

Memo



Date: November 15, 2010

To: City Manager

From: Land Use Management, Community Sustainability

Application: A10-0007 (GS)

Owners: Oyama Springs Ltd.
MacDonnell Farms Ltd.
Country Down Estates Ltd.
Cloverdale Holdings Ltd.
Woodsdale Estates Ltd.

Address: 202 Hereron Road

Applicant: Milagro Advisory Services Ltd.

Subject: Subdivision within the ALR and ALR Exclusion

Existing OCP Designation: Rural/Agricultural
Major Park/Open Space

Proposed OCP Designation: Rural/Agricultural
Industrial

Existing Zone: A1 - Agriculture 1

Proposed Zone: A1 - Agriculture 1
I2 - General Industrial

1.0 Recommendation

THAT Agricultural Land Reserve Appeal No. A10-0007 for Lot A, Sections 2 and 11, Township 23, Osoyoos Division Yale District Plan KAP 70553 except Plan KAP81470, located at 202 Hereron 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;

AND THAT Agricultural Land Reserve Appeal No. A10-0007 for a portion of Lot A, Sections 2 and 11, Township 23, Osoyoos Division Yale District Plan KAP 70553 except Plan KAP81470, located at 202 Hereron Road, Kelowna, B.C. for an exclusion from the Agricultural Land Reserve pursuant to Section 30(1) as shown on Map "A" attached to the report of the Land Use Management Department, dated November 15, 2010, NOT be supported by Municipal Council;

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

A handwritten signature in black ink, appearing to be a stylized 'R' or similar character.

2.0 Purpose

The applicant is requesting permission from the Agricultural Land Commission (ALC) to subdivide the parent 16.8 ha (41.5 ac) parcel located at 202 Hereron Road into three parcels. The new parcels being proposed include one 10.2 hectare, one 4.12 hectare, and one 1.13 hectare parcel. An existing road reserve is registered on the land title in favour of the City of Kelowna for the extension of Acland Road (see attached proposed subdivision plan). The road reserve is approximately 1.35 hectares in size.

Concurrent with their request for a subdivision within the ALR, the applicants have requested an exclusion of the 1.13 hectare parcel from the Agricultural Land Reserve. It is the applicants' stated intention to rezone from A1- Agriculture 1 to I2 - General Industrial for this parcel.

3.0 Land Use Management

At 16.8 hectares (41.5 acres), the subject property is large for the City of Kelowna in relative terms. Given their rarity, larger agricultural parcels are significant and worthy of protection. Larger parcels are preferable for a number of reasons including being easier to farm; being subject to less neighbourhood conflict due to the reduced interface; and providing the greatest flexibility and options for future owners/operators to undertake agricultural related production.

The justification for the subdivision within the ALR is stated to be for the purpose of estate planning/succession. While Land Use Management staff is sympathetic with the need to undertake future planning, neither the Agricultural Land Commission nor City of Kelowna policy contains provisions that support this justification.

The applicant has also noted the existing road reserve through the western portion of this parcel (obtained through a previous lot line adjustment) as partial justification for the subdivision of the 1.13 hectare parcel, exclusion from the Land Reserve and rezoning to an industrial zone. While it is acknowledged that the road reserve does exist and which would serve to extend Acland Road north and realign a portion of Bulman Road, there is no certainty over when this road would be constructed. Further, in locations where a property is bisected by a road or a stream for example, it is common to hook the lots together. Hooking the lots across Acland Road would be an option in this case if and when the road was constructed.

In terms of City Policy, both the existing Official Community Plan and the Future Land Use Map in the draft 2030 Official Community Plan designate this land as agricultural. Rezoning this portion to an industrial land use may affect the uptake of land in areas designated for industrial land use; in addition to altering the City's future servicing plans. Further, both the City of Kelowna Official Community Plan and Agriculture Plan discourage the expansion of urban uses into what is otherwise an agricultural landscape and which will serve to diminish the viability of agricultural practice locally. City of Kelowna policy is strongly in favour of the preservation of agricultural land and against the subdivision of agricultural land into smaller parcels. Exceptions include cases where positive benefits to agriculture can be demonstrated.

In terms of soil qualities, the Canada Land Inventory (CLI) suggests that there is potential for land capability to increase through improvements such as dewatering and grading modifications to promote better drainage (see BCLI Land Capability and Soil Classification attached). In fact the western portion of the land is thought to be improvable to Class 2 and 3, while the eastern portion may be improved to Class 3 and 4. In relative terms Class 2 land in the Okanagan is often

regarded as quite exceptional and certainly worthy of preservation. The applicant has not noted soil as a limiting factor on this property or as a justification of the subdivision or exclusion.

According to the City's Wetland Inventory, Classification, Evaluation and Mapping (WIM), the area proposed for exclusion and rezoning to industrial land use contains riverine wetlands which are associated with flowing water. Development of this land would result in the loss of these wetlands. The loss of wetlands in this area could also result in hydrological implications elsewhere.

