
CITY OF KELOWNA
MEMORANDUM

Date: November 22, 2007
File No.: A07-0020
To: City Manager
From: Planning & Development Services Department
Purpose: To obtain approval from the Agricultural Land Commission to allow a .52 ha. lot homesite severance subdivision from the 5.12 ha. subject property under Section 21(2) of the *Agricultural Land Commission Act*.
OWNERS: Johanna Betty Verkerk **APPLICANT:** David Taylor
AT: 4240 Spiers Road
EXISTING ZONE: A1 Agriculture 1 Zone
REPORT PREPARED BY: Corine (Cory) Gain, MCIP, CPT

1.0 RECOMMENDATION

THAT Agricultural Land Reserve Application No. A07-0020 for property located at 4240 Spiers Road and legally described as: Lot 118 Section 3 Township 26 Osoyoos Division Yale District Plan 1247 requesting approval of a homesite severance subdivision 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.

2.0 SUMMARY

The Applicant is requesting permission to subdivide a .52 hectare (1.28 ac.) lot as a homesite severance from the 5.12 hectare (12.65 ac.) parent property. The subject property was owned by the Mrs. Verkerk's deceased husband from 1955 to 1987. The title of the property was then transferred into Mrs. Verkerk's name. Mrs. Verkerk has continually occupied the home since 1961. The applicant has advised that the remaining 4.60 hectare (11.37 ac.) parcel will be sold. A copy of ALC Policy #11 is attached to this report.

3.0 AGRICULTURAL ADVISORY COMMITTEE

THAT the Agricultural Advisory Committee support Application No. A07-0020 for 4240 Spiers Road, by J. Verkerk (D. Taylor) to obtain approval from the Agricultural Land Commission under Section 21(2) of the *Agricultural Land Commission Act* to allow a .52 ha. lot homesite severance subdivision from the 5.12 ha. subject property.

4.0 SITE CONTEXT

The subject property is located in East Kelowna southwest of the intersection of Spiers and June Springs Roads.



The applicant advises that 40% of the property has been planted in orchard since 1958. The principal single family dwelling was constructed in 1961. Also located on the property is a small carport structure, two existing non-conforming 468 sq.ft. cabins constructed under a Regional District of Central Okanagan building permit in 1971, and a small equipment shed south of the house. A site visit confirmed that there is also a horse shelter located south of the cabins belonging to the owner of 4232 Spiers Road. The owner of the neighbouring property (Mrs. Verkerk's son) indicated that this structure will be removed from the property when no longer required for his daughter's horse. All buildings except the principal dwelling will remain with the parent property. An existing easement provides for access to Lot 117 (4232 Spiers Road) and for development on each lot that impacts the other (Lots 117 and 118). The Mr. Verkerk (son) expressed interest in pursuing a lot line adjustment to rectify the encroachment issues in the future, particularly given that the balance of Lot 118 will likely to sell to someone other than a family member.

Parcel Size: 5.12 ha. (12.65 ac.)
Elevation: Approx. 509 m to 524 m GSC

Zoning of Adjacent Property

North	A1 – Agriculture 1 – Orchard
East	A1 – Agriculture 1 – Orchard
South	A1 – Agriculture 1 – Pasture and Orchard
West	A1 – Agriculture 1 – Orchard

5.0 SITE MAP:

Subject Property: 4240 Spiers Road



BCLI Land Capability for Agriculture (1: 5,000)

The subject parcel is identified on the BC Land Capability for Agriculture Map as having an unimproved rating of 0:5A and an improved rating of 7:*3 P 3:*3A indicating the following:

Unimproved:

100% 5A: "Land in this class has limitations that restrict its capability to producing perennial forage crops or other specially adopted crops" and "Soil Moisture Deficiency – Crops are adversely affected by droughtiness caused by low soil water holding capacity or insufficient precipitation"; and

Improved:

70% 3P: "Land in this class has limitations that require moderately intensive management practices for 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".

30% 3A "Land in this class has minor limitations that require moderately intensive management practices or moderately 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: 5,000)

The subject property is identified on the BC Soil Capability for Agriculture Map as having a rating of 7GM and 3PE indicating the following:

70% GM: "Gammil – very gently to extremely sloping fluvioglacial deposits".

30% PE: "Paradise – Land: Nearly level to very steeply sloping fluvioglacial deposits; Texture: 26 to 60 cm of sandy loam or loamy sand over gravely loamy sand or very gravely sand; Drainage: rapid; and Classification: Eluviated Eutric Brunisol".

6.0 POLICY AND REGULATION

4.1 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.

4.2 Kelowna 2020 – Official Community Plan

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

4.3 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.

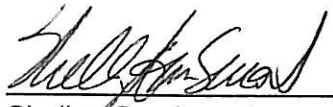
7.0 TECHNICAL COMMENTS - Refer to Attachment 'P'.

8.0 PLANNING AND DEVELOPMENT SERVICES COMMENTS

The applicant seeks permission to subdivide a .52 ha. homesite lot from the 5.12 ha. parent property. The owner's intent is to subdivide off her existing home from the remainder of the property so that she can continue living in her home of 46 years and sell the balance of the acreage. The remainder parcel will satisfy the minimum 2.0 hectare lot size requirement of the A1 - Agriculture zone.

The two small cabins located towards the southwest corner of the subject property were built under a building permit issued by the Central Okanagan Regional District in 1971. These cabins are existing non-conforming under the City of Kelowna Zoning Bylaw. Should the homesite severance be approved by the ALC and the lot subdivided, one of the cabins will be considered the principal dwelling on the remainder lot and the second cabin will continue to enjoy its existing non-conforming status.

