
**CITY OF KELOWNA
MEMORANDUM**

DATE: May 13, 2009
FILE NO. A06-0005
TO: City Manager
FROM: Community Sustainability Division
PURPOSE: To obtain approval from the Agricultural Land Commission to subdivide the subject property, under Section 21(2) of the *Agricultural Land Commission Act*, creating two 2.6 ha (6.5 ac) parcels.

OWNERS: Elmer Gruza **APPLICANT:** Elmer Gruza and Sharon Nevison
 Jori-Ann Gruza

AT: 2604 Belgo Road
EXISTING ZONE: A1 Agriculture 1
REPORT PREPARED BY: Birte Decloux

1.0 RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A06-0005 for Lot 5, Block 16, Section 11, Township 26, O.D.Y.D., Plan 1380, located on Belgo Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the *Agricultural Land Commission Act*, not be supported by Municipal Council.

2.0 SUMMARY

The Applicant is requesting permission to subdivide the parent 5.2 ha (13 ac) parcel into two 2.6 ha (6.5 ac) lots. The Applicant has provided a letter of rationale, dated November 30, 2006 (see attachments).

3.0 AGRICULTURAL ADVISORY COMMISSION


At a meeting held on March 14, 2006, the Agricultural Advisory Committee made the following recommendation:

THAT the Agricultural Advisory Committee not support Agriculture Application No. A06-0005, for 2604 Belgo Road, Lot 5, Block 16 Plan 1380, Sec. 11, Twp. 26, ODYD, by Benson Edwards, which seeks to obtain approval from the Agricultural Land Commission to subdivide within the Agricultural Land Reserve to create an additional lot as it does not demonstrate any benefit to agriculture.

Note: The applicant requested to re-present their application to the Agricultural Advisory Committee, providing additional information (see letter of rationale, dated November 30, 2006).

At a meeting held on January 11, 2007, the Agricultural Advisory Committee made the following recommendation:

THAT the Agricultural Advisory Committee not support Application No. A06-0005 for 2604 Belgo Road, Lot 5, Blk. 16, Sec. 11, Twp. 26, ODYD, Plan 1380, by Benson Edwards LLP to obtain approval from the Agricultural Land Commission to subdivide within the Agricultural Land Reserve to create an additional lot.



Note: The Members noted that the property is not being used to its agricultural capacity and the City's agriculture policy does not support this type of subdivision as there is no benefit to agriculture.

4.0 SITE CONTEXT

The subject property is located in the Belgo Area of Kelowna, having frontage on Belgo Road. The current use is predominantly an apple orchard.

Existing development consists of three residences. A single detached dwelling and a mobile home are located on the north side of the property. An additional single detached dwelling is located on the south side of the property (see attached sketch of proposed subdivision).

Parcel Size: 5.2 ha (12.8 ac)
 Elevation: 505 m – 520m

BCLI Land Capability

The unimproved land classification for the subject area falls primarily into Class 4 (± 95%), with some Class 5 as well (± 5%). The predominant limiting factor for unimproved land is “soil moisture deficiency”, with “adverse topography” having a lesser impact. Consequently, with irrigation the improved land capability rating increases mostly to Class 3 (± 64%), with approximately 36% of the subject property increasing to Class 2 (see attached Land Capability Map copied from map 82E.084).

Soil Classification

The soil classification for the subject property includes the following:

%	Soil Type	Description
60%	AC – Acland Creek	<u>Land:</u> gently to moderately sloping fluvioglacial deposits; <u>Texture:</u> 60 cm to 100 cm of sandy loam or loam over very gravely loamy sand or very gravely sand; <u>Drainage:</u> well to rapid
25%	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
15%	OY - Oyama	<u>Land:</u> very gently to extremely sloping fluvioglacial deposits; <u>Texture:</u> 100 cm or more of sandy loam or loamy sand grading to sand; <u>Drainage:</u> rapid.

Zoning of Adjacent Property

North A1 – Agriculture 1 in the ALR
 East A1 – Agriculture 1 in the ALR
 South A1 – Agriculture 1 in the ALR
 West A1 – Agriculture 1 in the ALR

Subject Property: 2609 Belgo 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

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

Isolated Development – In general, not support extensions to existing development or new development isolated within agricultural areas, regardless of ALR status.