In sum, the proposed three lot subdivision and exclusion of a portion for the purpose of rezoning to an industrial land use does not represent a positive outcome for agriculture - the test for development applications on agricultural land. Land Use Management has witnessed increased interest in the alteration of agricultural land to non-agricultural land uses in this area. The success of this application could prove to have a dramatic effect on agricultural land speculation in this area acting as a precedent setting catalyst for similar requests. Given that no benefit to agriculture has been articulated by the applicants, from a policy perspective, Land Use Management staff is unable to support either the subdivision nor the exclusion as proposed. Further, using the future possible extension of Acland Road through the subject property as a justification for subdivision of a third parcel is considered premature at this time.

4.0 Proposal

4.1 Background

The subject property is bisected by Mill (Kelowna) Creek and is wholly within the Mill Creek Floodplain. In 1999 the lower *Mill Creek Channel Assessment* concluded that the subject property was suffering from bank erosion resulting in the loss of agricultural land, in addition to having negative impacts on fisheries and water quality. With the owners consent, the City, Ministry of Environment and Department of Fisheries and Oceans partnered with funding sources, including Fisheries Renewal BC, to undertake stream restoration along the length of the subject property. The applicants willingness to allow these restoration efforts which resulted in bank stabilization and a more naturalized stream section is gratefully acknowledged (see photos page 16).

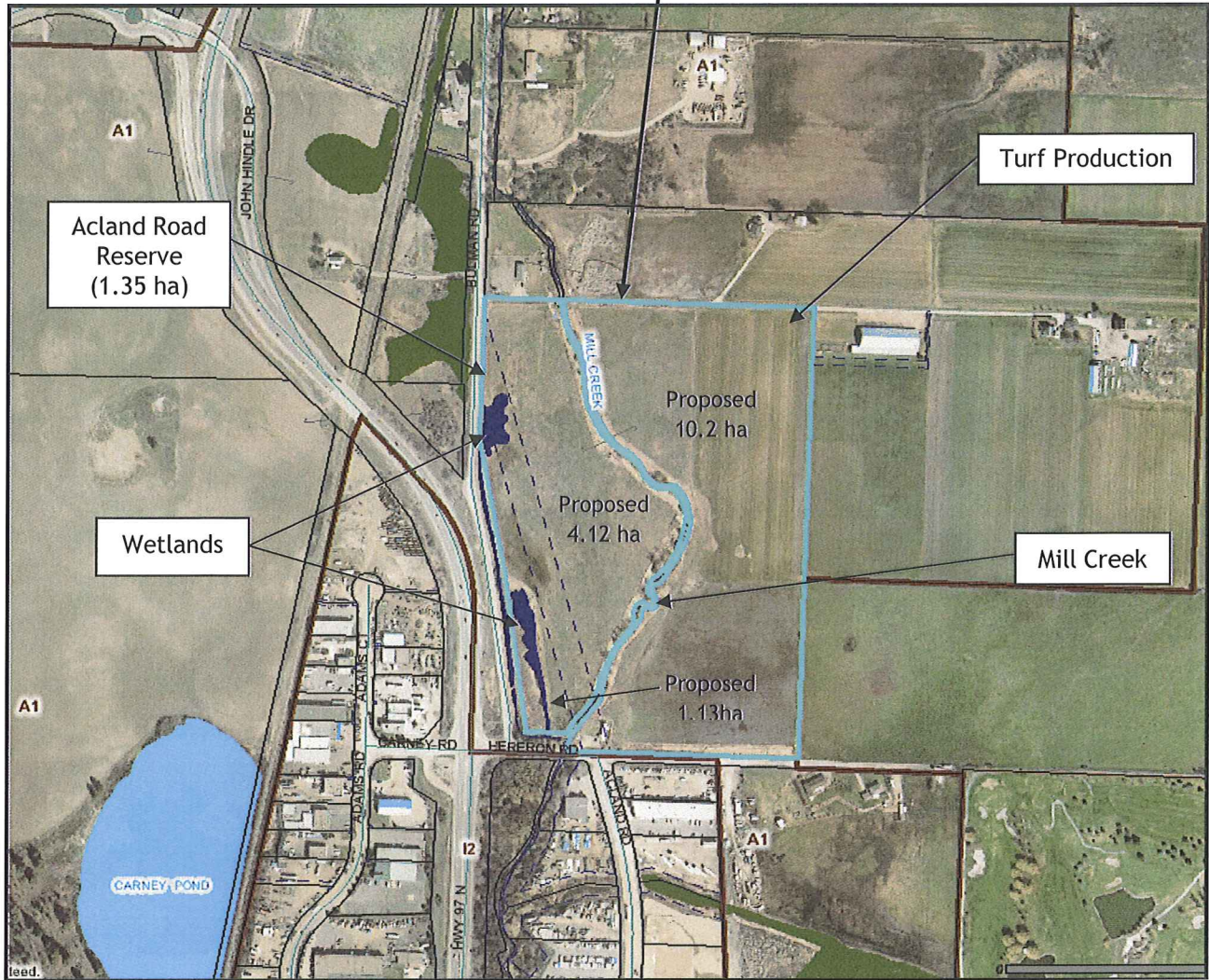
The applicants note that Allan Macdonell purchased the subject property from his parents in 1962 and that more recently Mr. Macdonell has apportioned and transferred ownership of the property to family members. The ALR application further notes the following:

"The application for subdivision within the ALR is being made for the sole purpose of estate planning/succession. If approval to subdivide is granted, ownership of the proposed Lots 1 and 2 will remain with the Macdonnell family. In regards to the proposed Lot 3, approval of the subdivision and exclusion will "trigger" the dedication of the Road Reserve (PlanKAP68207) and isolate an irregular shaped 1.13 ha remainder with little, if any, agricultural capability."

"If approval is granted, the proposal is to rezone Lot 3 to an industrial use category consistent with the I2 zoning of the industrial park to the south."

In terms of existing land uses, approximately 60% of the property is being used for forage purposes, with the remaining 40% being used for the production of turf grass. The only structure currently located on this property is a mobile home.

4.2 Site Context - 202 Hereron Road (16.8 ha)



4.3 Subdivision and development criteria for the Industrial 2 zone include the following:

CRITERIA	I2 (General Industrial) ZONE REQUIREMENTS
Subdivision Regulations	
Minimum Lot Area	1 hectare (not connected to sanitary sewer) .4 hectare (when connected to sanitary sewer)
Minimum Lot Width	40.0 m
Minimum Lot Depth	35.0 m
Maximum Site Coverage	60%

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Environment¹

7.8.7 No Net Loss of Aquatic Habitat Productivity. Practice the principle of “no net loss/net gain” with respect to land use decisions that affect aquatic habitat. Based on the “no net loss” guiding principle of the Department of Fisheries and Oceans “Policy for the Management of Fish Habitat”, this means that no individual land use or development project should result in a net loss in aquatic habitat productivity, and that the City will strive for a net gain in overall productivity throughout the city’s aquatic habitats in the long term;

7.10.12 Retention of Natural Areas. Encourage all development and infrastructure projects to conserve wetlands, wildlife habitat, trees or other indigenous vegetation.

Agriculture Policies²

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

5.2 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.

5.3 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.

6.0 Technical Comments

6.1 Development Engineering Department

This application does not trigger any Development Engineering Services at this point in time, however, a comprehensive report will be provided at the time of development application if and when the Agricultural Land Commission agrees to the proposed exclusion.

6.2 Subdivision Approving Officer

A Preliminary Layout Review will be required in the event that the application is supported by the Agricultural Land Commission.

¹ City of Kelowna Official Community Plan - Chapter 7 - Environment; p. 7-8 & 7-13.

² City of Kelowna Official Community Plan - Chapter 11 - Agriculture; p. 11-3.

6.3 Ministry of Transportation

The Ministry has no objection to the ALR application on the condition that when these subject lands change in the existing land use, the Ministry has the opportunity to review the land use change, and if required, request a traffic impact study be conducted, at the applicants cost, to identify any negative impacts to Highway 97.

7.0 Application Chronology

Date of Application Received: August 4, 2010

Agricultural Advisory Committee: October 14, 2010

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on October 14, 2010 and the following recommendations were passed:

THAT the Agricultural Advisory Committee NOT support Application No. A10-0007 for 202 Hereron Road North, by Milagro Advisory Services Inc., to obtain approval from the Agricultural Land Commission to subdivide the parent 16.8 ha (41.5 ac) parcel for a three lot subdivision.

The Agricultural Advisory Committee does not support the subdivision application as there is no benefit to agriculture demonstrated. As the Committee did not support the subdivision application it was not necessary to consider the 1.13 hectare exclusion proposal to rezone from A1- Agriculture 1 to I2 - General Industrial for this parcel.

8.0 Alternate Recommendation


THAT Agricultural Land Reserve Application No. A10-0007 for Lot A, Sections 2 and 11, Township 23, Osoyoos Division Yale District Plan KAP70553 except Plan KAP81470, located at 202 Hereron 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 subject to:


- a maximum two lot subdivision with the natural boundary/intersection provided by Mill Creek acting as the subdivision line for one parcel on the west and a second to the east; and
- no exclusion of land from the Agricultural Land Reserve.

