

# City of Kelowna

## Regular Council Meeting

### AGENDA



Monday, September 23, 2013

1:30 pm

Council Chamber

City Hall, 1435 Water Street

Pages

#### 1. Call to Order

This meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

#### 2. Confirmation of Minutes

3 - 7

Regular PM Meeting - September 9, 2013

#### 3. Public in Attendance

##### 3.1 Superintendent Romanchuk, re: Quarterly Policing Report

To present the Quarterly Policing Report.

##### 3.2 Culture Days - Poem by Rawle James

Performance of a new work by local spoken word artist Rawle James, a representative of the local cultural community, in support of Culture Days in Kelowna.

#### 4. Development Application Reports & Related Bylaws

##### 4.1 Rezoning Application No. Z12-0062 - 2190 Cooper Road, Brian & Linda Pahl

8 - 35

**Mayor to invite the Applicants, or Applicants' Representative, to come forward.**

To consider a staff recommendation NOT to rezone the subject property from the A1 - Agriculture 1 zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone in order to allow for agri-tourist accommodation which would facilitate the development and operation of ten (10) recreational vehicle sites on the subject property.

- 4.2 Report - A13-0003 ALR Exclusion 2025 Springfield Road, 2120 Cooper Road (McIntosh Properties) 36 - 224
- The applicant is requesting permission from the Agricultural Land Commission (ALC) to exclude two properties with a combined area of approximately 9.85 ha (24.35 ac) from the Agricultural Land Reserve (ALR). The exclusion is requested to facilitate the creation of a mixed use development. In exchange for the exclusion, the applicant is proposing the inclusion into the ALR of 21.4 ha (53 ac) of arable land located in the Regional District of North Okanagan (RDNO) of which 16.8 ha (41.6 ac) is planted and proposing financial support which would go toward the improvements to the agricultural capability of six farm sites within the Okanagan and topsoil relocation to be used for future land remediation.
- 4.3 Extension Report OCP10-0008 Z10-0040 - 2149, 2159, 2169, 2179, 2189 Pandosy St (Marrington, Balla) 225 - 229
- To consider a final extension to facilitate the rezoning of the subject property from the RU6-Two Dwelling Housing zone to the HD2-Health District 2 zone in order to permit the construction of the proposed mixed-use development.
5. Bylaws for Adoption (Development Related)
- 5.1 Bylaw No.10881 Z13-0026 - 330 Taylor Road (Comfort Crafted Homes Inc) 230 - 230
- To consider adoption of Bylaw No.10881 - Z13-0026, 330 Taylor Road, in order to rezone from the RU1-Large Lot Housing zone to the RU6-Two Dwelling Housing zone.
6. Non-Development Reports & Related Bylaws
- 6.1 Report to Council Sept 23 - Lease to Okanagan Symphony 231 - 267
- To obtain Council endorsement of a five (5) year lease to Okanagan Symphony Orchestra Society for the use of the house at 865 Bernard Avenue.
7. Bylaws for Adoption (Non-Development Related)
- 7.1 Bylaw No.10863 - Amendment No. 2 to Development Applications Procedures Bylaw No. 10540 268 - 268
- To consider adoption of Bylaw No. 10863 that amends Development Application Procedures Bylaw No.10540.
8. Mayor and Councillor Items
9. Termination



## City of Kelowna Regular Council Meeting Minutes

Date: Monday, September 9, 2013  
Location: Council Chamber  
City Hall, 1435 Water Street

Council Members Present: Mayor Walter Gray and Councillors Colin Basran, Maxine DeHart, Gail Given, Mohini Singh, Luke Stack and Gerry Zimmermann

Council Members Absent: Councillors Andre Blankeil and Robert Hobson

Staff Present: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Planner II, James Moore\*; Planner II, Lauren Sanbrooks\*; Manager, Long Range Planning, Gary Stephen\*; and Council Recording Secretary, Sandi Horning

(\* denotes partial attendance)

### 1. Call to Order

Mayor Gray called the meeting to order at 1:41 p.m.

Mayor Gray advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

### 2. Confirmation of Minutes

Moved By Councillor Singh/Seconded By Councillor DeHart

**R591/13/09/09** THAT the Minutes of the Regular PM Meeting of August 26, 2013 be adopted as circulated.

Carried

### 3. Development Application Reports & Related Bylaws

#### 3.1. Development Permit Application No. DP13-0052 - 2280 Baron Road, Victor Projects Ltd.

**Staff:**

- Provided an overview of the Development Permit Application.
- Displayed a site plan of the development.