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. Strictly speaking, ALC Policy #11 cannot be satisfied by the proposed subdivision in that only the husband's name appeared on the title until his death in 1987. However, given that the property has been continually occupied by Mrs. Verkerk, the wife of the deceased previous owner and farmed by the family since 1958 Planning and Development Services staff recommends that the application be treated as a subdivision under the Agricultural Land Commission's Homesite Severance Policy.

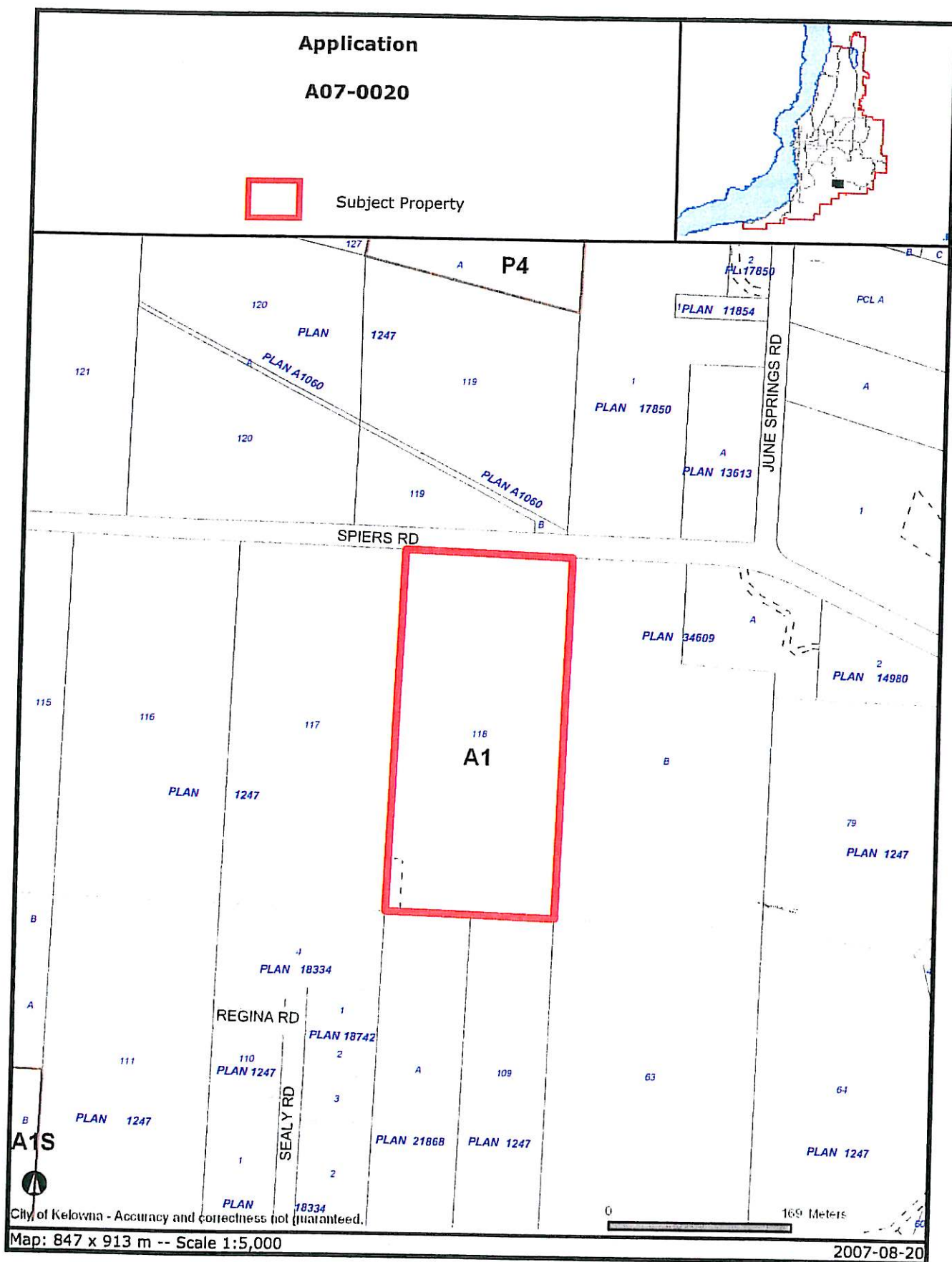


Shelley Gambacort
Subdivision Approving Officer

SG/cg

ATTACHMENTS

- A- Location Map
- B- ALC Application by Land Owner (4 pages)
- C- Proposed Subdivision Plan
- D- Photographs submitted by the Applicant (2 pages)
- E- Land uses and ownership of surrounding properties (submitted by the applicant)
- F- ALC Policy #11 Homesite Severance on ALR Lands (2 pages)
- G- ALR Map
- H- Future Land Use Map
- I - Generalized Zoning Map
- J - Orthophoto (1: 8,229)
- K- Orthophoto (1: 3,009) with 1 m Contours
- L - Slope Map
- M- Land Capability Map
- N- Soil Classification Map
- O - Orthophoto with buildings identified
- P - Technical Comments



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.



APPLICATION BY LAND OWNER

ATTACHMENT B

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: JOHANNA B VERKERK		Agent: DAVID TAYLOR	
Address: 4240 SPIERS RD		Address: 2100 WARD RD	
KELOWNA		KELOWNA BC	
Postal Code V1W 4E3		Postal Code V1W 4B1	
Tel. (home) 250-861-4273 (work)		Tel. 250-317-6391	
Fax		Fax	
E-mail jverkerk@telus.net		E-mail	

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
Lot 118, Plan 1247, Sec 3, TWP 26 ODYD	5.12 ha		1955

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:

Title Number(s): Lot 117, Plan 1247, Sec 3, Twp 26 ODYD (HOLD MORTGAGE)

PROPOSAL (Please describe and show on plan or sketch)

To create a homestead acreage lot.