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

Report prepared by:

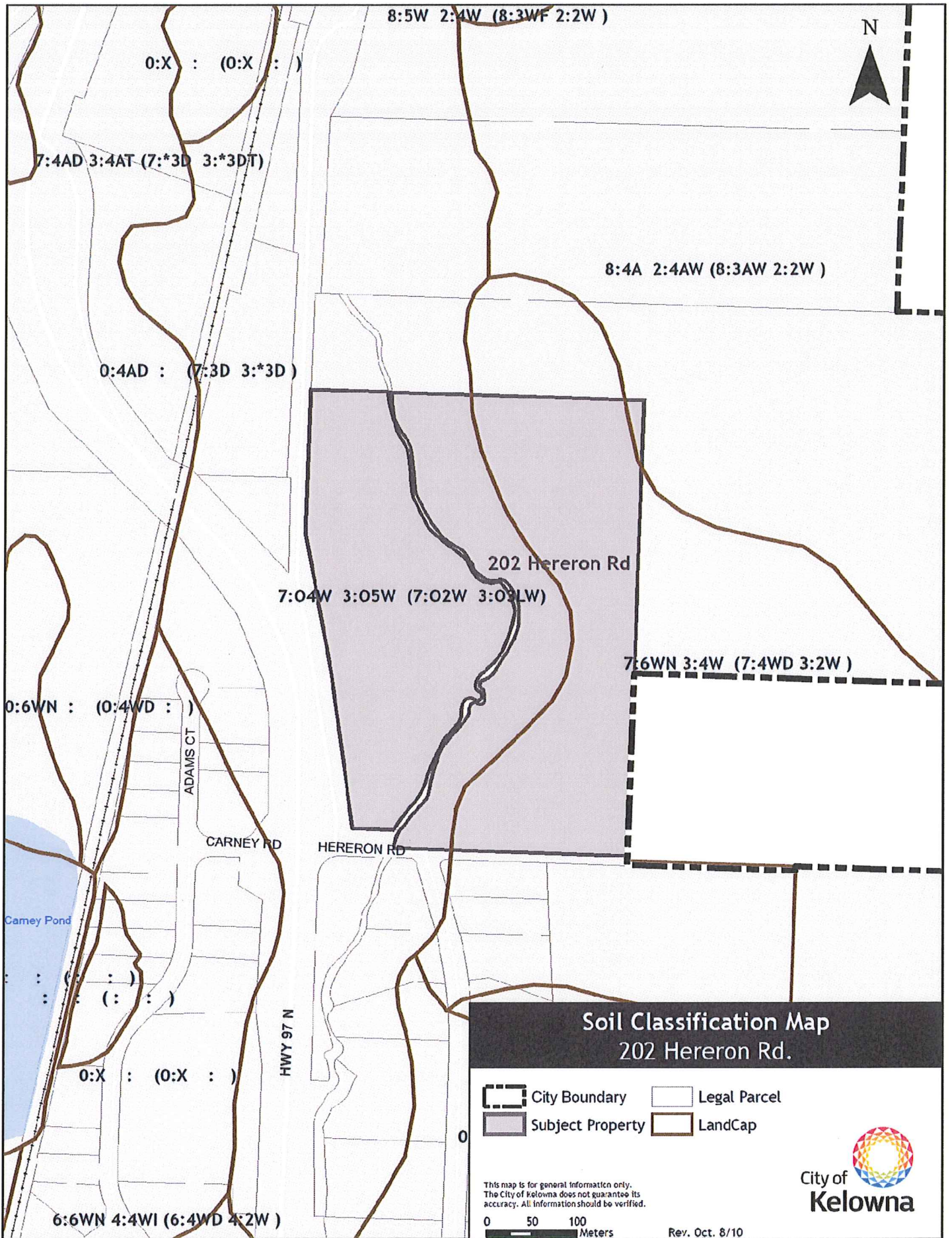

Greg Sauer, Land Use Planner

Reviewed by:  Shelley Gambacort, Director, Land Use Management

Approved for Inclusion  J. Paterson, General Manager, Community Sustainability

Attachments:

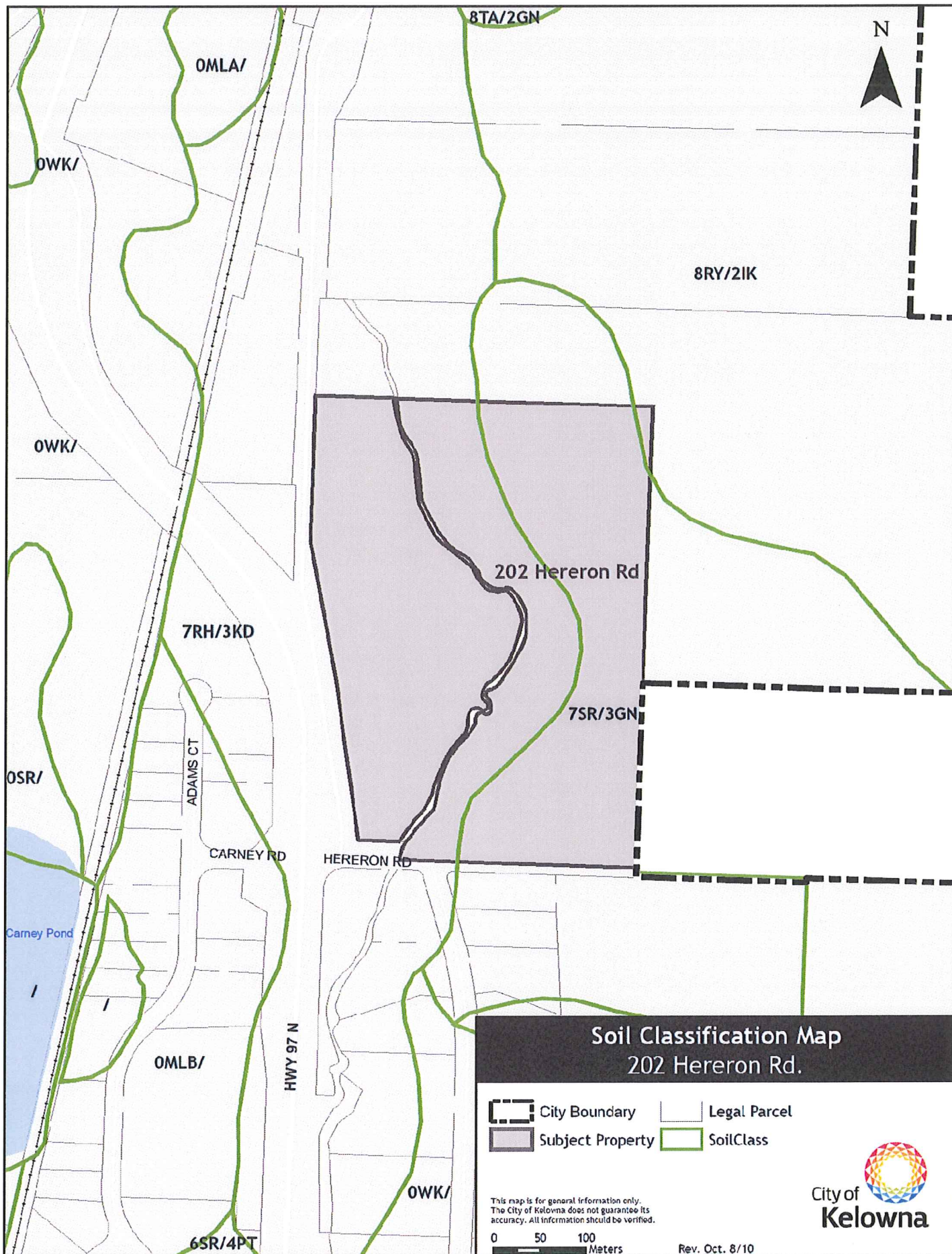
- Soil Classification Map
- Subject Property Soil Classification Description
- BCLI Land Capability Map
- Subject Property BCLI Land Capability Description
- Subject Property Map
- Proposed Subdivision Plan 1 - Map "A"
- Proposed Subdivision Plan 2
- Context/Site Photos
- Conceptual Elevations (N/A)
- Landscape Plan (N/A)
- Sustainability Checklist (N/A)
- Summary of Technical Comments (N/A)



Soil Classification

The soil classification for the subject property is broken into two sections with soil types as defined below.

Portion of Site / %	Soil Type	Description
Western Portion 70%	RH - Rumohr	<p><u>Land</u>: organic veneer and marl over nearly level depressional fluvial fan deposits.</p> <p><u>Texture</u>: 20 to 60 cm of partially decomposed (mesic) organic material and up to 50cm of silt loam (marl) over loamy sand or fine sandy loam.</p> <p><u>Drainage</u>: very poor, high ground water-table, subject to flooding.</p> <p><u>Classification</u>: Rego Gleysol: peaty and calcareous phases.</p>
Western Portion 30%	KD - Kendall	<p><u>Land</u>: nearly level and very gently sloping organic deposits over fluvial deposits.</p> <p><u>Texture</u>: 40 to 160cm of partially decomposed (mesic) organic material over loamy sand or sand.</p> <p><u>Drainage</u>: very poor, fluctuating ground water-table, subject to flooding.</p> <p><u>Classification</u>: Teric Mesic Humisol.</p>
Eastern Portion 70%	SR - Summerland	<p><u>Land</u>: nearly level to strongly sloping fluvial veneer over glaciolacustrine sediments.</p> <p><u>Texture</u>: 10 to 100 cm of silty clay loam grading to clay loam.</p> <p><u>Drainage</u>: dominantly poor, ranging to imperfect; fluctuating groundwater table or seepage, subject to flooding.</p> <p><u>Classification</u>: Orthic Humic Gleysol: Calcareous and saline phases.</p>
Eastern Portion 30%	GN - Guisachan	<p><u>Land</u>: nearly level and very gently sloping fluvial floodplain deposits.</p> <p><u>Texture</u>: 10 to 100 cm of silt loam, loam or sandy loam over loamy sand or very gravelly loamy sand.</p> <p><u>Drainage</u>: poor, fluctuating groundwater table.</p> <p><u>Classification</u>: Orthic Humic Gleysol.</p>



