **buildings**.

BL8760 replaced paragraph (f)

- (f) Notwithstanding subsections 11.1.6(c) to (e), **confined livestock areas** and/or **buildings** housing more than 4 animals, or used for the processing of animal products or for **agricultural and garden stands**, shall not be located any closer than 15.0 m from any **lot line**, except where the **lot line** borders a **residential zone**, in which case the area, building or stand shall not be located any closer than 30.0 m from the **lot line**.

11.1.7 Other Regulations**BL8367 and BL8760 both replaced paragraph (a):**

- (a) Notwithstanding subsection 11.1.4(b), when a **home based business**, rural involves the cutting and wrapping of wild game or any meat, the **lot** must have a minimum **lot area** greater than 0.33 ha.
- (b) Single wide **mobile homes** shall not be located on **lots** smaller than 2.0 ha. and double wide **mobile homes** shall not be located on **lots** smaller than 0.8 ha.
- (c) Major animal clinics or **kennels and stables** shall not be located on parcels less than 2.0 ha.

BL8654 replaced paragraphs (d) and (e) with paragraphs (d) (e) and (f) and renumbered the subsequent paragraphs:

- (d) **Agricultural and garden stands** selling only produce grown on the **site** or another **site** operated by the same producer do not have a maximum area. The maximum **gross floor area** of stands selling produce that is produced off-site shall be 50.0 m². For **sites** within the **Agricultural Land Reserve**, the maximum **gross floor area** of agricultural and garden sales for produce produced off-site or off-farm products shall be the lesser of one-third of the total floor area of the agricultural and garden sales stand or 100.0 m².
- (e) For **lots** not located within the **Agricultural Land Reserve**, **agri-tourist accommodation** shall not be located on **lots** smaller than 5.0 hectares in size and shall not exceed 10 **bedrooms**, campsites or recreational vehicle pads.

- (f) For lots located within the **Agricultural Land Reserve**, **agri-tourist accommodation** shall not be located on lots smaller than 2.0 hectares in size and shall not exceed 10% **site coverage**. Notwithstanding this section, the provision of **agri-tourist accommodation** must be in compliance with the provisions of the **Agricultural Land Reserve Act** or specific approval from the **Land Reserve Commission**.

BL8404 added paragraphs (g) and (h):

BL8760 replaced paragraph (g):

- (g) In addition to the regulations listed above, other regulations may apply, including, but not limited to, other sections of this Zoning Bylaw, and any applicable regulations or requirements of the **Land Reserve Commission**.
- (h) An "s" notation shown on Schedule "A" as part of the identified **zone** classification indicates that a **secondary use** in the form of a **secondary suite** is permitted on the properties so designated, subject to meeting the conditions of **use** of the **zone**. An "s" zoning classification on a property shall be established by rezoning the subject property to the "s" version of parent **zone**.
- (i) A **secondary suite**, in accordance with Section 9.5, may only be located within a single detached **dwelling** or an accessory **building** to a single detached **dwelling** which is no closer than 5.0 m to the principal **building**.

BL8760 added paragraph (j) as follows:

- (j) **Intensive Agriculture** uses shall be located only within those areas designated for Intensive Agricultural Use in accordance with Schedule "A" attached to this Bylaw.

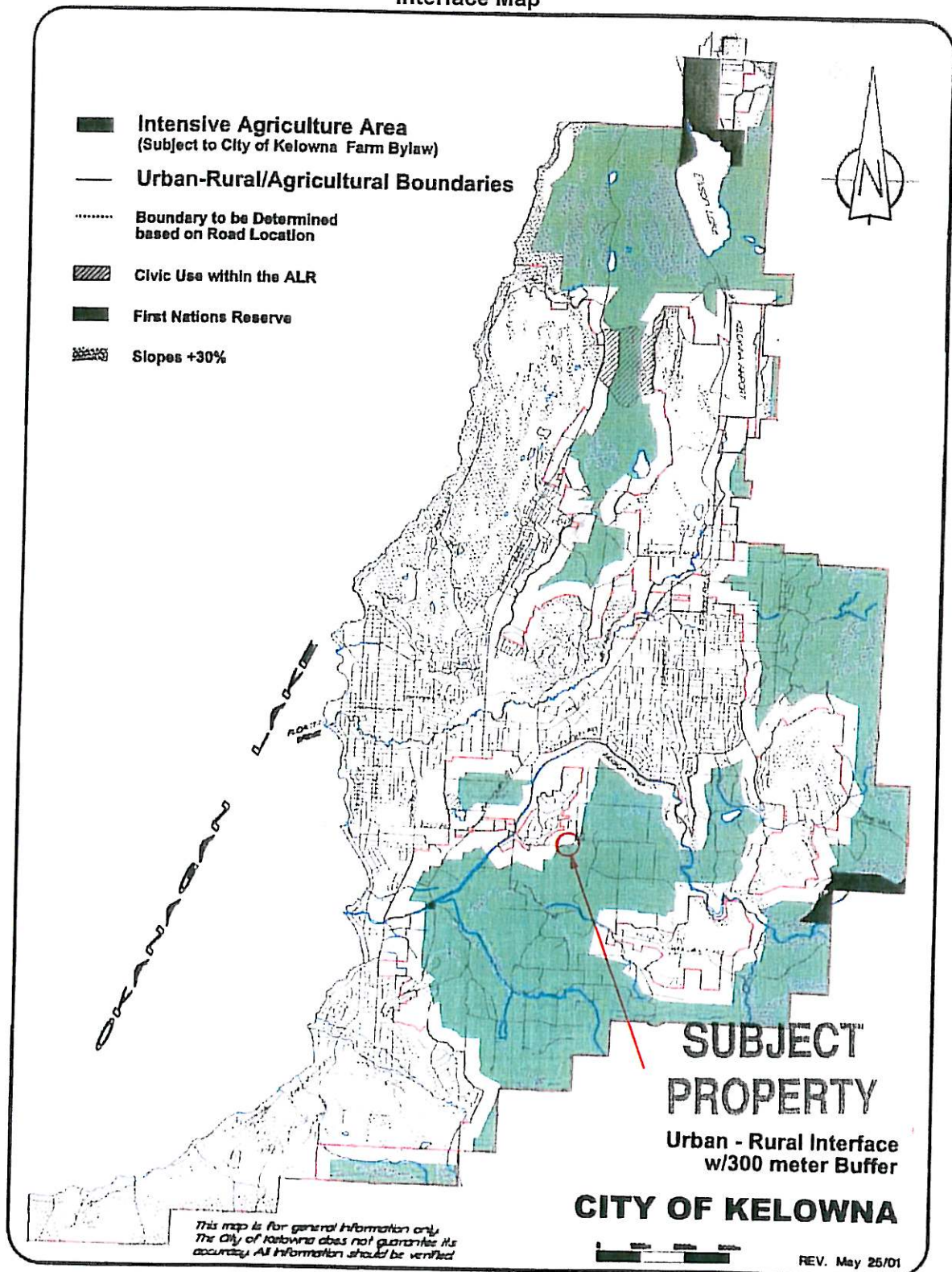
BL8881 added paragraph (k) as follows:

- (k) A **second kitchen** may only be located in **single detached housing**. A **second kitchen**, when permitted, is to be used by the occupants of **single detached housing** only to accommodate one **household**. The section of the building containing the **second kitchen** must be freely and fully accessible from the remainder of the **dwelling** without any intervening doors equipped with a locking device of any kind. In order to clarify the restrictions of use of the **second kitchen** to members of the **household**, the owner of the property will be required to sign an affidavit form clearly outlining all **second kitchen** regulations prior to the issuance of an occupancy permit for the **second kitchen**.