Homesite Severance – Continue to support the concept of homesite severance, consistent with Agricultural Land Commission Policy #011.

6.0 TECHNICAL COMMENTS

6.1 Development Engineering Services

Works and Utilities has no comments at this point in time with regard to this application, however, a comprehensive servicing report will be provided at the time of development

application if and when the Agricultural Land Commission agrees to the proposed development.

7.0 LAND USE MANAGEMENT DEPARTMENT COMMENTS

After considerable time lapsing whereby the applicant requested the file remain on hold, the owner has recently decided to represent themselves in this application and have requested that it proceed to Council for consideration.

The relevant City policy documents noted do not support the creation of additional lots within the Agricultural Land Reserve, except as a home site severance consistent with the Agricultural Land Commission's policy. The subject property is designated as Rural / Agricultural in the OCP and is indicated as being within the rural portion of the Urban - Rural / Agricultural Boundary as shown on Map 11.2 for retention in the ALR. The site is in a well established agricultural area with other large actively farmed agricultural parcels.

A home site severance of a small parcel for one of the residences would keep the remainder in a larger size to maintain some viability, however, the current owner of the property does not qualify for a home site severance as he did not own the property prior to 1972.

The proposed subdivision provides no net benefit to agriculture. Agricultural planning policies require the preservation of contiguous areas of viable agricultural land. In most cases, the Commission favours larger parcel sizes, to maintain the broadest range of options for agricultural uses.

Should Council wish to support the application, an alternate recommendation is provided below:

8.0 Alternate Recommendation

THAT Agricultural Land Reserve Appeal No. A06-0005 for Lot 5, Block 16, Section 11, Township 26, O.D.Y.D., Plan 1380, located on Belgo Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, be supported by Municipal Council and forwarded to the ALC for their consideration.



Shelley Gambacort
Director of Land Use Management

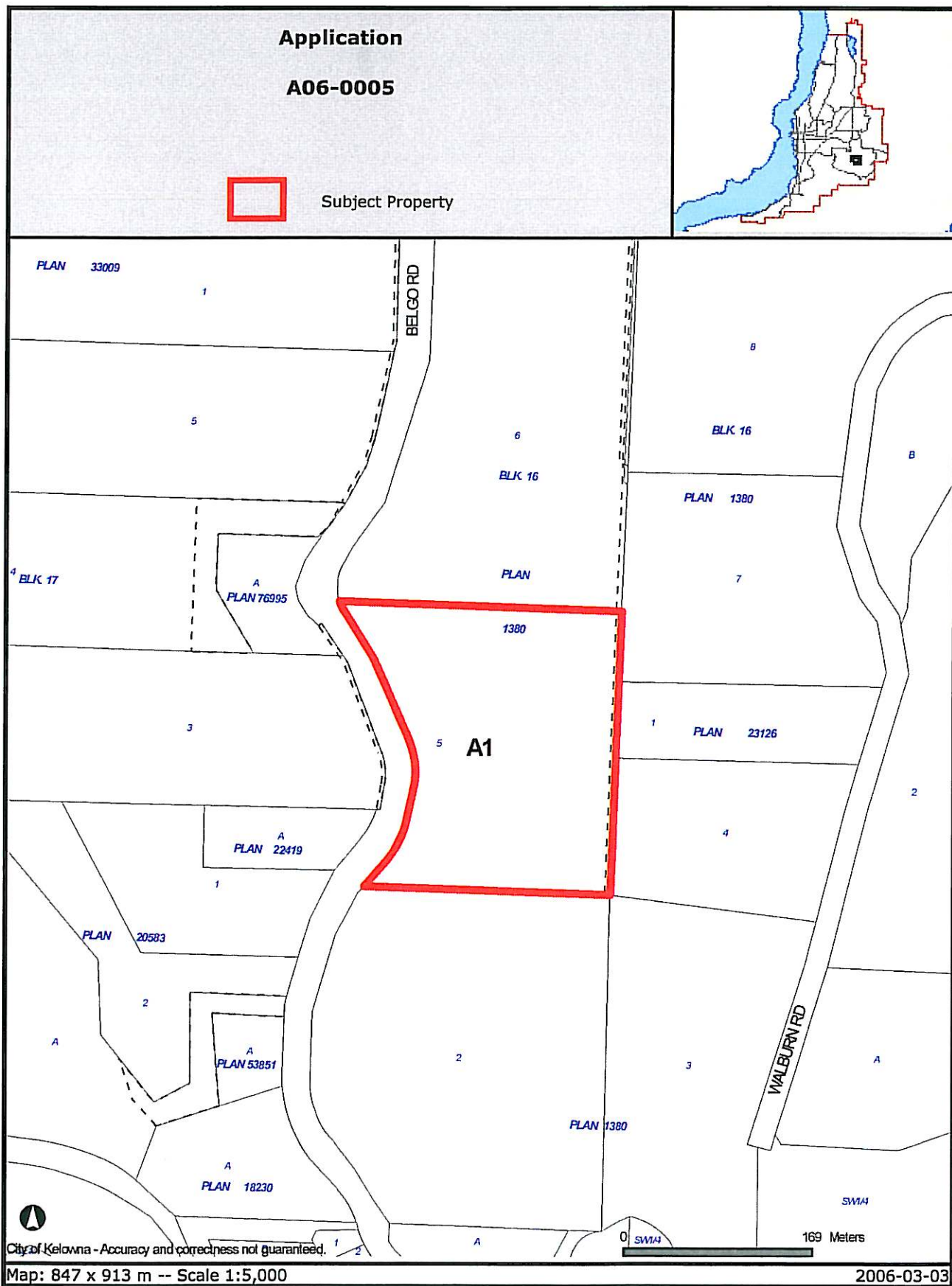
Approved for inclusion:



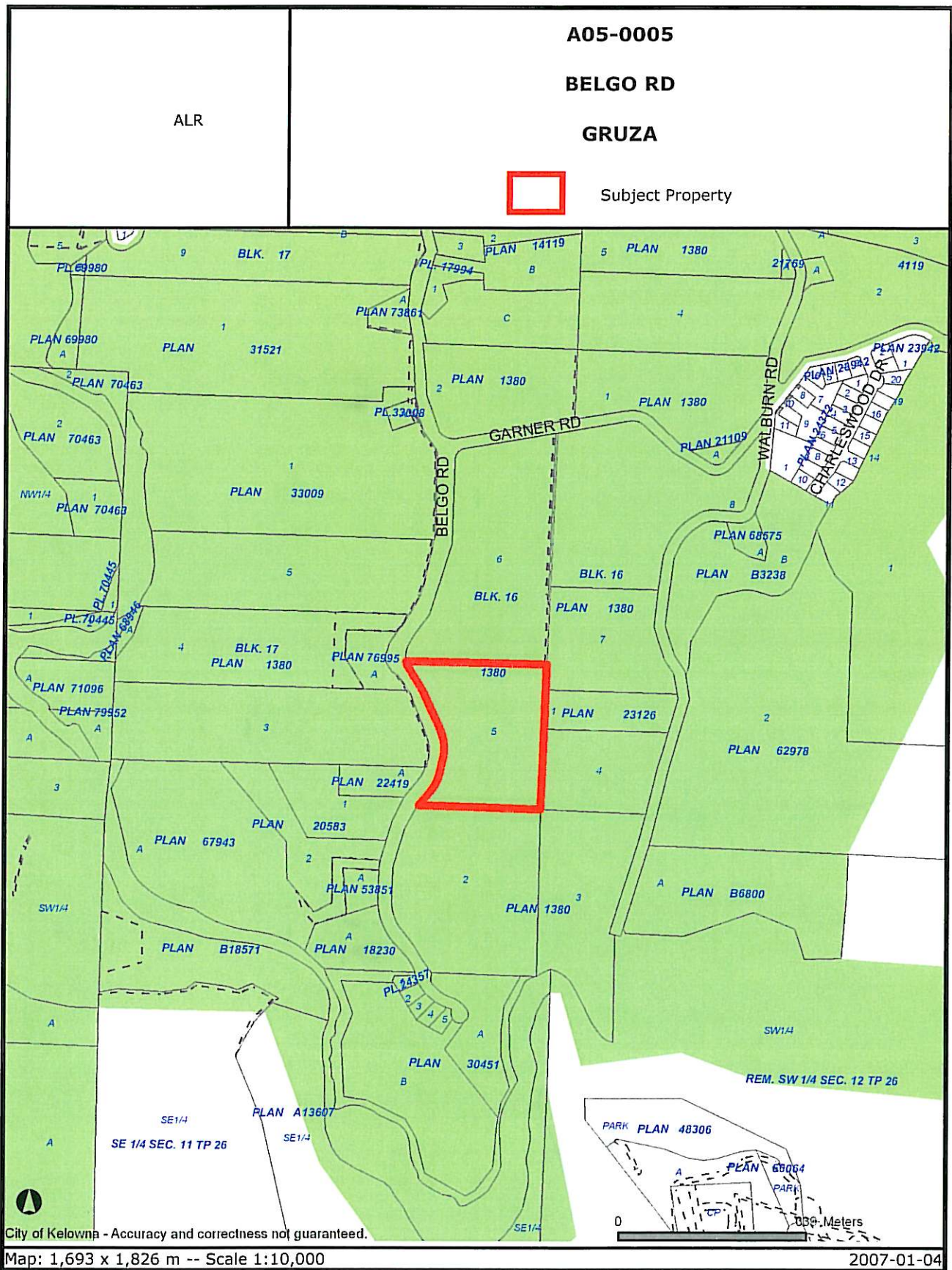
Jim Paterson
General Manager, Community Sustainability Division

