
CITY OF KELOWNA
MEMORANDUM

Date: June 19, 2009
File No.: A09-0004
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.
Owner: Elizabeth Borrett
Applicant: Aaron Dow (Farris, Vaughan, Willis & Murphy LLP)
AT: 3681 Hart Rd; Lot A, Section 10, Township 26, Osoyoos Division Yale District Plan 31613
EXISTING ZONE: A1 – Agriculture 1
REPORT PREPARED BY: Greg Sauer

1.0 RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A09-0004 for Lot A, Section 10, Township 26, Osoyoos Division Yale District Plan 31613, located at 3681 Hart Road, Kelowna, B.C. for a homesite severance within the Agricultural Land Reserve, pursuant to Section 21(2) of the *Agricultural Land Commission Act*, NOT 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 from the Agricultural Land Commission (ALC) to permit a homesite severance. The proposed homesite severance parcel is 0.65 hectare (1.61 ac) in size, leaving a 2.49 hectare (6.15 ac) remainder parcel (see applicant's attached Homesite Severance Proposal Map).

3.0 AGRICULTURAL ADVISORY COMMITTEE

At a meeting held on June 11, 2009, the Agricultural Advisory Committee passed the following recommendation:

THAT the Agricultural Advisory Committee support Application No. A09-0004 for 3681 HART Road, Lot 1, Plan 48949, by Farris, Vaughn, Wills & Murphy LLP (A. Dow) to obtain approval from the Agricultural Land Commission under Section 21(2) of the Agricultural Land Commission Act to complete a homesite severance subdivision.

Comment: The Agricultural Advisory Committee support the location of the homesite severance but have concerns with the size and future density on the properties.

4.0 SITE CONTEXT

The subject property is located on the east side of Hart Road, between Gulley and Reekie Road, in the Southeast Kelowna sector of the City. The property is within the Agriculture Land Reserve

90

(ALR) and is surrounded by properties within the ALR on all boundaries. The subject property is designated as Rural / Agricultural for future land use.

The existing parcel is 3.3 hectares (8.15 acres) in size and contains a house that was constructed in the early 1990s, with the remainder of the parcel dedicated to fruit production (orchards). The current parcel configuration is the result of a lot line adjustment completed in 1992. The adjustment served to alter the lot line from an east/west orientation to the north/south orientation which exists at present.

The property is serviced with water by the Southeast Kelowna Irrigation District (SEKID), and an onsite septic system. The parcel has a moderate slope (approx. 5.5% on average) from a low of 464 meters on the southwest edge to a high of 478.5 meters at the southeast property boundary.

4.1 BCLI Land Capability (Map 82E.083)

Portion of Site	Land Capability Rating, Unimproved	Land Capability Rating, with Improvements
1.	100% Class 5 with soil moisture deficiency	50% Class 3 with soil moisture deficiency 30% Class 3 with stoniness and soil moisture deficiency 20% Class 2 with soil moisture deficiency
2.	100% Class 5 with soil moisture deficiency	100% Class 3 with soil moisture deficiency
3.	100% Class 5 with soil moisture deficiency	50% Class 3 with soil moisture deficiency 30% Class 3 with stoniness and soil moisture deficiency 20% Class 2 with soil moisture deficiency

4.2 Soil Classification (Map 82E.083)

Portion of Site	%	Soil Type	Description
1.	70%	PE - Paradise	<u>Land</u> : Nearly level to very steeply sloping fluvioglacial deposits. <u>Texture</u> : 25 to 60 cm of sandy loam or loamy sand over gravelly loamy sand or very gravelly sand. <u>Drainage</u> : Rapid.
	30%	GM - Gammil	<u>Land</u> : Very gently to extremely sloping fluvioglacial deposits. <u>Texture</u> : 10 to 25 cm of sandy loam or loamy sand over very gravelly loamy sand or very gravelly sand. <u>Drainage</u> : Rapid.
2.	100%	PR - Parkhill	<u>Land</u> : Very gently to strongly sloping fluvioglacial deposits. <u>Texture</u> : 100 cm or more of loamy sand or sand. <u>Drainage</u> : Rapid.

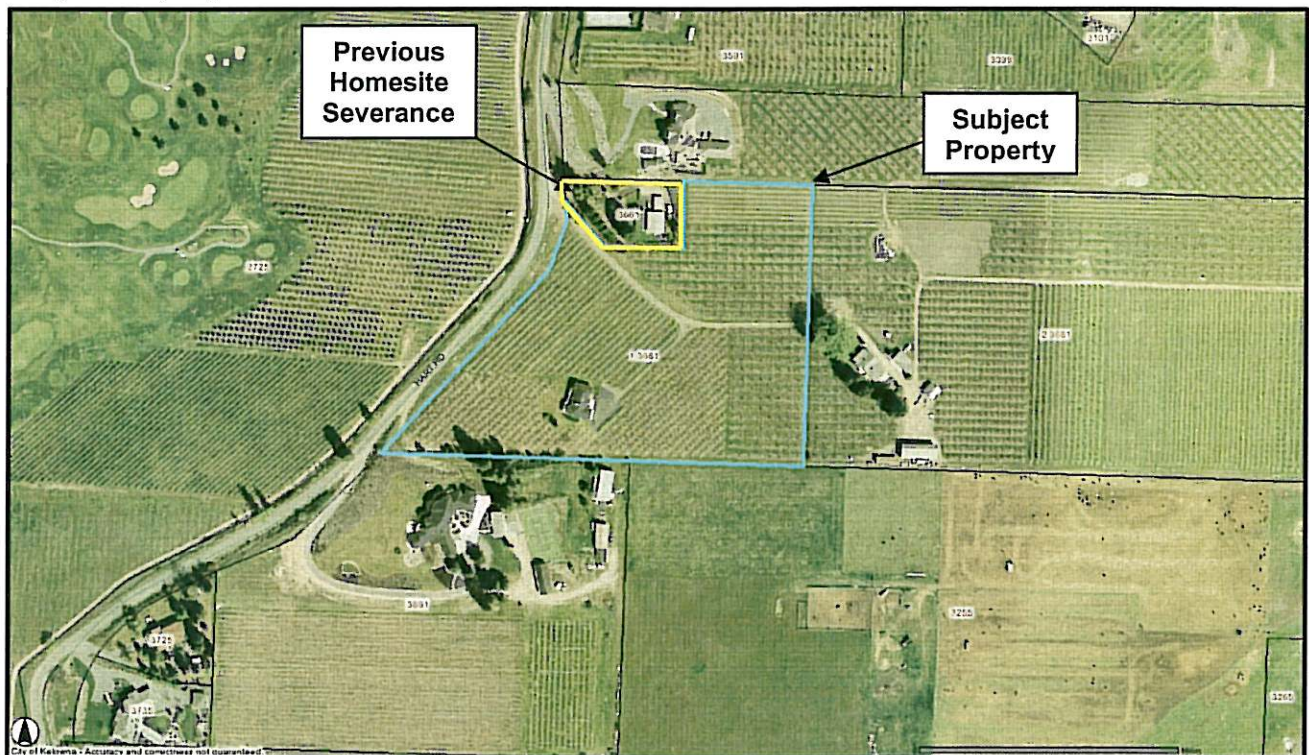
Portion of Site	%	Soil Type	Description
3.	70%	PR - Parkhill	<u>Land:</u> Very gently to strongly sloping fluvio-glacial deposits. <u>Texture:</u> 100 cm or more of loamy sand or sand. <u>Drainage:</u> Rapid.
	30%	GM - Gammil	<u>Land:</u> Very gently to extremely sloping fluvio-glacial deposits. <u>Texture:</u> 10 to 25 cm of sandy loam or loamy sand over very gravelly loamy sand or very gravelly sand. <u>Drainage:</u> Rapid.

