

REPORT TO COUNCIL



Date: October 29, 2012
To: City Manager
From: Land Use Management, Community Sustainability (GS)
Application: A12-0005
Owner: Richard Lamberton
Linda Lamberton
Address: 3995 June Springs Road
Applicant: Richard Lamberton
Linda Lamberton
Subject: Non-farm use application
Existing OCP Designation: Resource Protection Area
Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve appeal A12-0005 for Lot 1, Section 3, Township 26 Osoyoos Division Yale District Plan KAP80425, located at 3995 June Springs 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 for a second dwelling on the subject property.

3.0 Land Use Management

In 2007 the owners made their first application to the ALC for a non-farm use to allow a detached secondary suite. In coming to their decision to refuse the application to retain the existing 75m² single family dwelling as a second home, the Commission noted that the farming operation does not require an additional dwelling for farm help and further concluded that (see attached ALC Decision):

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the proposal will impact agriculture.
4. That the proposal is inconsistent with the objective of the Agricultural Land Commission Act to preserve agricultural land.

A handwritten signature in black ink, appearing to be "Re".

In 2011, the owners obtained a Building Permit. A condition of the Building Permit was a Demolition Permit for the existing dwelling that the existing dwelling would be demolished when the new home was completed.

The owners are now seeking for a second time to retain the existing dwelling. However, little appears to have changed in the five years since the applicants first sought to construct a new home and retain the existing dwelling for either farm help, or as low-cost rental housing stock as was proposed at that time (Note: the applicants presently state that their primary intent is to house family). While the applicant's note that the Christmas tree operation has been expanded, the agricultural operations remain well short of minimum established operations that would warrant an additional dwelling for farm worker(s). Ministry of Agriculture documentation suggests that the minimum established level of operation for a nursery with field grown stock is eight hectares, while the existing operation is less than two hectares.

The protection of agricultural land seeks to preserve the "Right to Farm" for existing and future farmers. Farmers' ability to farm can be impeded by non-farmers living on, or in close proximity to agricultural land and having lower tolerance for what the industry accepts as "normal farm practice". As residential dwellings increase, the likelihood that conflict will occur between these uses is known to increase.

As noted, the applicants now seek to retain the dwelling for use by family members (i.e. daughter/granddaughter). The intended occupant is different from the first application and has been revised since the original submission which also included low-cost rental accommodation. While the intent at this time is for family members, if approved, a Carriage House permits rental occupancy.

Despite this, the provision of secondary suites within the footprint of the principal dwelling is supported by the ALC and is also the approach encouraged by City staff. As the principal dwelling was constructed recently, the dwelling could have been developed to provide a suite within with no ALC non-farm use application and with staff support for the rezoning from A1 to A1s¹.

4.0 Proposal

4.1 Background/ Project Description

Two single detached dwellings currently exist on the subject property. A new dwelling was constructed under a 2011 Building Permit. A Demolition Permit was applied concurrently, however, a delayed demolition was granted with bonding to ensure the building's removal at the time of occupancy of the new dwelling. The new dwelling was granted Occupancy in May 2012.

Table 1: Subject Property Events Timeline

Year	Activity
2007	ALC Non-Farm Use Application
2007	ALC Refused Application
2011	Building Permit Issued
2011	Delayed Demolition Permit Issued
2012	Occupancy Permit Granted
2012	2 nd ALC Non-Farm Use Application

¹ Note that the rezoning from A1 to A1s is no longer required for secondary suites in the principal dwelling. As a result, at present, only a Building Permit is required to proceed.

The applicants are seeking for a second time to have the existing (~75m²) dwelling remain as a “non-farm use”; and further, to have the property rezoned to the A1c - Agriculture 1 with Carriage House zone. Rezoning to A1c is necessary to meet the City’s regulations which permit one dwelling where additional dwellings are not necessary for farm use².

The applicants originally noted their intent was to retain the existing dwelling to house family members or for rental purposes (see attached application). The applicants have since revised their proposal to reflect a change in the occupancy to family members only (see attached supplemental information).

If not authorized by a non-farm use (ALC) and rezoning (City of Kelowna), the dwelling would need to be demolished, or decommissioned as per the delayed demolition permit prior to releasing the performance bonding.

