
CITY OF KELOWNA
MEMORANDUM

Date: June 6, 2007
File No.: A07-0004
To: City Manager
From: Planning & Development Services Department
Purpose: To obtain approval from the Agricultural Land Commission under Section 21(2) of the *Agricultural Land Commission Act* to facilitate a homesite severance subdivision.

OWNERS J & D Orchards Ltd. **APPLICANT:** Clay Larson Law Corporation
AT: 2047 Morrison Rd.
EXISTING ZONE: A1 – Agriculture 1
REPORT PREPARED BY: Nelson Wight

1.0 RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A07-0004 for Lot 2, Section 36, Township 26, O.D.Y.D., Plan 425 Except Plan KAP78155, located on Morrison Road, Kelowna, B.C. for a homesite severance subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, be supported by Municipal Council.

2.0 SUMMARY

The applicant is requesting permission from the Agricultural Land Commission (ALC) to allow a homesite severance subdivision. The proposed homesite severance parcel is 0.42 ha (1.0 ac) in size, leaving a 7.58 ha (18.7 ac) lot remainder.

3.0 SITE CONTEXT

The 8.0 ha (19.8 ac) parent parcel is located on Morrison Road, just south of the intersection of Old Vernon Road and Morrison Road. The property is bounded on the west by Morrison Road, and on the east by McKenzie Road. This parcel slopes moderately upwards from west to east. The existing farmyard occupies the 0.42 ha area that is being requested for the homesite severance parcel. The remainder 7.58 ha portion accommodates an existing orchard.

There is one single family dwelling on the property, and an accessory building, labelled as "4-bay garage" on the attached site plan. Although it is not detailed on the site plan, it is assumed that there is a septic field servicing the existing dwelling. The applicant will be expected to provide this detail to the Agricultural Land Commission (ALC), in order to establish the most suitable lot boundary for the parcel.

Parcel Size: 8.0 ha (19.8 ac)
Elevation: 430 m – 481 m

BCLI Land Capability

The subject property has a mix of ratings regarding Land Capability, with some Class 5 (\pm 54%), Class 3 (\pm 25%), Class 4 (12%), and Class 6 (\pm 9%). "Soil moisture deficiency" is identified as the primary limiting factor, and "undesirable soil structure" is also noted as a limiting factor. Consequently, through irrigation, the land rating improves mostly to Class 1 (\pm 48%) and Class 3 (\pm

43%), with a smaller percentage of Class 2 (9%) (See attached Land Capability Map copied from map 82E.094).

Soil Classification

The soil classification for the subject property includes the following:

%	Soil Type	Description
50%	KE - Kelowna	<u>Land</u> : moderately and strongly sloping glacial till. <u>Texture</u> : 10 to 30 cm of loam or sandy loam veneer over gravelly sandy loam or gravelly loam. <u>Drainage</u> : well.
25%	GL - Glenmore	<u>Land</u> : nearly level to moderately sloping stratified glaciolacustrine sediments. <u>Texture</u> : 100 cm or more of silt loam, silty clay loam or clay loam. <u>Drainage</u> : well to moderately well.
25%	R - Rutland	<u>Land</u> : very gently to strongly sloping fluvioglacial deposits. <u>Texture</u> : 10 to 25 cm of sandy loam or loamy sand over gravelly loamy sand or very gravelly sand. <u>Drainage</u> : rapid.

Zoning of Adjacent Property

- North A1 – Agriculture 1
- East A1 – Agriculture 1
 RR3 – Rural Residential 3
- South A1 – Agriculture 1
- West A1 – Agriculture 1

4.0 POLICY AND REGULATION

4.1 Kelowna 2020 – Official Community Plan

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

4.2 City of Kelowna Agriculture Plan

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

Parcel Size (Agricultural Land) – Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

Homesite Severance – Continue to support the concept of homesite severance, consistent with Agricultural Land Commission Policy #11

5.0 PLANNING AND DEVELOPMENT SERVICES COMMENTS

The applicant has provided documents alleging the continuous ownership of the parcel by Joseph Pilato since 1965.

The Agricultural Plan recommends that the City should continue to support the concept of home site severances, consistent with the ALC policy #11, which allows farmers to retire or sell the property while retaining the homesite. This limited subdivision opportunity makes the balance of the property available for others to expand or enter the farm business.