4.3 Zoning of Adjacent Property

Direction	Zoning Designation	Land Use
North	A1 – Agriculture 1	Agricultural
East	A1 – Agriculture 1	Agricultural
South	A1 – Agriculture 1	Agricultural
West	A1 – Agriculture 1	Agricultural

Site Location Map

Subject Property: 3681 Hart Road



5.0 **APPLICANT'S PROPOSAL**

The current size and configuration of the subject property is the result of a lot line adjustment executed in 1992; and a previous 0.29 hectare homesite severance that was granted by the ALC to the applicant's father-in-law in 1980. The applicants have provided a verbal and illustrated history of this property which has been included as an attachment.

The applicant (Elizabeth Borrett) has been the owner-occupant of this portion of the parcel since December 21, 1972 when the Agricultural Land Reserve came into effect. The applicant has proposed a homesite severance so that she may sell the remainder of the property to her son, Roger Borrett Jr., as evidenced by a notice of intention to purchase (see attached). The applicant proposes to sever an area around her current home to create a new 0.65 hectare rectangular shaped parcel that would be owned by the applicant. While the applicant will continue to live on the portion of the property proposed to be severed, the remainder will be sold to the owner's son, who presently owns the adjacent parcel (Lot 2, Plan KAP 48949) located to the east of Lot 1. It is the applicant's stated intent that the remaining parcel will be integrated into the existing farm operations.

6.0 **POLICY AND REGULATION**

6.1 **Agricultural Land Commission Act**

Policy #11 – Homesite Severance on ALR Lands (Policy Attached)

- 4 (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).
- 5 (b) The Commission may require that the "remainder" be consolidated with an adjacent parcel.

6.2 **Kelowna 2020 – Official Community Plan**

Agriculture Policies:

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

6.3 **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.

6.4 **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.

7.0 TECHNICAL COMMENTS

The application has been submitted to various technical agencies and City departments, and the following relevant comments have been received:

7.1 Development Engineering Comments

Development Engineering Services has no comments at this point in time with regard to this application. 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 LAND USE MANAGEMENT DEPARTMENT COMMENTS

The Agricultural Plan recommends that the City should continue to support the concept of homesite severances, consistent with ALC policy #11 (copy attached), 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. However, the ALC policies state that consideration of any homesite 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.

Considerations for this property include the validity of the request for a homesite severance given that a homesite severance was already granted to the original owner (Roger Borrett) by the ALC in 1980 for the western portion of the Borrett properties, which has been affected by the lot line adjustment. It is suggested that the determination of the validity of this initial severance is best left to the Agricultural Land Commission.

If successful, the proposed homesite severance will generate a third home on the remaining western parcel. A primary concern with this proposal is the fragmentation and diminishment of an agriculturally viable parcel from 3.59 hectares (8.88 acres) to 2.65 hectares (6.84 acres). This is contrary to the Official Community Plan and Agriculture Plan policies which seek to ensure larger and more viable parcel sizes remain.

Land Use Management is also concerned with the size of the homesite severance that has been proposed by the applicant. The applicant's home is set back quite far from Hart Road, and will therefore require a deep lot. Both the width and depth being proposed contribute to a homesite severance which is larger than necessary and may reduce the agricultural viability of the parcel being farmed. Agricultural Land Commission Act Policy #11 – *Homesite Severance on ALR Lands* - speaks to options including:

- 1. the creation of a minimum size severance which is compatible with the character of the property and provides a reasonable area for legal access; and,*
- 2. requiring that the "remainder" be consolidated with an adjacent parcel.*

Should Council choose to support the alternate staff recommendation, two options pertaining to Policy #11 can mitigate the impact of this severance on agricultural viability. Addressing the first point, the creation of a panhandle lot with access from Hart Road would allow for a significant reduction in the size of the parcel from 0.65 hectares (1.61 acres) to 0.25 hectares (0.60 acres) and

would ensure the residual 0.40 hectares (0.99 acres) remains arable (see attached Map – Land Use Management Proposed Lot Size and Configuration).

With respect to the second option, requiring that the remainder of the parcel be consolidated with Lot 2 would address a concern that this homesite would permit the construction of a third home on the western property, and would further diminish the agricultural viability of this parcel. This requirement would also be consistent with OCP Policy 8.1.54 which discourages residential development in agricultural environments.

9.0 ALTERNATE RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A09-0004 for Lot A, Section 10, Township 26, Osoyoos Division Yale District Plan 31613, located at 3681 Hart Road, Kelowna, B.C. for a homesite severance within the Agricultural Land Reserve, pursuant to Section 21(2) of the *Agricultural Land Commission Act*, be supported by Municipal Council subject to:

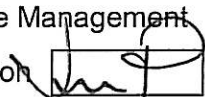
- Consolidation of the “remainder” of Lot A, Section 10, Township 26, Osoyoos Division Yale District Plan 31613 with adjacent parcel Lot 2, Section 10, Township 26, Osoyoos Division Yale District Plan KAP48949 owned by Roger H Borrett, the intended purchaser.
- Limitation of the size of the homesite severance to 0.4 hectares (1.0 acres) to include the existing home, a maximum 10.0 meter wide access along the south property line, and the existing private sewage disposal system.