ATTACHMENTS

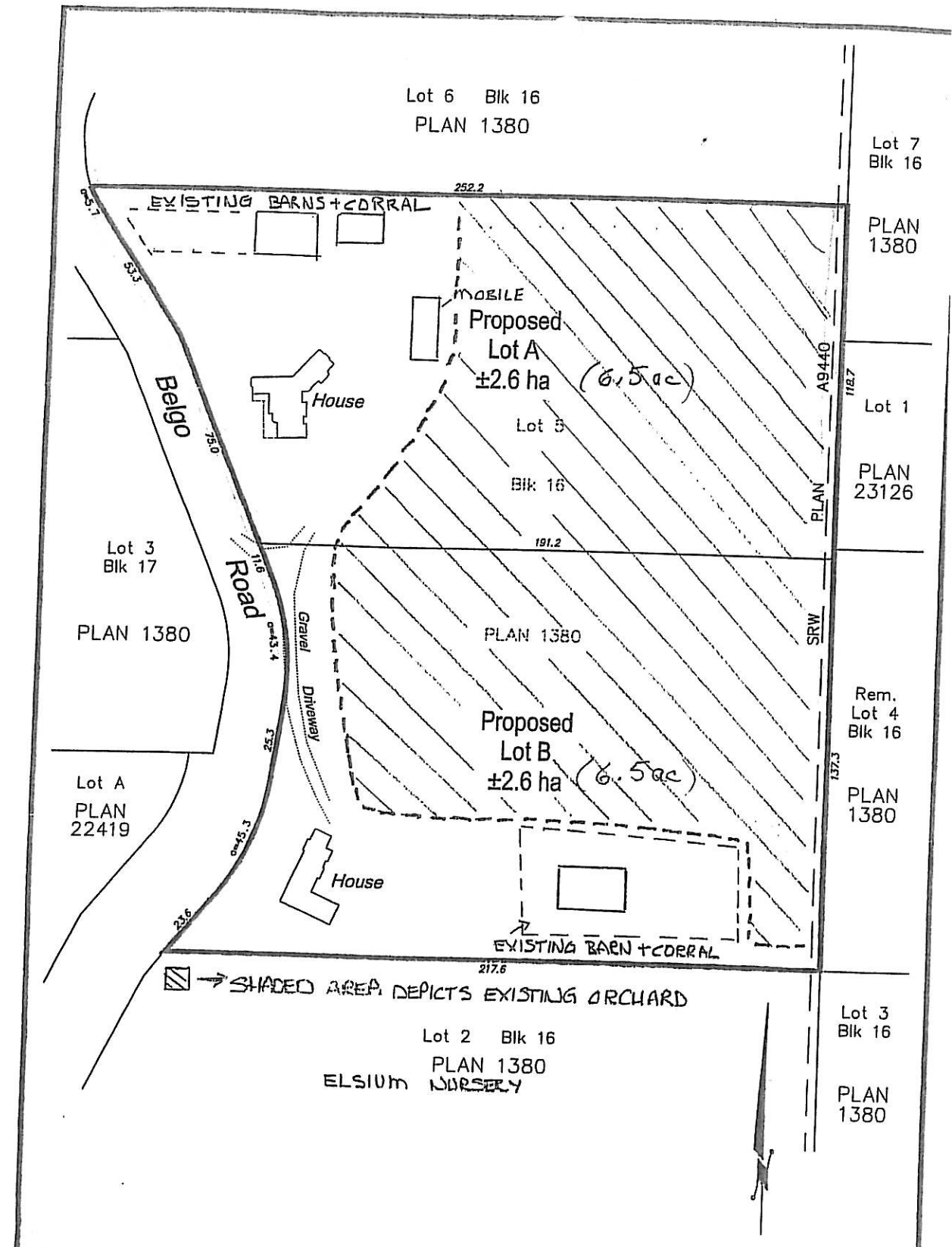
Location of subject property
ALR Map
Air Photo
Sketch Plan of Proposed Subdivision
Application by Land Owner (2 pages)
Letter of Rationale from Applicant, November 30, 2006 (2 pages)
Land Capability Map
Soil Classification Map



