
CITY OF KELOWNA
MEMORANDUM

Date: January 20, 2009
File No.: A08-0009
To: City Manager
From: Community Sustainability Division
Purpose: To obtain approval from the Agricultural Land Commission under Section 21(2) of the *Agricultural Land Commission Act* to complete a homesite severance subdivision.
OWNER Joseph Sowinski
Katherine Sowinski
APPLICANT: Jason Sowinski
AT: 3265 McCulloch Road
EXISTING ZONE: A1 – Agriculture 1
REPORT PREPARED BY: Birte Decloux

1.0 RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A08-0009 for Lot B, Section 10, Township 26, O.D.Y.D., Plan 19769, located on McCulloch Road, Kelowna, B.C. for a subdivision (option #2) within the Agricultural Land Reserve, pursuant to Section 21(2) of the *Agricultural Land Commission Act*, be supported by Municipal Council subject to:

- Registration of a 219 Restrictive Covenant against the remainder parcel restricting location of the home site to an area of approximately 15,000 ft² that is not in current agricultural production
- Post a security bond in the form of a "letter of credit" at time of subdivision securing the estimated cost of the replant/densification of fruit trees on the agricultural portion, as determined by a professional agrologist.

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

2.0 SUMMARY

The applicant is requesting permission from the Agricultural Land Commission (ALC) to allow a homesite severance subdivision. Originally, two proposals were offered to the Agricultural Advisory Committee of which only one received a positive recommendation. This option is being put forth to the ALC which proposes a 0.25ha (0.6 acres) home site that will sever the existing home from the remainder property 0.9ha (3.8 acres) requiring an access easement over a panhandle. Although panhandles are not favoured, this option would create the largest agricultural remainder.

3.0 AGRICULTURAL ADVISORY COMMITTEE

At a meeting held on October 9, 2008 the Agricultural Advisory Committee passed the following recommendation:

THAT the Agricultural Advisory Committee support Application No. A08-0006, , for 3265 McCulloch Rd, Lot B, Plan 19769, by Jason Sowinski to obtain approval from the Agricultural Land Commission under Section 21(2) of the Agricultural Land Commission Act to facilitate a home site severance subdivision. The AAC favours the proposed parcel configuration labelled "Option # 2" because this creates a more economical parcel for farming.

4.0 SITE CONTEXT

The subject property is located on the west side of McCulloch Road, less than 1 kilometre east of the Harvest Golf Course. Currently, there is an existing single-family dwelling and multiple accessory buildings. Approximately two-thirds of the arable land outside the farm yard is in orchard production, and the remaining one-third is currently not being actively used for agriculture.

Parcel Size: 1.8 ha (4.48 ac)
Elevation: 488 m – 498 m

BCLI Land Capability

The unimproved land capability rating for the subject property is Class 5 (70%) and Class 3 (30%), with "soil moisture deficiency" listed as the only limiting factor. Consequently, with improvements through irrigation, for example, the land improves to Class 3 (70% and Class 2 (30%) (See attached Land Capability Map copied from map 82E.083).

Soil Classification

The soil classification for the subject property includes the following:

%	Soil Type	Description
70%	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 gravely loamy sand or very gravely sand. <u>Drainage</u> : rapid.
30%	DH - Dartmouth	<u>Land</u> : nearly level to very steeply sloping fluvioglacial deposits. <u>Texture</u> : 25 to 60 cm of sandy loam or loam over gravely sandy loam or gravely loamy sand. <u>Drainage</u> : well to rapid.

Zoning of Adjacent Property

North A1 – Agriculture 1 – orchard and cattle operation
East A1 – Agriculture 1 – orchard
South A1 – Agriculture 1 – orchard
West A1 – Agriculture 1 – cattle operation

Site Map: 3265 McCulloch Road



5.0 CURRENT DEVELOPMENT POLICY

5.1.1 City of Kelowna Strategic Plan

Objective: Sensitively integrate new development with heritage resources and existing urban, agricultural and rural areas.

Action towards this objective: – Evaluate the effectiveness of City policies and bylaws in preserving agricultural lands.

5.1.2 Kelowna 2020 – Official Community Plan

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

5.1.3 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.

6.0 LAND USE MANAGEMENT DEPARTMENT COMMENTS

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

owner is eligible for the home site severance and has owned and resided on the land since 1969.

ALC policies state that consideration of any home site severance should be reviewed in the context of the overall agricultural integrity of the parcel, where the size and configuration will, in the Commission's opinion, constitute a viable agricultural remainder. As the existing agricultural parcel is somewhat limited as a viable agricultural unit (given its relatively small area) any proposal to subdivide the land further reduces that viability. It appears more likely that given high land values both proposed parcels would revert to estate residential lots eventually, despite the intentions of the current property owners to intensify the agricultural use.