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



Shelley Gambacort
Director of Land Use Management

Approved for Inclusion

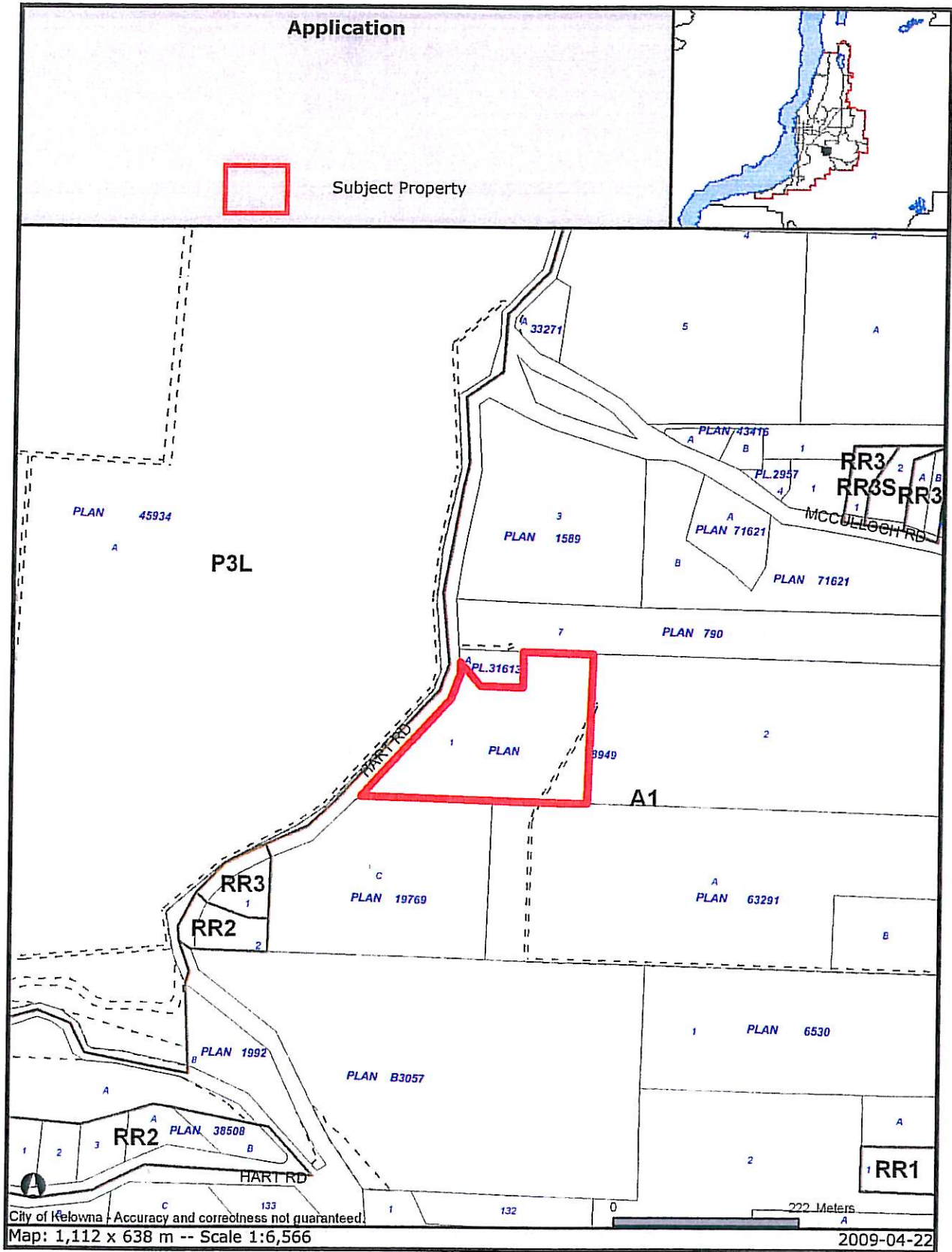


Jim Paterson
General Manager, Community Sustainability

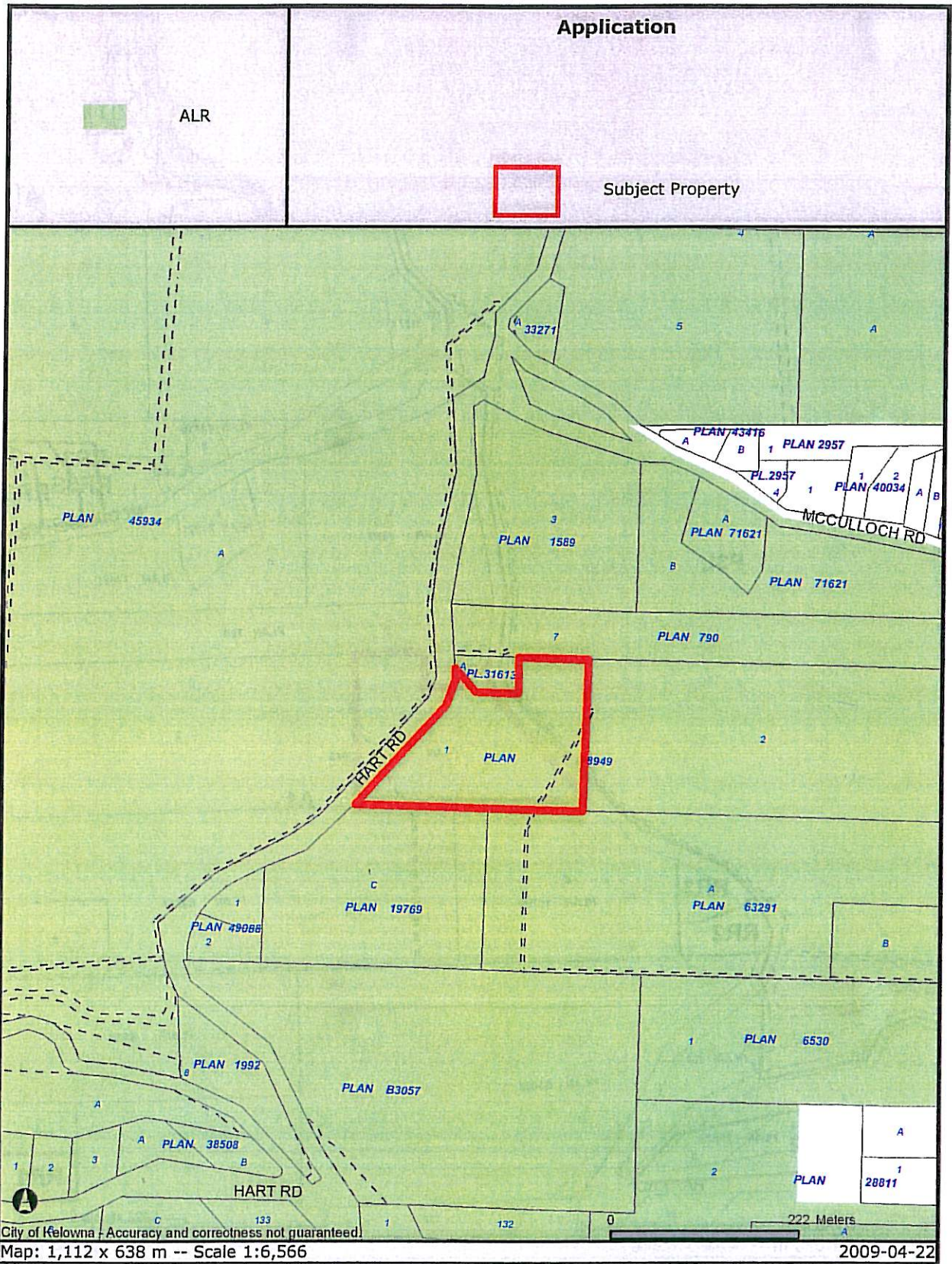
GS/gs

ATTACHMENTS

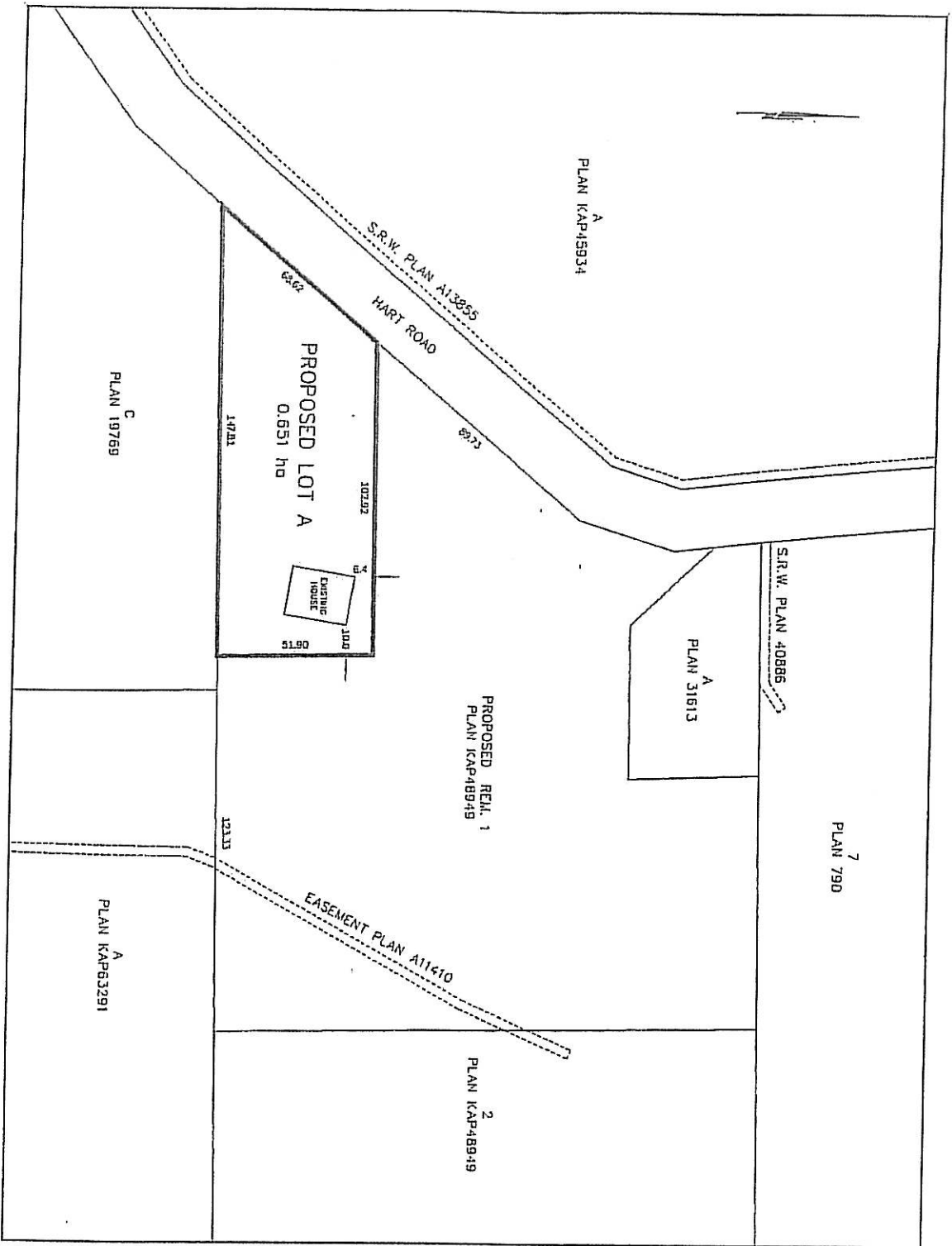
- Subject Property Map (1 page)
- ALR Map (1 page)
- Homesite Severance Proposal Map (1 page)
- Property Servicing Map (1 page)
- Site Legend, Land Capability, and Soil Classification maps (3 pages)
- Notice of Intention to Purchase (1 page)
- Agricultural Land Commission Act – Policy #11 (2 pages)
- Subject Property Map - Land Use Management Proposed Lot Size and Configuration (1 page)
- Application by Land Owner (2 pages)
- ALC Minutes (1 page)
- Applicant's Property History (5 pages)



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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PROPOSED SUBDIVISION
 LOT 1, PLAN KAP48949,
 SEC. 10, TP. 26, O.D.Y.D.

RUNNALLS DENBY
 British Columbia Land Surveyors
 #2 - 1470 Vicer Street Phone: (250) 763-7232
 Nelson, BC V1Y 1Z5 Fax: (250) 763-4113
 email: info@runnallsdenby.com