BL9003 added paragraph (l) as follows:

- (l) A **mobile home** may be considered a **secondary suite** within an **accessory building** only in an A1s – Agricultural 1 with Secondary Suite zone provided it is not in the **Agricultural Land Reserve**.

Schedule "A" – Note for a Clearer Image of this Map see "Section 11 – Urban Rural Interface Map"



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 Agricultural Land Commission Act	Policy #11 March 2003 HOMESITE SEVERANCE ON ALR LANDS
<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>	

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.

12 months after it was adopted unless the applicant agrees in writing that it should have effect.

RS1979-290-993; 1985-79-8; 1987-14-49.

Parcel frontage on highway

944. (1.) If a parcel being created by a subdivision fronts on a highway, the minimum frontage on the highway must be the greater of
- (a) 10% of the perimeter of the lot that fronts on the highway, and
 - (b) the minimum frontage that the local government may, by bylaw, provide.
- (2.) A local government may exempt a parcel from the statutory or bylaw minimum frontage provided for in subsection (1).
- (3.) As a limitation on section 176 (1) (e) [corporate powers - delegation] of this Act or section 154 [delegation of council authority] of the Community Charter, a local government may delegate its powers under subsection (2) only to an approving officer.

RS1979-290-994; 1985-79-8; 1987-14-50; 1998-34-205; 2003-52-399.

Highway provision and widening

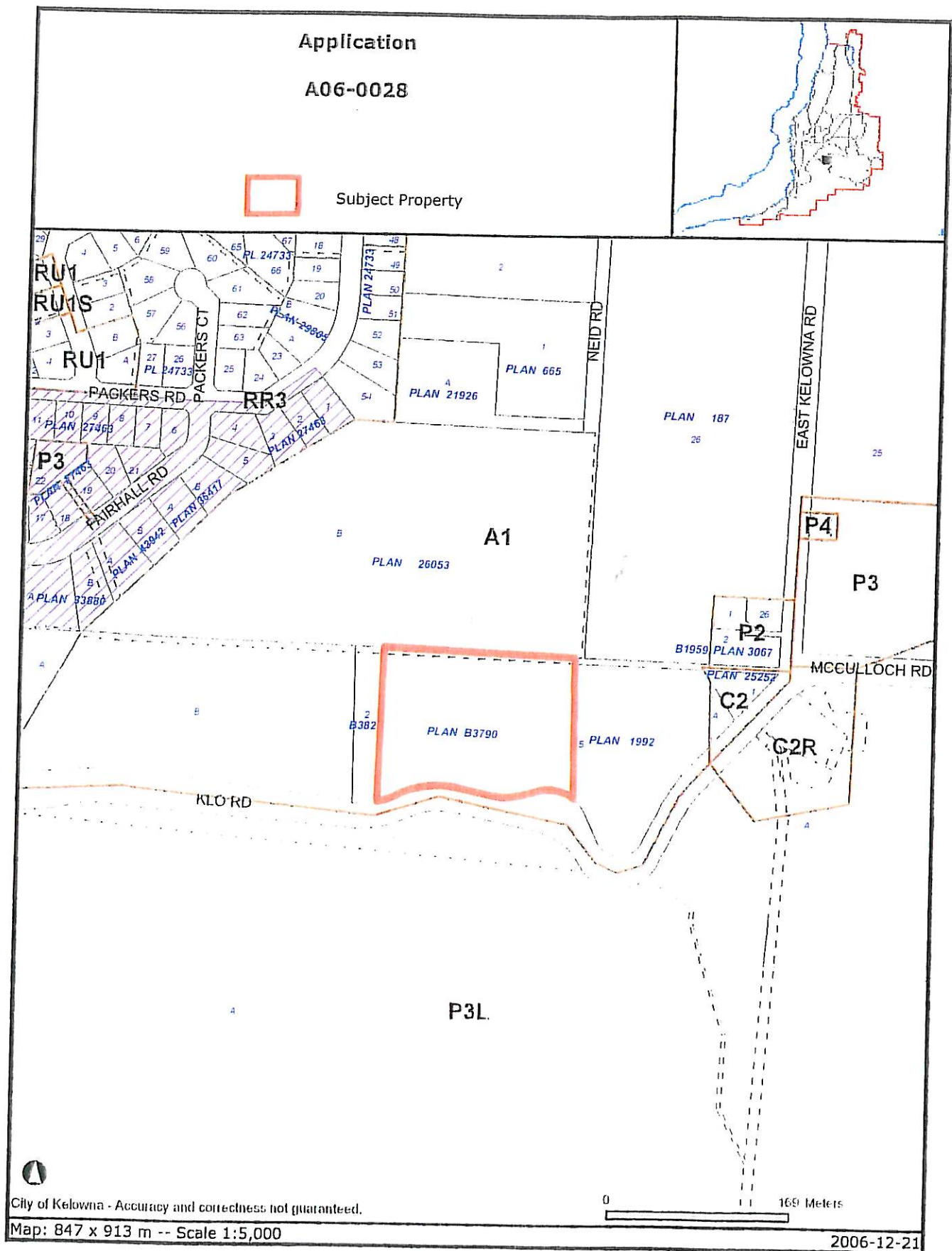
945. (1.) An approving officer may require that the owner of the land being subdivided provide, out of the land that is being subdivided and without compensation, land not greater than
- (a) 20 metres in depth, for a highway within the subdivision, or
 - (b) the lesser of
 - (i) 10 metres in depth, and
 - (ii) the difference between the current width of a local highway and 20 metres,
 for widening an existing local highway that borders or is within the subdivision.
- (2.) If the approving officer believes that, due to terrain and soil conditions, a roadway of a width of 8 metres cannot, within the 20 metre limit referred to in subsection (1), be adequately supported, protected or drained, the approving officer may determine that the owner provide, without compensation, land of a greater width than that referred to in subsection (1) (a) or (b) that, in the approving officer's opinion, would permit the local highway to be supported, protected or drained.

RS1979-290-995; 1985-79-8; 1987-14-51.