4.2 Site Context

The subject property is located north and east of June Springs Road in the far reaches of southeast Kelowna. The site area is 2.85 hectares (7.05 acres) and the site elevation varies between 501 m and 518 m. The soils in this area can be improved to Class 3 according to the land inventory (see attached).

This property exists as a result of a homesite severance subdivision approved by ALC Resolution #205/2002. The former property owner subdivided the subject property from the parent property under application #A02-0101 (the homesite lot is located directly to the east of the subject property) with the existing secondary dwelling located as shown on the site plan submitted with the current application. The status of the existing dwelling on the then 4.60 ha parcel prior to subdivision was as a secondary dwelling.

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

Direction	Zoning	ALR	Land Use
North	A1c - Agriculture 1 with Carriage House	Yes	Rural/agricultural
South	A1 - Agriculture 1	Yes	Rural/agricultural
East	A1c - Agriculture 1 with Carriage House	Yes	Rural/agricultural
West	A1 - Agriculture 1	Yes	Rural/agricultural

² Rezoning the parcel would only occur if the non-farm use is permitted by the ALC.

Subject Property Map: 3995 June Springs Road**5.0 Current Development Policies****5.1 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 agriculture³.

Policy .1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, 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.

Objective 5.34 Preserve productive agricultural land⁴.

³ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

⁴ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

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 emissions⁵.

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.

5.2 City of Kelowna Agriculture Plan

ALR Application Criteria⁶

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

Not applicable.

7.0 Application Chronology

Date of Application Received: April 30, 2012

Agricultural Advisory Committee: June 14, 2012

The above noted application was reviewed by the Agricultural Advisory Committee and the following recommendation was passed:

THAT the Agricultural Advisory Committee NOT support Agricultural Land Reserve Application No. A12-0005 for 3995 June Springs Road, by Richard and Linda Lamberton, to obtain approval from the Agricultural Land Commission pursuant to Section 20(3) for a "non-farm use" within the ALR to allow for a second dwelling on the subject property.

⁵ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Environment Chapter; pp. 6.1 & 6.2.

⁶ City of Kelowna Agriculture Plan (1998); p. 130.

Anecdotal Comment:

The AAC did not support the Application as the proposal is inconsistent with the objective of the ALC Act to preserve agricultural land.

Extension Requested/Granted to Applicants: July 4, 2012

8.0 Alternate Recommendation

THAT Agricultural Land Reserve appeal A12-0005 for Lot 1, Section 3, Township 26 Osoyoos Division Yale District Plan KAP80425, located at 3995 June Springs 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

Reviewed By:



Todd Cashin, Manager, Environment & Land Use

Approved for Inclusion:



Shelley Gambacort, Director, Land Use Management

Attachments:

Subject property/zoning map & ALR map (2 pages)