Please see attached, sketch, photos and description.

CURRENT USE OF LAND (Show information on plan or sketch)

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

ORCHARD 40% ± } see attached
UNDEVELOPED 60 ± }

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

North ORCHARD
East ORCHARD
South PASTURE
West ORCHARD

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.

AUG 6 2007
Date

J. Buerkerh.
Signature of Owner or Agent

JOHANNA B. VERKERK
Print Name

Date

Signature of Owner or Agent

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)

4240 Spiers Road
Kelowna, BC V1W 4E3
August 6, 2007

Planning Department
City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

To Whom It May Concern:

Attached please find my application and supporting documents for a home site severance subdivision of Lot 118, Plan 1247, Sec. 3, Township 26, ODYD.

This property and the adjoining lot 117 were purchased by my husband in 1955. The first orchard was planted in 1958. Construction of our principal residence was completed in 1961 and I have lived here continuously since then.

After my husband died in 1987, my son Rob took over the running of the orchard and purchased Lot 117 from me in 1990.

I now would like to sell Lot 118, but wish to continue living in what has been my home for the past 46 years.

Thank you for your attention to this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "J. Verkerk".

Johanna B. Verkerk

VERKERK

HOME SITE SEVERANCE APPLICATION

PROPOSAL

To create a home site severance lot of .52 ha, containing the residence and driveway. The home is situated on high ground, surrounded by undeveloped land (large trees and bush). This land has never been considered suitable for agriculture and consequently has never been cleared; the trees and topography provide significant buffering from the balance of Lot 118.

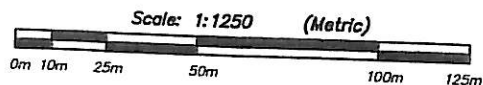
The orchard to the East has an eight foot (8') high deer fence running North to South for the complete length of the boundary with Lot 118. The existing landscaping around the home, in addition to growth of vines on the deer fence, provides good buffering for the orchard to the East.

CURRENT USE

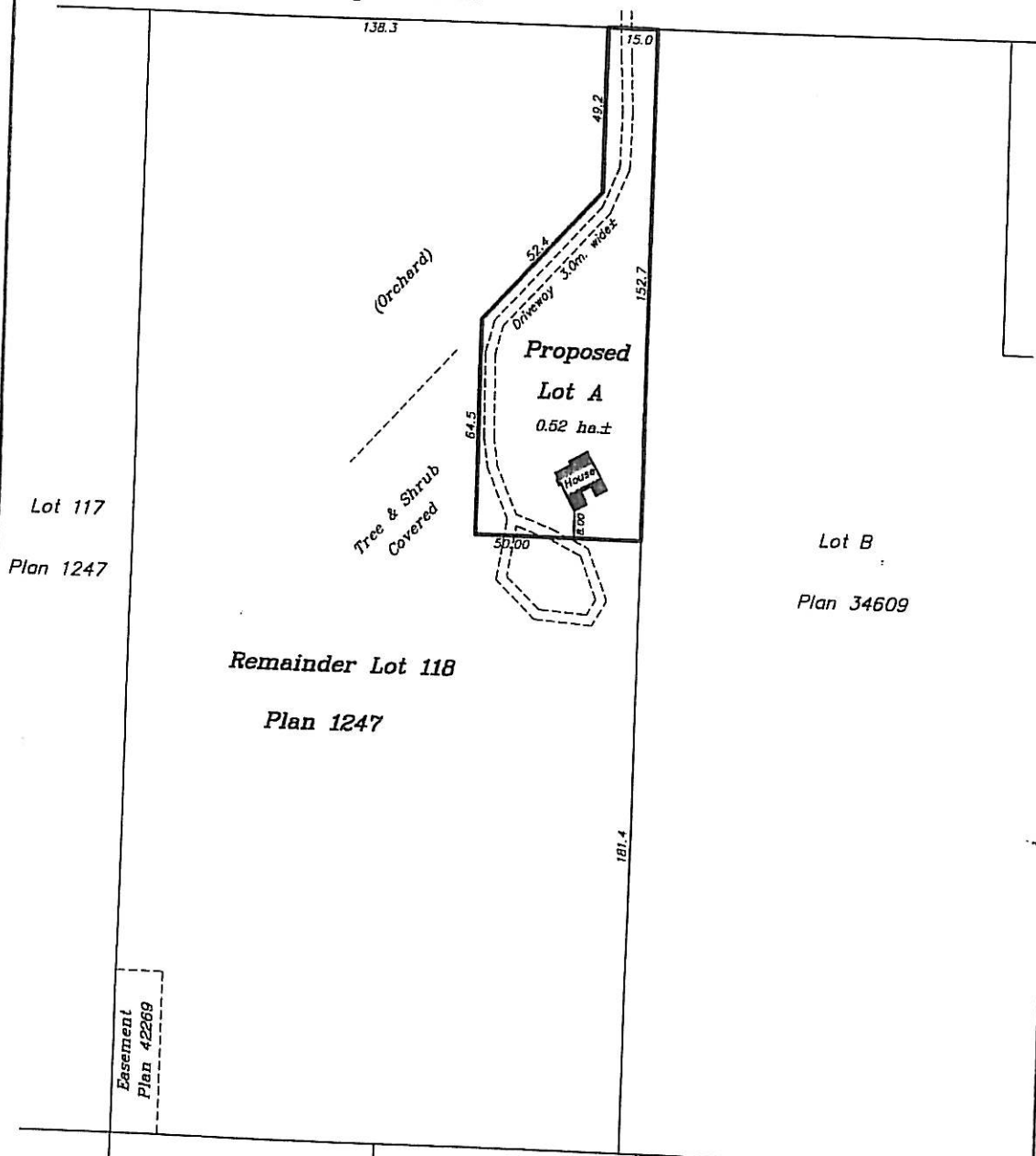
The sketch shows the existing orchard, approximately 40% of the land; the balance of Lot 118 is undeveloped with bush and large trees. There are two small cabins (each 468 sq.ft.) near the southern boundary of the lot and a small equipment shed south of the house.