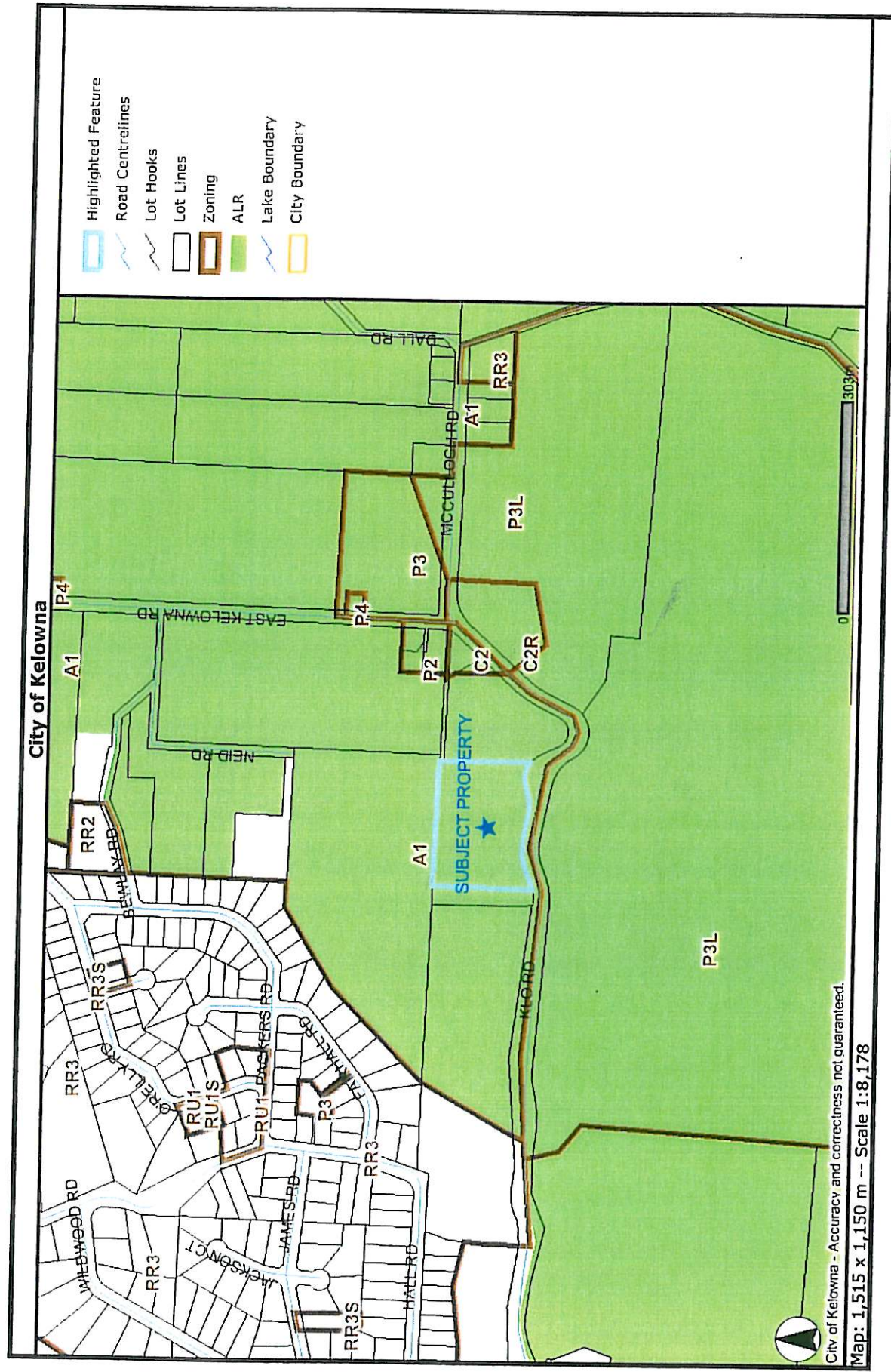
Subdivision to provide residence for a relative

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,

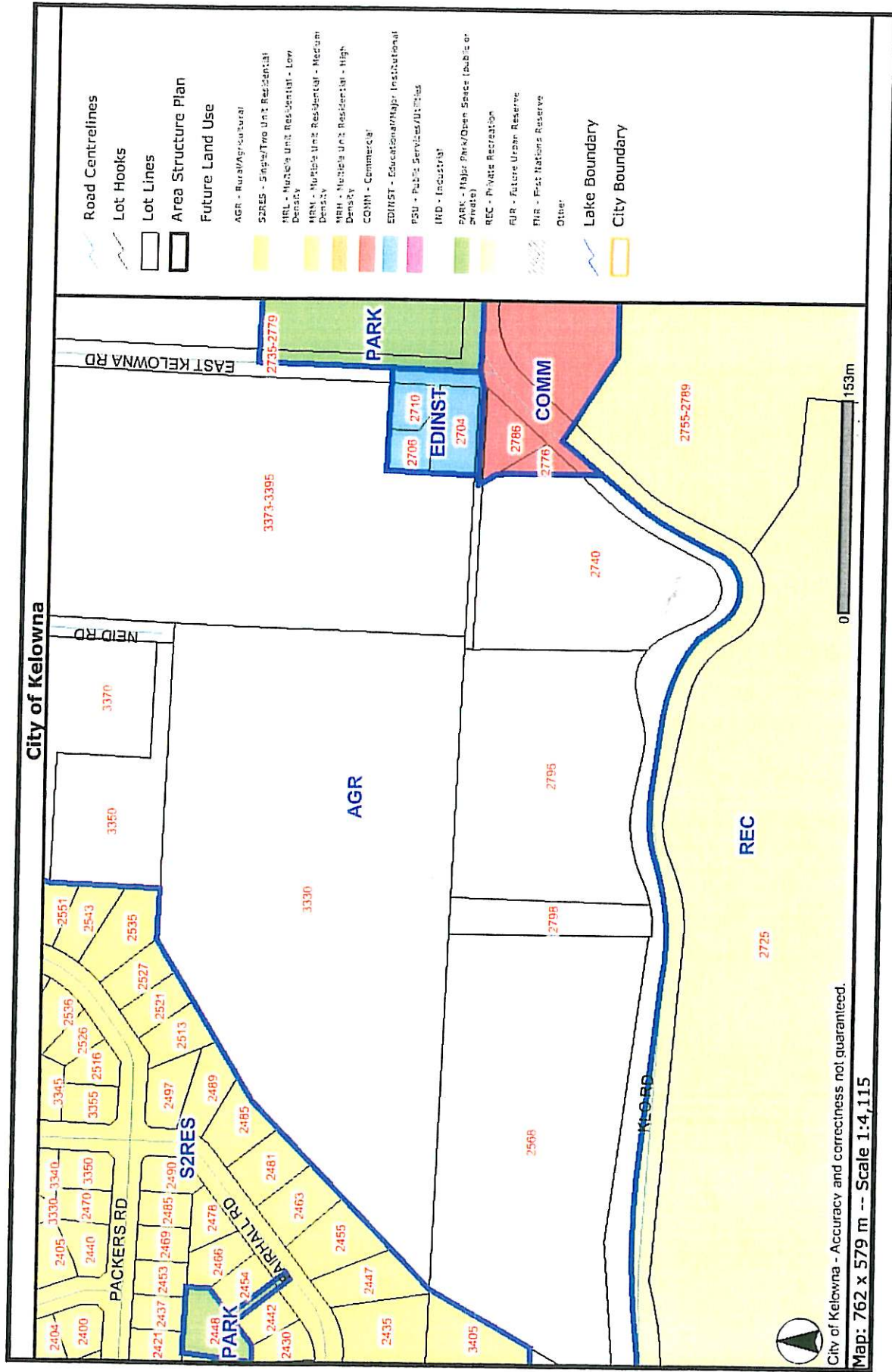
- son, daughter-in-law, son-in-law or grandchild;
- (c) the subdivision would not be a subdivision that an approving officer is prevented from approving by subsection (3).
-  (3.) Despite subsection (1), an approving officer must not approve a subdivision under this section in any of the following circumstances:
- (a) if
-  (i) the parcel proposed to be subdivided is classified as farm land for assessment and taxation purposes, and
- (ii) 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;
- (b) if the parcel proposed to be subdivided
- (i) is not within an agricultural land reserve established under the Agricultural Land Commission Act, and
- (ii) 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;
- (c) if the parcel proposed to be subdivided
- (i) is within an agricultural land reserve established under the Agricultural Land Commission Act, and
- (ii) 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.
- (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 m², 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 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