CLIENT:
PETRAROLA LANGFORD RUSH

SCALE:	1:1500
DATE:	JUNE 2, 2008
DWG:	1228-8D.VG
FILE:	1228-1

S.R.W. PLAN A13

HART ROAD

8.62

PROPOSED LOT A

0.65 ha

DRIVEWAY

197.81

HYDR. UNDER GRD SERVICES

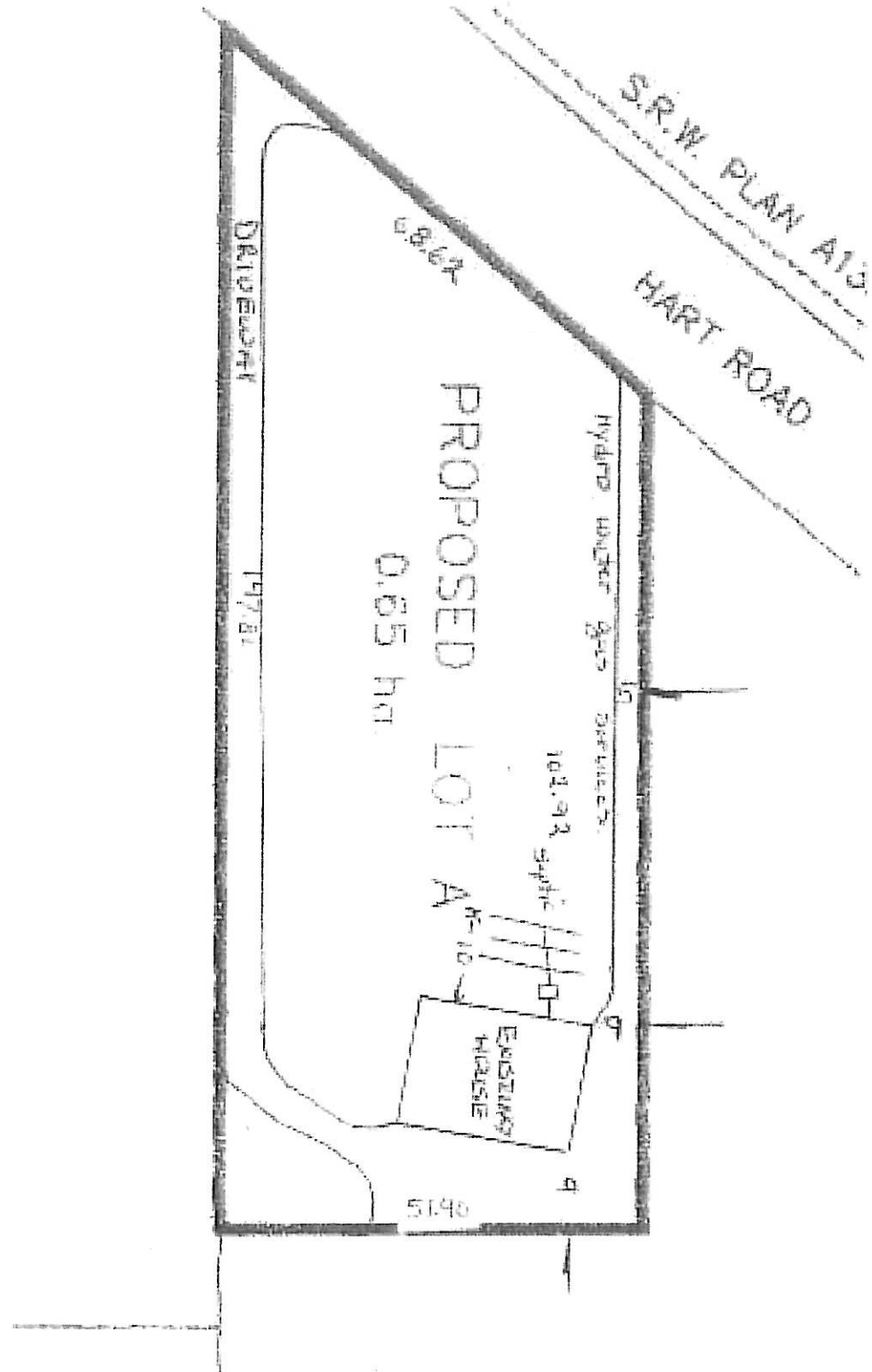
102.92

septic

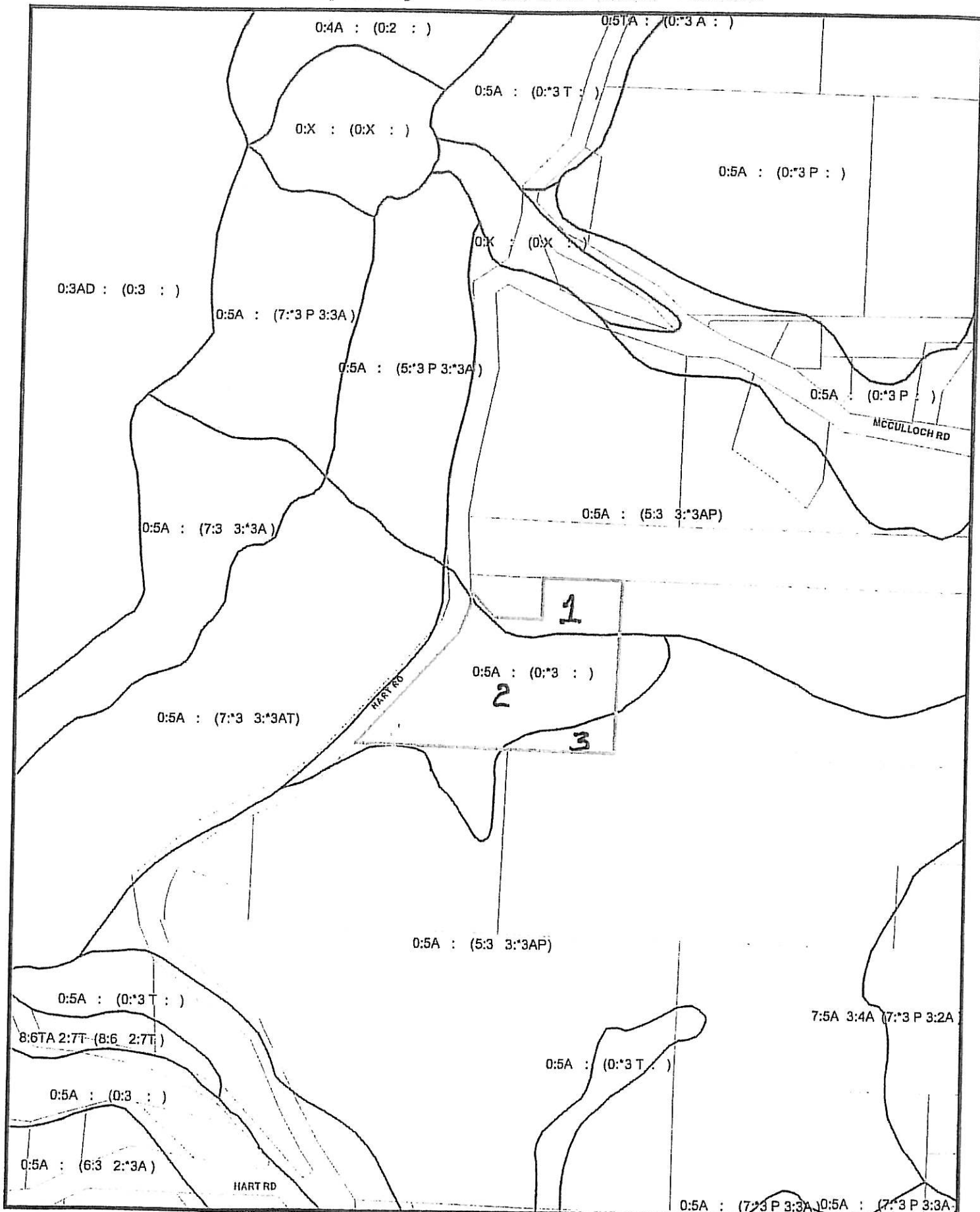