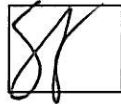
Although the applicant initially put forth two separate proposals for the home site severance, the Agriculture Advisory Committee only supported the option which left the greatest part of the site available for farming with the applicant's intent to improve the orchard with high density plantings. The Land Use Management Department concurs with "Option 2", to retain the largest viable remainder to encourage agricultural/orchard production and to discourage two equal residential estate lots.



Danielle Noble
Urban Land Use Manager

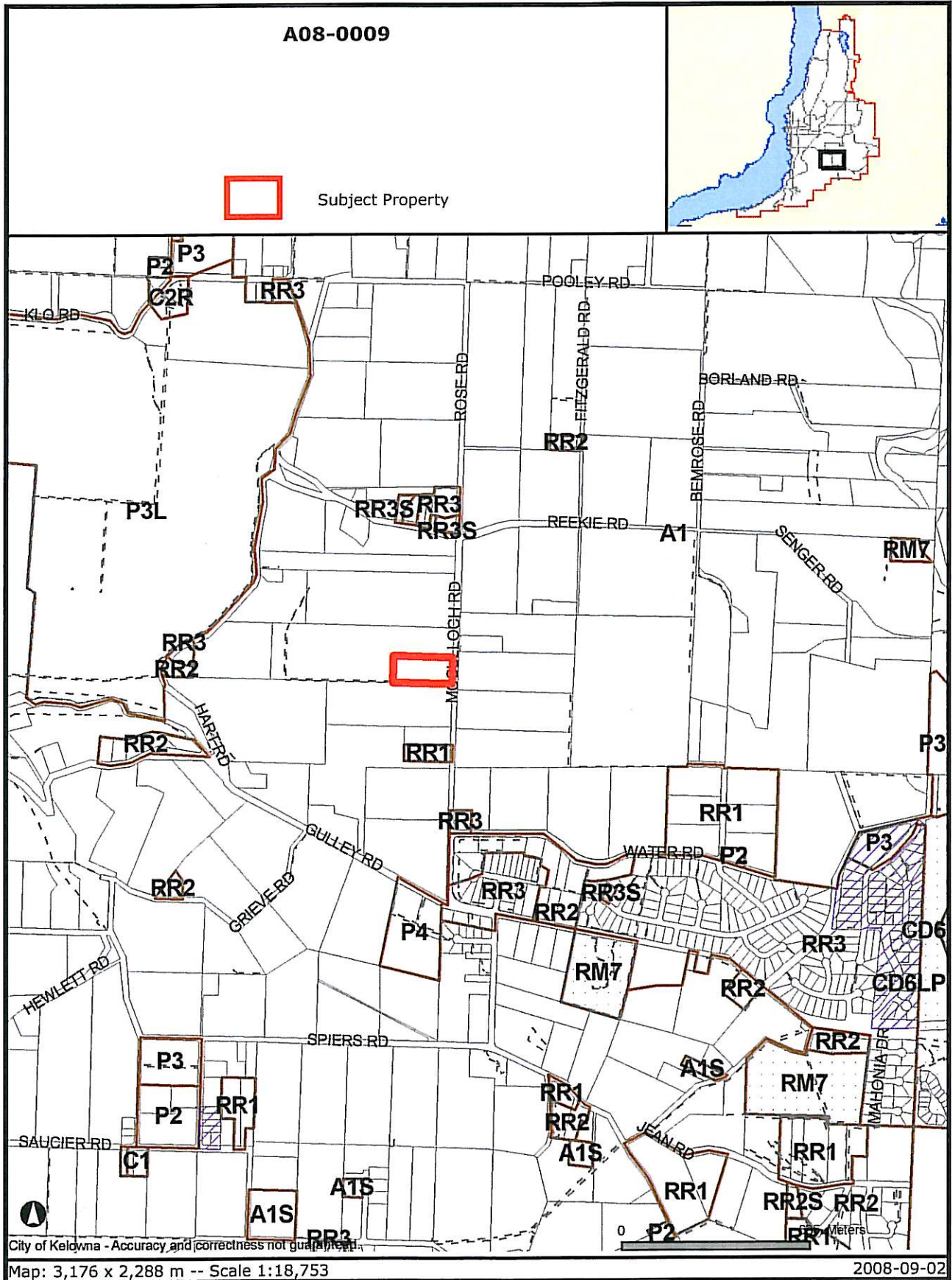


Approved for Issuance
Shelley Gambacort
Director of Land Use Management



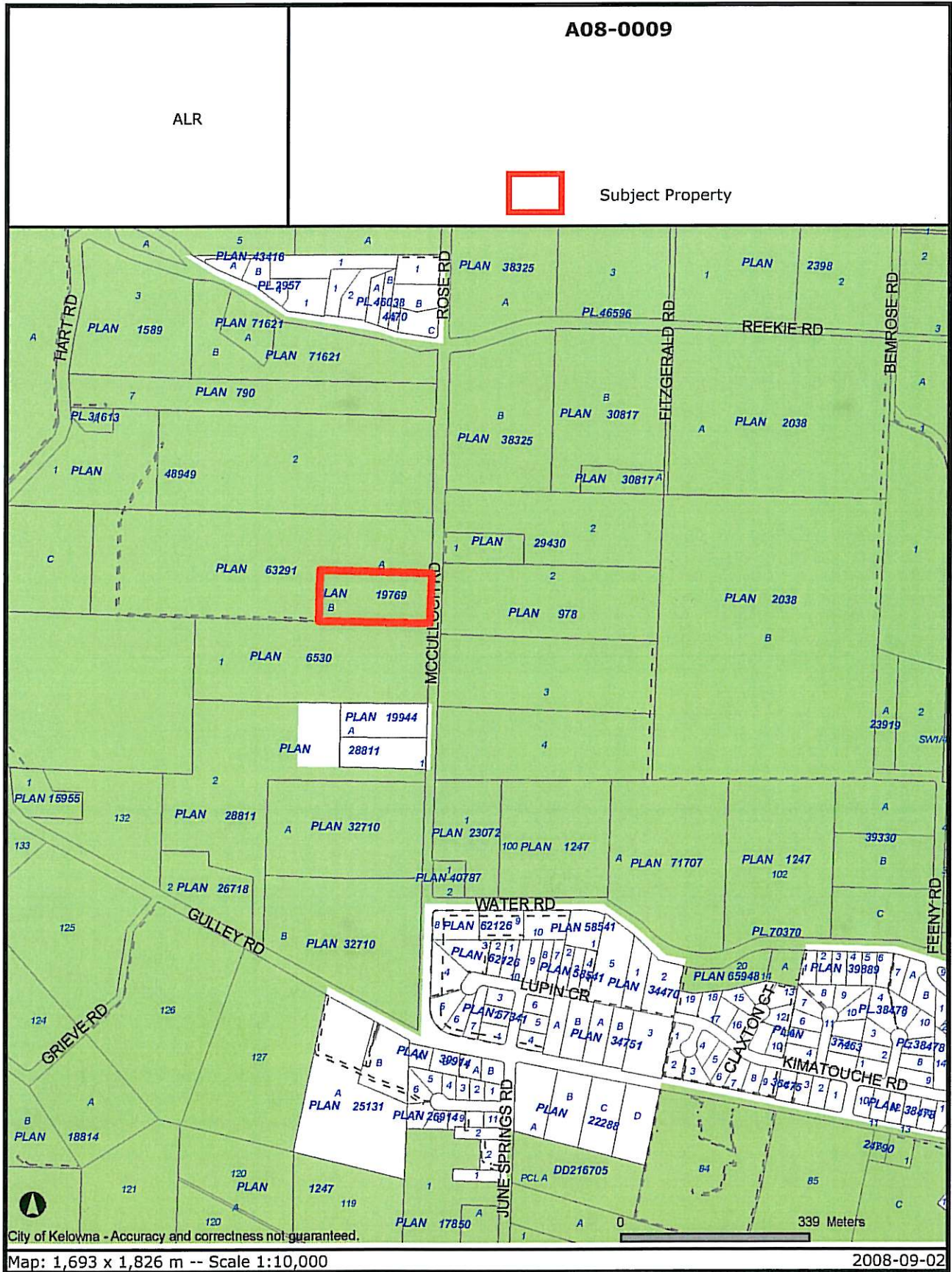
ATTACHMENTS

- Subject Property/ALR Map
- Submission Package from Applicant (16 pages)
 - Overall summary
 - ALC application form
 - Orchard Densification and Expansion Plan
 - Proposed subdivision "Option 2" map
 - State of title
- Land Capability Map
- Soil Classification Map



