

REPORT TO COUNCIL



Date: September 11, 2012
To: City Manager
From: Land Use Management, Community Sustainability (GS)
Application: A12-0007
Address: 1306 - 1308 McKenzie Road
Subject: Supplemental Report
Existing OCP Designation: Resource Protection Area
Existing Zone: A1 - Agriculture 1

Owner: Kulwant Kohar
Kulwinder Kohar
Gurdev Kohar
Applicant: Kulwant Kohar

1.0 Recommendation

THAT Council receives for information, the Supplemental Report of the Community Sustainability Division dated September 11, 2012;

AND THAT Agricultural Land Reserve appeal A12-0007 for Lot 12, Section 25, Township 26 Osoyoos Division Yale District Plan 1760, except Plans B4687 and KAP77650, located at 1306 - 1308 McKenzie Road, Kelowna, B.C. for a non-farm use of agricultural land, pursuant to Section 20(3) of the Agricultural Land Commission Act, NOT be supported by Municipal Council;

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

2.0 Purpose

To obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for a non-farm use within the Agricultural Land Reserve (ALR) to allow a detached secondary suite.

3.0 Background

Council resolution from the July 23, 2012 p.m. regular meeting:

THAT Council defers consideration of Agricultural Land Reserve Appeal Application No. A12-0007, for the property located at 1306-1308 McKenzie Road, for a non-farm use within the Agricultural Land Reserve pending further discussions between the Applicant and City staff regarding the Applicant's options for a secondary suite on the subject property.

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

A copy of the original staff Report to Council dated July 3, 2012 is attached as Schedule "A" hereto.

4.0 Land Use Management

Land Use Management and Building Department staff met with the applicants (Kulwant and Kulwinder Kohar) on Wednesday July 25 following Council's direction. In attendance was Mr. Binder Thind of Development Services. Mr. Thind is a capable translator and provided translation between staff and the applicant.

Land Use staff outlined the staff position of non-support and that Council had deferred their decision asking staff to meet with them to determine if the non-farm use application could be avoided by locating a secondary suite in the principal dwelling as opposed to in the accessory structure. The applicants noted that their family was large and that it was their desire to maintain the dwelling for their family. As a result, they are not interested in creating a legal suite in the principal dwelling. Instead the applicant reaffirmed that they would like to continue with the non-farm use application in attempt to have the secondary suite in accessory structure authorized by the ALC.

The applicant also provided a lease agreement for a 10 acre parcel that they operate (2010 - 2015) in the Rutland Sector.

Staff noted that they would proceed with the file by returning the application to an upcoming meeting. The applicants advised that they would like to provide a Food Safe document or letter to accompany the report. Apparently the letter confirms that the applicants require adequate hand washing facilities.

After more than six weeks the applicants have not provided the letter. Staff are however confident that the contents of the letter would not substantially impact on the City or ALC's consideration of the proposed non-farm use application and recommend that Council proceed with a recommendation to the ALC in an effort to obtain a decision.

5.0 Application Chronology

Date of Application Received:	April 30, 2012
Agricultural Advisory Committee:	May 4, 2012
Council Consideration:	July 23, 2012 (Deferred)
Staff Meet With Applicant:	July 25, 2012
Staff Notified the Applicant of Intent to Proceed:	July 25, 2012

Report prepared by:


Greg Sauer, Land Use Planner

Approved for Inclusion:



Shelley Gambacort, Director, Land Use Management

Schedule "A"

REPORT TO COUNCIL



Date: July 3, 2012

To: City Manager

From: Land Use Management, Community Sustainability (G5)

Application: A12-0007 **Owner:** Kulwant Kohar
Kulwinder Kohar
Gurdev Kohar

Address: 1306 - 1308 McKenzie Road **Applicant:** Kulwant Kohar

Subject: Non-farm use in the Agricultural Land Reserve Application

Existing OCP Designation: Resource Protection Area

Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve appeal A12-0007 for Lot 12, Section 25, Township 26 Osoyoos Division Yale District Plan 1760, except Plans B4687 and KAP77650, located at 1306 - 1308 McKenzie Road, Kelowna, B.C. for a non-farm use of agricultural land, pursuant to Section 20(3) 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 Purpose

To obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for a non-farm use within the Agricultural Land Reserve (ALR) to allow a detached secondary suite.

3.0 Land Use Management

The subject property is approximately 4.1 ha (10.1 ac) with a planted area of approximately 3.3 ha (8.1 ac) and the remainder being steep slopes and the homeplate in the south. The area of land planted (apple orchard) is well below that which is typically required (i.e. 10 ha for apple orchard) in order to qualify for an additional residence for farm employee based on criteria currently being used to evaluate the need for additional dwellings.

While one additional residence was authorized in 2007, the actual development reflects two stand-alone dwellings (duplex) constructed side by side which was not authorized. The second dwelling was constructed in the remaining half of the accessory building which was to be storage only and without Building Permits. No Occupancy Permit has been issued for either dwelling to date.

The second dwelling was authorized in 2007 for farm employee purposes and is not in question from a land use perspective, but still does require an Occupancy Permit to legalize the use. The proposed additional dwelling in the accessory structure (for a total of three dwellings) was built without authorization.

