

# Memo



**Date:** August 12, 2010  
**To:** City Manager  
**From:** Community Sustainability Division  
**File No:** Z10-0011  
**Applicant:** Van Gorp & Company  
(Henk Van Gorp)  
**At:** 1785 Swainson Road  
**Owner:** Olga Stuhlberg  
**Purpose:** TO REZONE A PORTION OF THE SUBJECT PROPERTY FROM THE EXISTING "A1 - AGRICULTURE 1" ZONE TO THE PROPOSED "RR1 - RURAL RESIDENTIAL 1" ZONE TO FACILITATE THE SUBDIVISION OF A 1.0 HECTARE PORTION WITHIN THE AGRICULTURAL LAND RESERVE.

**Existing Zone(s):** A1 - Agricultural 1  
**Proposed Zone(s):** A1 - Agricultural 1  
RR1 - Rural Residential 1  
**Existing Future Land Use(s):** Rural/Agricultural  
Single/Two Unit Residential  
**Proposed Future Land Use(s):** Rural/Agricultural  
Single/Two Unit Residential  
**Report Prepared by:** Greg Sauer

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## 1.0 RECOMMENDATION

THAT Rezoning Application No. Z10-0011 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification for a portion of Lot E, Sections 19 and 30, Township 27, ODYD, Plan 2058, located at 1785 Swainson Road, Kelowna BC, from the A1 - Agriculture 1 zone to the RR1 - Rural Residential 1, as shown on Map "A" attached to the report of Land Use Management Department, dated August 12, 2010, zone be considered by Council;

AND THAT the zone amending bylaw be forwarded to a Public Hearing for further consideration.

## 2.0 SUMMARY:

The applicant is proposing to rezone and subdivide a 1.00 hectare portion of the subject property. Notably, the subject property being considered is 7.86 hectares in size. The land is largely agriculturally viable, though a wetland on a northern portion of the property renders a portion of the land near the home non-arable. The proposal seeks to create a rural residential parcel separate from the parent parcel where agricultural production is taking place.

Currently two homes are present on the existing single parcel. The subdivision would see one home on each of the two remaining parcels.

### 3.0 BACKGROUND:

The subject property is located on the south side of Swainson Road in the Belgo/Black Mountain North sector of the City. The subject parcel is largely surrounded by lands within the Agriculture Land Reserve (ALR) to the west, north and east. A majority of the subject property is within the ALR with the southern portion outside of the ALR. In 2008 an application was considered by the Agricultural Land Commission (ALC) for subdivision within the ALR. In a March 2009 decision the Commission concluded:

1. That the 0.9 ha area under application for subdivision has limited agricultural capability due to swampy conditions.
2. That the southerly 1.2 ha portion of the property is currently in agricultural use.
3. That the subdivision proposal will have no net impact on the property if a commensurate amount of land is included into the ALR.

The rezoning before you reflects the 2009 comments of the Agricultural Land Commission and the wishes of the City to have the subdivided area offset by an inclusion application for land outside of the ALR. That is to say that in the time since, the applicant has successfully included the southerly approximate 1.00 hectare of non-ALR land into the ALR which satisfies the Agricultural Land Commission's conditions for subdivision of the 1.0 hectare parcel.

There are currently two residences located on the subject property; one located in the northern portion while the second is located in the southern portion of the subject property and nearly 500 meters from Swainson Road. The home at the north end is proposed to be subdivided off, while the home located toward the southern boundary would remain with the parent parcel. The southern residence is located within the recently included portion of the property.

Within the southeastern corner of the subject property, a portion of hillside remains outside of the ALR. The City's Official Community Plan shows a future land use designation of Single/Two Unit Residential for this portion and may be developed for residential purposes in the future (see attached portion of OCP Future Land Use Map).

In terms of natural environment features, the property contains a wetland at the northern boundary of the property and which is described in the City's Wetland Inventory & Mapping (WIM).

#### Parcel Summary:

Parcel Size: 7.86 ha (19.4 ac)  
Elevation: 555 - 650 masl

### 3.1 Site Context

The subject property is located within the Belgo/Black Mountain Sector.