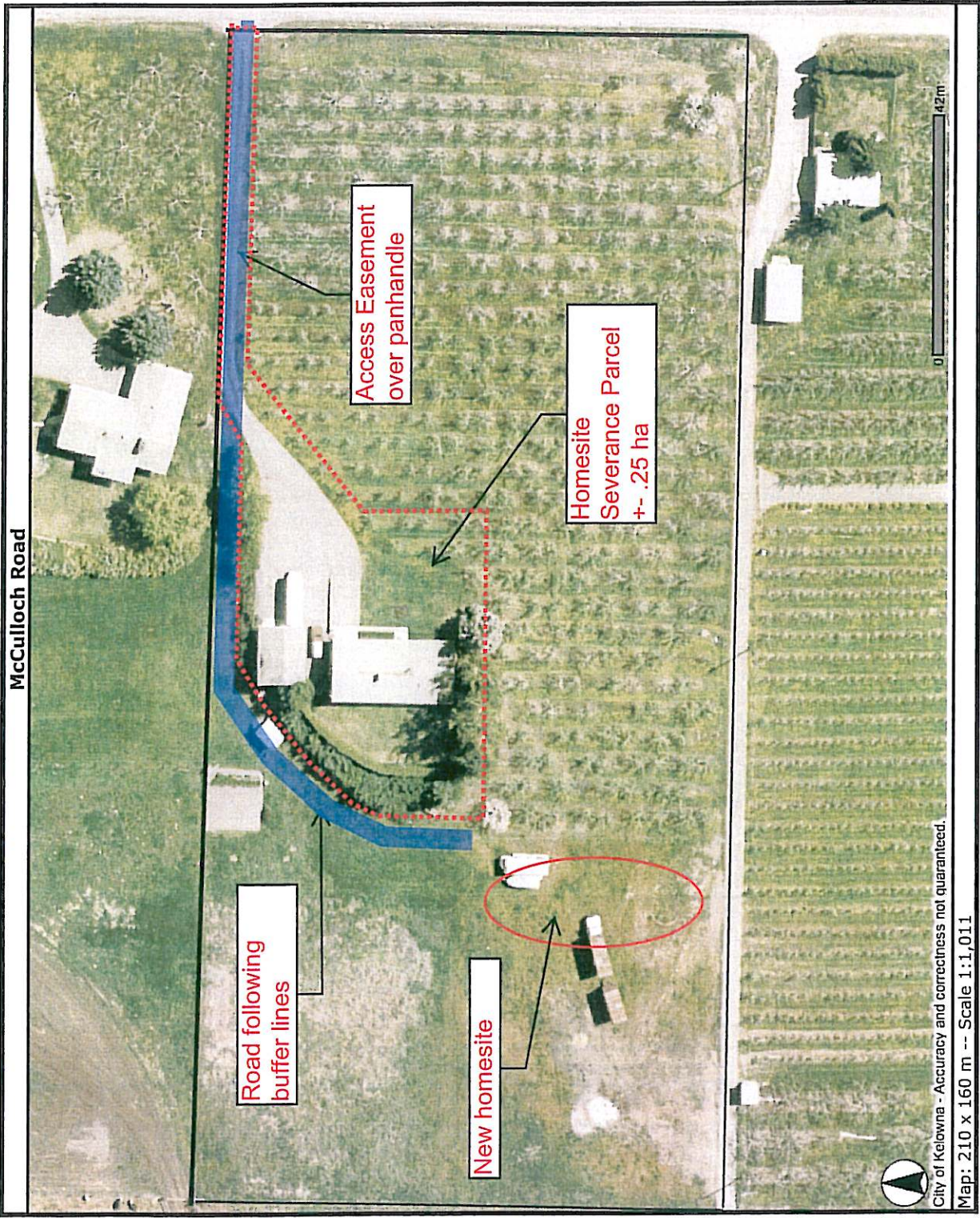
City of Kelowna - Accuracy and correctness not guaranteed.
Map: 3,176 x 2,288 m -- Scale 1:18,753 2008-09-02

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.



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McCulloch Road



Road following
buffer lines

Access Easement
over panhandle

Homesite
Severance Parcel
+/- .25 ha

New homesite

City of Kelowna - Accuracy and correctness not guaranteed.

Map: 210 x 160 m -- Scale 1:1,011

0 42m

HOMESITE SEVERANCE - LEAST PREFERRED OPTION #2

Homesite Severance – 3265 McCulloch Road Kelowna

Submission Contents

Overall Summary 2

I. Agricultural Enhancement Plan 3

 i) History to date: 3

 ii) Property History: 3

II. Densification/Economic Enhancement Plan 3

 i) Economic Enhancement 3

 ii) Single Point of Access 4

 iii) No-Build covenant on over 90% of the agricultural lands 4

 iv) Support for the Homesite Severance policy 4

 v) Financial Commitment by the Owner 4

III. Subdivision Proposals 5

 i) Subdivide the lands in half 5

 ii) Create a pan-handle lot 5

IV. Recent Similar Proposals 5

V. Conclusion 6

Addenda

Application by Landowner Tab 1

Densification/Expansion Plan figures and Map Tab 2

Proposed subdivision layout Tab 3

Alternate subdivision layout Tab 4

Copy of Title and subdivision plan 19769 Tab 5

Overall Summary

Background:

As a result of advancing age and the pending expiration of the current crop-share agreement, the owners of the subject property wish to sell the agricultural operation to their son(s). They meet the basic requirements of the Agricultural Land Commission Homesite Severance policy.