10-10

EXISTING
HOUSE

51.46

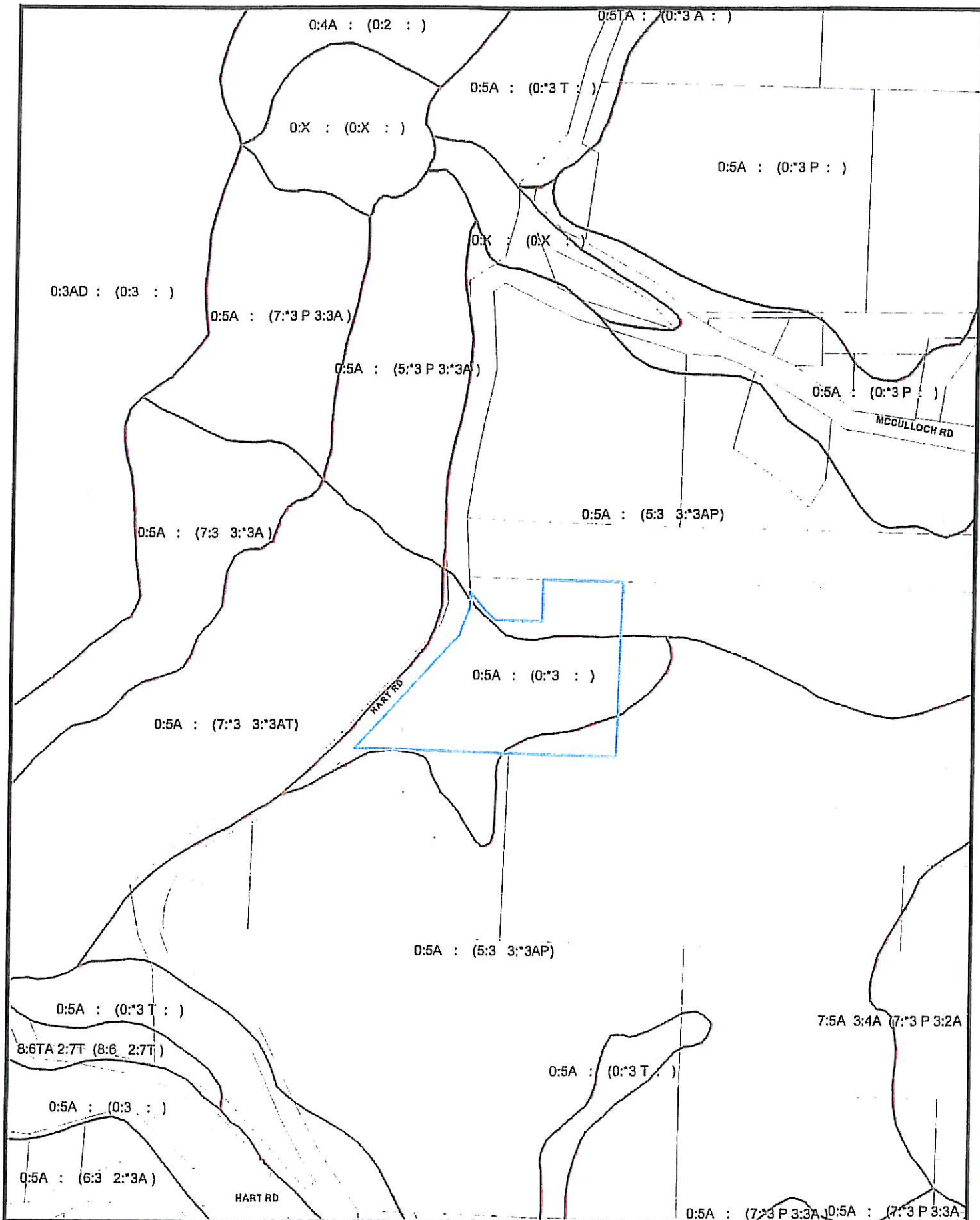


Land Capability = Brown/ Soil Class = Green



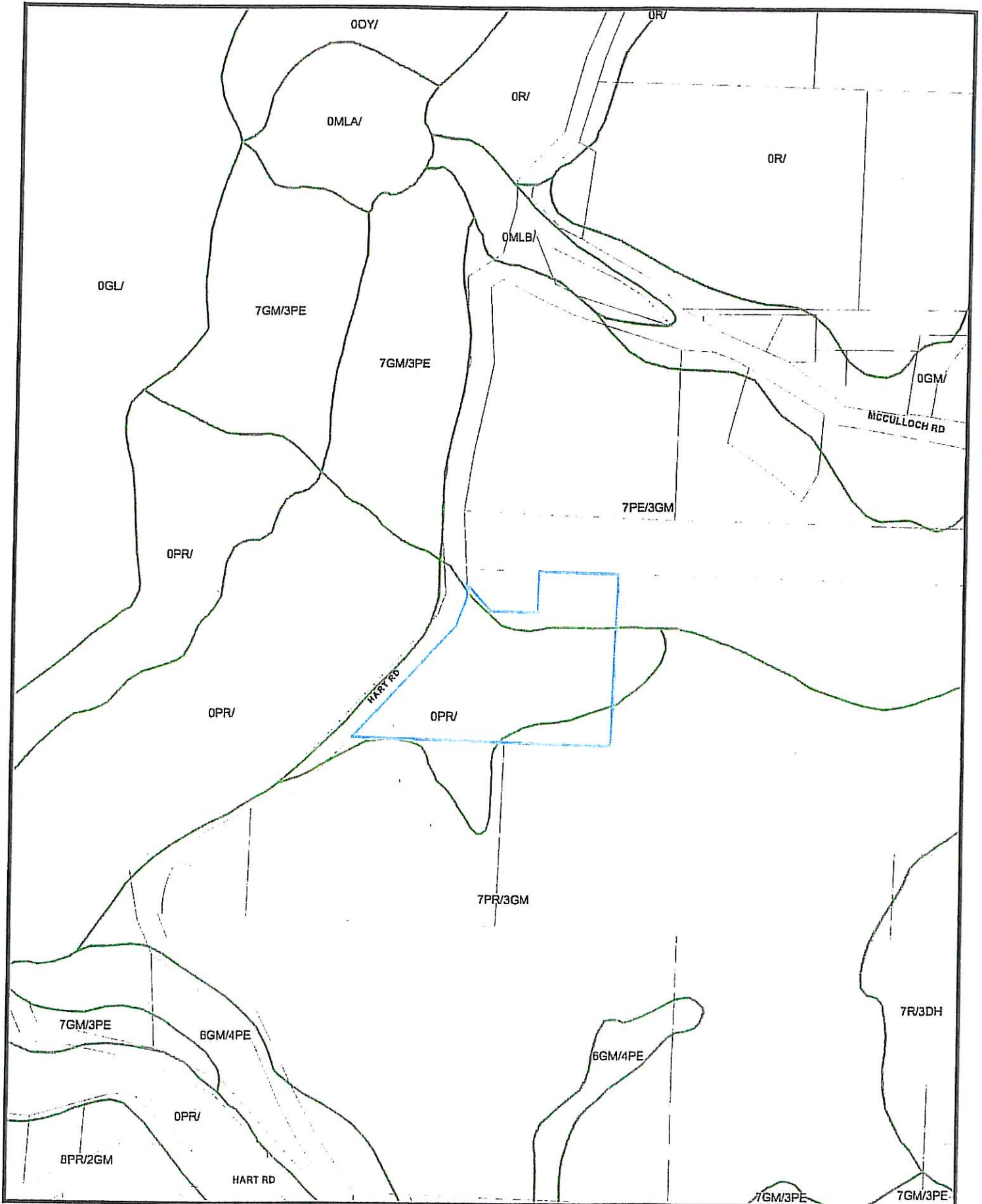
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Land Capability = Brown/ Soil Class = Green