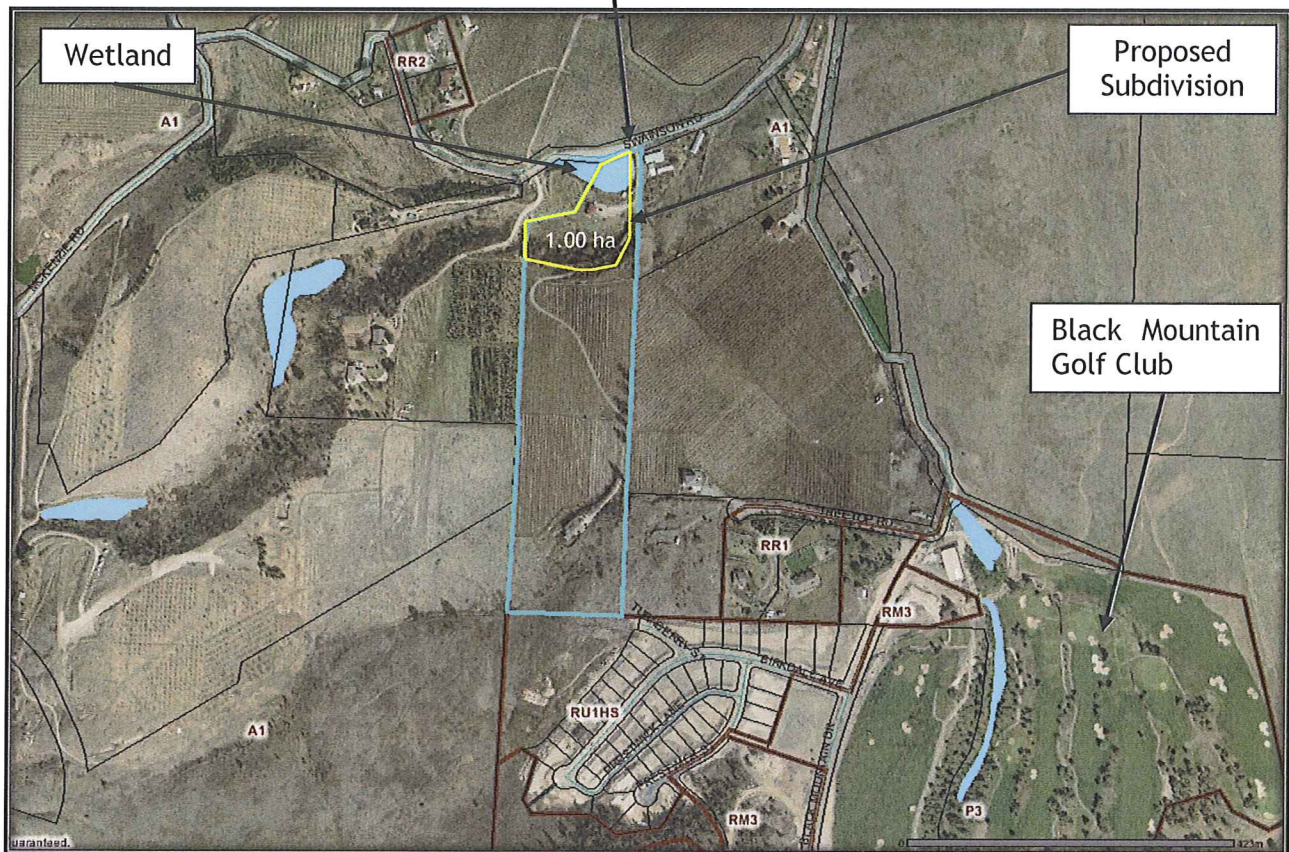
The adjacent zones and uses are as follows:

| Orientation | Zoning   | Land Use                      |
|-------------|--|-------------------------------|
| North       | A1 - Agricultural 1  | Orchard                       |
| West        | A1 - Agricultural 1  | Orchard                       |
| South       | RU1hs - Large Lot Housing (Hillside Area) with Secondary Suite | Large Lot Residential Housing |
| East        | A1 - Agricultural 1  | Orchard                       |



### 3.2 Site Location Map

Subject property: 1785 Swainson Road



### 3.3 Proposal

The goal of this application is to effect a subdivision in the ALR on the subject property. The proposed 1.00 ha lot to be subdivided is considered to be non-farmable by the applicant. It is stated that the topography of the land as well as a significant amount of wetland located directly adjacent to Swainson Road are limiting factors. The Land Commission has concurred with this contention.

### 4.0 **ADVISORY PLANNING COMMISSION (APC)**

At a meeting held on July 20, 2010, the Advisory Planning Commission passed the following recommendations to Council:

THAT the Advisory Planning Commission support Rezoning Application Z10-0011, for 1785 Swainson Road, by Van Gorp & Company, to rezone a portion of the subject property from the A1 - Agriculture 1 to the RR1 - Rural Residential 1 to effect a 1.0 hectare subdivision within the Agricultural Land Reserve.

### 5.0 **AGRICULTURAL ADVISORY COMMITTEE (AAC)**

The AAC reviewed this application as part of the "Inclusion" file (A10-0001) and supported the application contingent upon the registration of a nuisance covenant on the subdivided lot to protect existing and future agricultural activities.



## 6.0 CURRENT DEVELOPMENT POLICY

### 6.1 Kelowna 2020 - Official Community Plan

#### Watershed Policies

*Section 7.3.11 Establish Riparian Management Areas*<sup>1</sup>. Require riparian management areas to be provided to limit environmental and hydrological impacts on local watercourses.

#### Natural Environment Policies

*7.10.12 Retention of Natural Areas*<sup>2</sup>. Encourage all development and infrastructure projects to conserve wetlands, wildlife habitat, trees or other indigenous vegetation. Encourage alternative development methods, such as considering increasing density, narrowing right-of-ways, or cluster housing.

*7.10.14 Wetland Buffers*<sup>3</sup>. Encourage the retention and use of wetlands as natural buffers between urban and rural uses (7.5 meters as per Table 7.1<sup>4</sup> of the Official Community Plan).

#### Agriculture Policies

*Section 11.1.17. Subdivision*<sup>5</sup>. Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

### 6.2 City of Kelowna Agriculture Plan

Covenants<sup>6</sup>. Consider the need for a covenant registered on the title, as part of a subdivision approval, that advises prospective buyers and land owners of the potential impact of living near farm operations and the conditions of the Farm Practices Protection (Right to Farm) Act.

Parcel Size (Agricultural Land)<sup>7</sup>. Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

## 7.0 TECHNICAL COMMENTS

### 6.1 Fire Department

This property is outside of a 10 minute response for the Fire Department. As a result, if a new dwelling is to be constructed on the property a fire sprinkler system meeting the requirements of NFPA 13D must be included in the design.

### 6.2 Development Engineering Branch

See attached.