The principal dwelling has also housed an illegal suite in the basement. Each of the suites (i.e. in the principal and in the accessory building) has been the subject of complaints and bylaw enforcement action.

Given the small size of the parcel and that the additional dwelling cannot be warranted from a farm employee perspective, staff recommend this request to the ALC not be supported. Although the proposed dwelling is modest in size and cost, approval infers that an additional dwelling is supported and could be reconstructed as an improved dwelling in the future. Second and third dwellings are known to have negative impacts on small parcels, especially by occupying arable land and by increasing the valuation of agricultural land.

4.0 Proposal

4.1 Background/ Project Description

The applicants are proposing to have an additional dwelling located in the accessory building (3rd dwelling on the subject property) legalized by way of this “Non-Farm Use” application. The second dwelling unit in the accessory structure is existing and both were developed without Building Permits. While a Building Permit was later issued for one dwelling, the area developed as the second dwelling was originally proposed as “storage”. The dwelling units are adjacent one-another and fully self contained (i.e. separate bathrooms and kitchens).

4.2 Site Context

The subject property is located west of McKenzie Road in the Rutland Sector, and is designated as Hazardous Condition Development Permit Area given the steep slope along the western edge. The site area is ~4.1 hectares (10.1 acres) and the site elevation varies between 518 m and 538 m. The soils in this area are excellent reflecting an improved Class 1 and 2 rating along much of the planted area according to the land inventory (see attached CLI).

The subject property has extensive urban/rural interface on account of an adjacent residential development to the west.

Zoning and land uses adjacent to the property are as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Rural residential
South	A1 - Agriculture 1	Yes	Rural/agricultural
East	A1 - Agriculture 1	Yes	Rural/agricultural
West	LUC - Land Use Contract	No	Rural residential

Subject Property Map: 1306 - 1308 McKenzie Road



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

5.2 2030 Official Community Plan: Greening Our Future

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

Objective 5.33 Protect and enhance local agriculture¹.

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development by supporting a “no net loss” approach, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

¹ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

Objective 5.34 Preserve productive agricultural land².

Policy .1 Secondary Suites. Encourage secondary suites on agricultural land to be located within a permitted principal dwelling.

Policy .3 Homeplating. Locate buildings and structures, including farm help housing and farm retail sales area and structures, on agricultural parcels in close proximity to one another and where appropriate, near the existing road frontage. The goal should be to maximize use of existing infrastructure and reduce impacts on productive agricultural lands.

Objective 6.2 Improve energy efficiency and reduce community greenhouse gas emissions³.

GHG Reduction Target and Actions. The City of Kelowna will, in partnership with: senior governments; local residents and businesses; NGOs; external agencies; and utility providers, work towards reducing community greenhouse gas emissions by 33% (from 2007 levels) by 2020.

The City of Kelowna's efforts will be focussed on creating more mixed-use neighbourhoods (as identified on the OCP Future Land Use map) and on ensuring that residents can conveniently and safely travel by bus or by foot, bicycle and other forms of active transportation to get to major community destinations while ensuring the efficient movement of goods and services.

5.3 City of Kelowna Agriculture Plan

ALR Application Criteria⁴

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.

Legislative Policies

10. Secondary Suites. Support the provision of secondary suites in agricultural areas as per Land Commission Policy # 770/98 (see Attached Policy #8), which allows one suite per parcel, substantially within the footprint of an existing or proposed single family dwelling provided it is clearly secondary to the single family dwelling. Suites in accessory buildings or enlarging the footprint of an existing residence for a suite would require an ALC application.

6.0 Technical Comments

6.1 Building & Permitting

The accessory building was originally constructed without permit. The owner eventually provided engineering to verify the accessory building was structurally adequate to issue the permit following fee payment. The owner was instructed to call for inspection to verify the buildings insulation, vapour barrier and life safety items. Upon inspection it was determined that the owner did not comply with the issued permit and had built two suites instead of the one unit that was authorized. The result was that a "Stop Work" order was issued.

The owner also had to deal with decommissioning an illegal suite in the main dwelling during this time frame. This illegal suite investigation was initiated by a complaint to Bylaw Enforcement and eventually decommissioned.

² City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

³ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Environment Chapter; pp. 6.1 & 6.2.

⁴ City of Kelowna Agriculture Plan (1998); p. 130.

6.2 Bylaw Enforcement

The subject property has been the recipient of multiple bylaw files being opened and enforcement action since 2010. Public complaints include unsightly premises (construction materials and derelict vehicles) and for occupancy of a suite in the principal dwelling and with respect to rental of the accessory structure. Bylaw enforcement staff found evidence of an illegal suite in the principal dwelling.

7.0 Application Chronology

Date of Application Received: April 30, 2012

Agricultural Advisory Committee May 4, 2012

The above noted application was reviewed by the AAC and the following recommendation was passed:

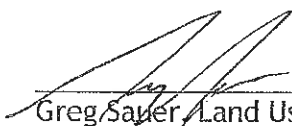
THAT the Agricultural Advisory Committee NOT support Agricultural Land Reserve Application No. A12-0007 for 1306-1308 McKenzie Road, by Kulwant Kohar, to obtain approval from the Agricultural Land Commission under Section 20(3) of the Agricultural Land Commission Act for a non-farm use within the Agricultural Land Reserve to allow a detached secondary suite.