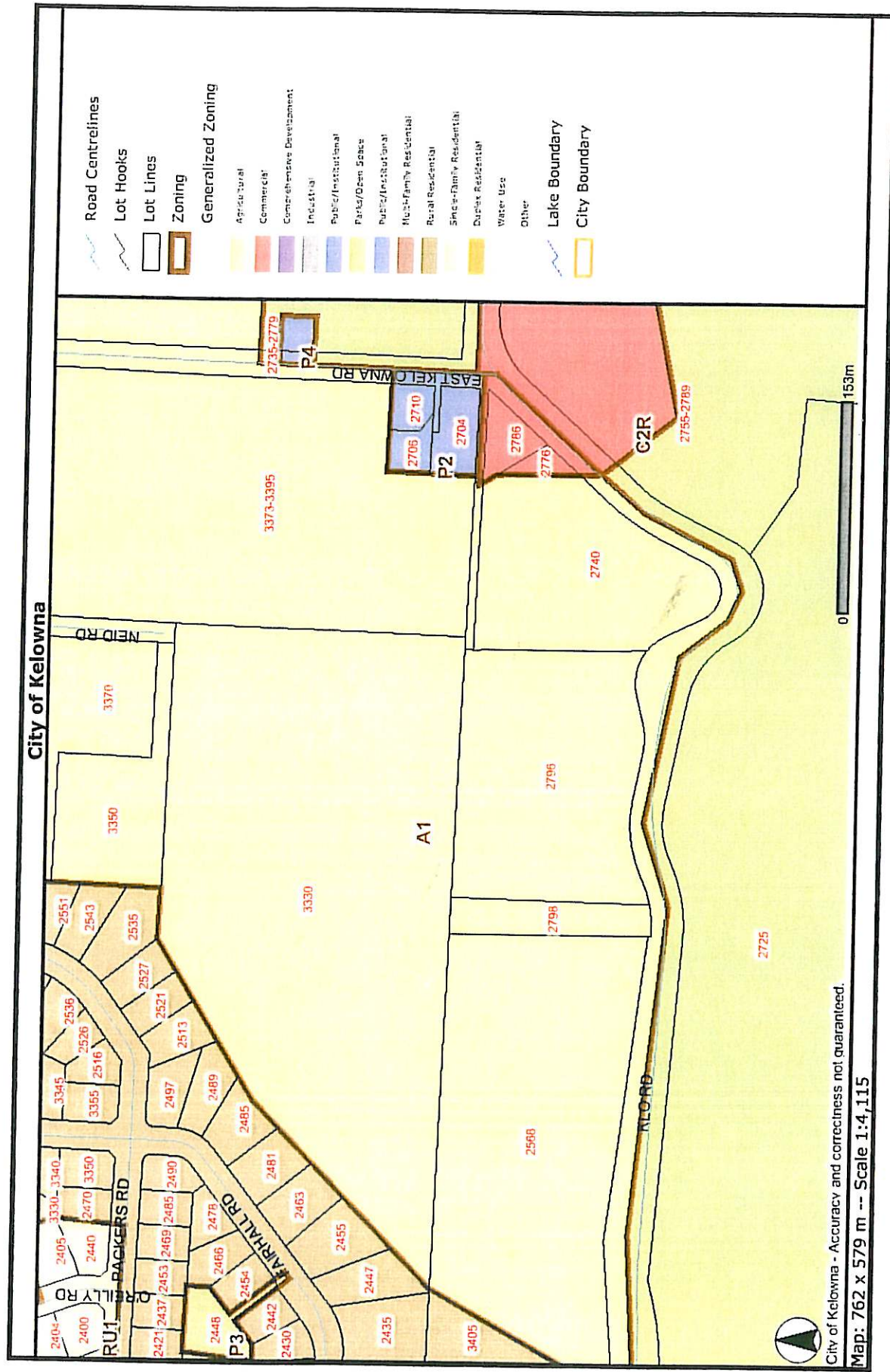
Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.



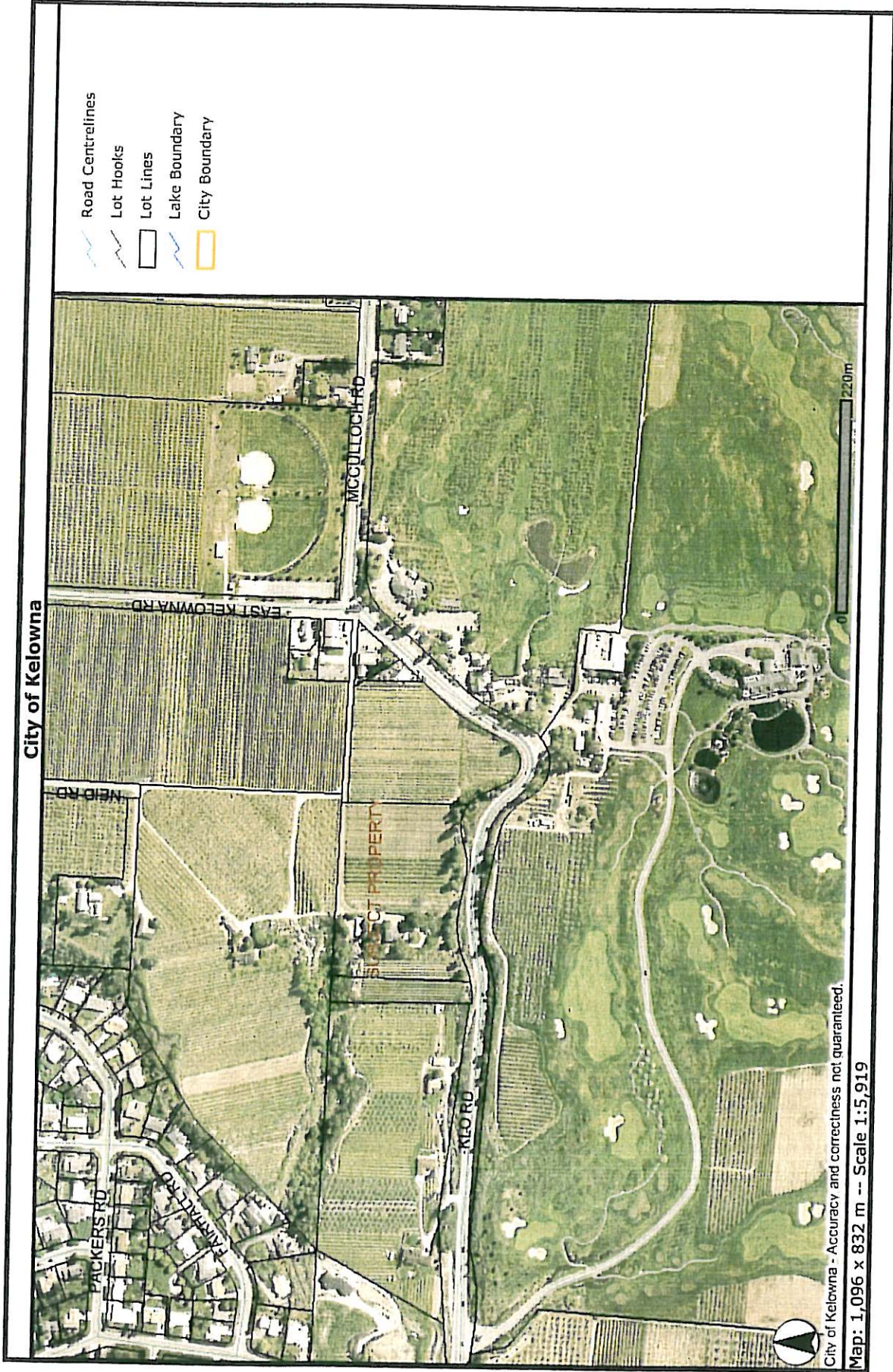
This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.