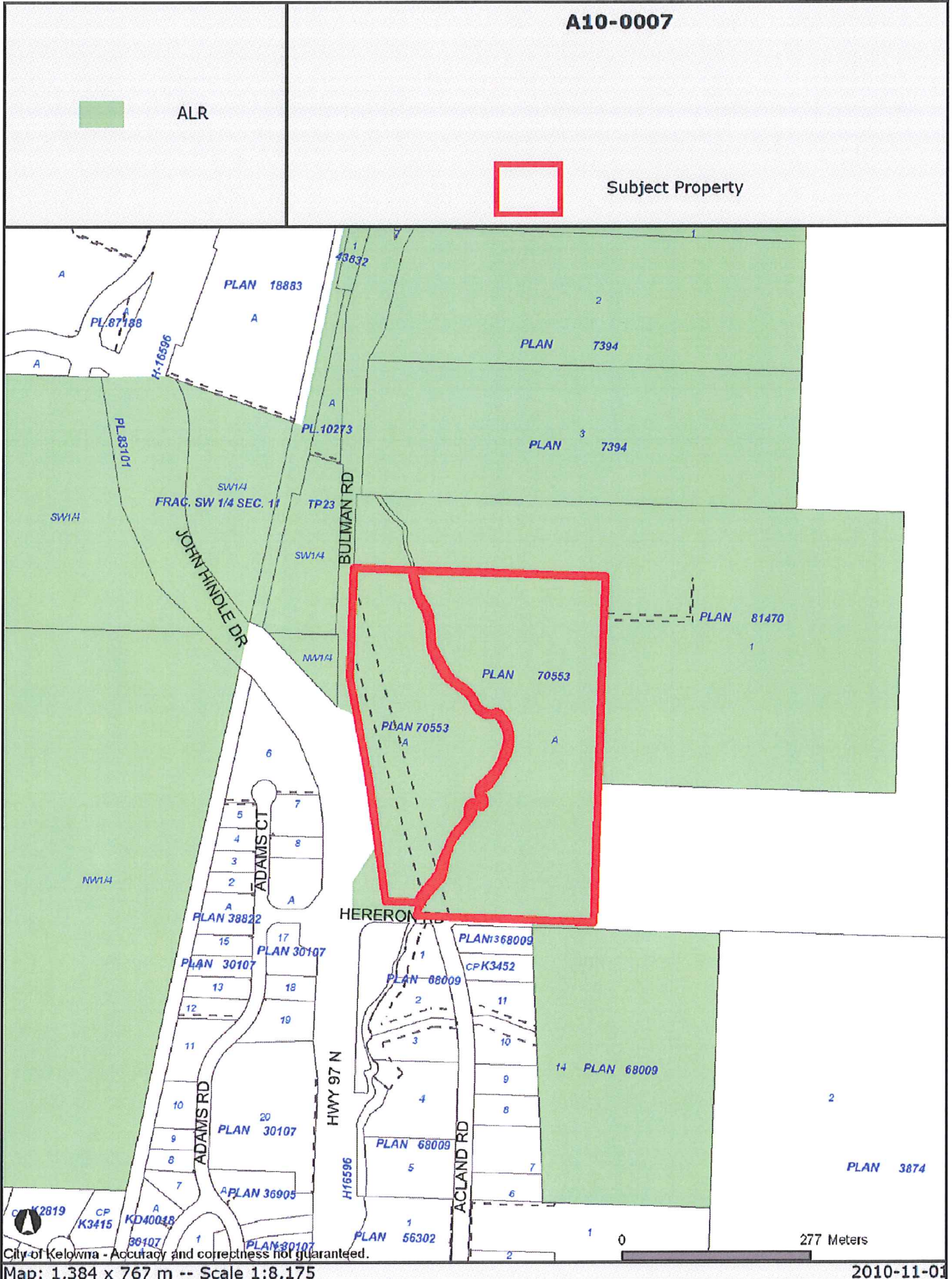
BCLI Land Capability

Portion of Site	Land Capability Rating, Unimproved	Land Capability Rating, With Improvements
Western	<p>70% Class 4. Class 4 land has limitations that require special management practices or severely restrict the range of crops, or both. This land may be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas.</p> <p>30% Class 5. Class 5 land has limitations which restricts its capability to producing perennial forage crops or other specially adapted crops. This land may be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas.</p>	<p>70% Class 2. Class 2 land has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both. This land may continue to be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas.</p> <p>30% Class 3. Class 3 land has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both. This land may continue to be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas. Further, soil may be limited by degree of decomposition which affects drainage, permeability, capillary rise of water and rate of subsidence. The presence of mineral soil layers may be limiting to optimum crop yield and to drainage.</p>
Eastern	<p>70% Class 6. Class 6 is non-arable but is capable of producing native and/or uncultivated perennial forage crops. This land may be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas. The land may also be adversely affected by soluble salts (soil salinity) which reduce crop growth or restrict the range of crops.</p> <p>30% Class 4. Class 4 land has limitations that require special management practices or severely restrict the range of crops, or both. This land may be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas.</p>	<p>70% Class 4. Class 4 land has limitations that require special management practices or severely restrict the range of crops, or both. This land may be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas. The soil may also contain undesirable soil structure and/or low perviousness which make it difficult to till, require special management for seedbed preparation, pose trafficability problems, have insufficient aeration, absorb and distribute water slowly, and/or have rooting zone depth restricted by conditions other than high water table, bedrock, or permafrost.</p> <p>30% Class 2. Class 2 land has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both. This land may continue to be limited by excess water, other than from flooding, which limits agricultural use. The excess water may be due to poor drainage, high water tables, seepage, and/or runoff from surrounding areas.</p>