8.0 Alternate Recommendation

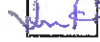
THAT Agricultural Land Reserve appeal A12-0007 for Lot 12, Section 25, Township 26 Osoyoos Division Yale District Plan 1760, except Plans B4687 and KAP77650, located at 1306 - 1308 McKenzie Road, Kelowna, B.C. for a non-farm use of agricultural land, pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Municipal Council;

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

Report prepared by:


Greg Sauer, Land Use Planner

Approved for Inclusion:  Shelley Gambacort, Director, Land Use Management

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

Attachments:

BC Land Inventory - Land Capability and Soil Classification (5 pages)
Subject property/zoning map & ALR Map (2 pages)
ALC application by landowner (5 pages)
ALC Policy #8 Permitted Uses In The ALR: Residential Use (2 pages)

Land Capability = Brown/ Soil Class = Green

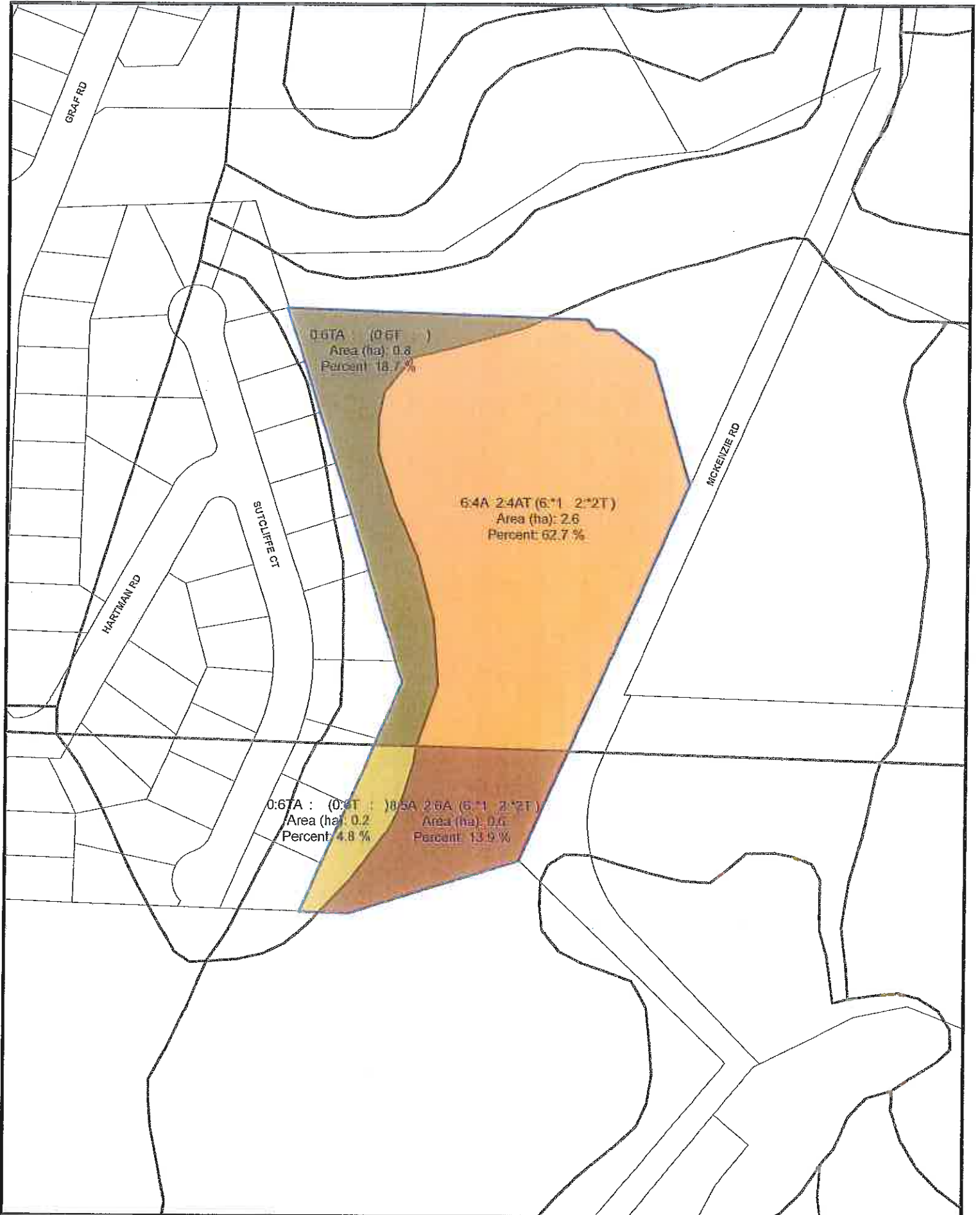


Soil Classification

The soil classification for the subject property is as defined below.