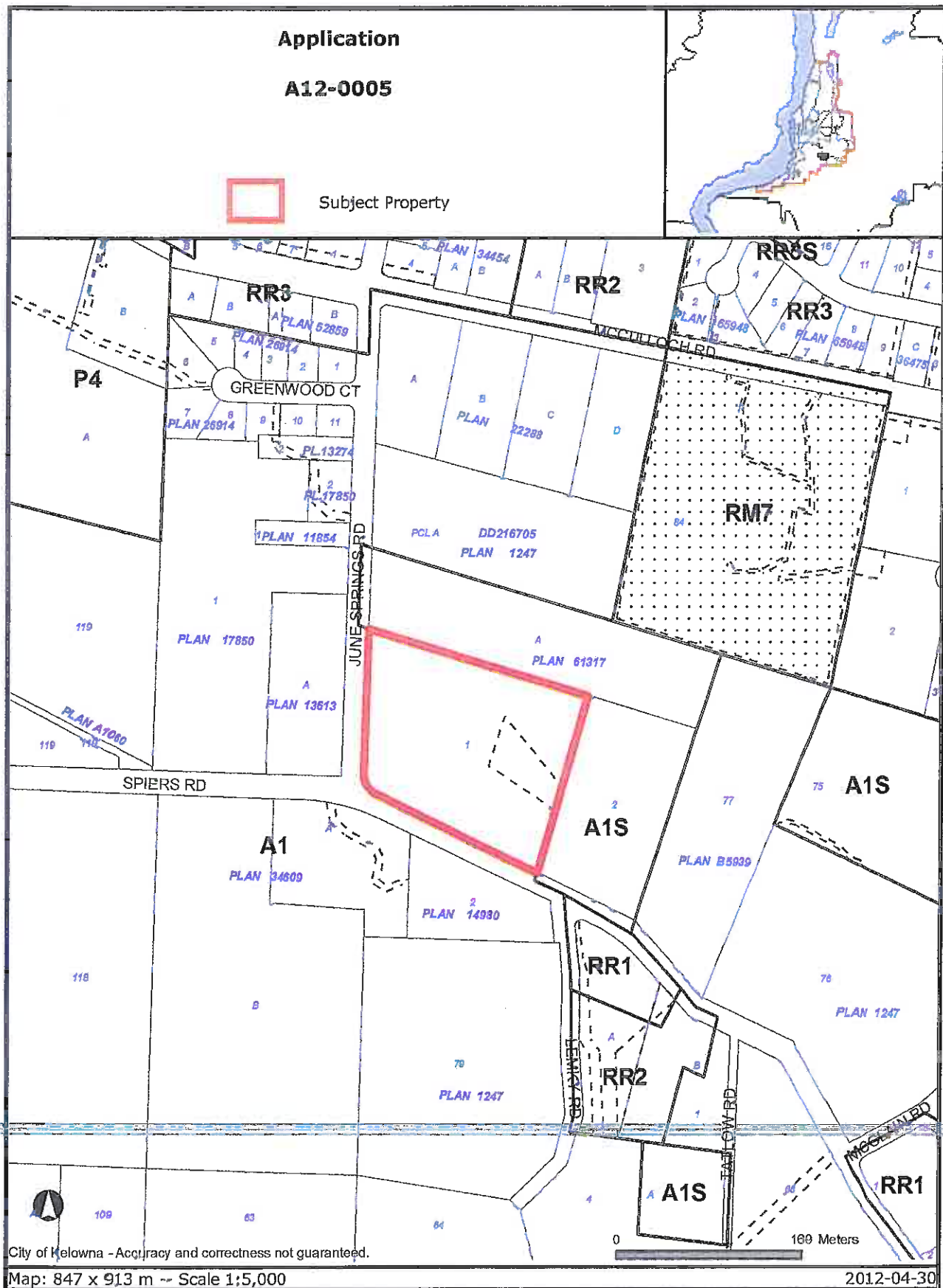
BC Land Inventory - Land Capability and Soil Classification (4 pages)

ALC application by landowner (6 pages)

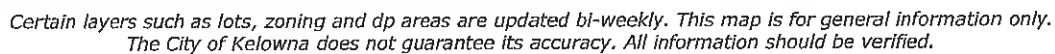
Photos/floor plan (3 pages)

ALC Policy #8 Permitted Uses In The ALR: Residential Use (2 pages)

ALC Resolution#355/2007 (3 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.



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
2.9 ha / 100% 40%	PE - Paradise	<u>Land</u> : nearly level to very steeply sloping fluvioglacial deposits. <u>Texture</u> : 25 to 60cm of sandy loam or loamy sand over gravelly loamy sand or very gravelly sand. <u>Drainage</u> : rapid. <u>Classification</u> : Eluviated Eutric Brunisol.
40%	PR - Parkhill	<u>Land</u> : very gently to strongly sloping fluvioglacial deposits. <u>Texture</u> : 100cm or more of loamy sand or sand. <u>Drainage</u> : rapid. <u>Classification</u> : Eluviated Eutric Brunisol.

Land Capability = Brown/ Soil Class = Green



BCLI Land Capability

Portion of Site	Land Capability Rating, Unimproved	Land Capability Rating, With Improvements
2.9 ha / 100%	<p>100% Class 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.</p> <p>Crops are adversely affected by droughtiness caused low soil water holding capacity or insufficient precipitation.</p>	<p>60% Class 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.</p> <p>20% Class 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.</p> <p>Crops are adversely affected by droughtiness caused low soil water holding capacity or insufficient precipitation.</p>

Supplemental Information Provided by Applicant (August 31, 2012)

Greg here are the changes to be made on our original "Application By Land Owner" under Proposal the paragraph should read:

"We are seeking a non farm use with the intent to rezone to A1S. We have recently constructed a new principal dwelling and want to retain the original house for our daughter and granddaughter (in lieu of a mobile home)."