1:5,000

Land Capability = Brown/ Soil Class = Green



1:5,000

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**Agricultural Land
Commission Act**

**Policy #11
March 2003**

HOMESITE SEVERANCE ON ALR LANDS

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.

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.

Subject Property Map - Land Use Management Alternate Recommendation - Proposed Lot Size and Configuration (0.25 hectares)



City of Kelowna - Accuracy and correctness not guaranteed.
Map: 397 x 209 m -- Scale 1:1,686

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

Minutes of the Provincial Agricultural Land Commission

Meeting held at the B.C. Agricultural Land Commission Office, 4333
Ledger Avenue, Burnaby, B.C., on the 8th day of July 1980.

Present: M.F. Clarke Chairman
 A. Claridge Commissioner
 C.F. Cornwall Commissioner
 C.E. Framst Commissioner
 John Rogers Commissioner
 Joseph A. Rogers Commissioner

An application from Mr. Roger Borrett under Section 20(1) of the Agricultural Land Commission Act was considered for the property described as that portion of Lot 7, Section 10, Township 26, O.D.Y.D. Plan 790 (more particularly shown on plans submitted to the Commission) with the application requesting a homesite severance of .29 ha from the above described parcel.

It was noted that the applicant meets the requirements for a homesite severance and has provided the necessary documentation.

IT WAS

MOVED BY: Commissioner Claridge
SECONDED BY: Commissioner Joseph Rogers

1221/80

THAT the application be allowed.

Carried.

Borrett Property History

Location: East Kelowna

Address: 3681-1, 3681-2, and 3661 Hart Road

Sketch #1 – Property as owned by Roger (Sr.) Borrett in 1958

- 20 acre parcel purchased in 1928
- 10 acre parcel purchased in 1958

Sketch #2 – Property as it existed in December 1972

- 20 acre parcel purchased and farmed by Alan (son of Roger Sr.) and Liz Borrett in 1967 ($\frac{1}{4}$ interest purchased in 1965 with the remaining $\frac{3}{4}$ interest purchased in 1967)
- 10 acre parcel retained by Roger (Sr.) Borrett
- Roger (Sr.) Borrett constructed new house on 10 acre parcel in 1965

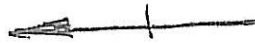
Sketch#3 – Property changes 1972 to 2008

- Roger (Sr.) Borrett house taken off 10 acre parcel and rezoned to residential in 1981. Alan and Liz Borrett purchase remaining 9 acres of orchard.
- Lot line between two agricultural lots changed from east-west to north-south. Acreage revised to approx. 21 acres and 8 acres so original homestead included in 21 acres. Roger (Jr.) Borrett (Alan Borrett's son) purchase 21 acre parcel. Alan and Liz build new house on 8 acre parcel.
- 8 acre parcel passes to Liz by right of survivorship on Allan's death in 1998.

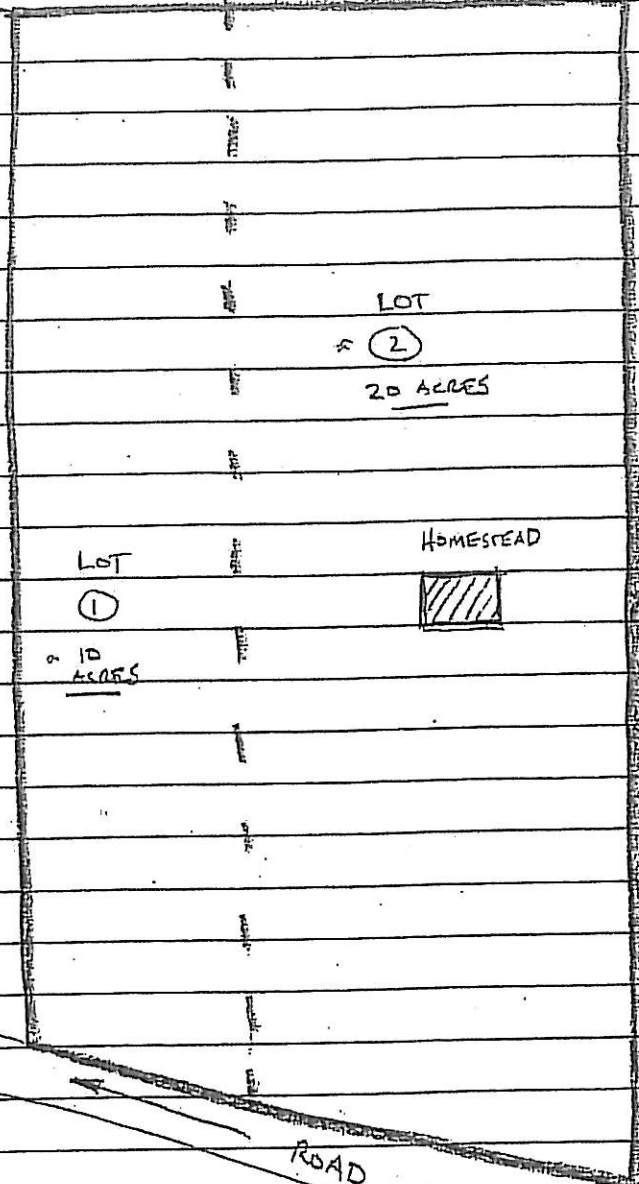
Sketch #4 – Proposed property boundaries with home site severance for Liz Borrett.