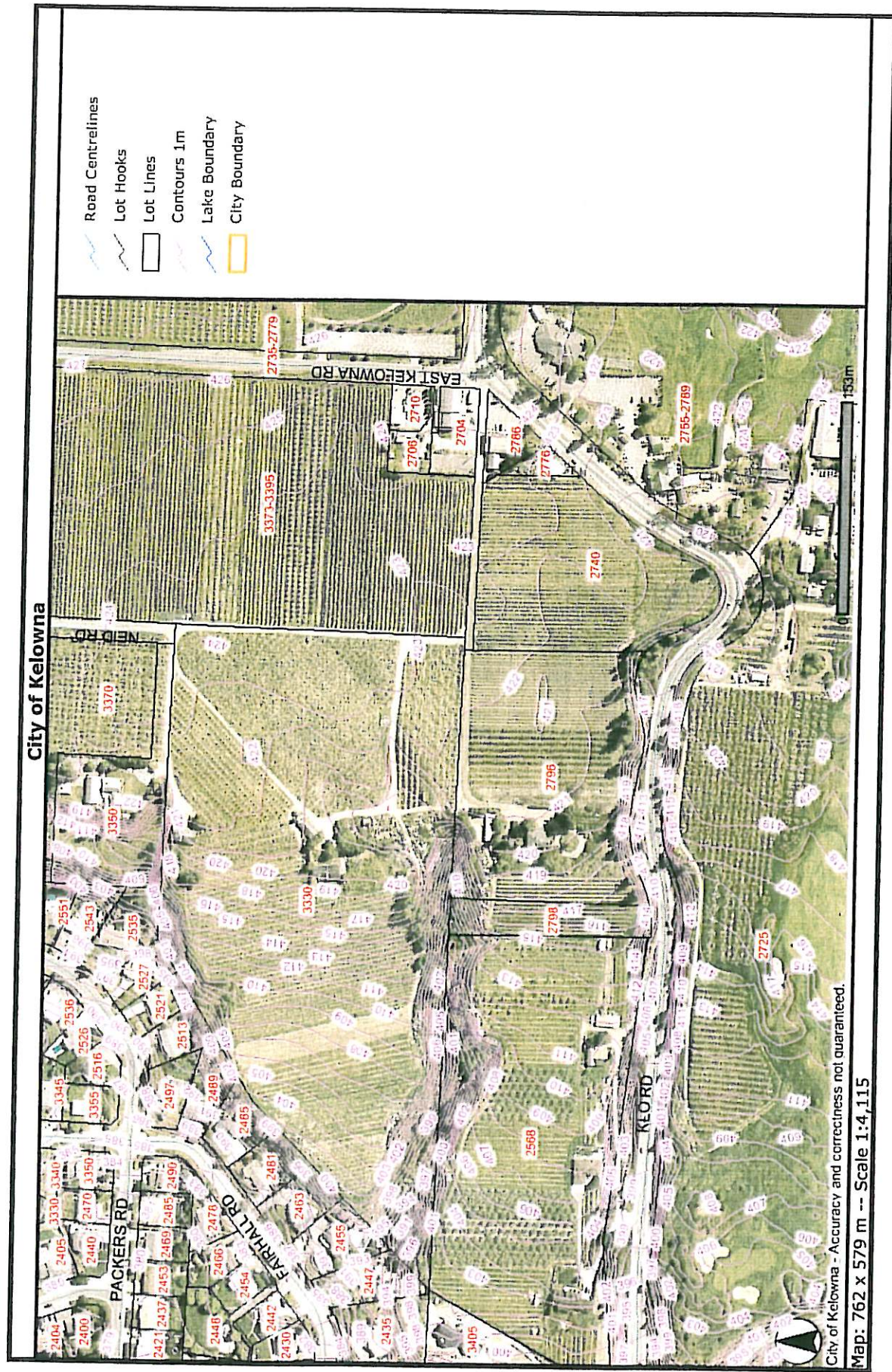
This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.