**PLAN OF PROPOSED SUBDIVISION OF LOT 118,
PLAN 1247, SEC. 3, TP. 26, O.D.Y.D.**

ATTACHMENT C



Spiers Road



Lot A
Plan 21868

Rem. Lot 109
Plan 1247

VAN GURP & COMPANY
land surveyors
201-1470 St. Paul Street,
Kelowna, B.C. (250) 763-5711
F.B. 610(72) File: 15B15PRO

This Plan lies within the Central Okanagan Regional District.

Johanna Verkerk

July 12th, 2007.



Photo #1: Taken from where the driveway meets Spiers Road, looking south toward the house.

Photo #2: Taken just beyond curve in driveway visible in Photo #1 (further south) Note deer fence on the eastern property line.



Photo #3: Shows height of house above orchard.



Photo #4: Facing north; home and deer fence with vines started.



Photo #5: Facing south; shows large lilac bush and vines on the deer fence.

Spiers Road

ORCHARD ↑

138.3

15.0

PHOTO #1

49.2

PHOTO #2

52.4

Driveway 3.0m. width

152.7

PHOTO #5

(Orchard)

PHOTO #3

Proposed

Lot A

0.52 ha.±

House

64.5

50.00

PHOTO #4

ORCHARD

Lot 117

Plan 1247

Tree & Shrub Covered

ORCHARD

Lot B

Plan 34

Remainder Lot 118

Plan 1247

SHED

181.4

Easement
Plan 42269

CABINS


PASTURE ↓

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Burnaby, British Columbia, Canada

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 Agricultural Land Commission Act	<p style="text-align: right;">Policy #11 March 2003</p> <p style="text-align: center;">HOMESITE SEVERANCE ON ALR LANDS</p>
<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.]

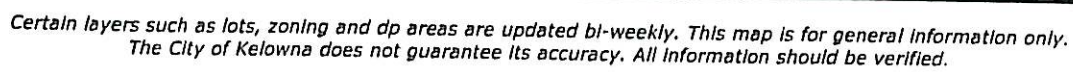
In considering the application, the Commission may make its approval subject to sale of the remainder within a specified period of time.

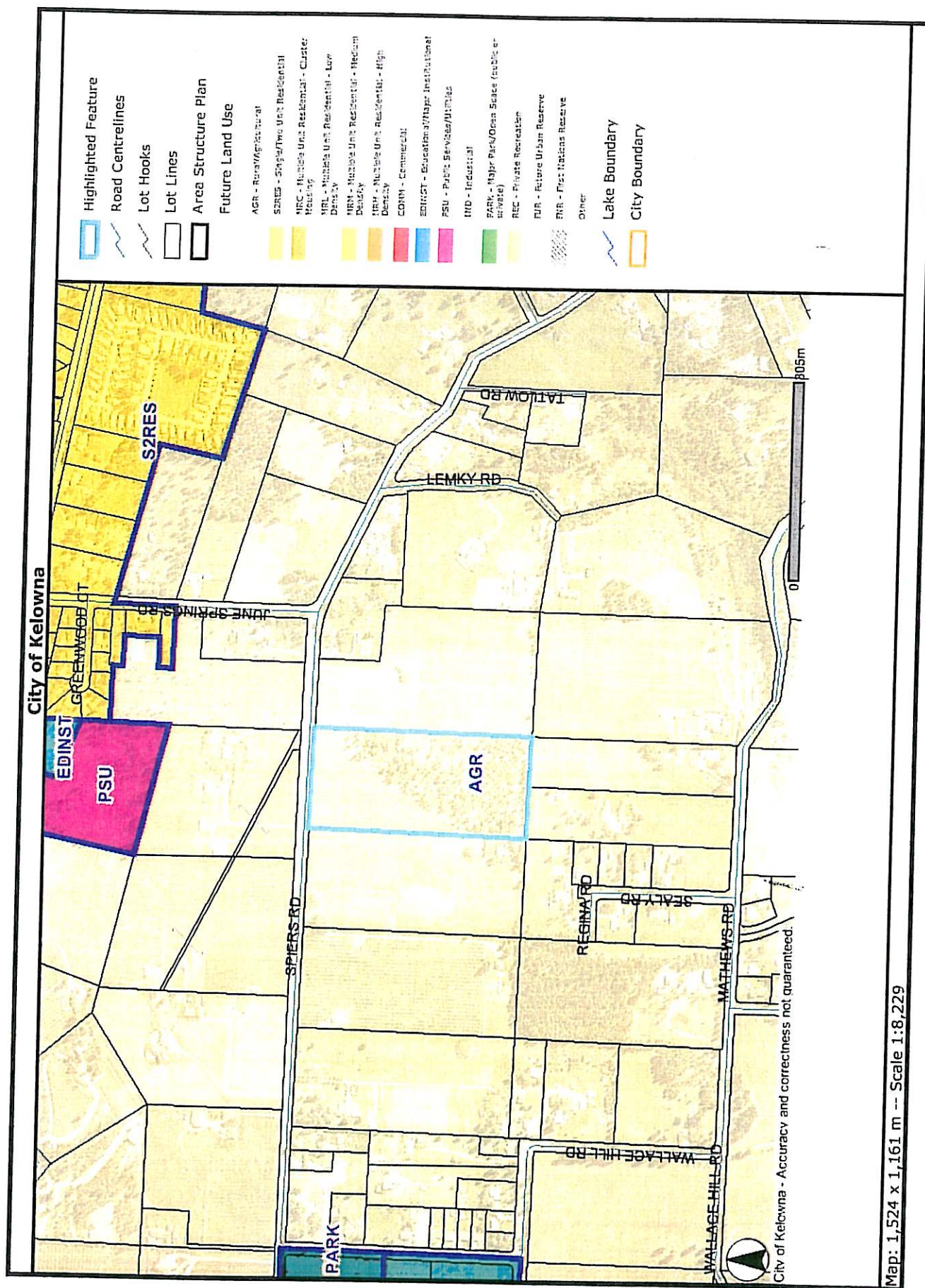
A Certificate of Order authorizing the deposit of the subdivision plan will be issued to the Registrar of Land Titles only when a "transfer of estate in fee simple" or an "agreement for sale" is being registered concurrently.