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.



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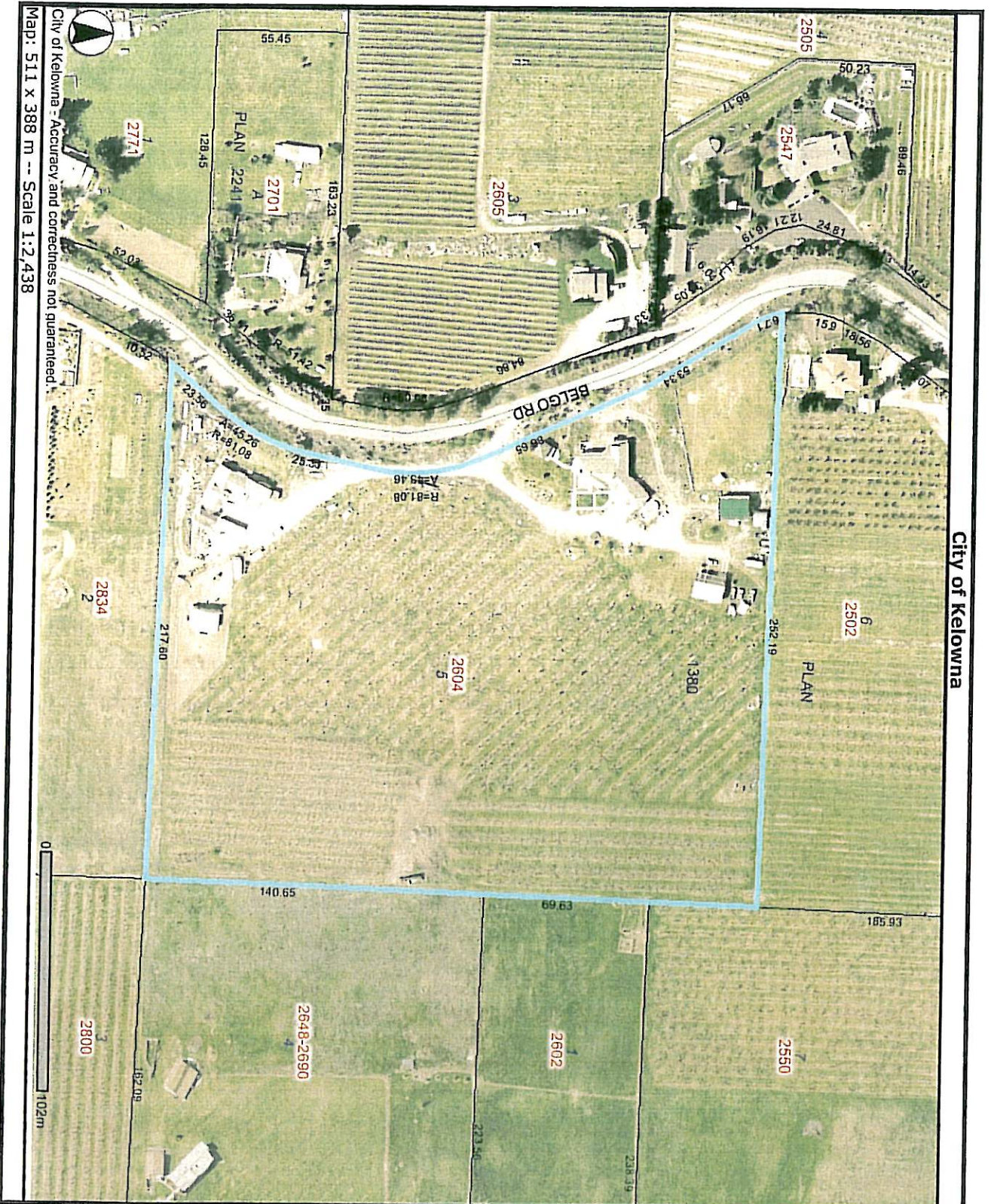