Portion of Site / %	Soil Type	Description
Eastern / 76.6% (3.2 ha) 80%	KE - Kelowna	<u>Land:</u> moderately and strongly sloping glacial till. <u>Texture:</u> 10 to 30cm of loam or sandy loam veneer over gravelly sandy loam or gravelly loam. <u>Drainage:</u> well. <u>Classification:</u> Orthic Dark Brown.
20%	R - Rutland	<u>Land:</u> very gently to strongly sloping fluvioglacial deposits. <u>Texture:</u> 10 to 25cm of sandy loam or loamy sand over gravelly loamy sand or very gravelly sand. <u>Drainage:</u> rapid. <u>Classification:</u> Orthic Dark Brown.
Western / 23.5% (1.0 ha) 100%	KE - Kelowna	<u>Land:</u> moderately and strongly sloping glacial till. <u>Texture:</u> 10 to 30cm of loam or sandy loam veneer over gravelly sandy loam or gravelly loam. <u>Drainage:</u> well. <u>Classification:</u> Orthic Dark Brown.

Land Capability = Brown/ Soil Class = Green



BCLI Land Capability

Legend

1	Land in this Class has no or only very slight limitations that restrict its use for the production of common agricultural crops. Land in Class 1 is level or nearly level. The soils are deep, well to imperfectly drained under natural conditions, or have good artificial water table control, and hold moisture well. They can be managed and cropped without difficulty. Productivity is easily maintained for a wide range of field crops.
2	Land in this Class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both. Land in Class 2 has limitations which constitute a continuous minor management problem or may cause lower crop yields compared to Class 1 land but which do not pose a threat of crop loss under good management. The soils in Class 2 are deep, hold moisture well and can be managed and cropped with little difficulty.
3	Land in this Class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both. The limitations are more severe than for Class 2 land and management practices are more difficult to apply and maintain. The limitations may restrict the choice of suitable crops or affect one or more of the following practices: timing and ease of tillage, planting and harvesting, and methods of soil conservation.
4	Land in this Class has limitations that require special management practices or severely restrict the range of crops, or both. Land in Class 4 has limitations which make it suitable for only a few crops, or the yield for a wide range of crops is low, or the risk of crop failure is high, or soil conditions are such that special development and management practices are required. The limitations may seriously affect one or more of the following practices: timing and ease of tillage, planting and harvesting, and methods of soil conservation.
5	Land in this Class has limitations which restricts its capability to producing perennial forage crops or other specially adapted crops. Land in Class 5 is generally limited to the production of perennial forage crops or other specially adapted crops. Productivity of these suited crops may be high. Class 5 lands can be cultivated and some may be used for cultivated field crops provided unusually intensive management is employed and/or the crop is particularly adapted to the conditions peculiar to these lands. Cultivated field crops may be grown on some Class 5 land where adverse climate is the main limitation, but crop failure can be expected under average conditions.
6	Land in this Class is non-arable but capable of producing native and/or uncultivated perennial forage crops. Land in Class 6 provides sustained natural grazing for domestic livestock and is not arable in its present condition. Land is placed in this class because of severe climate, or the terrain is unsuitable for cultivation or use of farm machinery, or the soils do not respond to intensive improvement practices. Some unimproved Class 6 lands can be improved by draining, diking and/or irrigation.
7	Land in this Class has no capability for arable agriculture or sustained natural grazing. All classified areas not included in Classes 1 to 6 inclusive are placed in this class. Class 7 land may have limitations equivalent to Class 6 land but does not provide natural sustained grazing for domestic livestock due to unsuited natural vegetation. Also included are rock land, other non-soil areas, and small water bodies not shown on the maps. Some unimproved Class 7 land can be improved by draining, diking, irrigation, and/or levelling.

Subject Property Land Capability

Portion of Site	Land Capability Rating, Unimproved	Land Capability Rating, Improved
NE (2.6 ha/ 62.7%)	<p>60% Class 4 with crops affected by droughtiness caused low soil water holding capacity or insufficient precipitation.</p> <p>20% Class 4 with crops affected by droughtiness caused low soil water holding capacity or insufficient precipitation and soils limited by steepness or pattern of slopes which hinders the use of farm machinery, decreases uniformity of growth and maturity or crops, and/or increases the potential for water erosion.</p>	<p>60% Class 1</p> <p>20% Class 2 with soils limited by steepness or pattern of slopes which hinders the use of farm machinery, decreases uniformity of growth and maturity or crops, and/or increases the potential for water erosion.</p>