**Moved By Councillor Stack/Seconded By Councillor Given**

**R592/13/09/09** THAT Council authorizes the issuance of Development Permit No. DP13-0052 for Lot 6, D.L. 126, ODYD, Plan KAP59534, located at 2280 Baron Road, Kelowna B.C., subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
3. Landscaping to be provided on the land be in general accordance with Schedule "C";
4. The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND THAT the applicant be required to complete the above-noted condition No. 4 within 180 days of Council approval of the Development Permit application in order for the permit to be issued.

**Carried**

#### 3.2. Rezoning Application No. Z10-0100 - 445 Pearson Road, Balwinder & Harbax Khunkhun

**Staff:**

- Responded to questions from Council.

**Moved By Councillor Basran/Seconded By Councillor Zimmermann**

**R593/13/09/09** THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Amending Bylaw No. 10522, Lot 67, Section 26, Township 26, O.D.Y.D., Plan 22239, located on 445 Pearson Road, Kelowna, BC be extended from May 17, 2013 to May 17, 2014.

**Carried**



**3.3. Rezoning Application No. Z11-0025 - 2857 East Kelowna Road, Christopher Fehr & Ian McClellan**

**Staff:**

- Responded to questions from Council.

**City Clerk:**

- Responded to questions from Council regarding bylaw infractions with respect to the carriage house.

**Moved By Councillor Singh/Seconded By Councillor Given**

**R594/13/09/09** THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Amending Bylaw No. 10555 Parcel A (DD145723F & Plan B6784) of Lot 25, Section 16, Township 26, ODYD Plan 187, located at 2857 East Kelowna Road, Kelowna, BC be extended from January 12, 2013 to January 12, 2014.

**Carried**

**4. Non-Development Reports & Related Bylaws**

**4.1. Rescind all ownership Housing Agreements (Phase 1)**

**Moved By Councillor Zimmermann/Seconded By Councillor Basran**

**R595/13/09/09** THAT Council, receives for information, the report from the Policy and Planning Department, dated August 16, 2013 with respect to rescinding all existing ownership Housing Agreements Authorization Bylaws;

AND THAT Council directs staff to proceed with the next steps to rescind all existing ownership Housing Agreements Authorization Bylaws.

**Carried**

**4.2. Development Application Notification Process**

**City Clerk:**

- Provided an overview of the proposed changes to the Development Application Notification Process.
- Provided an overview of the Council Policy changes.
- Responded to questions from Council.

**Moved By Councillor Singh/Seconded By Councillor DeHart**

**R596/13/09/09** THAT Council receives, for information, the Report from the City Clerk, dated September 09, 2013 regarding changes to the development application notification process for information;

AND THAT Council gives reading consideration to Bylaw No. 10863 being Amendment No.2 to Development Applications Procedures Bylaw No.10540;

AND THAT Council amends Council Policy No. 359, 'Liquor Licensing Policy & Procedures' as attached to the report of the City Clerk, dated September 09, 2013;

AND THAT Council rescinds Council Policies Nos. 309 and 272, being 'Submissions to Council' and 'Handling of Petitions Received from the Public';

AND FURTHER THAT Council endorses a new Council Policy No.369, Circulation of Correspondence to Council, as attached to the Report of the City Clerk, dated September 09, 2013.

Carried

**4.2.1. Bylaw No. 10863 - Amendment No. 2 to Development Applications Procedures Bylaw No. 10540**

Moved By Councillor Zimmermann/Seconded By Councillor Stack

R597/13/09/09 THAT Bylaw No. 10863 be read a first, second and third time.

Carried

**5. Bylaws for Adoption (Non-Development Related)**

**5.1. Bylaw No. 10884 - Amendment No. 27 to Airport Fees Bylaw No. 7982**

Moved By Councillor Singh/Seconded By Councillor Basran

R598/13/09/09 THAT Bylaw No. 10884 be adopted.

Carried

**6. Mayor and Councillor Items**

**6.1. Councillor Basran, re: Notice of Motion - Parking Restrictions in the Downtown Core**

Councillor Basran:

- Advised that upon further consideration, he would like to defer consideration of the Draft Resolution pending further information from staff.

Moved By Councillor Basran/Seconded By Councillor DeHart

R599/13/09/09 THAT Council defers consideration of the Draft Resolution with respect to removing the parking restrictions between 3:00 am - 6:00 am in the downtown core;

AND THAT staff report back to Council with the following information for consideration:

- a) The cost implications if the parking restrictions are removed;
- b) Input from the Downtown Kelowna Association; and
- c) The use of the City's existing parking infrastructure for overnight parking.

Carried

**6.2. Mayor and Councillor Items**

Councillor Given:

- Thanked those who put on and attended the 'Volunteer Fair' at the Parkinson Recreation Center this past Saturday.

Councillor Stack:

- Commented on the Canadian Blood Service event and the challenge between the City of Kelowna and the City of Prince George.