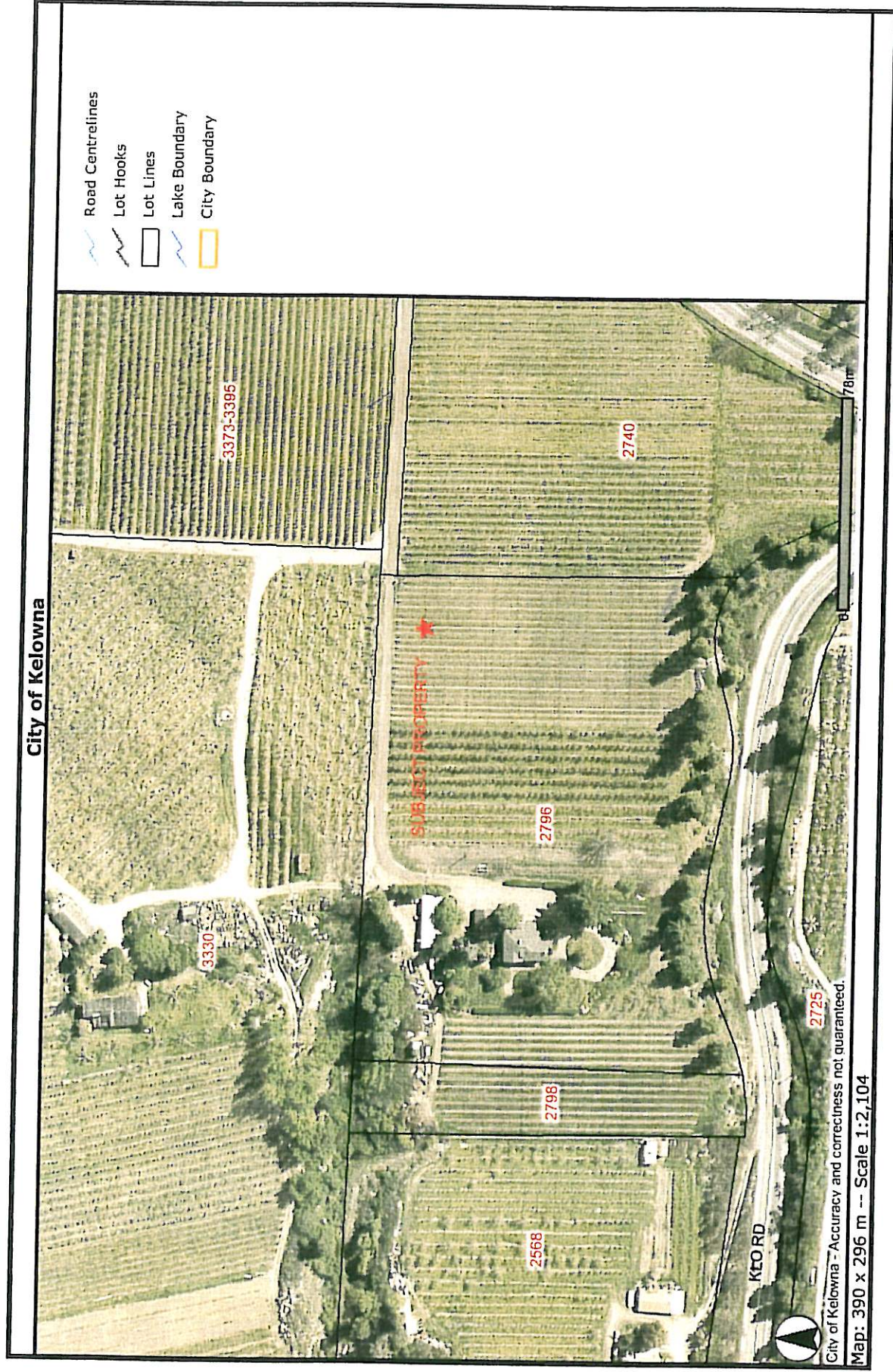
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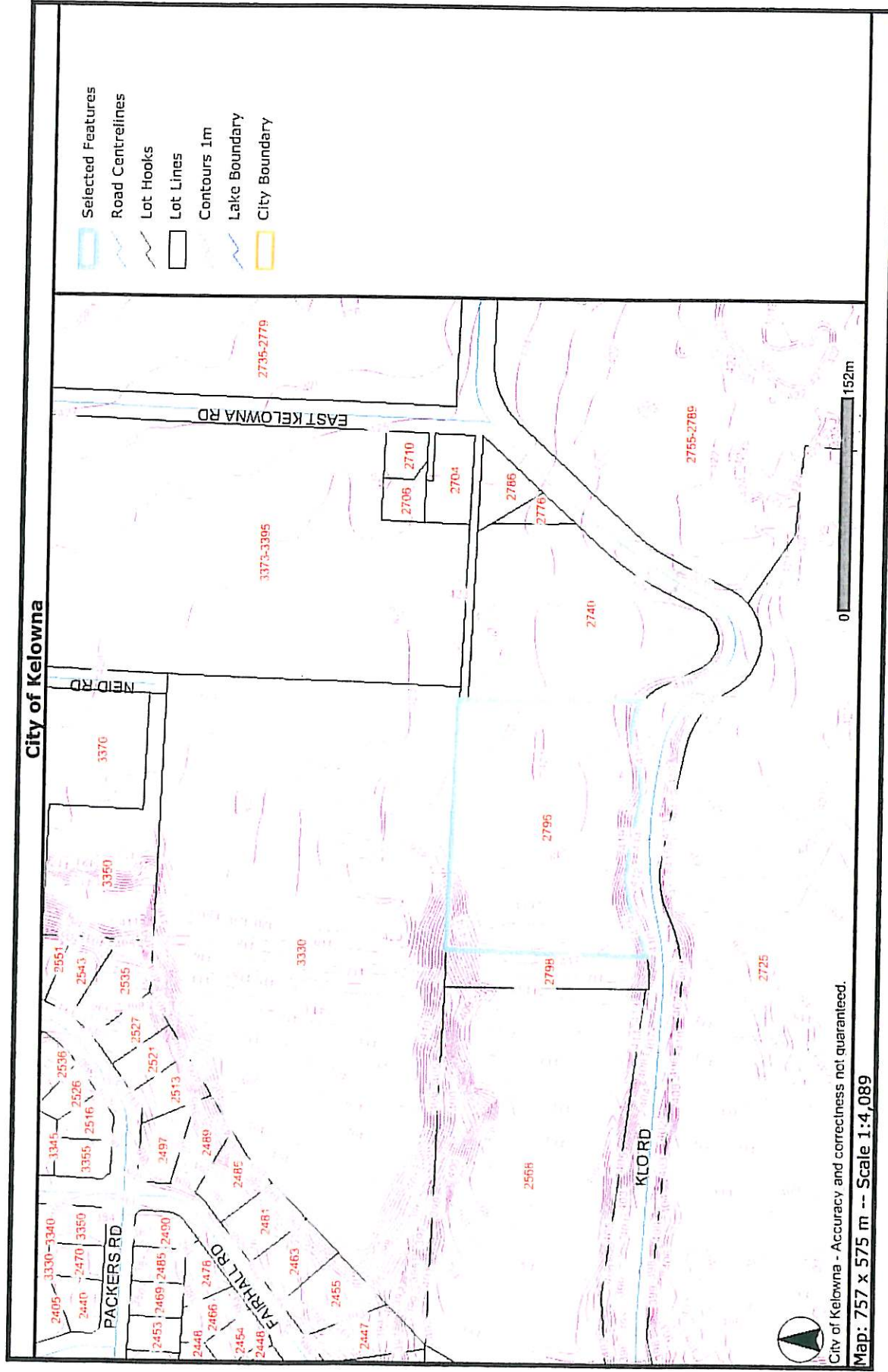
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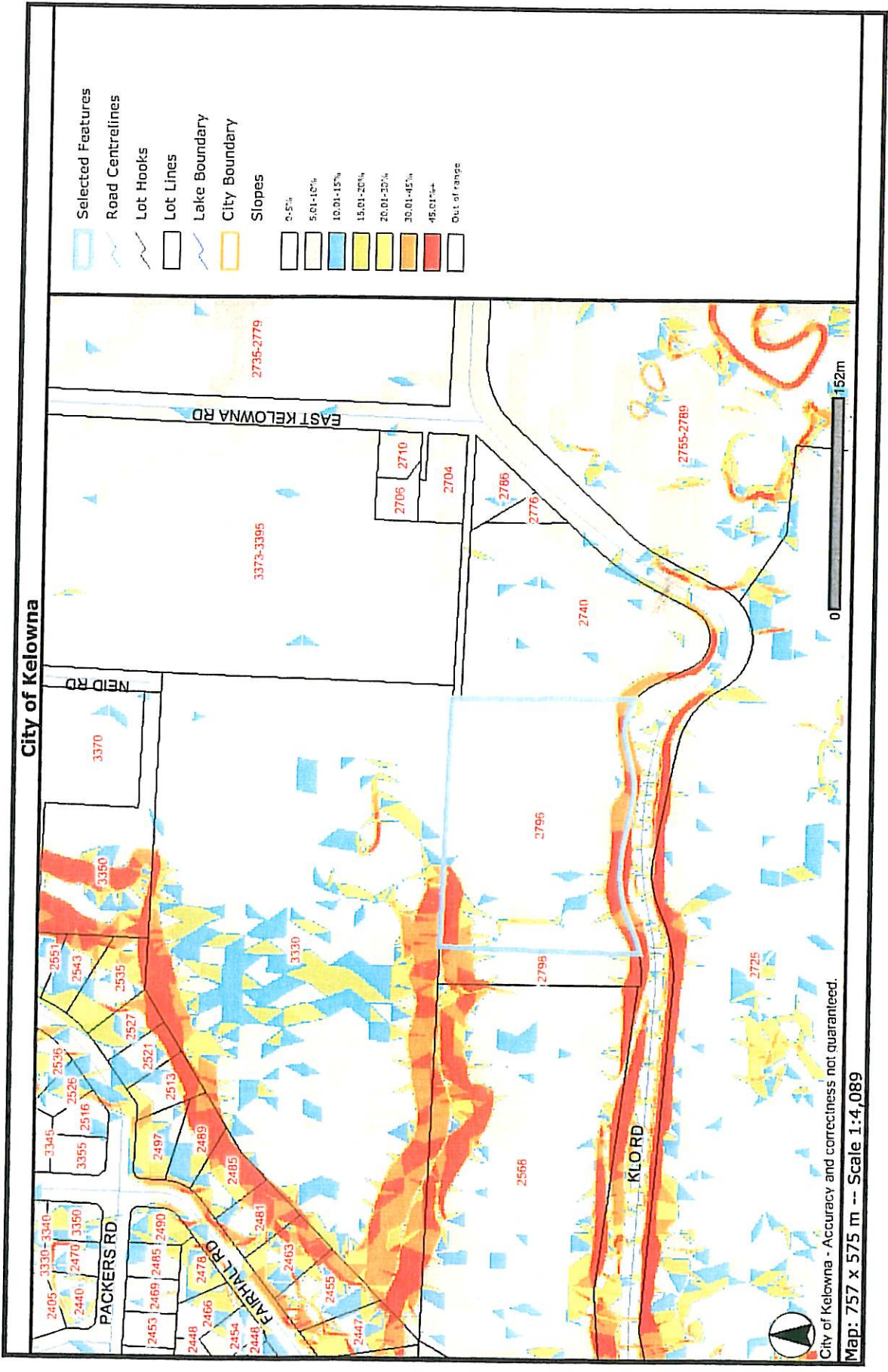
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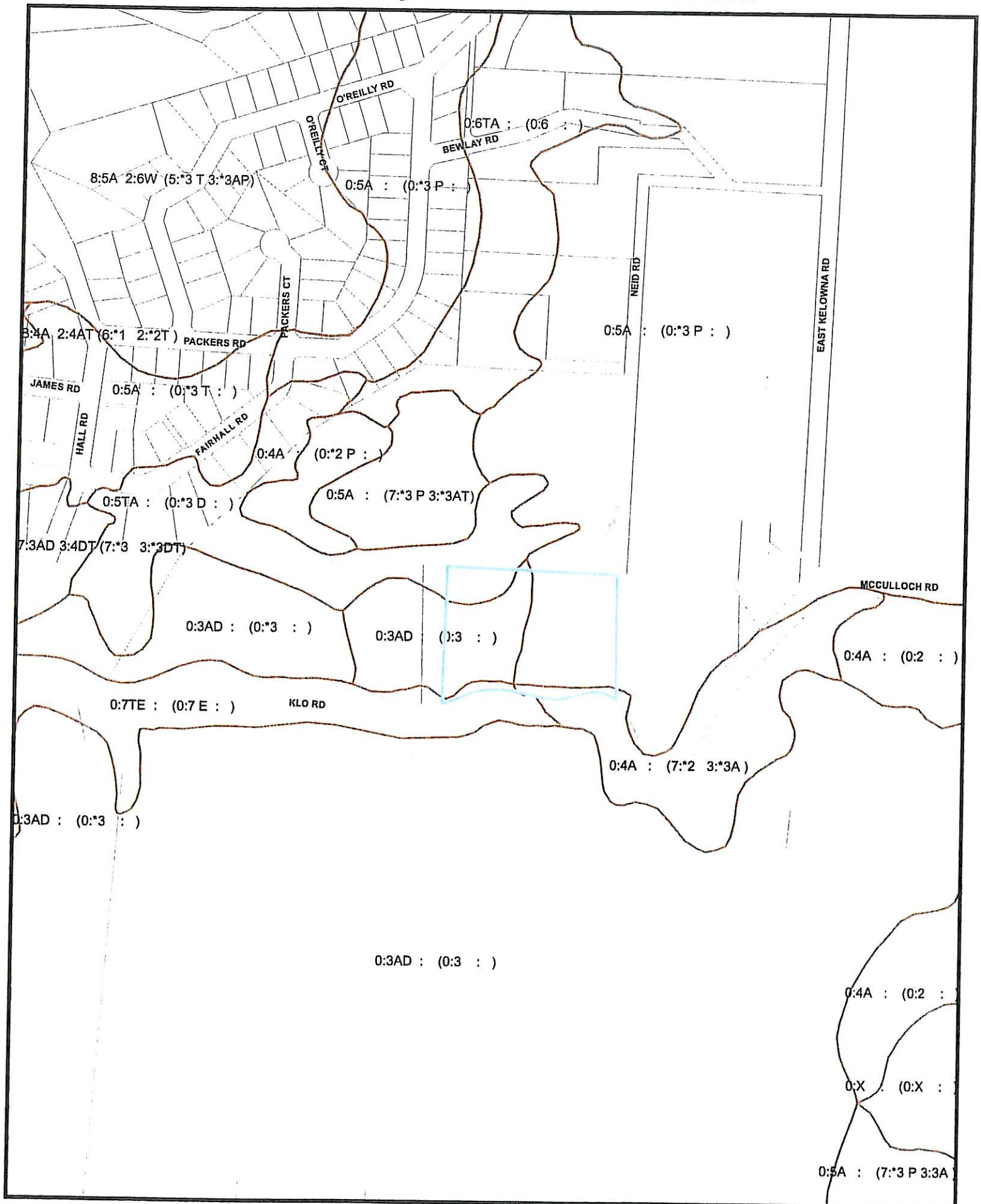