Alignment with City of Kelowna/ALR Key Strategies:

- I. Economic Enhancement
 - o Replant Program(Kelowna) – tree fruit replant to higher densities/higher value varieties.
 - o Farming Encouragement/ALR Policy (Kelowna) – encourage farming.
 - o Land Use framework that encourages farming(ALR)
 - o Encourage farm use of agricultural lands(ALR)

- II. Legislative Policies
 - o Support Homesite Severance for owners that qualify(Kelowna & ALR)
 - o Farm Home Plate initiative (Kelowna) – reduce entry points/residential use areas on ALR lands

The Plan:

Economic Enhancement:

The agricultural operation will be enhanced by replanting an area of old very low density trees, expanding the orchard and farm operation to land not currently in use. Based on the best estimates available, the plan will achieve the following:

- o Increase density of areas currently planted by 23% and yield by 17%
- o Increase farm production areas by 41%.
- o Increase total orchard yield by 41%.
- o Increase total stabilized gross revenue potential by 70%

Legislative Policies:

The plan supports the legislative policies of both the City of Kelowna via their published Agricultural Plan and the Agricultural land reserve strategic objectives. Specific components are as follows:

- o No areas currently under production will be removed. The plan is for densification of the original plantation and the addition of lands currently unused into the farm operation.
- o Single point of access to encourage minimal lost acreage for driveways/etc.
- o No-build covenant on agricultural operation save and except a 15,000sf portion that is currently not in production and has the poorest soil quality on the property.
- o Allow the farmer (who turns 75 years old this year) to maintain his residence and continue the active farm.

I. Agricultural Enhancement Plan

i) History to date:

Resulting from advancing age and the soon to expire crop-share agreement, Joe Sowinski started to investigate the possibilities of homesite severance and/or a S946 subdivision to provide a residence for a relative. One or both of his sons have agreed to purchase and manage the farm operation.

After reviewing other similar applications and subsequent approvals both in the City of Kelowna and elsewhere throughout the province the applicant met with city staff on April 16th and May 21st, 2008 and had a follow-up conversation regarding enhancements to the application on May 28th, 2008. Although there have been other approvals for homesite severance of properties smaller than the subject, City staff indicated concern over the impact to the farming operation and the size of the property. City staff asked the applicant to review both the policies of the agricultural land reserve and the City of Kelowna Agricultural Plan in an effort to present an option the City could support. Key elements were to include densification of the current operation and expansion of the farm.

ii) Property History:

The property was purchased in November 1969 by Joseph and Kathy Sowinski. As a result of challenging economic conditions, approximately 1.4 acres was removed from active production in the early 1980's and has remained vacant and unused since that time. With the exception of approximately ½ an acre, the majority of the remaining 2.4 acres in active production has slowly been replanted. The ½ acre that has not been replanted remains in its original state with very low density Spartan trees estimated to be over 50 years in age.

The City of Kelowna agricultural plan has identified the entire property as having class 2 soil conditions that are 'highly suitable for tree fruit'. Although this general classification appears to be accurate, of the 1.4 acres not currently in production, the soil quality on approximately .4 acres is quite poor resulting in intense water usage. This is one of the reasons that it was removed from active agricultural production over 25 years ago and is the proposed site for the new homestead.

II. Densification/Economic Enhancement Plan

i) Economic Enhancement

The plan proposed is specifically designed to address the goals and objectives of the City of Kelowna Agricultural Plan and the Agricultural Land Reserve strategic goals. The plan supports the following strategic initiatives:

- Replant Program (p.163 Kelowna Agricultural Plan) – Encourage higher density plantings, especially in higher value varieties.
- Agricultural Land Commission farming encouragement (p. 166 Kelowna Agricultural Plan) – Encourage the ALR to fulfill their complete mandate of encouraging farming.
- Land Use Framework that encourages and enables farming(p. 11 ALR Service Plan) – The ALR encourages farm use of agricultural lands with its key partners.

The plan includes removing the original ½ acre of Spartan apple trees and replanting with a higher density/economically superior apple trees. These trees are located on some of the best soil that can and should be used to a higher potential. The plan also considers planting 98 additional trees on the currently vacant increasing the total orchard area by .40 acres. Initial

contact has been made with an agriculturist to discuss the specific variety to be planted and he is willing and able to provide consulting services once the City offers approval.

In addition to the replant program and expansion of the orchard operation, the pasture land would be seeded for alfalfa use to bring the total area in production up by roughly 41%. The total orchard yield would also be up over 40% and the expected stabilized revenue potential by roughly 70%.¹

ii) Single Point of Access

The City of Kelowna has indicated a desire to reduce entry points to farmland and limit the residential use on ALR lands as per the proposed Farm Homeplate model.

The plan considers a single point of entry for both the agricultural lands and the homesite severance parcel. No areas currently under agricultural production or with production potential would be lost to provide access to the new parcel.

iii) No-Build covenant on over 90% of the agricultural lands

Both the City of Kelowna and the ALR encourage farming in general on ALR lands.