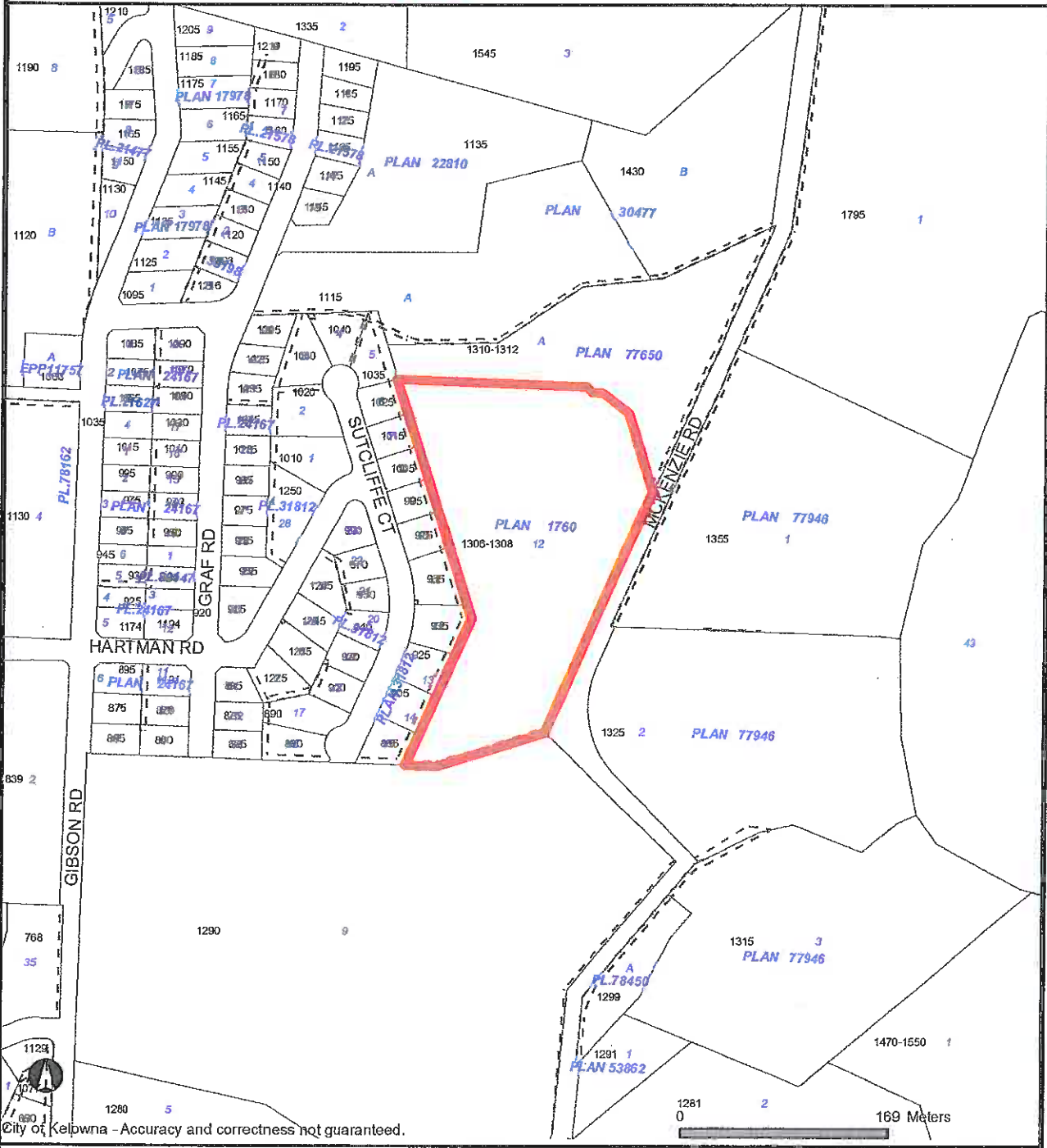
Portion of Site	Land Capability Rating, Unimproved	Land Capability Rating, Improved
SE (0.6 ha/ 13.9%)	<p>80% Class 5 with crops affected by droughtiness caused low soil water holding capacity or insufficient precipitation.</p> <p>20% Class 6 with crops affected by droughtiness caused low soil water holding capacity or insufficient precipitation.</p>	<p>60% Class 1</p> <p>20% Class 2 with soils limited by steepness or pattern of slopes which hinders the use of farm machinery, decreases uniformity of growth and maturity or crops, and/or increases the potential for water erosion.</p>
Western (1.0 ha / 23.5%)	<p>100% Class 6 with soils limited by steepness or pattern of slopes which hinders the use of farm machinery, decreases uniformity of growth and maturity or crops, and/or increases the potential for water erosion and crops affected by droughtiness caused low soil water holding capacity or insufficient precipitation.</p>	<p>100% Class 6 with soils limited by steepness or pattern of slopes which hinders the use of farm machinery, decreases uniformity of growth and maturity or crops, and/or increases the potential for water erosion.</p>