### 6.3 Environment

The subject property contains a wetland near the northern property boundary as determined by the City's Wetland Inventory and Mapping exercise (see attached Map D-6"). As per City policy, the wetland and appropriate riparian buffer will be protected in part by a Section 219 "No Disturb" covenant which will be required as part of the subdivision process.

### 6.4 Interior Health

Interior Health has no objections to this rezoning application provided no additional effluent flows are generated on the property.

<sup>1</sup> City of Kelowna Official Community Plan - Environment; p. 7-3.

<sup>2</sup> City of Kelowna Official Community Plan - Environment; p. 7-13.

<sup>3</sup> City of Kelowna Official Community Plan - Environment; p. 7-13.

<sup>4</sup> City of Kelowna Official Community Plan - Table 7-1 Riparian Management Area Setbacks; p. 7-22.

<sup>5</sup> City of Kelowna Official Community Plan - Agriculture; p. 11-3.

<sup>6</sup> City of Kelowna Agriculture Plan; p.131.

<sup>7</sup> City of Kelowna Agriculture Plan; p.132.

## 7.0 LAND USE MANAGEMENT DEPARTMENT:

The Agricultural Land Commission endorsed the City's request that a portion of the property currently outside of the ALR be included in the ALR as a condition of subdivision. The applicant has recently met the requirement of the Agricultural Land Commission's March, 2009 decision.

All applications for properties within the Agricultural Land Reserve are considered against the need to preserve agricultural farmland and/or generate a net benefit to agriculture. Official Community Plan policy direction is to "discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated". The inclusion of the southern 1.02 hectare portion of the subject property, which is partially used for agriculture production, can be seen as a positive benefit to agriculture. While the area is currently in production and zoned for agricultural purposes, the ALR inclusion adds a level of security that the land will remain agricultural and ideally productive.

The rezoning of the northern 1.00 hectare portion of the property from A1 - Agriculture 1 to RR1 - Rural Residential 1 respects the subdivision regulations. The Agriculture 1 zone requires a minimum lot size of 2.0 hectares when located within the Agricultural Land Reserve. Generally speaking, a smaller subdivision of this nature (homesite) is preferred as it ensures that a larger area remains in agricultural production. As a result, staff typically directs applicants to rezone to a rural residential zone, and to the minimum 1.0 hectare lot size associated with these parcels, when not connected to the community sanitary sewer system.

The number of homes that currently exist (two), and how the number could be impacted by a subdivision is relevant to the consideration of this application. Records show the owners applied for and were granted permission for a second dwelling under the auspices of a "picker's cabin" in 2001. Rezoning and subdivision would legitimize the home on each property as a principal use.

Official Community Plan policy requires the preservation and protection of aquatic habitats. An existing wetland and riparian area are contained within the proposed subdivision. To ensure the ongoing protection of this wetland, the City will require that the owners register a Section 219 "No Disturb" Covenant to protect the integrity of the wetland and a 7.5 meter buffer as a condition of subdivision.

Finally, consistent with the Agriculture Plan, registration of a notice on title which advises future inhabitants that, the subdivided property is located adjacent to the Agricultural Land Reserve (ALR) and is subject to typical farm practices, will be required as a condition of subdivision.



Todd Cashin  
Manager, Environment & Land Use

Approved for Inclusion



Shelley Gambacort  
Director of Land Use Management

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**Attachments:**

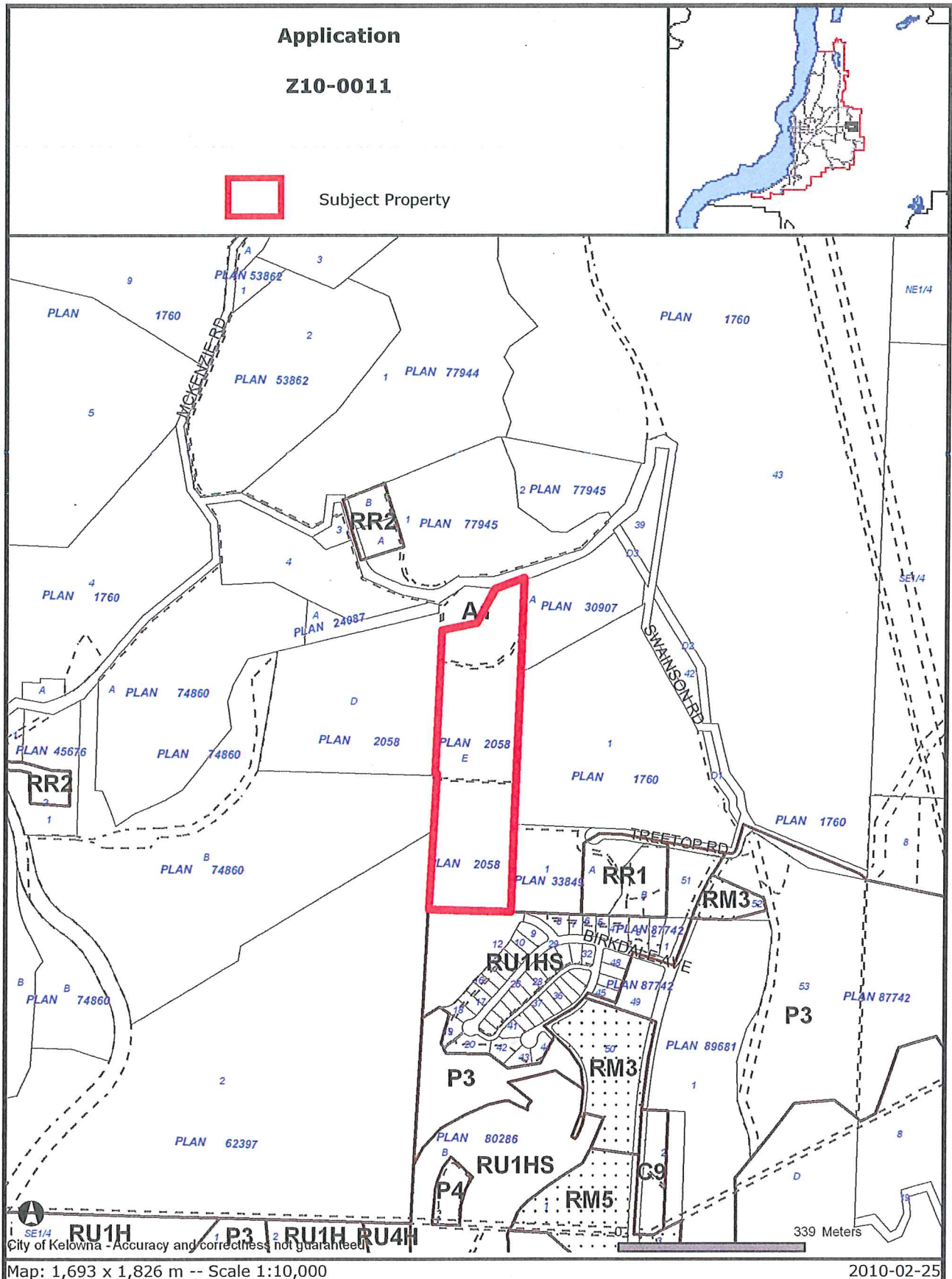
Subject Property Map  
OCP Future Land Use Map  
Plan of Proposed Subdivision - Map "A"  
Development Engineering Comments  
ALC Decision - June 11, 2010  
Wetland Inventory Map "D-6"