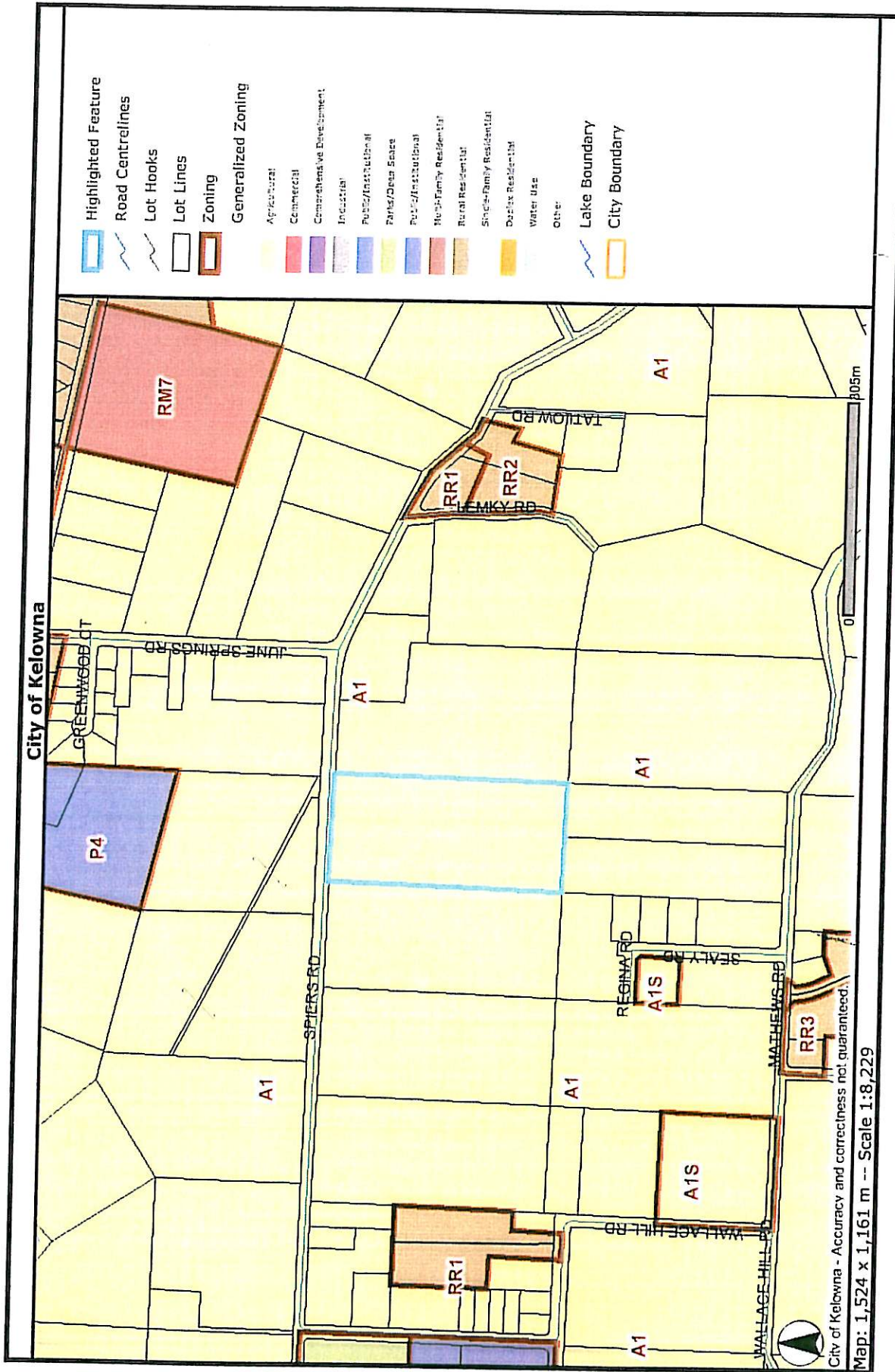
4. There will be cases where the Commission considers that good land use criteria rule out any subdivision of the land because subdivision would compromise the agricultural integrity of the area, and the Commission must therefore exercise its discretion to refuse the "homesite severance".