TITLE: **PROPOSED SUBDIVISION OF LOT 5,
BLOCK 16, PLAN 1380, SECTION 11,
TOWNSHIP 26, O.D.Y.D.**

DRAWN BY: **RUNNALLS DENBY**
british columbia land surveyors
#2-1470 Water Street Kelowna, B.C. V1Y 1J5
Phone: (250)763-7322 Fax: (250)763-4413 Email: denby@telus.net

SCALE: 1:1500
DATE: MAY 18, 2004
DWG: 11375_PROSUB.DWG
FILE No: 11375 REV. 0

CLIENT: **GRUZA**



City of Kelowna - Accuracy and correctness not guaranteed.
 Map: 511 x 388 m -- Scale 1:2,438

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

BENSON EDWARDS LLP
Barristers & Solicitors • Patent & Trade-mark Agents

Subdivision Approving Officer
Planning and Corporate Services
City Hall
1435 Water Street
Kelowna, BC V1Y 1J4

November 30, 2006
Our File No.: 30126

Attention: Bob Shaughnessy

Dear Mr. Shaughnessy:

**Re: 2604 Belgo Road
Elmer Herbie Gruza and Jori-Ann Gruza Application to Subdivide Within the
ALR**

RECEIVED
DEC 11 2006
CITY OF KELOWNA
PLANNING DEPT.

Further to our meeting, we are writing to clarify the need for subdivision approval for the above property and the viability of the proposed subdivision. We confirm from our conversation that this application is not intended to proceed pursuant to s. 946 of the *Local Government Act*, but rather purely as a subdivision within the ALR. We regret any confusion caused by reference to s. 946 within the above application.

The existing property has 2 residences on it, both of which are already serviced by water and septic systems. No additional urbanization is necessary for the functional subdivision of the above property.

The above property was held jointly by Elmer Gruza and his brother Raymond Gruza, who passed away. At that point in 2004, his widow, Jori-Ann Gruza, came on title in his place in as indicated on the attached title search. The proposed subdivision is to create two lots of approximately 2.63 hectares each, reflecting the half interest held by each of Elmer and Jori-Ann.

The current joint arrangement is causing hardship to the continued operation of the property with its existing use, namely as an orchard. The gravest problem is financial. Mr. Gruza was required to carry the entire mortgage for the property in the year following Raymond's death, as opposed to simply the half interest as previously. Mr. Gruza does not have the resources to pay the entirety of the mortgage, and he cannot do so in the future. Mr. Gruza is nearing retirement and suffers from severe arthritis. He cannot physically continue working beyond retirement age, and it is therefore not open to him simply continue working in order to finance the burdens of the entire farm property.

Since the death of her husband, Ms. Gruza has been raising two small children on her own and does not have the resources to maintain the property, either by paying the mortgage or the taxes that are payable on the land. Ms. Gruza desires to relocate to Alberta where her family resides and where she can receive the financial and emotional support necessary to her wellbeing and that of her children.

Neither Mr. Gruza nor Ms. Gruza has the resources to purchase the half interest held by the other. As the matter stands, in order to accommodate Ms. Gruza, Mr. Gruza would have to

sell his interest as well. Given that Mr. Gruza purchased this property with his brother, it has deep significance to him and he wishes to keep his interest in the property in the family. Further, Mr. Gruza has an ongoing lease for the working of the orchard on the property that he wishes to maintain.