Councillor Zimmermann:

- Commented on the recent visit by the new Provincial Minister of Agriculture.

Councillor DeHart:

- Commented on her attendance on behalf of the Mayor at the Ovarian Cancer Awareness Walk and Recovery Day event.

Councillor Basran:

- Commented on the recent 'Taste of Kelowna' event organized by the Downtown Kelowna Association.
- Reminded the public that the Terry Fox Run is this Sunday.

Councillor Singh:

- Commented on the 'Celebration of Life' for Kim Calloway this past Friday.

Mayor Gray:

- Noted that the Federation of Canadian Municipalities (FCM) is partnering with Elections Canada on Canada's Democracy Week, an annual event to increase civic engagement among youth. Canada's Democracy Week is September 16-23, 2013 and this year's theme is "Connect with Democracy". FCM is sponsoring the main prize of Canada's Democracy Week's 'National Democracy Challenge', a contest for youth to demonstrate their commitment to democratic engagement. The contest runs from September 16 to November 16, 2013. FCM is offering the winner a trip for 2 to FCM's 2014 Annual Conference and Trade Show in Niagara Falls.

## 7. Termination

This meeting was declared terminated at 2:23 p.m.

Mayor

/slh

  
City Clerk

# REPORT TO COUNCIL



**Date:** September 11, 2013

**RIM No.** 1250-30

**To:** City Manager

**From:** Land Use Management, Community Sustainability (GS)

**Application:** Z12-0062

**Owner:** Brian Pahl  
Linda Pahl

**Address:** 2190 Cooper Road

**Applicant:** Brian Pahl  
Linda Pahl

**Subject:** Rezoning Application - Agri-tourist Accommodation

**Existing OCP Designation:** Resource Protection Area (REP)

**Existing Zone:** A1 - Agriculture

**Proposed Zone:** A1t - Agriculture 1 with Agri-tourist Accommodation

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## 1.0 Recommendation

THAT Rezoning Application No. Z12-0062 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, District Lot 128, ODYD Plan KAP80629 located at 2190 Cooper Road, Kelowna, BC from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone NOT be considered by Council.

## 2.0 Purpose

To consider a staff recommendation NOT to rezone the subject property from the A1 - Agriculture 1 zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone in order to allow for agri-tourist accommodation which would facilitate the development and operation of ten (10) recreational vehicle sites on the subject property.

## 3.0 Land Use Management

Agri-tourist accommodation is a "permitted use" in the Agricultural Land Reserve (ALR). While the Agricultural Land Commission (ALC) permits the use, the activity is not designated as a "farm use" and may be regulated or prohibited by a local government bylaw.

Introduced in 2010, the City's A1t zoning requirement resulted from past experiences with this land use. The objectives were to ensure that the intended goals are better achieved; and the use does not create undue hardship on adjacent and nearby properties, owners and residents. This rezoning application represents just the second rezoning to be considered under the new regulations and no properties have been rezoned to date.

The applicants are proposing to develop ten (10) recreational vehicle (RV) sites on the subject property. Ten is the maximum number of units available to the subject property (1 unit / ha over 4 ha), and is the maximum for any parcel regardless of size (as per ALC regulations).

The subject property is well situated in many respects and is serviced by a number of urban services including a straight, paved road and the ability to connect to community water and sewer. The location is also central to many City amenities.

From an agricultural perspective, the subject property reflects excellent agricultural potential. As a larger property (>10 ha), the parcel contains all of the necessary attributes of a productive agricultural parcel capable of generating relatively high farm income.

While staff are supportive of agritourism and agri-tourist accommodation in general terms, staff support is reserved for instances where these activities can reasonably be expected to augment and enhance the principal use of agriculture. Staff are reasonably concerned with the lack of agricultural production and with the owners admitted lack of experience with farming. Both ALC and City Policy and Regulations are clear that agri-tourist accommodation is intended to support legitimate agricultural operations as an accessory use. Existing examples of agri-tourist accommodation developed prior to the requirement to rezone to the A1t zone demonstrate the inherent dangers where agriculture has become accessory to the accommodation, if existent at all.

While supporting the proposed rezoning (3 votes to 1) AAC members noted concerns with the proposal and the potential for negative impacts to agriculture. The AAC noted the location is among an agriculturally productive area with orchards located directly adjacent to the site of the proposed RV units. AAC concerns were primarily with respect to farmers' ability to carry out operations relatively unimpeded. Farm operators often apply chemicals to control pests and weeds which can result in spray drift ending up on adjacent properties. To reduce drift, farmers often spray in the early or late hours of the day when wind speeds are typically at their lowest. AAC members have commented on the difficulty of buffering impacts in general.