Where the Commission decides to allow a "homesite severance", there are two options:

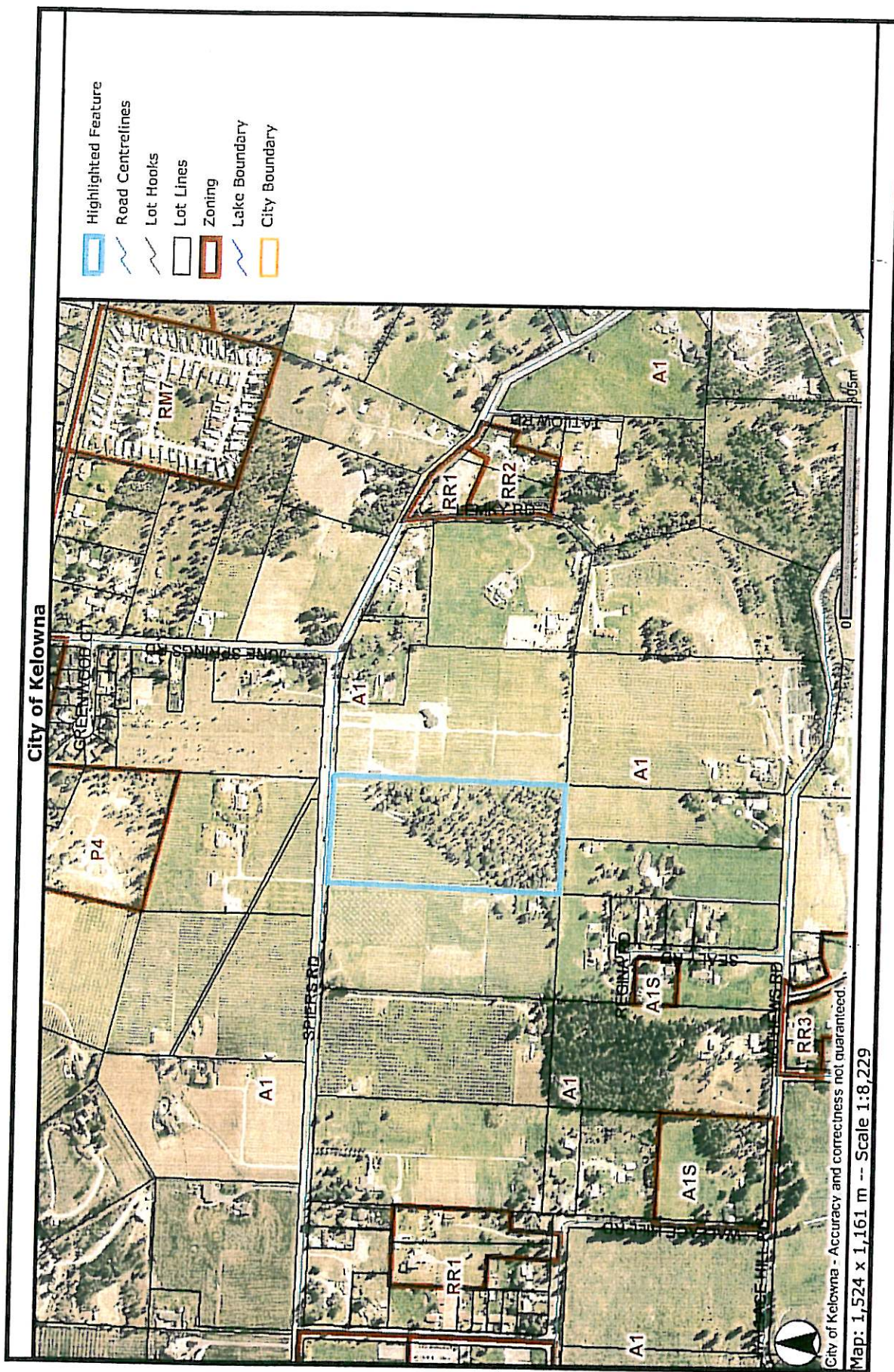
- a. the existing homesite may be created as a separate parcel where it is of a minimum size compatible with the character of the property (plus a reasonable area, where required, for legal access purposes); or
 - b. where the location of the existing homesite is such that the creation of a parcel encompassing 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.