Application

A12-0007



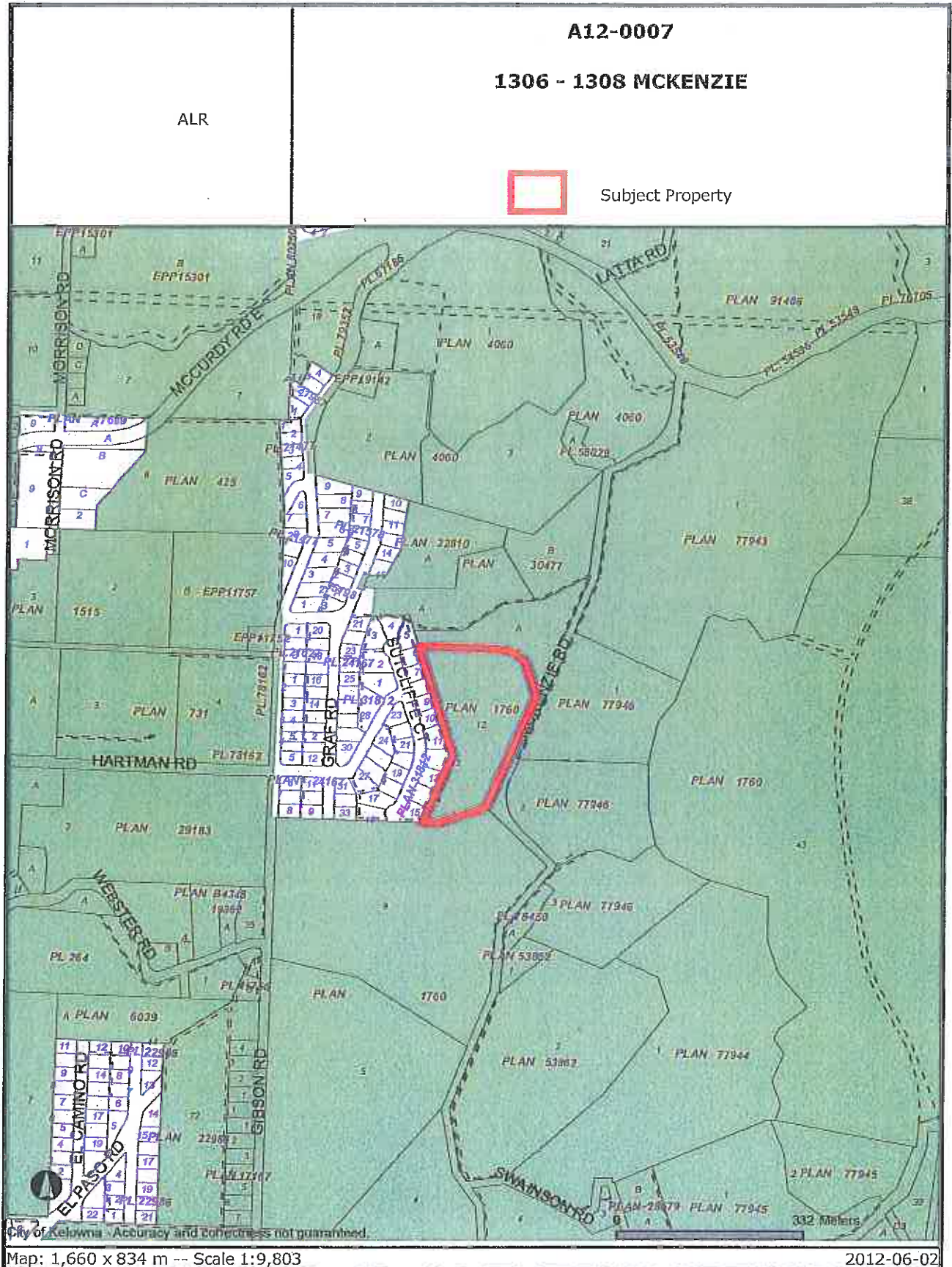
Subject Property



Map: 847 x 913 m -- Scale 1:5,000

2012-05-04

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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Back Window
D = 5 Foot by 6 Foot
TA = 5 Foot by 6 Foot