The denial of the requested subdivision will be detrimental to the agricultural use of the land and could be responsible for terminating the agricultural use altogether. Without the subdivision the parties cannot afford to continue to cultivate the land. The benefit to agriculture through the granting of this subdivision, as required by the Official Community Plan and the City of Kelowna's Agricultural Plan, is that the individual properties can continue to be active orchards. Further, it will require no new development within the agricultural area, nor will it require an extension of the existing development.

We respectfully request that the above subdivision application be considered by your office and by the Agricultural Advisory Committee. If any further information may be provided, or if you have any questions or concerns, please do not hesitate to contact us.

Yours truly,

BENSON EDWARDS LLP

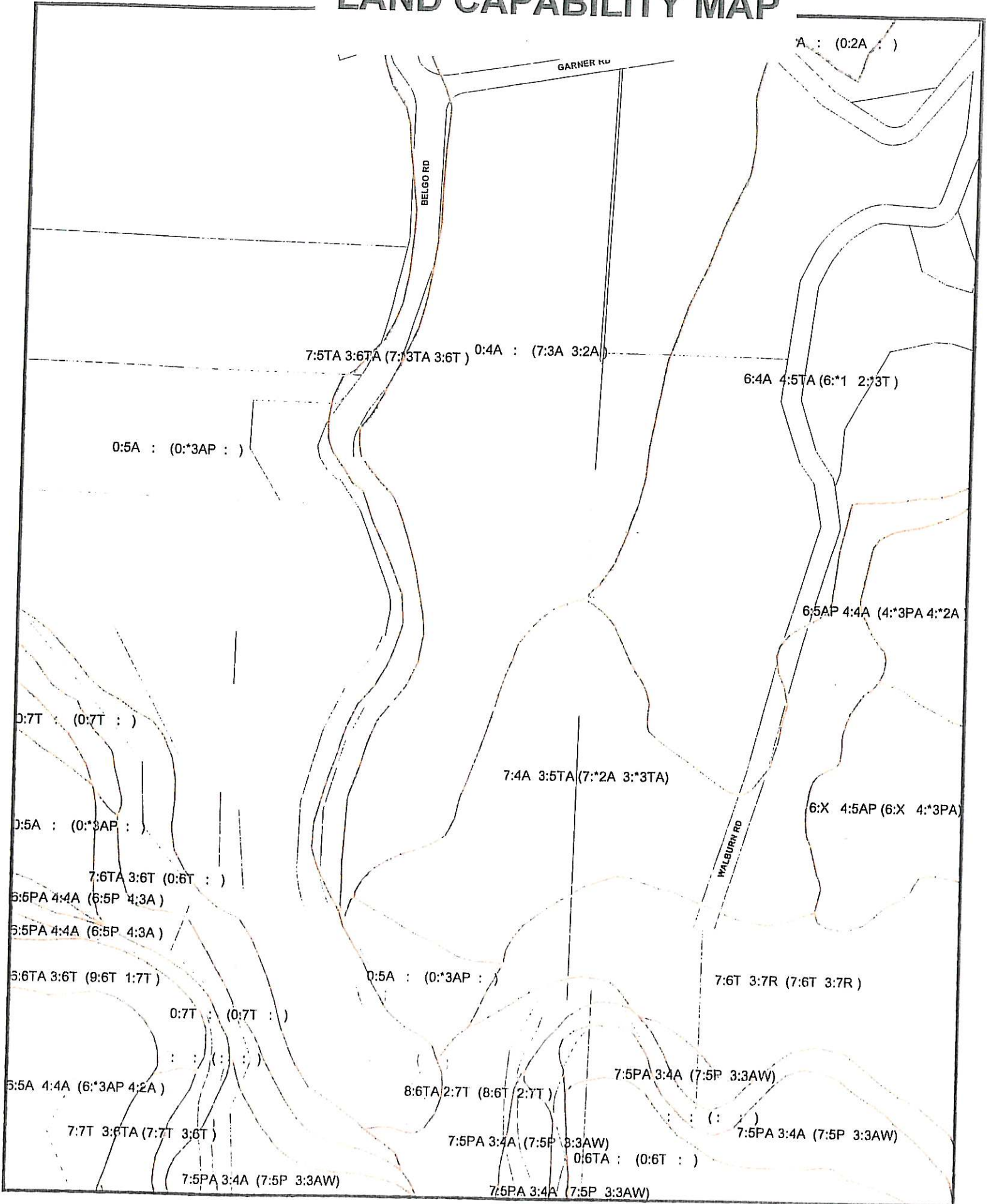
Per:

A handwritten signature in black ink, appearing to be 'Rose Shawlee', written over a faint circular stamp or watermark.