Here is some additional information for staff consideration:

We own 7 acres on June Springs Road (Lot 1, Plan KAP80425, Sec 3, Township 26, O.D.Y.D.) with 4 acres of Christmas trees, 2 acres of horse pasture and 1 acre of buildings(2 houses and a barn).

We had to sign a demolition agreement for the small original house in order to get a building permit for our new house. To get an Occupancy Permit, we had to sign an Irrevocable Letter of Credit in favour of the City in the amount of \$20,000 to ensure that the small house is demolished.

We would like to save the older house for our daughter and her little girl to live in. In 2007 we applied to the City and the Agricultural Land Commission to allow us to keep the original house for farm help. City Council sent our application on to the ALC, but they turned down our request as they didn't think the size of our tree farm warranted housing. Now that our daughter is a single Mom, we would like to keep the original house for her to live in and be close to us.

If the small house were a mobile home, then the City and the ALC would allow our daughter to live there (after rezoning the property to A1S). We would not have to go to the Agricultural Land Commission at all as they have pre-approved mobile homes on ALR land for immediate family. The house is almost like a mobile home in that it doesn't have a basement, just a crawl space over dirt, and has concrete blocks for the foundation.

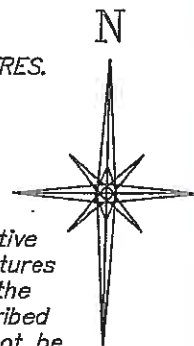
It is an existing building that has been on the property since the 1950's. It doesn't make sense to us to have to demolish a perfectly usable building in order to put a mobile home on the same spot (in fact, a double-wide would be larger than the present structure). The point of having a mobile home is that it is easily removed and the land can be returned to farmland. This little house can be easily removed in the future, just like a mobile home, and the land returned to its original state then.

Alternatively, it could be considered to be a secondary suite in an accessory building on our property. If we can put a mobile home for our daughter on the same footprint as the little house, then the fact that the building is there now won't adversely affect the agricultural capability of the property any more than the mobile home would.

We would be willing to waive our option of putting a mobile home on the property if our application is approved.

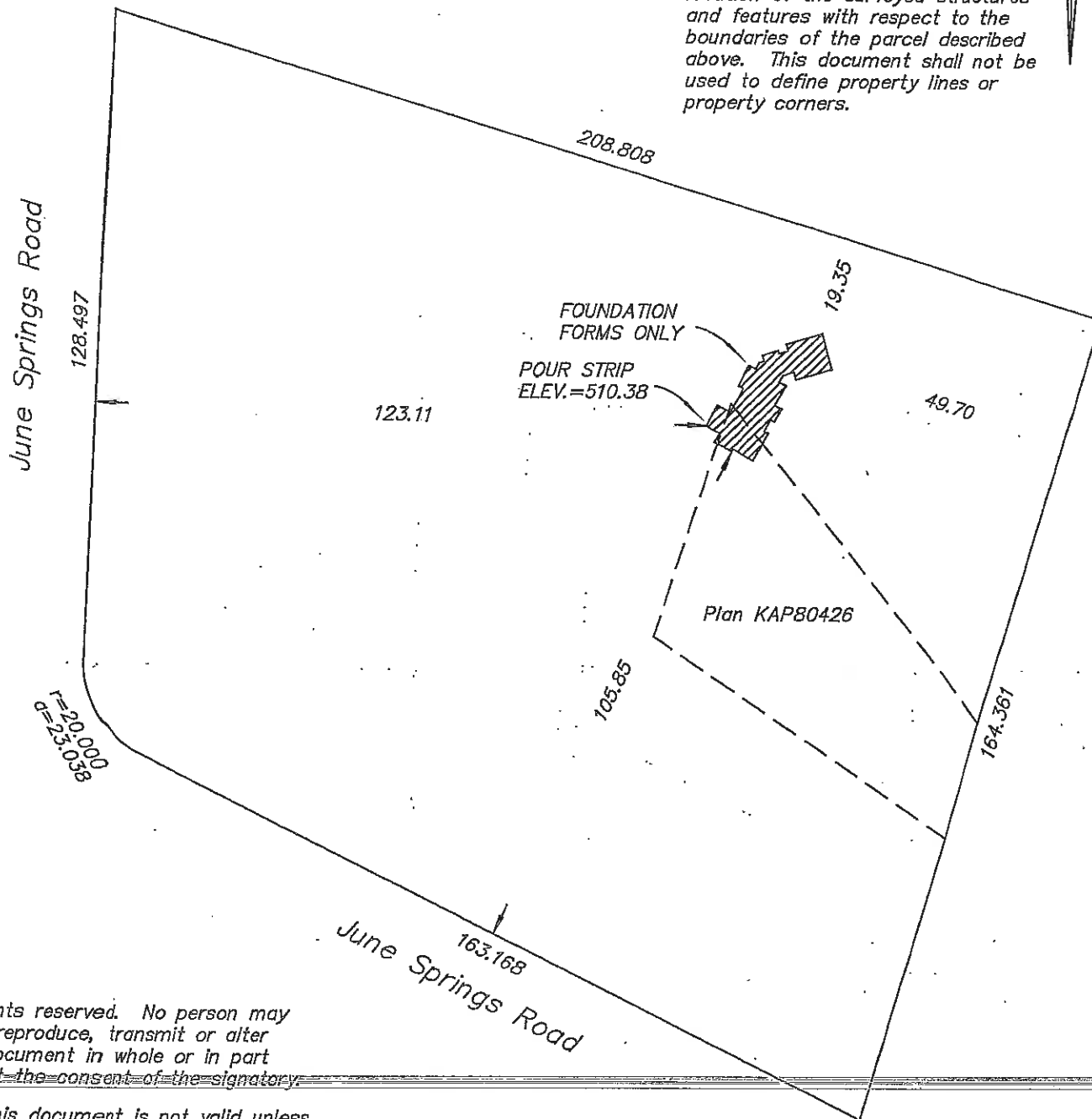
B.C. LAND SURVEYOR'S CERTIFICATE OF LOCATION OF BUILDING ON LOT 1 PLAN KAP80425 SEC. 3 TP. 26 O.D.Y.D.