PROPOSED SUITE

Living Room
D = 12 Foot by 17 Foot
TA = 204 Foot

1 Foot

KITCHEN

Hot Water Tank

TUB

T

Bathroom
D = 5 Foot by 9 Foot

SINK

Bedroom
D = 11 Foot x 9 Foot
TA = 99 Foot²

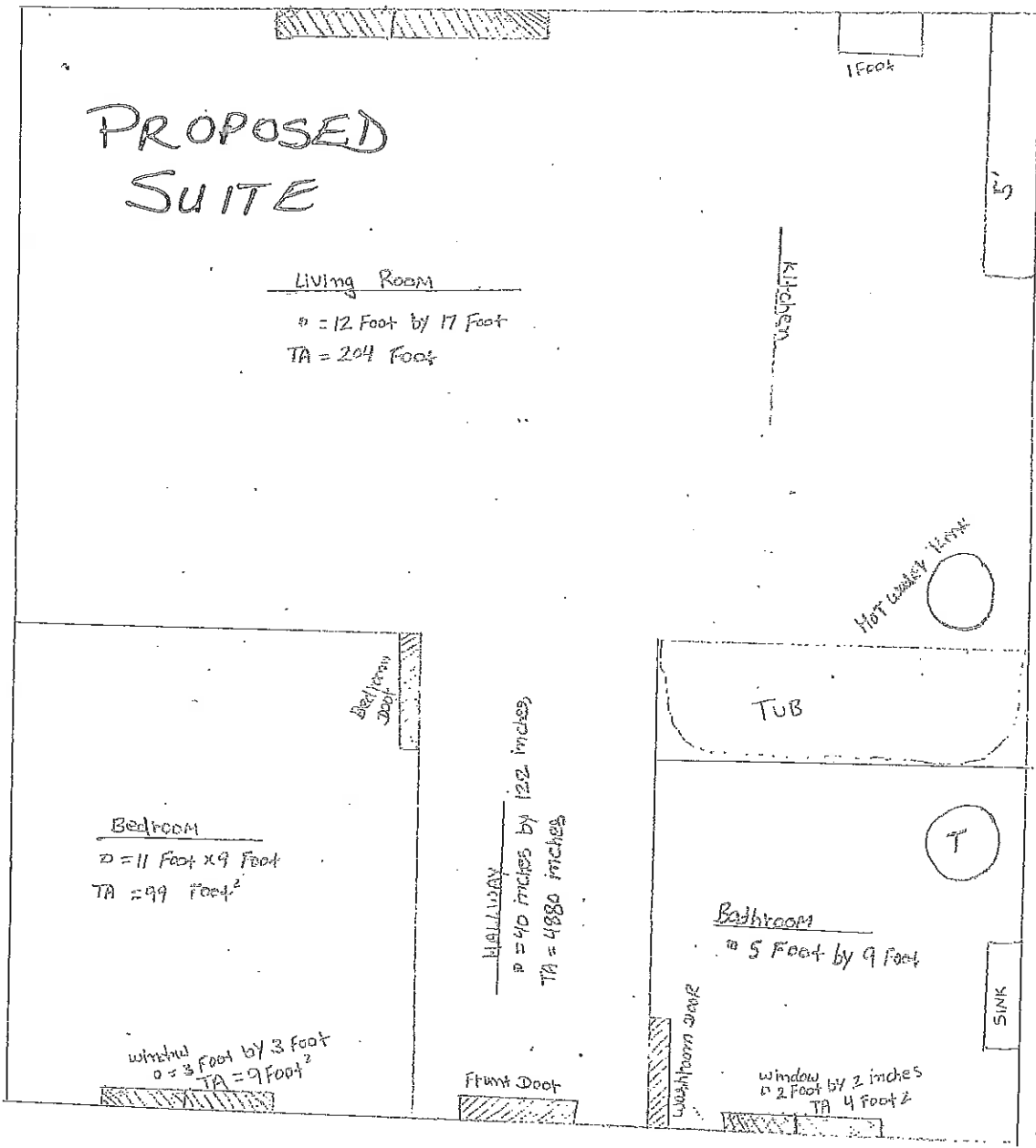
Window
D = 3 Foot by 3 Foot
TA = 9 Foot²

HALLWAY
P = 40 inches by 122 inches
TA = 4880 inches

Front Door

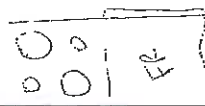
Washroom door

Window
D = 2 Foot by 2 inches
TA = 4 Foot²



EXISTING FARM
HELP ACCOMODATION

1.1.1.1.1.1.1
1.1.1.1.1.1.1
1.1.1.1.1.1.1



APPROVED SMOKE ALARMS
DETECTORS TO BE INSTALLED
AND INTERCONNECTED



Section 4 Development
Ensure that windows in future bedroom
a minimum area of 3.3 sq m (37.5 sq ft)
unobstructed height and width of 880 mm
(35"). The window opening shall be at
at least 1.5 m (5 ft) above the ground.

ACCESS

NO power source, sufficient of counter
design to allow for a replacement.