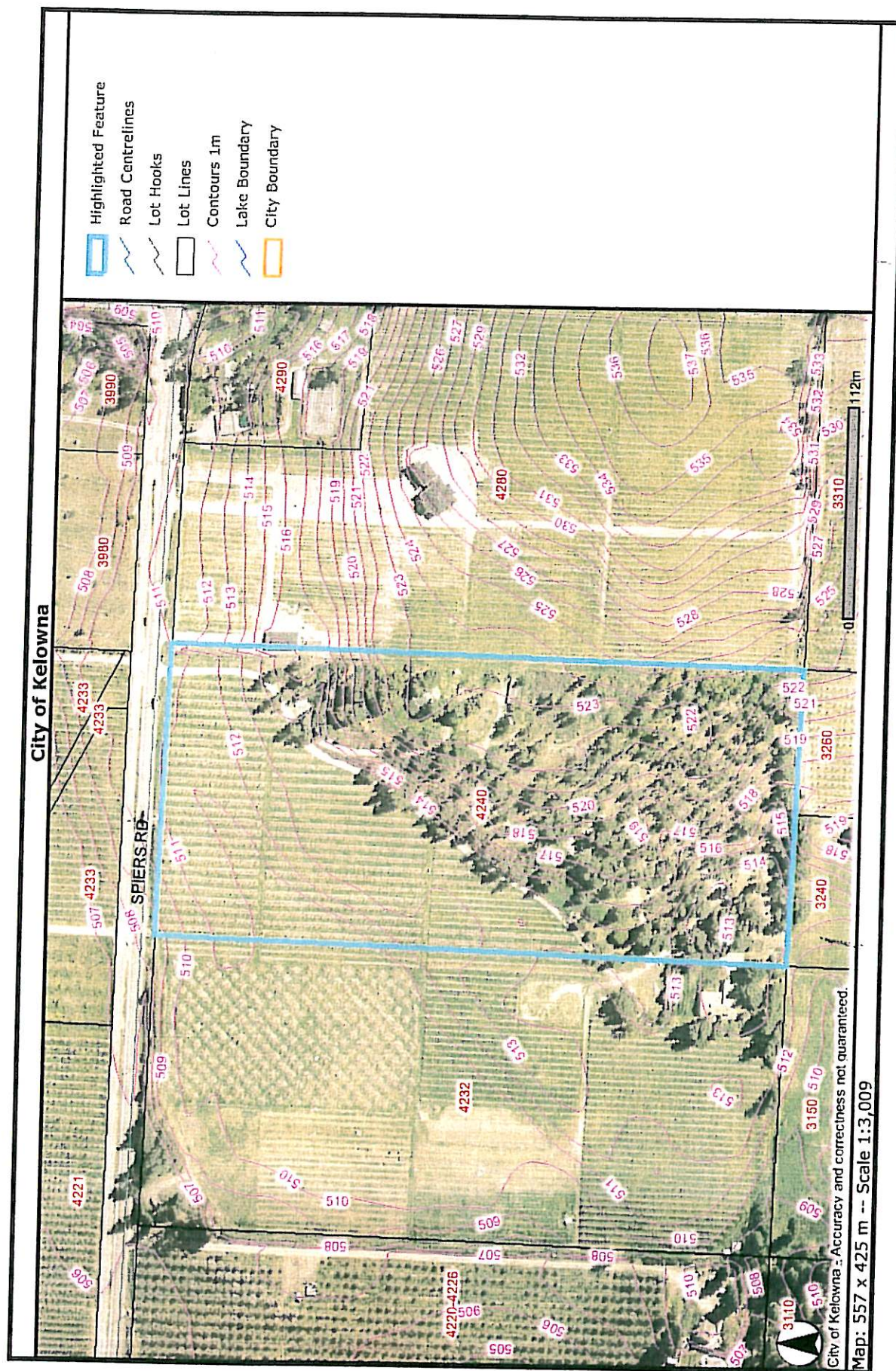




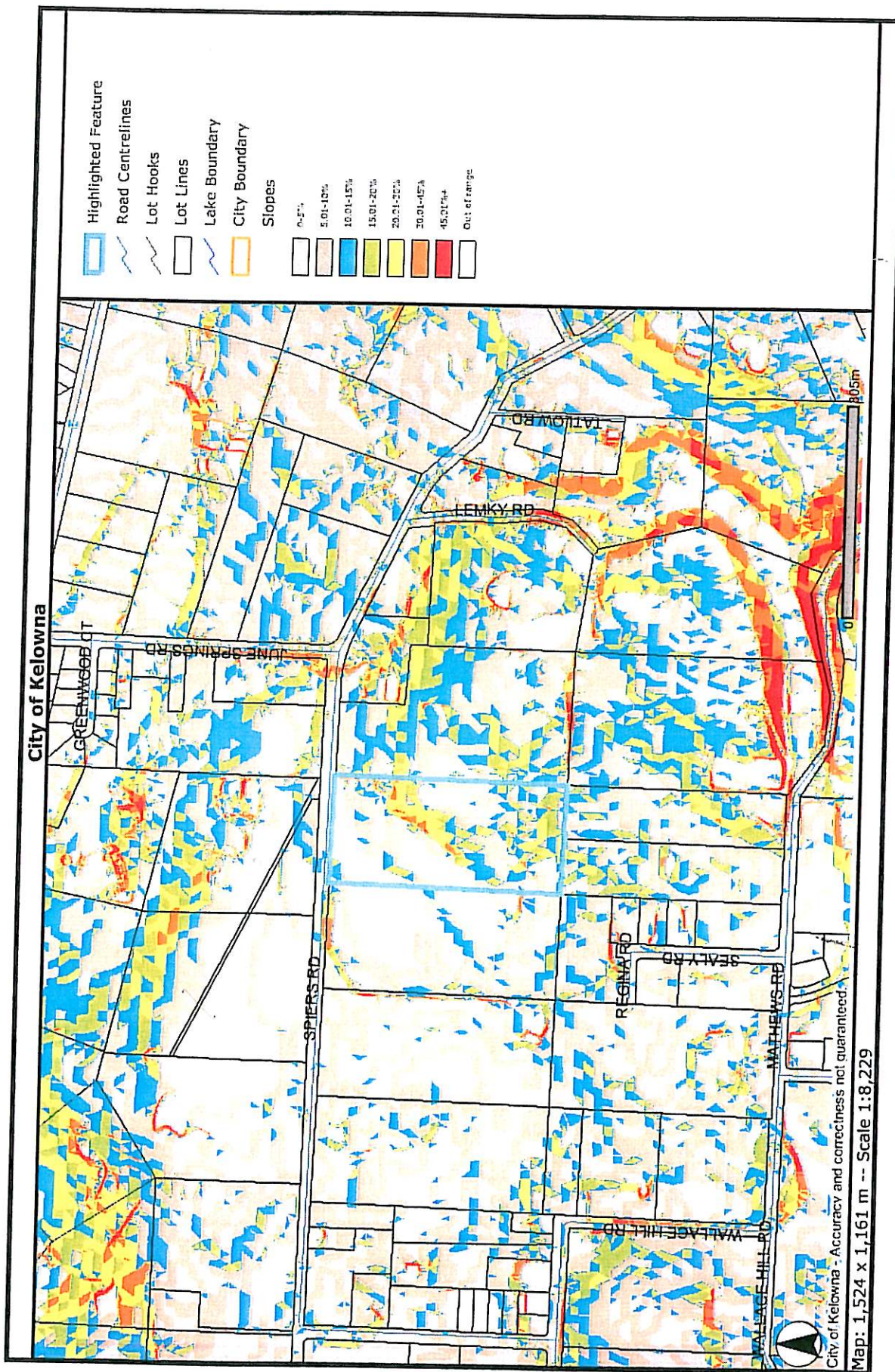
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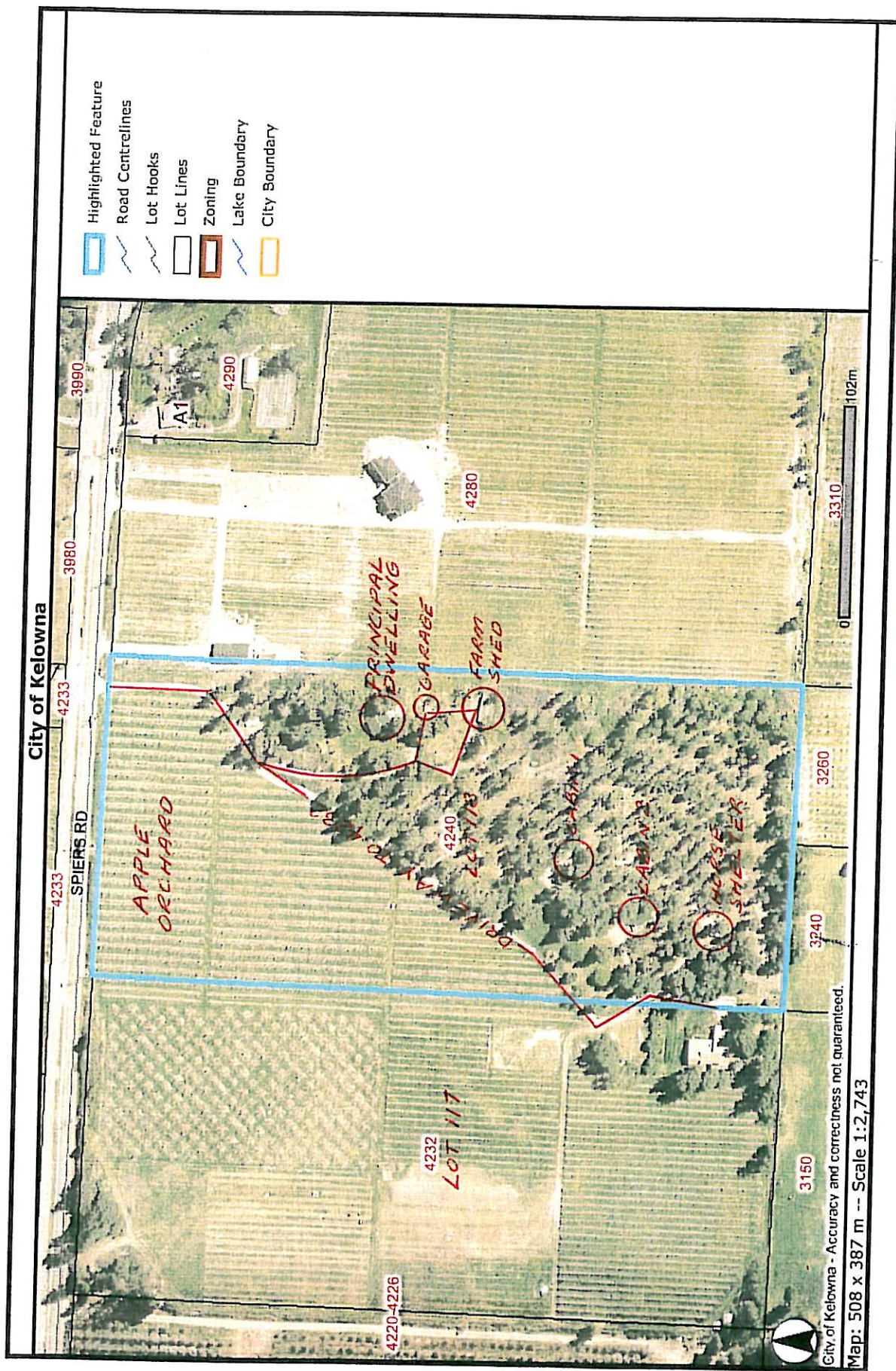
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ATTACHMENT M