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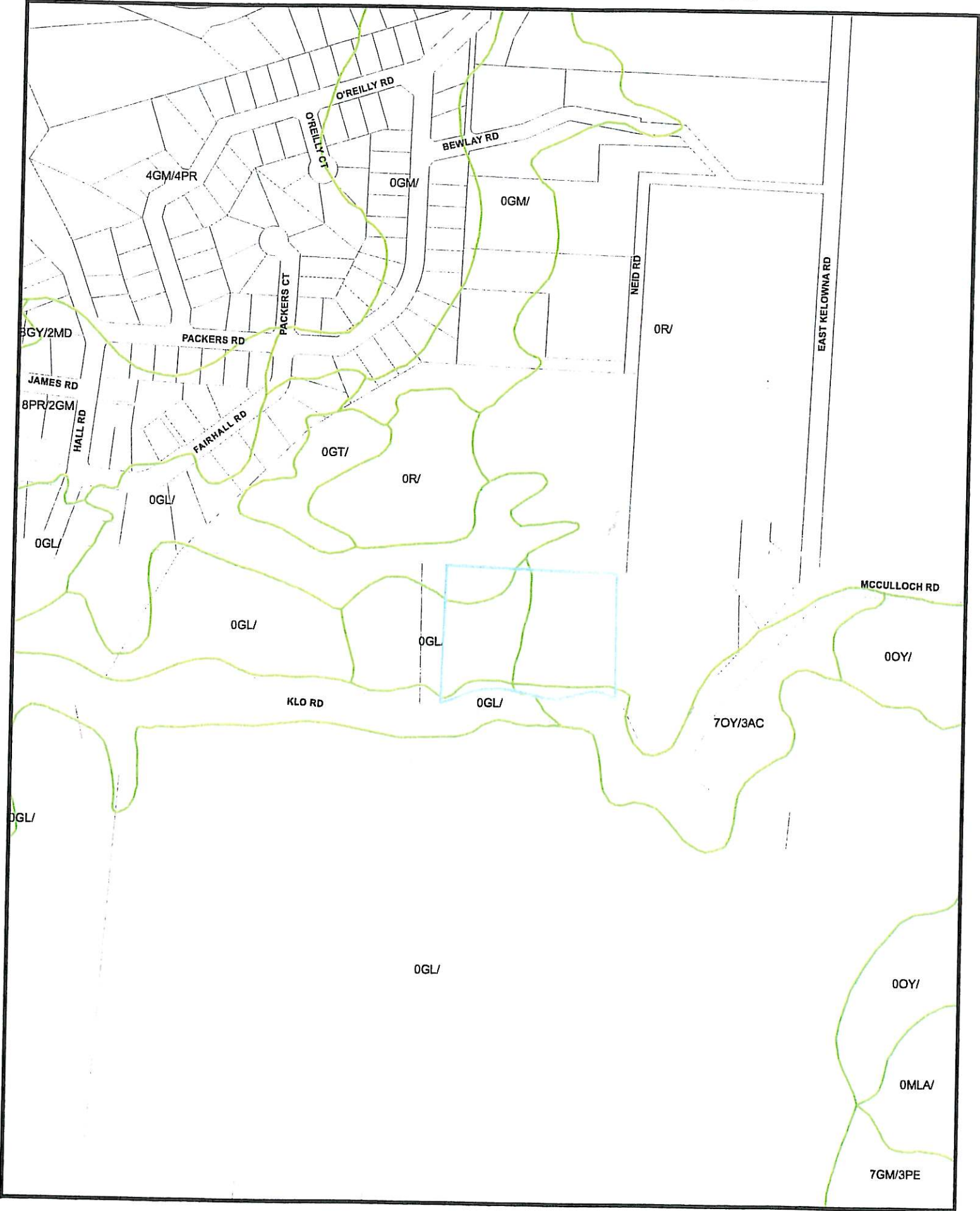
This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