**Date Application Accepted**

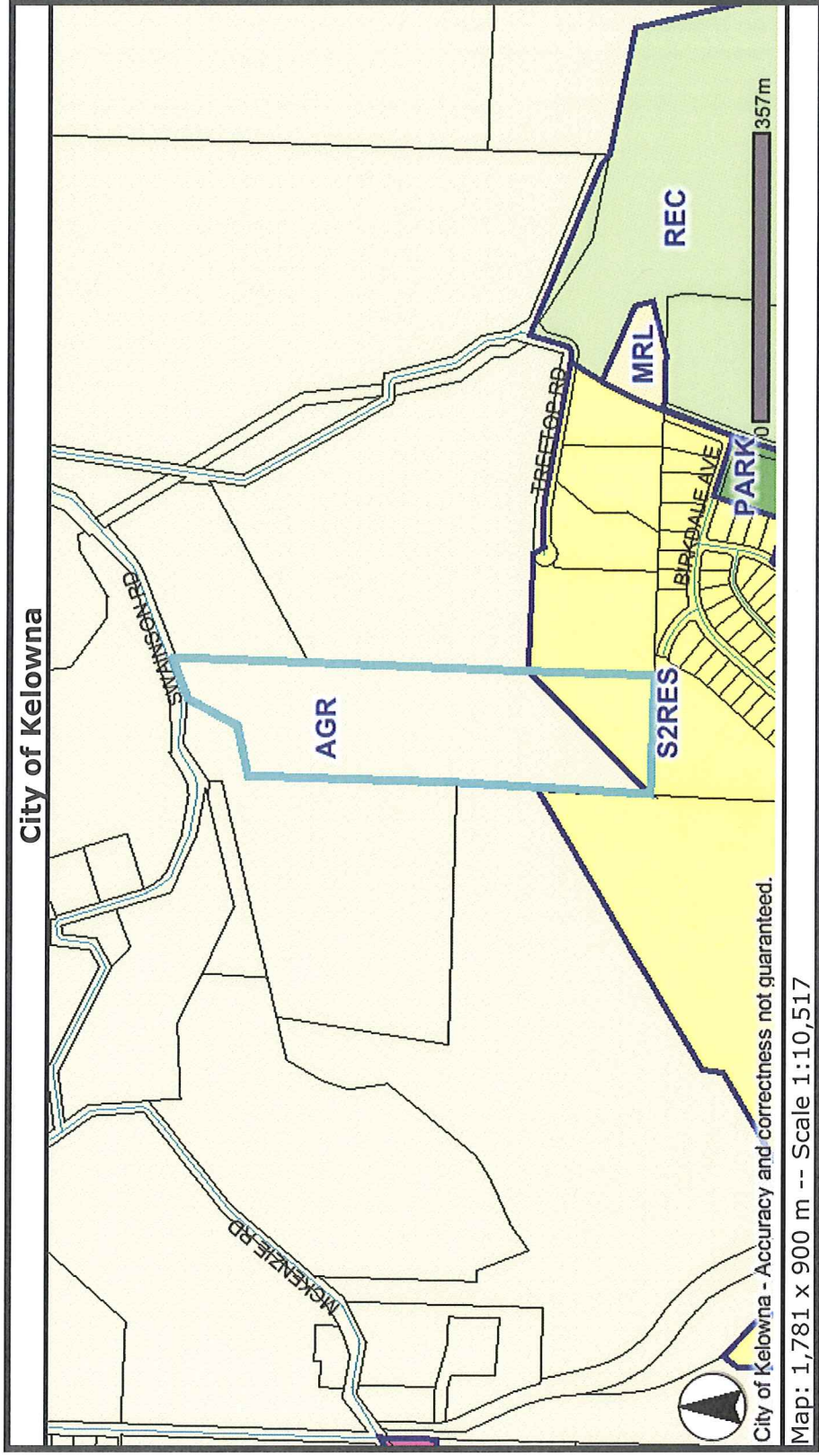
February 25, 2010

While the rezoning application was submitted in February, the ALC inclusion application was still in-stream and the ALC did not render a decision until mid-June. As a result the rezoning application was placed on hold pending the ALC decision.