X

PROPOSED SUITE

FUTURE DEVELOPMENT
REQUIRES SEPARATE PERMIT

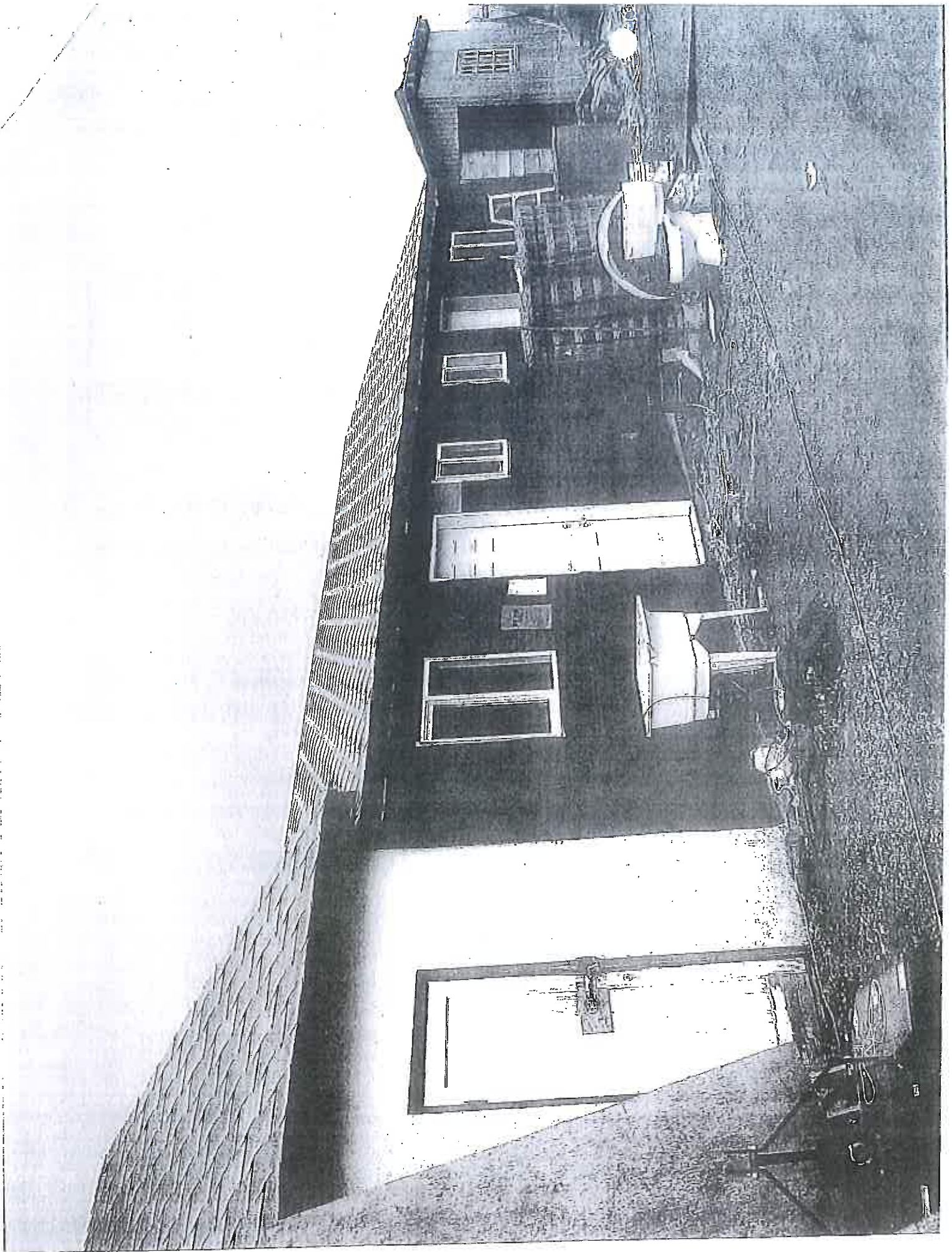
STORAGE

X

X
NO PLUMBING
PERMITTED.

THIS SUITE IS NOT TO BE
USED FOR A SEPARATE DWELLING UNIT

MIN 3'-0" BGC




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Burnaby, British Columbia, Canada

This is not the official version.

Only the printed version issued by the Agricultural Land Commission is the official version. Copies of the official version may be obtained from the Agricultural Land Commission, Room 133 - 4940 Canada Way, Burnaby, BC V5G 4K6, telephone: 604 660-7000.

Copyright in the electronic version of this Policy belongs exclusively to the Province of British Columbia. This electronic version is for private study or research purposes only.

 <p>Agricultural Land Commission Act</p>	<p style="text-align: right;">Policy #8 March 2003</p> <p style="text-align: center;">PERMITTED USES IN THE ALR: RESIDENTIAL USE</p>
<p><i>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.</i></p>	

REFERENCE:

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), the "Regulation", Section 3 (1) (b)

Section 3 (1) "the following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw:

- (b) for each parcel,*
 - (i) one secondary suite within a single family dwelling, and*
 - (ii) one manufactured home, up to 9 m in width, for use by a member of the owner's immediate family;*

Section 1 (1) "immediate family" means, with respect to an owner, the owner's

- (a) parents, grandparents and great grandparents,*
- (b) spouse, parents of spouse and stepparents of spouse,*
- (c) brothers and sisters, and*
- (d) children or stepchildren, grandchildren and great grandchildren;*

INTERPRETATION:

The Regulation permits a secondary suite for residential purposes, wholly contained within a single family dwelling, on a parcel in the ALR. The secondary suite use is not limited as to who occupies the suite. The Regulation also provides for one manufactured home, in addition to a dwelling, on a parcel in the ALR, but only for use by the property owner's immediate family. The maximum width of manufactured or mobile home allowed is 9 metres, which provides for what is commonly known as a 'double-wide'. The Commission may make an exception to the width requirement in the Peace and Northern Rockies Regional Districts to provide for a 'double wide' up to the industry standard width (10 metres).

The Regulation defines "immediate family" as noted above. If the manufactured home is no longer occupied by immediate family of the property owner, it is no longer a permitted use in the ALR and must be removed from the parcel or, if it remains, not used for residential purposes.

It should be noted that Section 18 (a) (ii) of the *Agricultural Land Commission Act* provides for one residence per parcel of land, and more than one residence where "the additional residences are necessary for farm use." See Commission Policy "Additional Residences for Farm Use".

Related uses that are not permitted in the Act or Regulation for residential use require application to and approval from the Commission.

Where a zoning bylaw is in place, this use must be specifically permitted by the bylaw.

TERMS:

Secondary suite — means an area set aside for residential use, within the footprint of a single family dwelling, and secondary or ancillary to the residential use of that single family dwelling.

Manufactured home — means a transportable prefabricated structure, whether ordinarily equipped with wheels or not, that is designed, constructed or manufactured to be moved from one place to another and to be used for residential use by a single family. The structure normally conforms to the CSA Z240 series standards of the Canadian Standards Association for manufactured homes.