The ALC Homesite Severance policy requires that the land be owned prior to 1972. Although the state of title shows a registration date of May 2005, the landowners claim that they have owned the land since before 1972.

Staff has no concerns with this application, provided that the ALC is satisfied that the owner satisfactorily establishes ownership of the property prior to 1972. The parcel size requested appears to adequately capture the actual homesite, leaving the farmable land with the parcel remainder.

R. G. Shaughnessy
Subdivision Approving Officer

Approved for inclusion

Mary Pynenburg, MRAIC MCIP
Director of Planning & Development Services

NW/nw

ATTACHMENTS (13 pages)

Subject Property Map

ALR Map

Site Plan (as submitted by applicant)

Air Photo Showing Parent Parcel

Air Photo Showing Proposed Homesite Severance Parcel

Application by Land Owner (2 pages)

Cover Letter from Applicant with Attachments (4 pages)

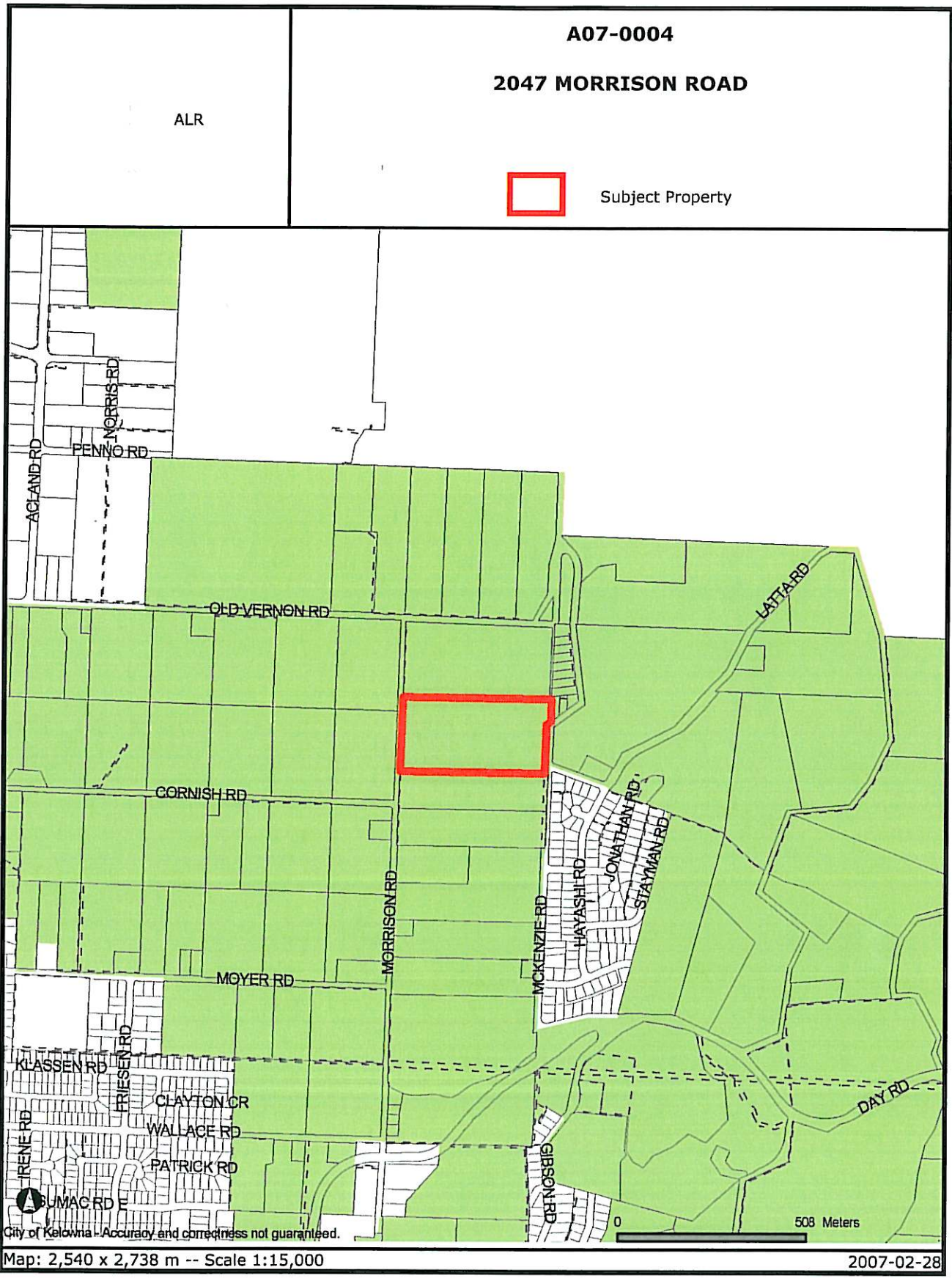
Copy of Transfer, transferring the property into the names of Joseph Pilato and his Mother, Domenica Pilato in 1965