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File: A07-0020

Existing Use: Rural Residential
 Proposed Use: Home site severance

Conform: Yes

Proposed Lots: Units:
 Final Lots: Units: General Comment:
 Remainder Lots: ESA Remainder Comment:
 Floor Space: m2
 Lot Size: ha m2
 Front x Depth: m X m Irregular:

Development Areas

Area	Location
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WILDLAND FIRE HAZARD

Zoning

Existing Zone: A1 # Lots: 1

Fees

Invoice	Status	Date	Parameter	Fee	Charge
104255	Active	2007-08-20	Subdivision/Non-Farming (Province)		300.00
104255	Active	2007-08-20	Subdivision/Non-Farming (City)		300.00
					<u>600.00</u>

File Progress

Step	Date	Comment
Application Accepted	2007-08-20	
Application Circulated	2007-08-20	
E-Application Received	2007-08-21	
E-Report Sent to Planning	2007-08-27	
All Agency Comments Received		
Additional Info Required		
Additional Info Received		
A.A.C. Consideration	2007-11-08	<p>THAT the Agricultural Advisory Committee support Application No. A07-0020 for 4240 Spiers Road, by J. Verkerk (D. Taylor) to obtain approval from the Agricultural Land Commission under Section 21(2) of the Agricultural Land Commission Act to allow a .52 ha. Lot homesite severance subdivision from the 5.12 ha. subject property.</p> <p>2007 10 11 - THAT the Agricultural Advisory Committee defer Agriculture Application No. A07-0020, for 4240 Spiers Road by D. Taylor, to obtain approval from the Agricultural Land Commission under Section 21 (2) of the Agricultural Land Commission Act to allow a .52 ha. lot homesite severance subdivision from the 5.12 ha. subject property.</p>

Report Forwarded to Council
 Council Consideration
 Application Fwd to BC Land Com
 BC Land Commision Decision
 File Closed

File Circulation