SCALE 1:1250
DISTANCES ARE IN METRES.



Civic Address:
3995 June Springs Road
Kelowna, BC

This document shows the relative location of the surveyed structures and features with respect to the boundaries of the parcel described above. This document shall not be used to define property lines or property corners.



All rights reserved. No person may copy, reproduce, transmit or alter this document in whole or in part without the consent of the signatory.

© This document is not valid unless originally signed and sealed.

CERTIFIED CORRECT
this 30th day of June, 2011.

D.A. Goddard BCLS

This plan was prepared for municipal purposes and is for the exclusive use of our client.

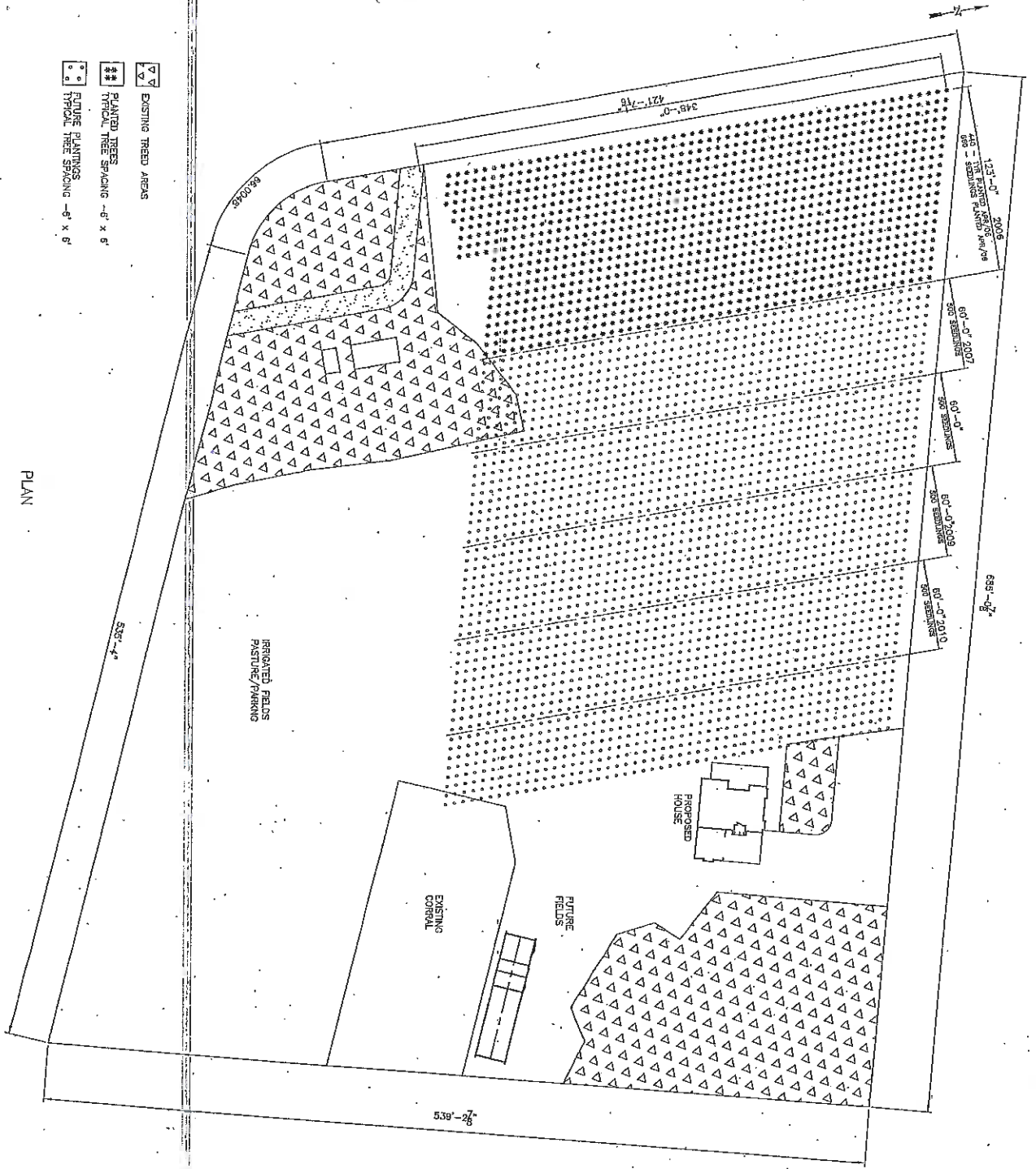
FILE 15638 FB 353
CLIENT - MEADOWRIDGE HOMES


The signatory accepts no responsibility or liability for any damages that may be suffered by a third party as a result of any decisions made, or actions taken based on this document.

D.A. Goddard Land Surveying Inc.
103-1358 St. Paul Street, Kelowna
Phone (250) 763-3733