Copy of Transfer, transferring the property from Pilato Bros. Orchards Ltd. to J & D Pilato on January 18, 1978. (Joseph Pilato and his mother had previously transferred the land to Pilato Bros. Orchards Ltd.)

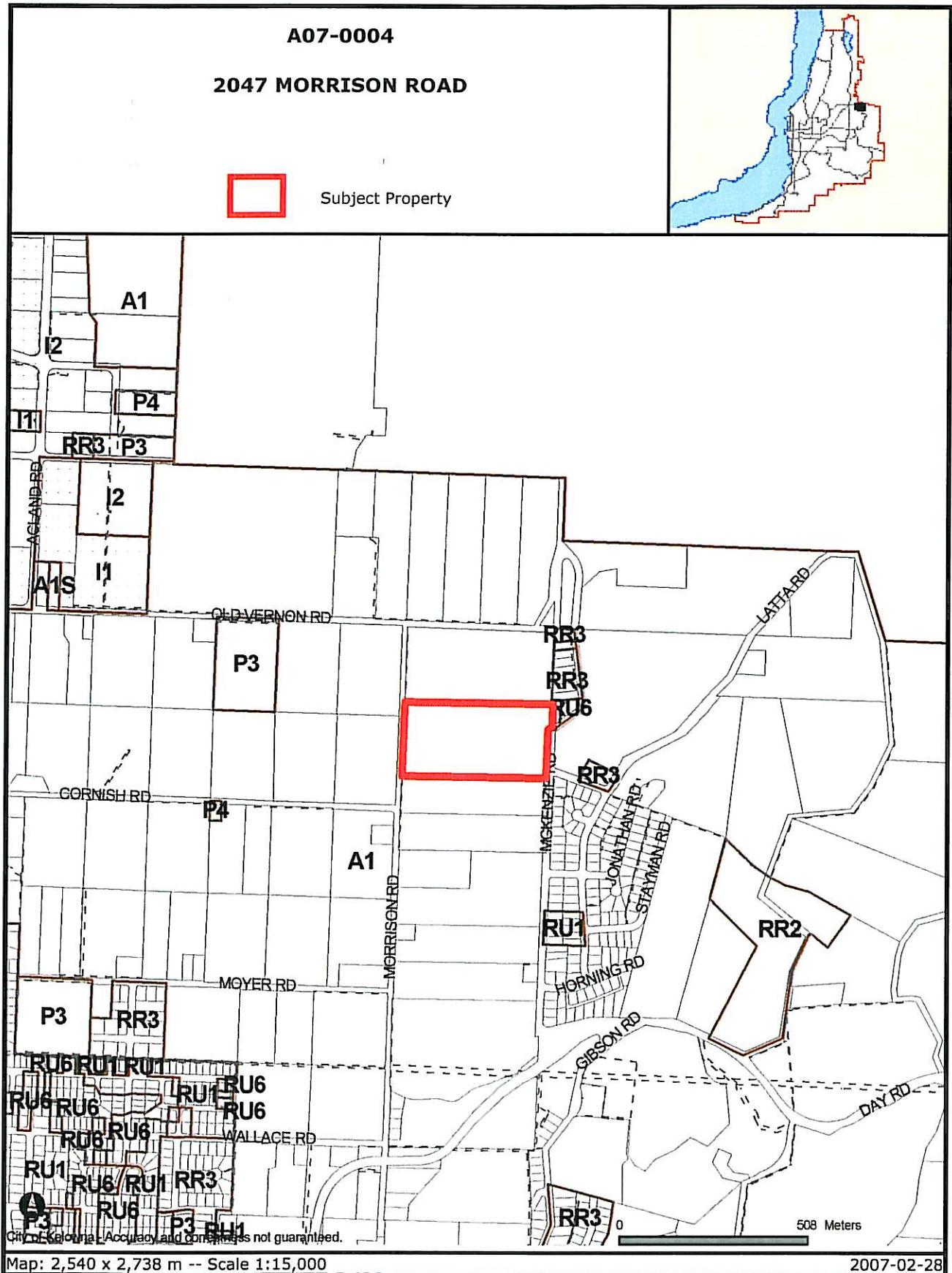
Copy of the Central Securities Register of J & D Orchards Ltd. showing Mr. Pilato as the only shareholder of J & D Orchards Ltd.