A10-0007

ALR

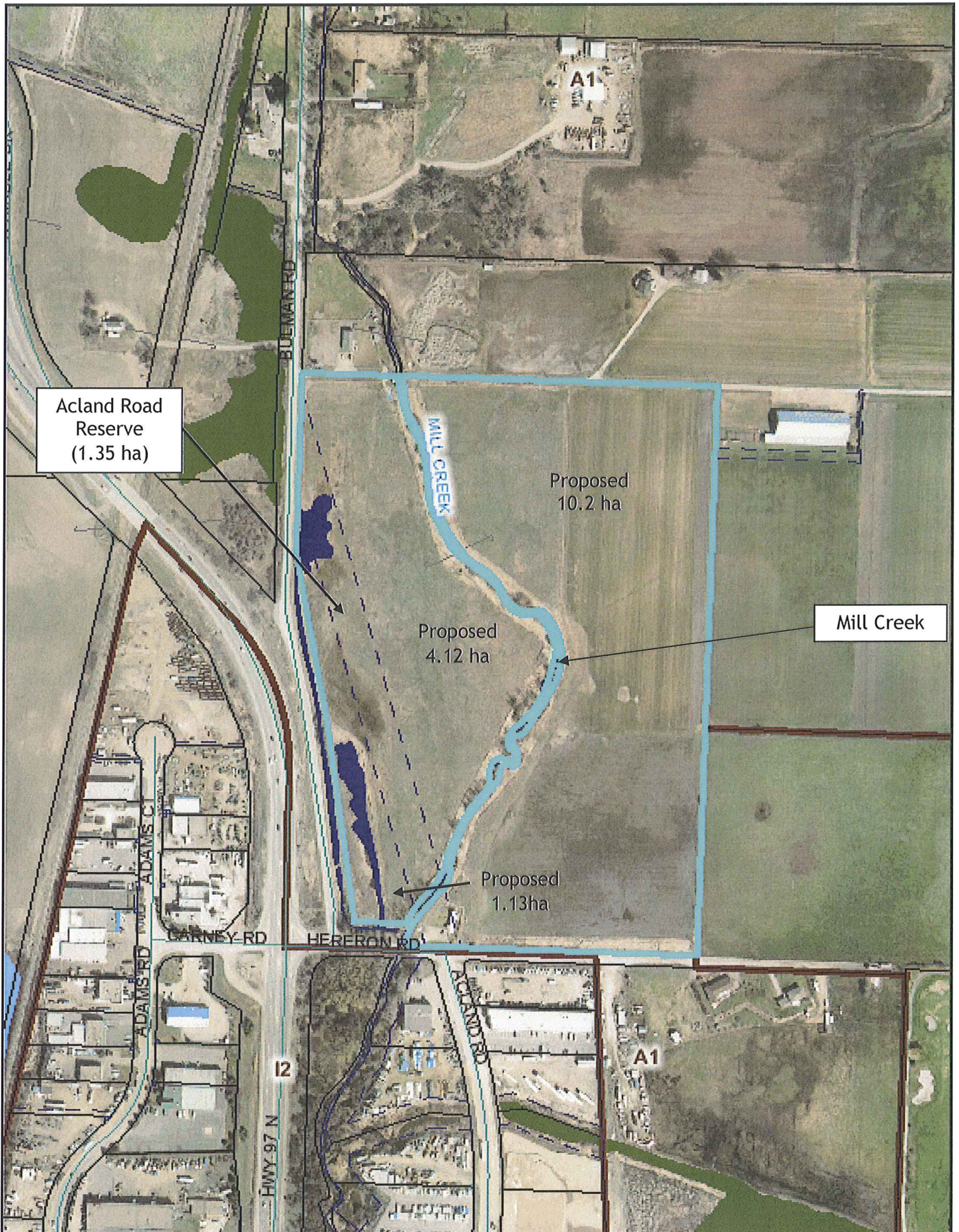
Subject Property



City of Kelowna - Accuracy and correctness not guaranteed.