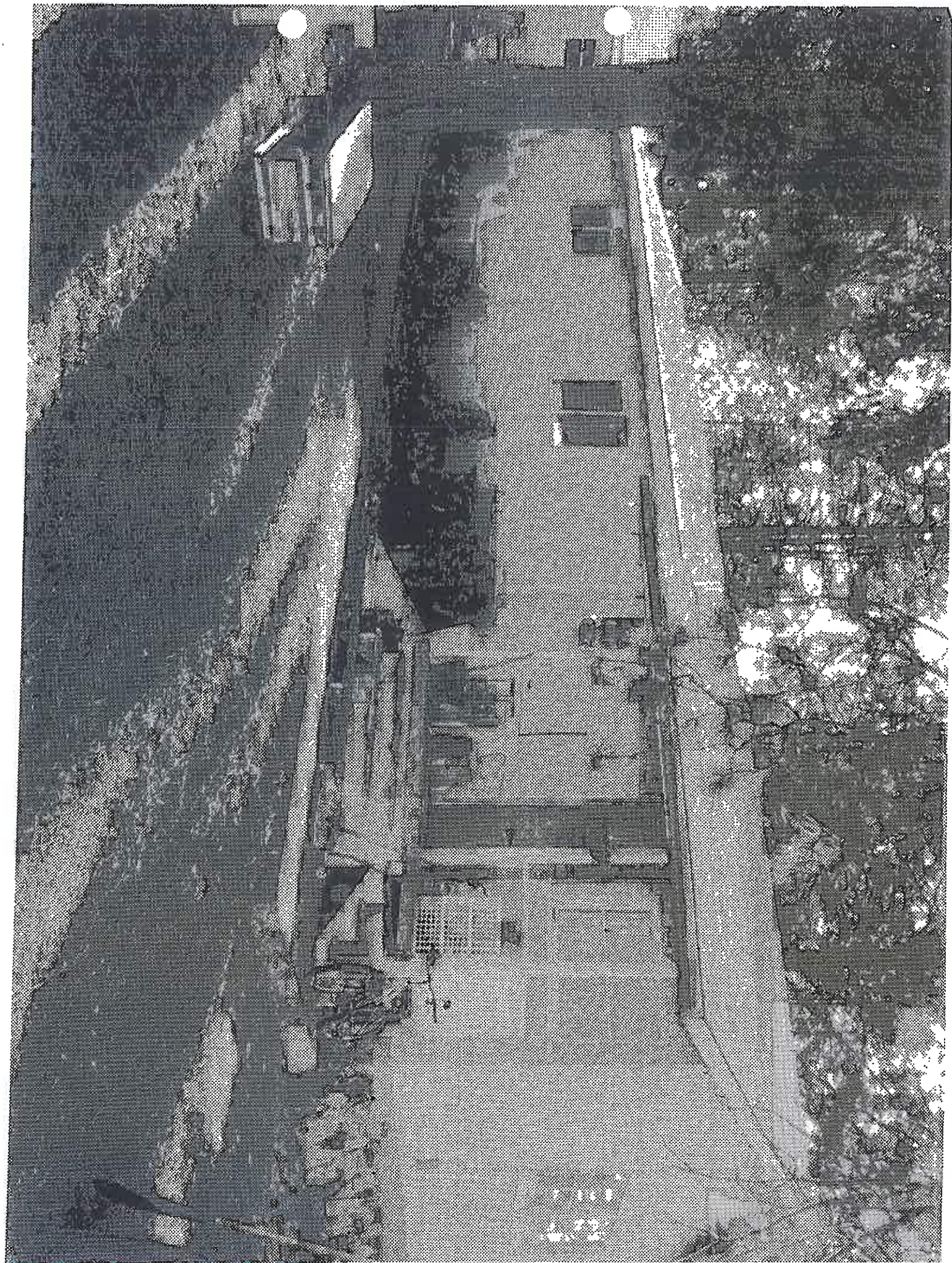
- ▽ EXISTING TREED AREAS
- *** PLANTED TREES
TYPICAL TREE SPACING - 6' x 6'
- FUTURE PLANTINGS
TYPICAL TREE SPACING - 6' x 6'