Land Capability Map

Soil Classification Map



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.



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.

1320 Feet

NORTH

168 FEET
61m

65m
214 Feet

4 BAY GARAGE

18'

24'

65m

214 Feet

DRIVE WAY
6 FEET
WALKWAY

HOUSE

214 FEET

214 FEET

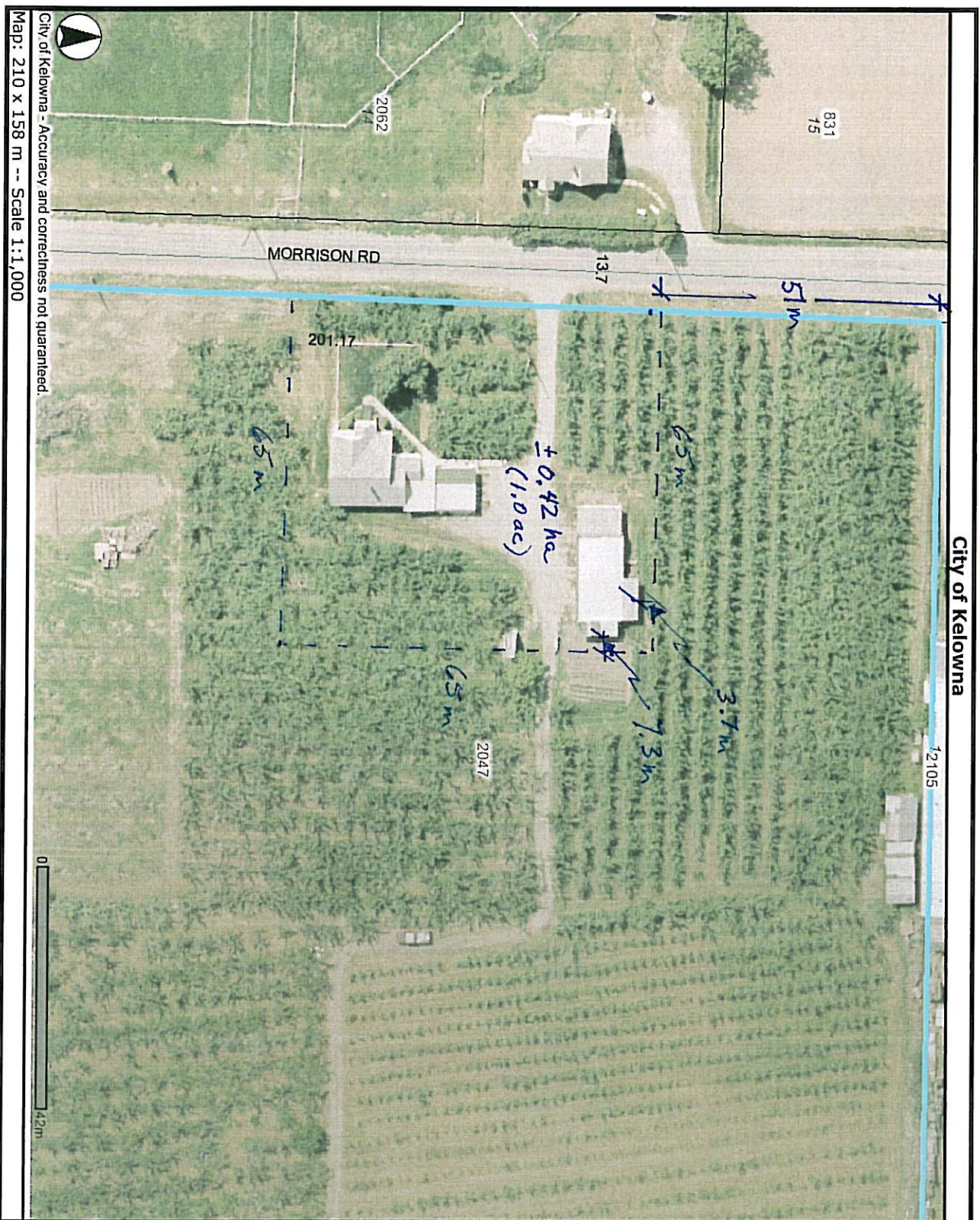
85m

278 FEET

214 FEET
65m

1000 1000

1000 1000



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



Application by Land Owner

NOTE: The information required by this form and the documents you provide with it are collected to process your application under the Agricultural Land Commission Act and regulation. This information will be available for review by any member of the public. If you have any questions about the collection or use of this information, contact the Agricultural Land Commission and ask for the staff member who will be handling your application.

TYPE OF APPLICATION (Check appropriate box)

- EXCLUSION under Sec. 30(1) of the Agricultural Land Commission Act
- SUBDIVISION in the ALR under Sec. 21(2) of the Agricultural Land Commission Act
- INCLUSION under Sec. 17(3) of the Agricultural Land Commission Act
- Non-farm USE in the ALR under Sec. 20(3) of the Agricultural Land Commission Act

APPLICANT

Registered Owner: J+D ORCHARDS LTD.		Agent: CLAY WARSON LAW CORP	
Address: 2047 MORRISON RD - KELOWNA B.C.		Address: 740 WESTPOINT COURT KELOWNA	
	Postal Code V1X4W4	B.C.	Postal Code V1W2Z4
Tel. (home) () (work) () 250 765 5235		Tel. () 250-764-0352	
Fax ()		Fax () 250-764-0855	
E-mail		E-mail clansonlaw@pacificcoast.net	

LOCAL GOVERNMENT JURISDICTION (Indicate name of Regional District or Municipality)

CITY OF KELOWNA

LAND UNDER APPLICATION (Show land on plan or sketch)

Title Number	Size of Each Parcel (Ha.)	Date of Purchase	
		Month	Year
271 995 F	8 HA-	Oct 1	1965

Joseph Pilato

OWNERSHIP OR Interests in other lands within this COMMUNITY
(Show information on plan or sketch)