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.



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

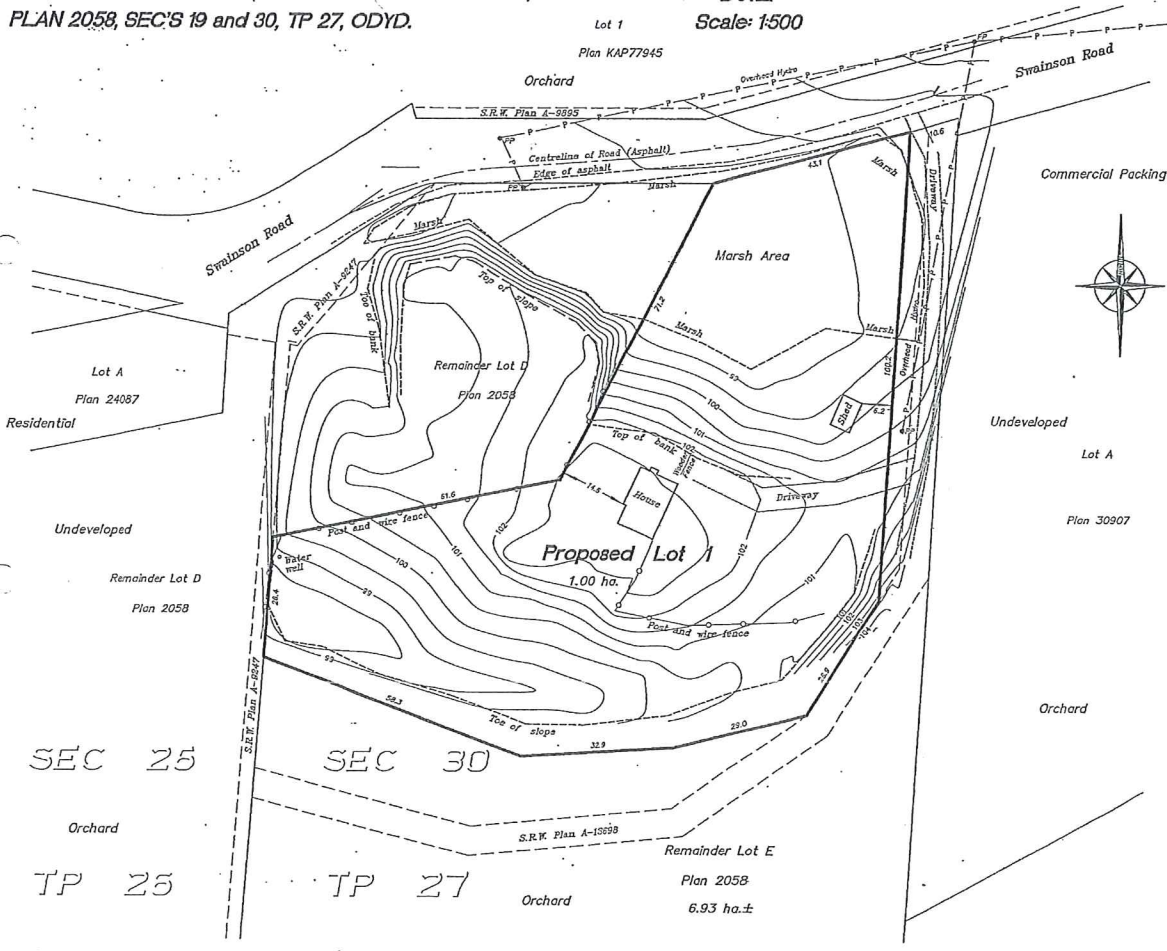


# Map "A" - Plan of Proposed Lot 1

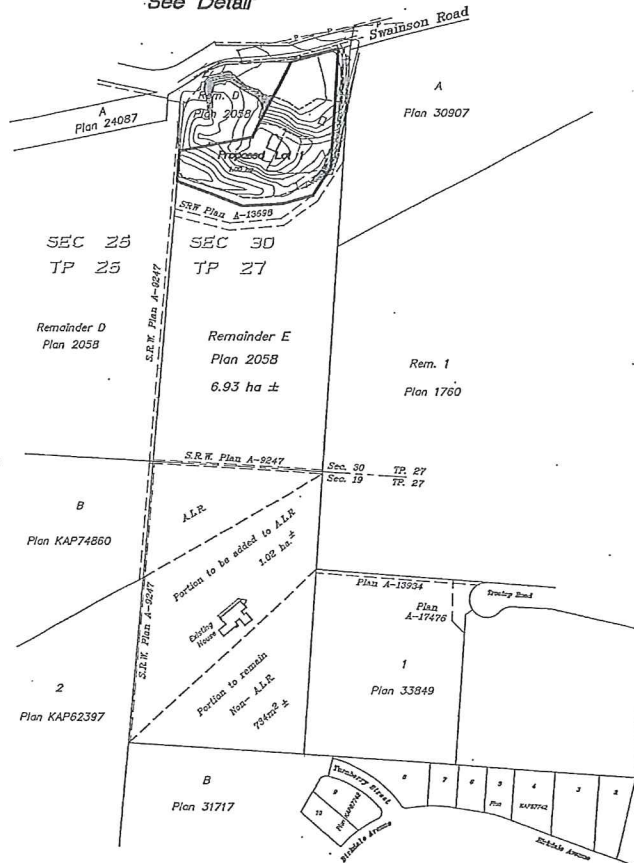
PLAN OF PROPOSED SUBDIVISION OF 1/4 OF LOT E,  
PLAN 2058, SEC'S 19 and 30, TP 27, ODYD.