Land Capability = Brown/ Soil Class = Green



1:5,000

Land Capability = Brown/ Soil Class = Green



1:5,000

PART 5 — PERMITTED SUBDIVISIONS

Application of this Part

- 9 This Part applies to a plan of subdivision, all or part of which consists of land in an agricultural land reserve.

Subdivision approval

- 10 (1) Despite section 18 (b) of the *Act*, an approving officer under the *Land Title Act*, the *Local Government Act*, or the *Strata Property Act* or a person who exercises the powers of an approving officer under any other Act may authorize or approve a plan of subdivision without the approval of the commission if the proposed plan achieves one or more of the following:
- (a) consolidates 2 or more parcels into a single parcel by elimination of common lot lines;
 - (b) resolves a building encroachment on a property line and creates no additional parcels;
 - (c) involves not more than 4 parcels, each of which is a minimum of 1 ha, and results in all of the following:
 - (i) no increase in the number of parcels;
 - (ii) boundary adjustments that, in the opinion of the approving officer, will allow for the enhancement of the owner's overall farm or for the better utilization of farm buildings for farm purposes;
 - (iii) no parcel in the reserve of less than 1 ha;
 - (d) establishes a legal boundary along the boundary of an agricultural land reserve.
- (2) An approving officer who declines to authorize or approve a plan must give notice of that decision to the person who made the application.
- (3) A person who receives a notice under subsection (2) may apply to the commission with respect to the proposed subdivision.



Land Reserve Commission

Working Farms, Working Forests

April 17, 2002

Reply to the attention of Elisa Martin

Ted and Cheryl Turton
P0 Box 28202, RPO East
Kelowna, B.C. V1W 4A6

COPY

Dear Sir/Madam:

Re: Application # G-34211

Those parts of Lot 2, shown on Plans B3790 and B3824, Sec. 9, Twp. 26,
ODYD, Plan 1992

We write to advise that pursuant to section 22(1) of the *Agricultural Land Reserve Act* (the "ALRA"), the Land Reserve Commission (the "Commission") has now had an opportunity to review your proposal to reconfigure the boundaries of the two adjoining subject properties.

The Commission appreciated the opportunity to view your property and to hear your concerns about the configuration and location of the existing 0.34 ha lot, which if developed for a residence, would reduce the amenity of the existing heritage home Bed and Breakfast. The Commission was concerned, however, with the City's requirement that the newly configured lot would be increased to 1 ha. This fact, the division of the largest productive portion of your property by the new lot, and the proximity of the newly created lot adjacent to cultivated land to the east, raised further concerns about the impact of additional residences and the long term retention of this block of land for agriculture.

For these reasons, the Commission, by Resolution # 106/2002, refused your application. The Commission believed that your proposal was not in keeping with its mandate.

The property remains subject to the provisions of the ALRA, the *Soil Conservation Act* and applicable regulations.

Please quote your application number in any future correspondence.

Yours truly,

LAND RESERVE COMMISSION

per:

K. B. Miller, Chief Executive Officer

cc: City of Kelowna – File: A01-112

EM/lv