The plan would include registering a covenant against the remainder parcel restricting the location of the homesite to an area of roughly 15,000 square feet that is current not in production and contains some of the poorest soil quality on the property. This would ensure that the areas currently in production and the expansion areas would not be used for a residential or ancillary use into the future and a new residence would disturb no arable land. The area of the new homesite is identified as an oval in the diagrams provided.

iv) Support for the Homesite Severance policy

The City of Kelowna supports the Homesite Severance Policy of the Agricultural Land Reserve consistent with ALC policy #11, which allows farmers to retire or sell the property while retaining the homesite. (p 78 of the Agricultural Plan).

The City has supported the policy of homesite severance and S946 subdivisions in numerous situations. More recently, homesite severance has been supported for fruit growers and for small land holdings including a property on Webster Road that is considerably smaller than the subject. The proposed subdivision meets the intent of the policy while supporting key agricultural goals.

v) Financial Commitment by the Owner

Initial discussions with the municipality indicated concern by the City Officials that the owner would not follow through with the financial commitment for the agricultural enhancement plan. Although it was not required of other similar homesite severance applicants, the owner is committed to register a bond with the City equating the estimated cost of the replant/densification program. This bond would only be release upon successful completion of the work.

¹ See attached Densification and Expansion plan for details

III. Subdivision Proposals

The proposal is to subdivide the subject lands to allow for the farmer to continue to reside in the homestead while selling the agricultural portion to one of his sons. This application considers two alternatives with the first one being most preferred by the applicant:

i) Subdivide the lands in half

The most preferred option by the applicant is to subdivide the subject lands roughly in half as per the general intent of S946 of the Local Government Act. An access easement would be placed on the original lot to ensure no trees would need to be removed for the additional driveway as per the agriculture enhancement plan. The farmer would continue to maintain the day-to-day operations of the smaller farm operation with the assistance of the son who would live next door. This option is illustrated in the "Lot Split – most preferred option" illustration attached.

The option would allow the applicant to continue farming a smaller but sizable operation with the help of his son living on the adjoining property. There is a strong incentive for both owners to maintain a proper viable farm operation in order to continue achieve farm class as per the requirements of the Assessment Act.

ii) Create a pan-handle lot

The second option is to create a pan-handle lot similar to other recently approved homesite severance applications in the City. This would essentially sever the current farmer from the lands, ensure there is a buffer between the agricultural land and the existing residence, and create a new farm parcel of roughly 3.8 Acres. This option is illustrated in the "Homesite Severance" illustration attached.

IV. Recent Similar Proposals

Application # G-37290 May 26th, 2008 1032 Webster Road Kelowna

The property under application is a 1.6HA site located in the City of Kelowna with identical zoning to the subject property. The applicant original submission to the city to create a 1.2Acre homesite severance parcel with a 2.7 acre residual parcel was approved by the city. The staff report indicated that 'Although the parent parcel size is small (1.6 ha/ 4.0 ac), staff has no concerns with this application given that it complies with the guiding ALC policy regarding homesite severances'²

The ALR considered this application on September 20th, 2007 and refused the initial application because of the size of the residual parcel and suggested something smaller. On May 28th, 2008 the commission approved a .27 ha or .67 acre parcel leaving a 1.33 ha or 3.28 remainder agricultural parcel. In the decision, the commission required a covenant restricting the location of the new homestead to an area not currently in active agriculture production. The City of Kelowna has continued to support the homesite severance application through the process.

The approved remainder parcel in this situation is about 15% smaller than the subject property. In addition, the owners have not been encouraged to commit to an agricultural enhancement plan.

² p 3, February 26th, 2007 report to Kelowna City Council.

Application #G – 36301-0 April 11th, 2006 2850 Dunster Rd, Kelowna

A recent .66 ha homesite severance application that was approved within the City of Kelowna. Applicant was approved regardless of the fact that he did not own the property until 1976 and did not construct a residence on the site until that date. Evidence was forwarded that the applicant farmed the property with his father since the purchase in 1972.

In comparison, the owner has continually farmed the subject property since the purchase in October 1969.

Application # H – 37645 October 25th, 2007 Solsqua, east of Sicamous

The subject property totals 1.3 ha and is used for a single family residence, garage, and fruit trees. The proposal is to subdivide .9 ha for use by the applicant's son. The application was approved given previous similar approvals in the area.

V. Conclusion

The general framework of this proposal is intended to meet the objectives identified by City staff at the in person meetings on April 16th and May 21st, 2008 and the follow-up conversation with Nelson Wight(planner) regarding final city input prior to application on May 28th, 2008. We look forward to any suggestions or alterations.

Joseph Sowinski – owner

Jason Sowinski – agent.