If you have interests in other lands within this community complete the following: N/A

Title Number(s):

PROPOSAL (Please describe and show on plan or sketch)

[Empty rectangular box for plan or sketch]

The proposal is to sever .42 hectares containing all of the buildings from the parent property. The buildings on the property consist of a house with an attached carport large enough for two cars and a 4 bay garage and workshop across the driveway to the north of the House. The remainder of the property to be severed is planted to orchard. The remainder of the parent property is also planted to the orchard with the exception of approximately .6 ha of the southwest corner which is unplanted but has been used for garden.

CURR
ENT
USE
OF
LAND
(Show
ow

information on plan or sketch)

List all existing uses on the parcel(s) and describe all buildings

USES ON ADJACENT LOTS (Show information on plan or sketch)

- North Agricultural land used for a few fruit trees and some grass and hay
- East Mostly subdivided for residential with some grassland
- South Working orchard
- West Bare land with some grass growing.
(See the maps attached for details of vegetation and buildings.)

DECLARATION

I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the *Agricultural Land Commission Act* and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

NOV 1, 2006 Joseph Pilato
 Date Signature of Owner or Agent JOSEPH PILATO Print Name

DEC 28, 2006 [Signature]
 Date Signature of Owner or Agent CLAY LARSEN Print Name

 Date Signature of Owner or Agent _____ Print Name

Please ensure the following documents are enclosed with your application:

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application *(See instructions)
- Photographs (optional)

CLAY LARSON LAW CORPORATION

740 Westpoint Court
Kelowna BC
V1W 2Z4

Phone 250-764-0352
Fax 250-764-0855
e-mail:clarsonlaw@pacificcoast.net
October 24, 2006

City of Kelowna
1435 Water Street
Kelowna BC V1Y 1J4

Attn: Mr. Nelson Light

Ladies and Gentlemen:

RE: Joseph Pilato, Home Severance, Lot 2, Sec 36, Twp 26, Plan 425

We are writing to you on behalf of Mr. Pilato who wishes to apply for a home severance within the ALR with respect to his property described above. In that regard we enclose:

1. A copy of a Transfer transferring the property into the names of Joseph Pilato and his Mother, Domenica Pilato in 1965;
2. A copy of a Transfer transferring the property from Pilato Bros. Orchards Ltd. to J & D Pilato on January 18, 1978. (Joseph Pilato and his mother had previously transferred the land to Pilato Bros. Orchards Ltd.)
3. A copy of the Central Securities Register of J & D Orchards Ltd. showing Mr. Pilato as the only shareholder of J & D Orchards Ltd.
4. Our client's cheque for \$600.00 payable to the City of Kelowna as the application fee.
5. A sketch plan of the portion which the Applicant wishes to have severed from the remaining property, which will remain in the ALR.

If there is anything else you require in connection with this application, please call me at your convenience.

Yours very truly

CLAY LARSON LAW CORPORATION

per:  CLAY LARSON

DEED OF LAND

Park Stationers Ltd., Vancouver, B.C.
Law and Commercial Stationers
Form No. 65-67

This Indenture

made the 27th day of September in the
year of our Lord one thousand nine hundred and sixty-five.

IN PURSUANCE OF THE "SHORT FORM OF DEEDS ACT"

BETWEEN

FRANK SINGER, the Younger, and
DILYS IDA SINGER, his wife
both of Westbank
in the Province of British Columbia
as "Joint Tenants"

AND

(hereinafter called the Grantor)
OF THE FIRST PART

JOSEPH PILATO, Labourer, and
DOMENICA PILATO, Housewife
both of Box No. 378, Rutland
in the Province of British Columbia

(hereinafter called the Grantee)
OF THE SECOND PART

WITNESSETH that in consideration of and for the sum of -----
FIFTY FIVE THOUSAND (\$55,000.00) -----
Dollars of lawful money of Canada now paid by the said Grantee to the said Grantor (the receipt whereof is hereby
by him acknowledged), the said Grantor DOTH GRANT unto the said Grantee, his heirs and assigns, FOREVER:
ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Vernon
Assessment in District in the Province of British Columbia and being more
particularly known and described as :

Lot Two (2)
Map Four Hundred Twenty-five (425)

REGISTERED
JANUARY 18, 1978

N 03003

DEED OF LAND (Long)

Form No. 565-567

DO NOT WRITE ABOVE THIS LINE, FOR LAND REGISTRY USE ONLY

SUBSTITUTE FORM A - PARTICULARS

Copyright by
Park Stationers & Printers
Vancouver, B.C.

Address of person entitled to be registered, if different from that shown in instrument:

Full name, postal address and telephone number of person presenting instrument for registration:

Finkelstein, Smithwick & Company
Barristers and Solicitors
332 Leon Avenue
Kelowna, British Columbia

British Subject Yes/No

Declared Value: \$ 169,300.00
Request for delivery of duplicate C.T. Yes/No

[Signature]
Signature of Applicant, Solicitor or Agent for

For Land Registry Office use only.

THIS INDENTURE made the 14 day of December 1977

IN PURSUANCE OF THE SHORT FORM OF DEEDS ACT
BETWEEN

PILATO BROS. ORCHARDS LTD., a company duly incorporated under the laws of the Province of British Columbia and having its registered office at 332 Leon Avenue, in the City of Kelowna, in the Province of British Columbia, (Incorporation No. 84718) (herein called "the Grantor") OF THE FIRST PART

AND

J. & D. ORCHARDSLTD., a company duly incorporated under the laws of the Province of British Columbia and having its registered office at 332 Leon Avenue, in the City of Kelowna, in the Province of British Columbia, (Incorporation No. 164386)