"Detail"

Lot 1  
Plan KAP77945  
Scale: 1:500



See "Detail"



Scale: 1:2000 (Metric)  
0m 40m 80m 140m 200m  
The intended plot size of this plan is 550m in width by 554m in height (Sheet size "D") when plotted at a scale of 1:2000.

Notes:  
- Elevations are based on an assumed datum.  
- All distances are in metres and decimals thereof.  
- Contour interval = 0.5 metres.  
- PP 8 - denotes power pole  
- all areas are approximations and subject to Legal Survey

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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** March 24, 2010  
**File No.:** Z10-0011  
**To:** Planning and Development Officer (GS)  
**From:** Development Engineering Manager  
**Subject:** Subdivision Application – PLR Requirements

|   |
|---|
| <p><b>LOCATION:</b> 1785 Swainson Road<br/><b>APPLICANT:</b> Olga Stuhlberg<br/><b>LEGAL:</b> Lot E, Plan 2058, Sec. 19 and 30, Twp. 27, ODYD</p> |
|---|

**WORKS AND SERVICES REQUIREMENTS**

The City's of Kelowna Development Engineering Branch comments and requirements to rezone the subject property from A1 to RR1 are as follows:

**.1) Water**

- a) The property is located within the Black Mountain Irrigation (BMID) service area.

**.2) Sanitary Sewer**

- a) The subject property is not currently serviced by the Municipal wastewater system the sewage is currently handled by an on-site sewage treatment and disposal system under the jurisdiction of the Public Health Officer.

**.3) Roads**

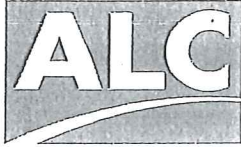
- a) Swainson Road is currently constructed to a standard that is consistent with the City of Kelowna servicing and development Bylaw. This application does not trigger any frontage upgrades.

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Steve Muenz, P.Eng.  
Development Engineering Manager

BB





**Agricultural Land Commission**  
133-4940 Canada Way  
Burnaby, British Columbia V5G 4K6  
Tel: 604 660-7000  
Fax: 604 660-7033  
www.alc.gov.bc.ca

June 11, 2010

Reply to the attention of Brandy Ridout  
ALC File: 51650

Van Gorp & Company  
#201-1470 St. Paul Street  
Kelowna, BC V1Y 2E6

Dear Mr. Van Gorp:

**Re: Application to Include Land into the Agricultural Land Reserve**

Please find attached the Minutes of Resolution #2493/2010 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client accordingly.

As the inclusion condition of Resolution #73/2009 has been met, please send two (2) paper prints of the final survey plans to this office. When the Commission confirms that the plan is in substantial compliance with the plan submitted with application #G-38772, it will authorize the Registrar of Land Titles to accept its registration.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'BU', is written over the 'Per:' label.

Brian Underhill, Executive Director

Enclosure: Minutes/Sketch Plan

cc: City of Kelowna (A10-0001)

BR/  
51650d1





## MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

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A meeting was held by the Provincial Agricultural Land Commission on June 10, 2010 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

**PRESENT:** Roger Mayer  
Gordon Gillette  
Brandy Ridout

Chair, Okanagan Panel  
Commissioner  
Staff

### For Consideration

Application: 51650  
Applicant: Olga Stuhlberg  
Proposal: To include 1 ha into the Agricultural Land Reserve to satisfy a condition of approval under Resolution #73/2009 (application #G-38772).  
Legal: PID: 011-264-276  
Lot E, Section 19 and 30, Township 27, ODYD, Plan 2058  
Location: 1785 Swainson Road, Kelowna

### Site Inspection

A site inspection was not conducted for the application.

### Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

### Discussion

The agricultural capability of the soil of the 1 ha area proposed for inclusion into the ALR is 70% Class 1 and 30% Class 2 for tree fruits with a limitation of topography. Class 1 land either has no or only very slight limitations that restrict its use for the production of common agricultural crops. Class 2 land has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

The Commission noted that the area proposed for inclusion was of prime agricultural capability and met the intent of its decision under Resolution #73/2009.

### **IT WAS**

**MOVED BY:** Commissioner Mayer  
**SECONDED BY:** Commissioner Gillette

THAT the application be approved.