**Rose Shawlee
Articled Student**

Encl.

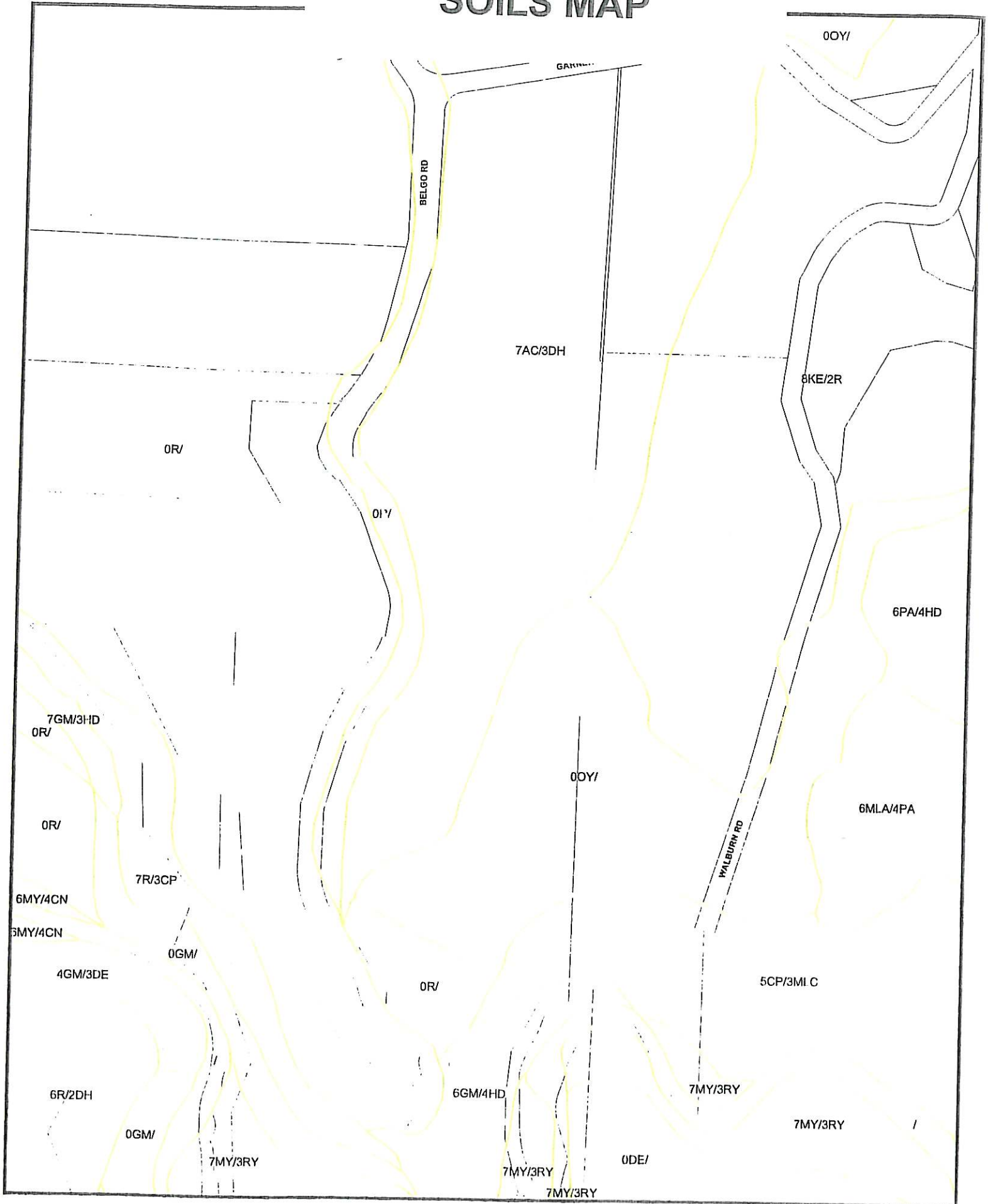
LAND CAPABILITY MAP



1:5,000

07 E 004

SOILS MAP



1:5.000

07 F. 084