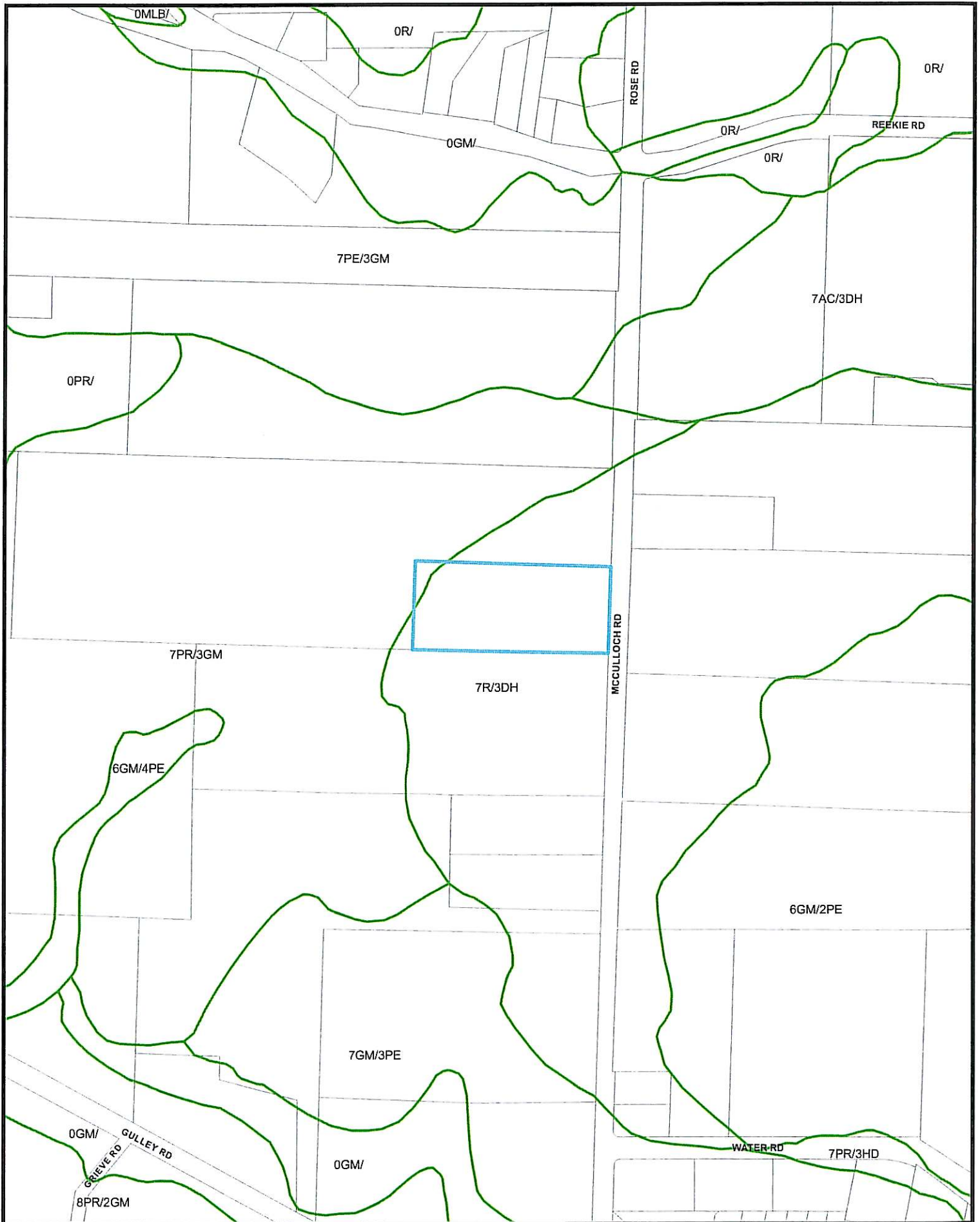
Sowinski Orchard Densification and Expansion Plan

Physical Area		Economic Summary	
	Current	Proposed	% Change
Orchard Acres in Production	2.4	2.8	16.67%
Total Acres in Farm Production	2.4	3.4	41.67%
Total Number of Trees Current area	430	530	23.26%
Total Trees Entire Operation	430	628	46.05%
Total Orchard Yield Orig current area(lbs)	40,000	48,500	21.25%
Total Orchard Yield(lbs)	40,000	56,500	41.25%
Densification Replant			
Current Number of Trees	26		
Spacing Between Trees (ft)	30		
New Rows	9		
New Tree Spacing	10		
Row Length	140		
Total New Trees	126		
Expansion Area Replant			
New Rows	7		
New Tree Spacing	10		
Row Length	140		
Total New Trees	98		
		Cost/Benefit	
Estimated Cost of Replant/Dens			\$10,000
Estimated Net Revenue(70% ER)			\$1,730
Discount Rate			8%
Years to production			5
Years to recoup investment			18
		Economic Summary	
Price/Pound Stabilized Current			\$0.20
Price/Pound Densification Area			\$0.30
New Estimated Price/Pound			\$0.23
Alfalfa Yield (\$)			\$600.00
Total Stabilized Gross Rev Current			\$8,000
Total Stabilized Gross Rev Projection			\$13,595
Estimated Increase			\$5,595

Increased yield stats estimated by agricultural consultant as a most conservative estimate.