- Proposed to create new Lot "C" (or other) to include Liz retirement home (2 acre parcel). Roger (Jr.) Borrett will purchase the remaining 6-acre orchard.

N



ROAD



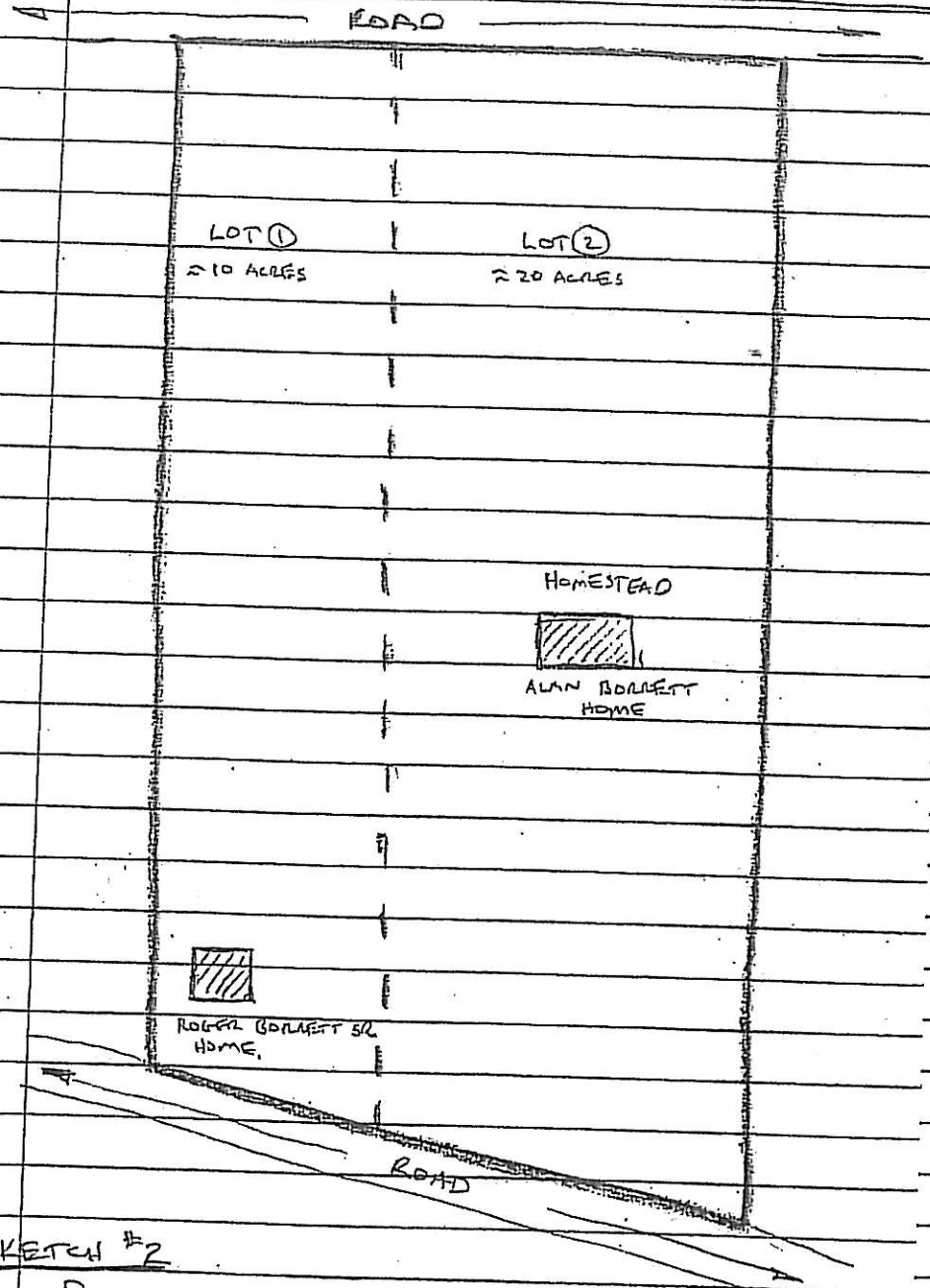
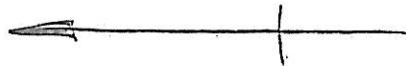
SKETCH #1

PROPERTY AS OWNED:

BY ROGER SR. BORRETT 1958 (FIRST PURCHASE 1928)

OWNER LOT 1+2 - ROGER (SR.) BORRETT

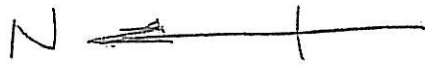
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SKETCH #2

PROPERTY AS IT EXISTED
IN DEC. 1972

OWNER LOT ① - ROGER (SR) BORNETT.
OWNER LOT ② - ALAN BORNETT



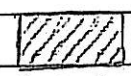
ROAD

LOT (2)

~ 21 ACRES

LOT LINE CHANGED
FROM E-W TO N-S
(~ 1992)

HOMESTEAD

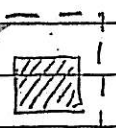


ROGER BONNETT JR.

LOT (B)

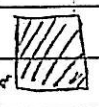
TAKEN
OFF
~ 1980

(REZONED
RESIDENTIAL)



LOT (1)

~ 8 ACRES



Liz
Barrett

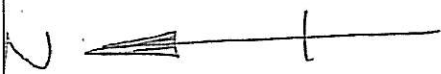
(NEW HOUSE
~ 1991)

SKETCH #3

ROAD

PROPERTY CHANGES
1972 TO 2008

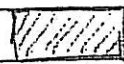
- 1. OWNER LOT (1) - LIZ BONNETT
- OWNER LOT (B) - LIZ BONNETT - PURCHASED FROM ROGER (SR.) ESTATE
- OWNER LOT (2) - ROGER BONNETT (JR.)



← ROAD →

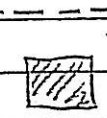
LOT ②
≈ 21 ACRES

HOMESTEAD



ROGER BORRETT SR.

LOT ①
≈ 6 ACRES



LOT "B"
1 ACRES



NEW
LOT "C"
FOR
"LIZ"
(≈ 2 ACRES)

ROAD

STETCH #4

PROPOSED PROPERTY BOUNDARIES
WITH HOME SITE SEVERANCE (LOT "C")

OWNER LOT ① - R. BORRETT TO PURCHASE

OWNER LOT ② - R. BORRETT.

OWNER LOT "C" - L. BORRETT