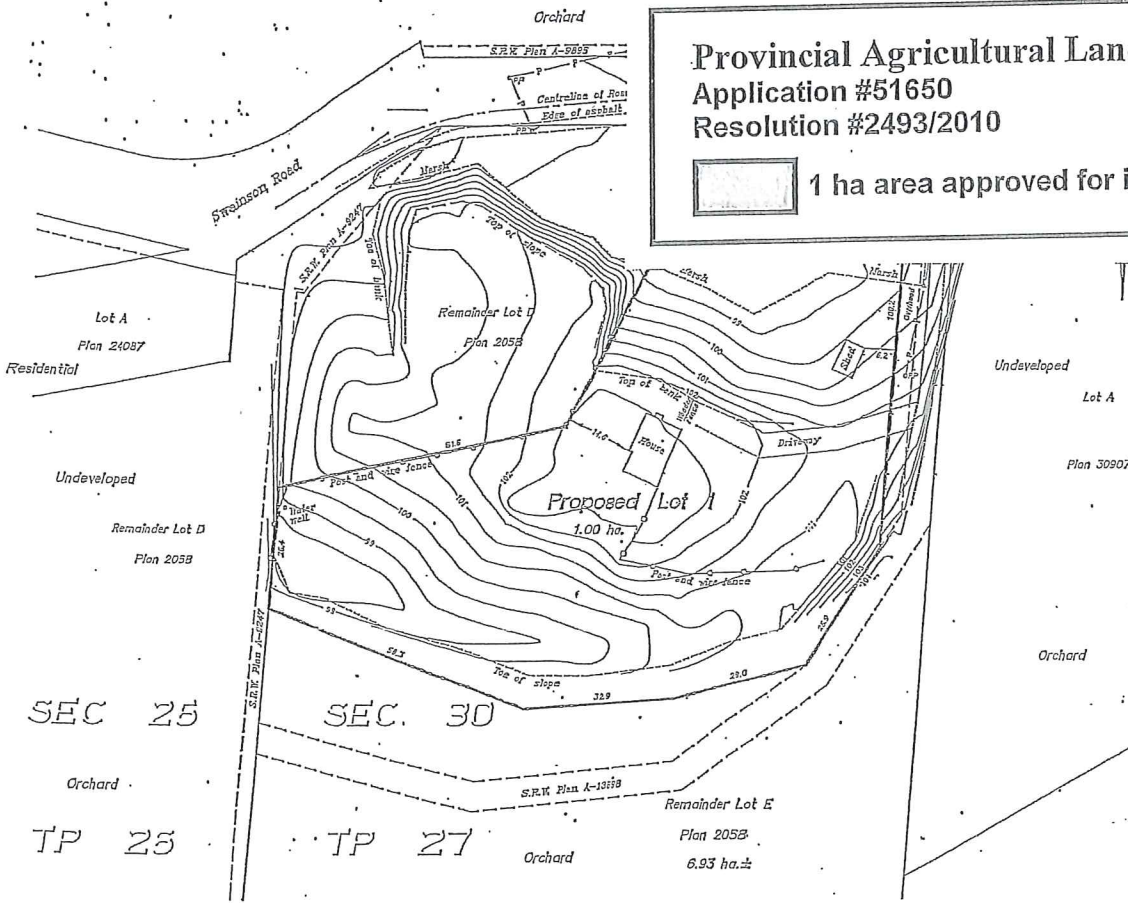
PLAN OF PROPOSED SUBDIVISION OF PART C  
 PLAN 2053, SEC'S 19 and 30, TP 27, ODYD.

Lot 1  
 Plan KAP77012  
 'Detail'  
 Scale: 1:600



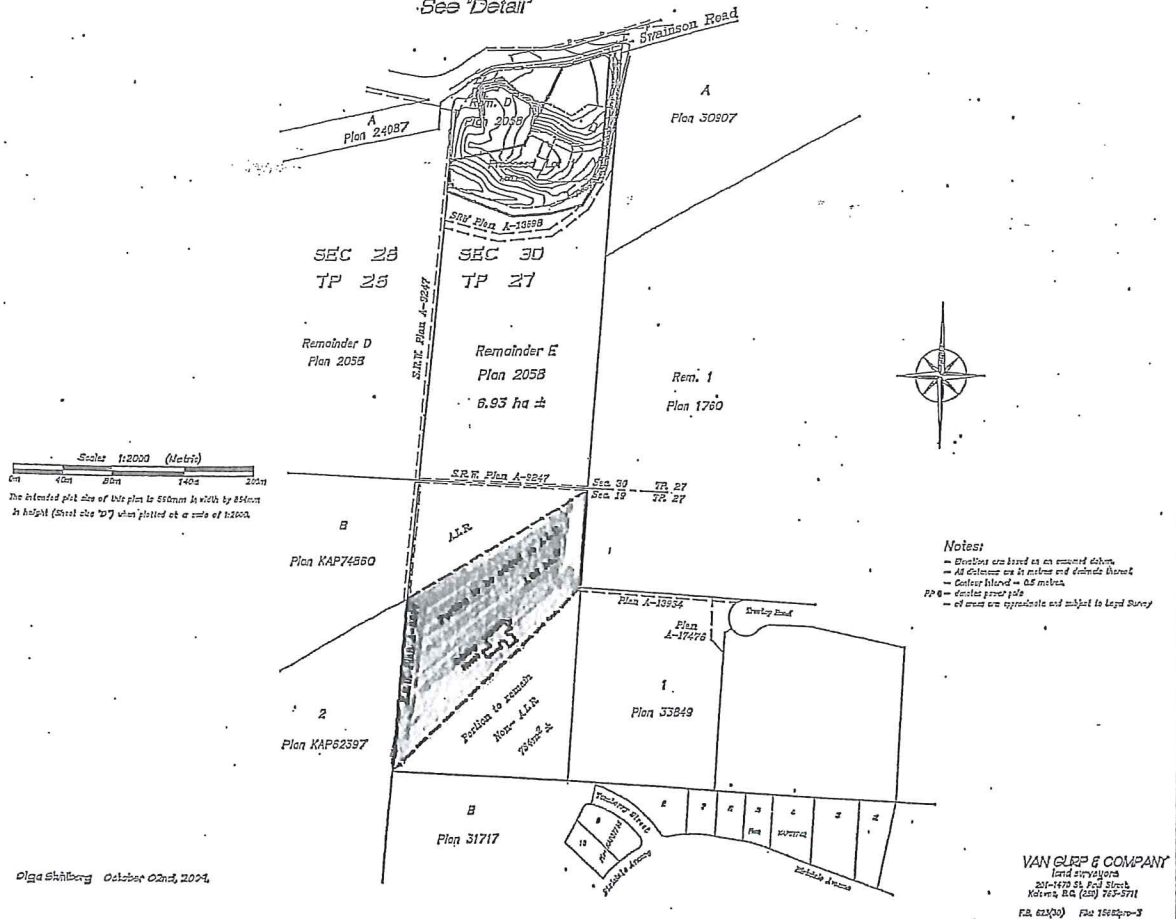
Provincial Agricultural Land Commission  
 Application #51650  
 Resolution #2493/2010