PLAN

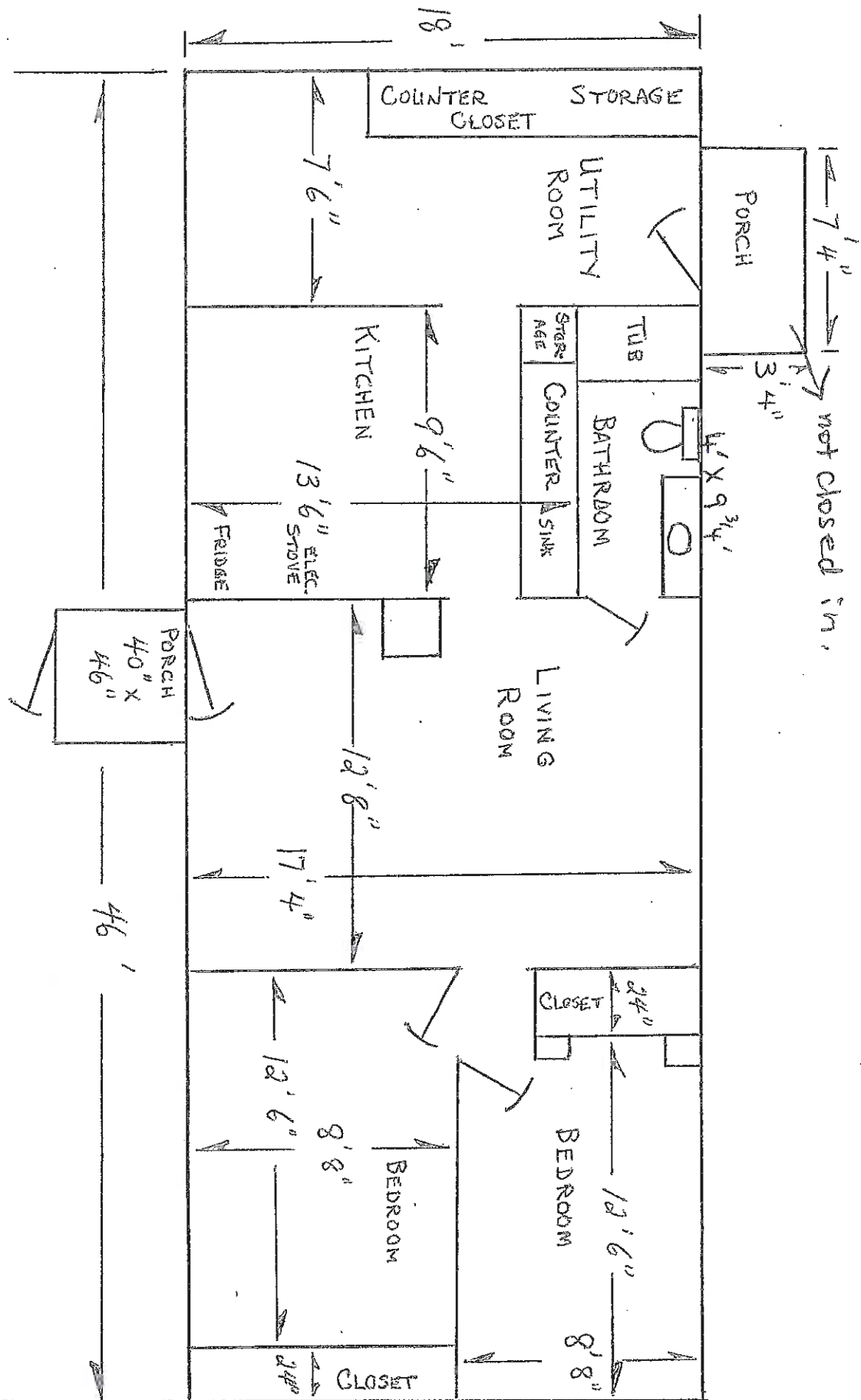


 LAMBERON ENTERPRISES 3895 JUNE SPRINGS RD. TOWN OF JUNE SPRINGS, AR		BY DATE CHECKED JUNE 2008 DESIGNED JUNE 2008
TREE FARM PROPOSAL LAMBERTON FARM PLAN 3895 JUNE SPRINGS RD. TOWN OF JUNE SPRINGS, AR		SCALE SHEET OF TOTAL





3995 JUNE SPRINGS RD.




Copyright © 2003: Agricultural Land Commission,
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.

 Agricultural Land Commission Act	<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.



The applicants bought the property in March 2006 and do not live on it as the existing house is too small for their needs. The Commission pointed out that one house is allowed per parcel and that they could demolish the existing house and build a new one. It was indicated by the applicants that the proposed location for the new house and the site of the existing house are not suitable for agriculture. In addition, as the City of Kelowna has a shortage of low-cost rental housing, the older house could be rented if not required for farm help.

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

Assessment of Agricultural Capability

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The ratings are interpreted using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system, or the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system.

The agricultural capability of the soil of the subject property is Class 3 (requires moderately intensive management practices or moderately restrict the range of crops, or both) with limitations of stoniness and soil moisture deficiency.

Assessment of Agricultural Suitability

The Commission assessed whether factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission does not believe there are factors that render the land unsuitable for agricultural use.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long-term goal of preserving agricultural land. Additional dwellings on agricultural land remove land from potential agricultural production; increase the re-sale value of the property (making it more difficult for farmers to purchase the property to farm); potentially introduce non-farmers into agricultural areas; and increase the desire to subdivide the property.

As such, unless they are necessary for farm help, the Commission has strong concerns with additional dwellings on ALR properties. The Commission did not believe that the operation of a portion of the property as a tree farm required farm help.

Conclusions

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the proposal will impact agriculture.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

IT WAS

MOVED BY: Commissioner Irvine

SECONDED BY: Commissioner Marshall

THAT the application to retain the existing 75 m² single family dwelling as a second home on the 2.9-ha property be refused on the grounds that the farming operation does not require an additional dwelling for farm help.

CARRIED

Resolution # 355/2007