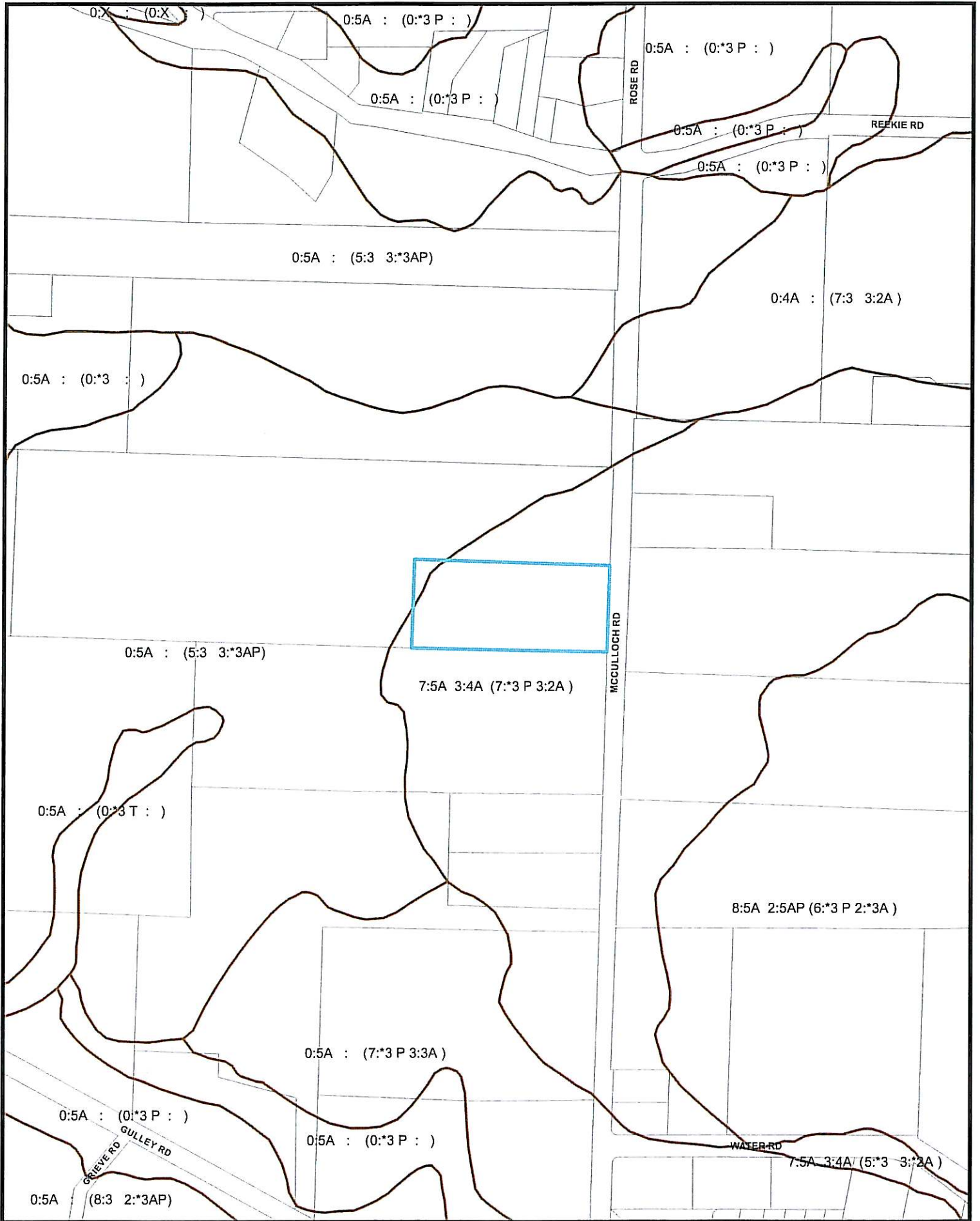
Alfalfa Yield - based on ministry estimate of 5 tonnes per acre and \$200 per tonne. Price/pound densification area based on yields for new crop varieties provided by Ministry statistics. Cost estimates for replant by agricultural consultant.

Land Capability = Brown/ Soil Class = Green



1:5,000

Land Capability = Brown/ Soil Class = Green



1:5,000