 1 ha area approved for inclusion into the ALR



RECEIVED  
 PROV. AGRICULTURAL  
 LAND COMMISSION  
 MAR 17 2010

See 'Detail'



VAN GLEP & COMPANY  
 Land Surveyors  
 201-1470 St. Paul Street  
 Kelowna, B.C. (250) 765-5711  
 P.E. 62300 Fax 250-765-5711

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government. This includes zoning, subdivision, or other land use bylaws, and decisions of any authorities that have jurisdiction under an enactment.

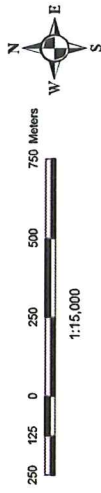
**CARRIED**  
**Resolution #2493/2010**



# Wetland Inventory

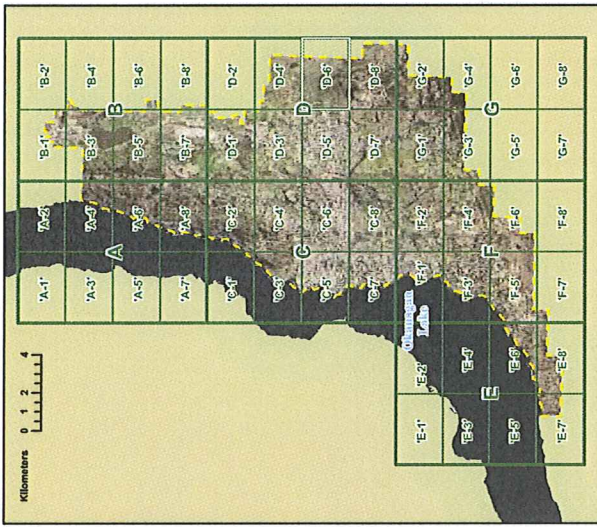
Map 'D-6'

**Project:** Wetland Inventory, Classification, Evaluation and Mapping (WIM)  
**Location:** City of Kelowna, BC  
**Project No.:** 07-151  
**Prepared by:** Ecosec Environmental Consultants Ltd.  
**Drawn by:** Robert Wagner  
**Checked by:** Kyle Hawes  
**Projection:** NAD83-UTM Zone 11  
**Date:** May, 2006

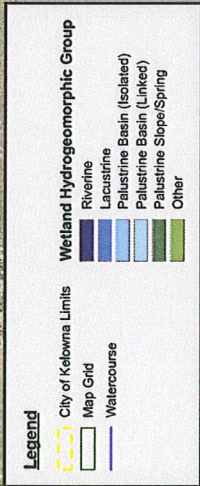


## SOURCE INFORMATION

**Base Map:** 82E/084 Kelowna  
**Orthophoto:** 2006, Provided by City of Kelowna  
**Wetland Information:** Field Inventory  
**Location Information:** Field, GPS (Trimble GeoXT) / Aerialphoto and Topographic Estimate  
**Feature Information:** Field Inventory  
**Date of Inventory:** Fall, 2007  
**Inventory Management:** Kyle Hawes, R.P. Bio. / Robert Wagner



**Kick-Up Hydrogeomorphic Group**  
 Riverine (Fluvial) System  
 Sites with flowing water and subject to flooding, erosion, and sedimentation. Sites are most closely linked to water quality and quantity in an adjacent stretch of river.  
 Lacustrine System  
 Sites at lacustrine (open water) bodies, directly affected by lake hydrological processes (e.g., wave action, flooding, and sedimentation).  
 Palustrine Basin (Isolated/Discharged)  
 Shaded, saturated, and poorly drained (topographic low points) and depressions in inland regions where the water table is near or at the surface. The water table is primarily by evaporation and, depending on the retention time and permeability of geological substrates, waters may be fresh or more saline.  
 Palustrine Basin (Linked)  
 Shaded in well drained basins (topographic low points) and depressions in inland regions where the water table is near or at the surface and have channelized inlets and outlets that flow during periods of high precipitation and run-off. They receive water from stream and river inflow, precipitation, groundwater discharge and surface runoff.  
 Palustrine Slope/Spring  
 Slope and spring sites that occupy wet seepage areas where groundwater discharges and/or are associated with first order water courses (e.g., swales, ditches, and springs) that flow on permeable strata and impermeable layers (e.g., clay or bedrock) contact the ground surface. Drainage tracks, pools, or small seepage channels are characteristic associated features.  
**Other**  
 Atypical position in the landscape usually associated with anthropogenic disturbance, constructed wetlands, stormwater management, and general hydrologic alteration.



5531500 5531000 5530500 5530000 5529500 5529000 5528500 5528000 5527500 5527000 5526500 5526000

33300 33250 33200 33150 33100 33050 33000