Map: 1,384 x 767 m -- Scale 1:8,175

2010-11-01

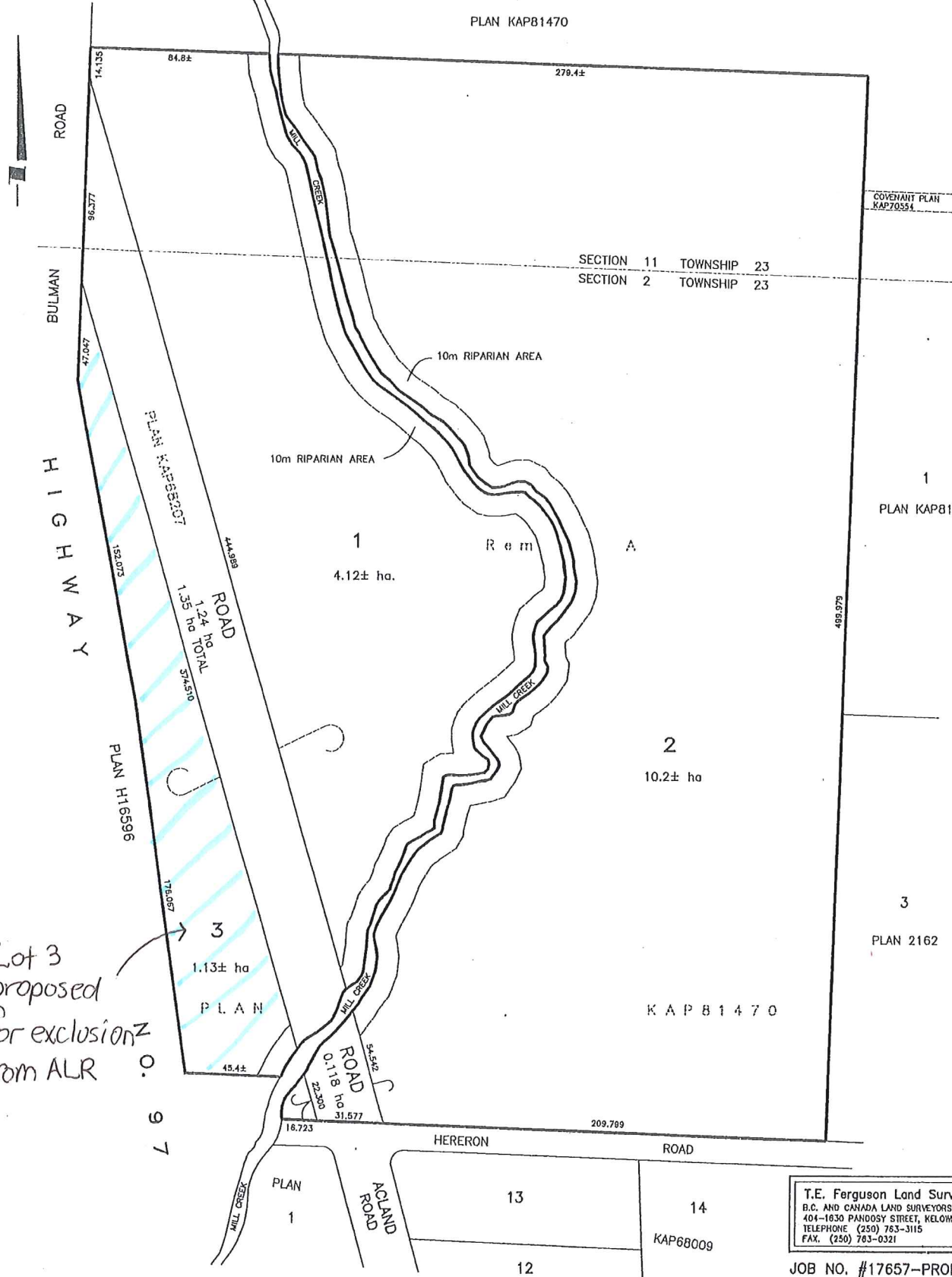


PROPOSED SUBDIVISION OF LOT A, PLAN KAP70553, SECTIONS 2 AND 11, TOWNSHIP 23, ODYD: EXCEPT PLAN KAP81470

BCGS 82E.094
SCALE: 1:1250



1
PLAN KAP81470



SECTION 11 TOWNSHIP 23
SECTION 2 TOWNSHIP 23

COVENANT PLAN
KAP70554

1
PLAN KAP81470

3
PLAN 2162

KAP81470

T.E. Ferguson Land Surveying Ltd.
B.C. AND CANADA LAND SURVEYORS
404-1630 PANDOSY STREET, KELOWNA, B.C.
TELEPHONE (250) 763-3115
FAX. (250) 763-0321

JOB NO. #17657-PROPOSED-SUB

3) Shaded (Aug 10, 2000) Job: 17657-PROPOSED-SUB-12/01/00 (17657)
17657-PROPOSED-SUB-12/01/00-8-2010.dwg

Site Photos (3)