(herein called "the Grantee") OF THE SECOND PART

WITNESSETH that, in consideration of the sum of -----ONE-----

Dollars (\$ -1.00-

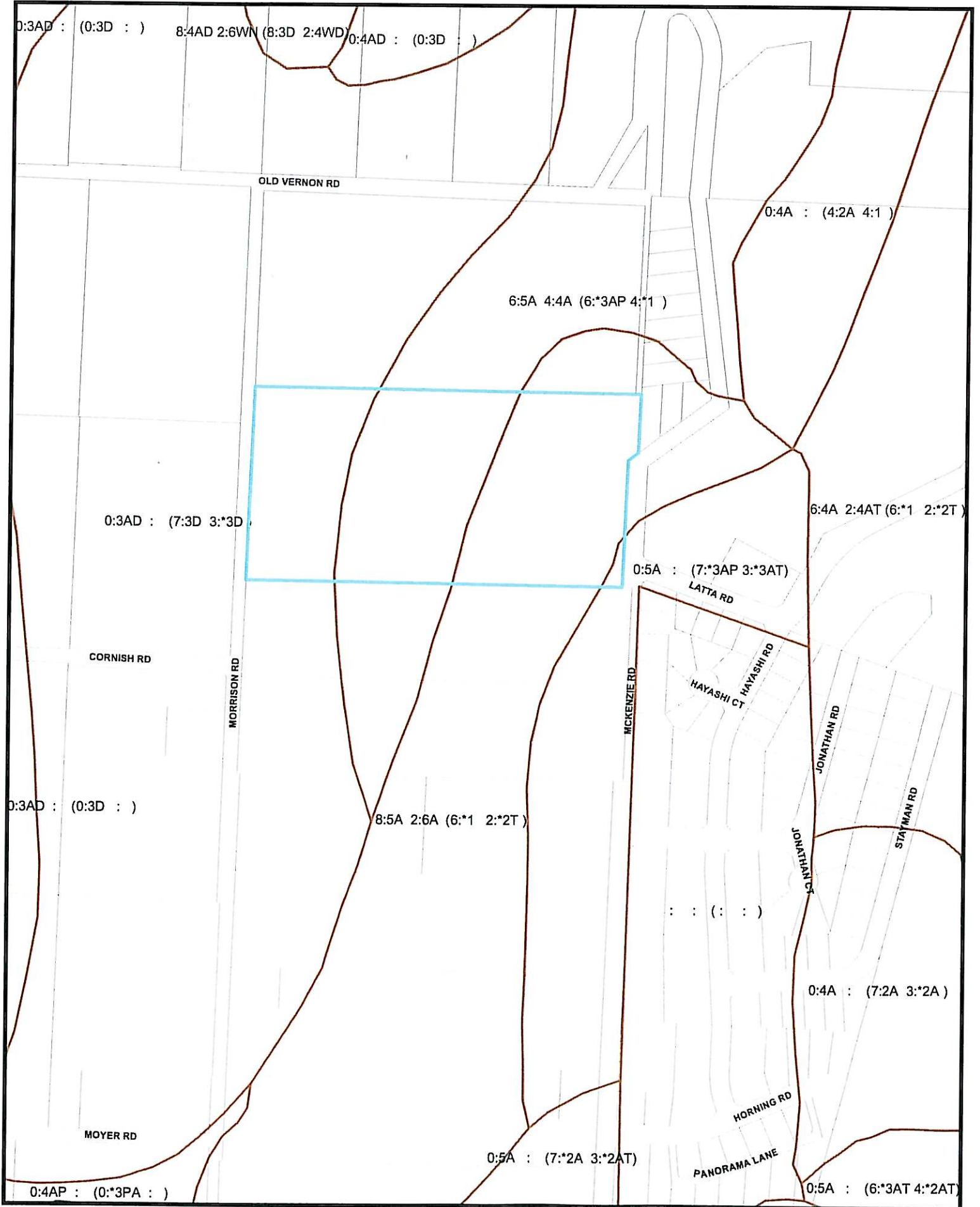
of lawful money of Canada now paid by the Grantee to the Grantor (the receipt of which is hereby acknowledged) the Grantor grants to the Grantee, his heirs and assigns for ever, all and singular that certain parcel or tract of land and premises situate in the Vernon Assessment District and Black Mountain Irrigation District, in the Province of British Columbia and described as:

Lot Two (2),
Section Thirty-Six (36),
Township Twenty-Six (26),
Osoyoos Division Yale District,
Plan Four Hundred and Twenty-Five (425),

SUBJECT TO a mortgage in favour of Farm Credit Corporation registered under No. C28088;

AND SUBJECT TO a Right of Way in favour of Black Mountain Irrigation District, registered under No. G8318.

Land Capability = Brown/ Soil Class = Green



1:5,000

Land Capability = Brown/ Soil Class = Green



1:5,000