Staff share the AAC's concerns with respect to the impact on adjacent landowners operations and have concerns that even an extensive vegetative buffer (e.g. +20 metres including a berm, trees and shrubs) will provide sufficient mitigation. The applicants are proposing a 10 metre wide buffer with turf and a "privacy hedge along property line".

## **Conclusions**

Staff suggest that the proposed rezoning is premature at this time. Council is being asked to place a great deal of faith that the proponents are capable of operating a working farm that is worthy of agri-tourist accommodation without a proven track record. The owners are encouraged to farm the land much closer to its potential and to demonstrate an ability to operate a working farm for a minimum of two full growing seasons.

Should Council support the proposed rezoning, staff recommend that Council require a minimum 20 metre wide buffer consistent with Schedule "A" to help limit the negative impacts. Staff also recommend that a Farm Plan prepared by a qualified professional outlining planting options and rotation schedule based on soil types and agricultural limitations for the balance of the land not presently productive be provided as part of the Development Permit.

In sum, the subject property is comprised of exceptional agricultural capability and has all of the necessary elements to be a productive farm. Agriculture is the intended principal use in the A1 zone and in the ALR, though provisions have been made to help augment farm income with non-farm uses such as agri-tourist accommodation. While supportive of the use, staff support is limited to those instances where a farm has been proven to be productive (including a large

investment into farming), the agri-tourist accommodation will result in limited impact on agriculture potential and will remain accessory to farming.

## 4.0 Proposal

### 4.1 Background/Project Description

The area proposed to be developed for agri-tourist accommodation is currently unplanted (see Figures 1 & 2 below). Based on airphoto interpretation, it is believed that less than 3.0 ha of the approximately 10.7 ha subject property are currently in production (orchard) and the remainder cultivated and free of agricultural production in 2011 and 2012.

The owners note the following plans for the subject property (see attached rationale):

*“With the existing home on the property being of an age & condition no longer economical to use, we are planning a new home in the location shown on the attached plans. A new shop for farm machinery maintenance & repair is necessary as well. With the location of the proposed new home & shop, the 10 RV sites is best suited between the new buildings and Byrns Road. No damage to fields or orchard trees by RV vehicles. Topsoil will be removed from the location of the road & RV sites & utilized in other areas of the farm”.*

And further:

*“All sites will be landscaped with grass & trees, and the road & sites area will be graveled. A restroom facility will also be provided”.*

### 4.2 Site Context

The subject property is located along Cooper, Benvoulin and Byrns Roads in the South Pandosy/KLO Sector of the City. The property is adjacent to urban land uses including single family and multi-family residential development, and is also adjacent to productive agricultural land (orchard). The subject property has a land use designation of Resource Protection Area in the City’s Official Community Plan and is zoned for Agriculture (A1). The property is also within the ALR and outside of the City’s Permanent Growth Boundary.

The subject property is within the City’s service area with respect to water and sanitary sewer. As such, if successful, the proposed agri-tourist accommodation would be connected to both City water and sanitary sewer. The Benvoulin Water Users irrigation ditch flowing from Mission Creek is located along the northern property boundary and provides irrigation water to the subject property.

Directly north are two agricultural properties (i.e. 2120 Cooper & 2025 Springfield Road) which have an active ALR Exclusion file under consideration.

An existing mobile home is located on the adjacent farm parcel (2050-2060 Byrns Rd) in close proximity to the shared property line and in close proximity to the proposed development.

The subject property is within a Farm Protection Development Permit and the proposed development of agri-tourist accommodation will require a Development Permit.

### 4.3 Parcel Summary

Parcel Size: 10.69 ha (26.4 ac)  
Elevation: 359 - 365 masl

No soils or agricultural capability reporting was required for the purposes of this rezoning. However, the Canada Land Inventory (CLI) shows that the subject property has the potential for

land capability to increase through improvements such as dewatering and grading which would render the site 80% Class 2 and 20% Class 3 (i.e. prime). Soils of this quality are rare in the Okanagan context.

The surrounding properties are zoned as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Agricultural
South	A1 - Agriculture 1	No	Rural Residential
East	RM3 - Low Density Multiple Housing	No	Multi-family Residential
	RM5 - Medium Density Multiple Housing	No	Multi-family Residential
	A1 - Agriculture 1	No	Rural Residential
	A1- Agriculture 1	Yes	Agricultural
West	A1 - Agriculture 1	Yes	Agricultural

Figure 1: Proposed RV Site (in the foreground) Looking East Along Byrns Road (October 1, 2012)





**Figure 2: Proposed RV Site (foreground) Looking North from Byrns Road (October 1, 2012)**



**Figure 3: Western Property Line with Mobile Home on Adjacent Property (Google Street View - Date Unknown)**

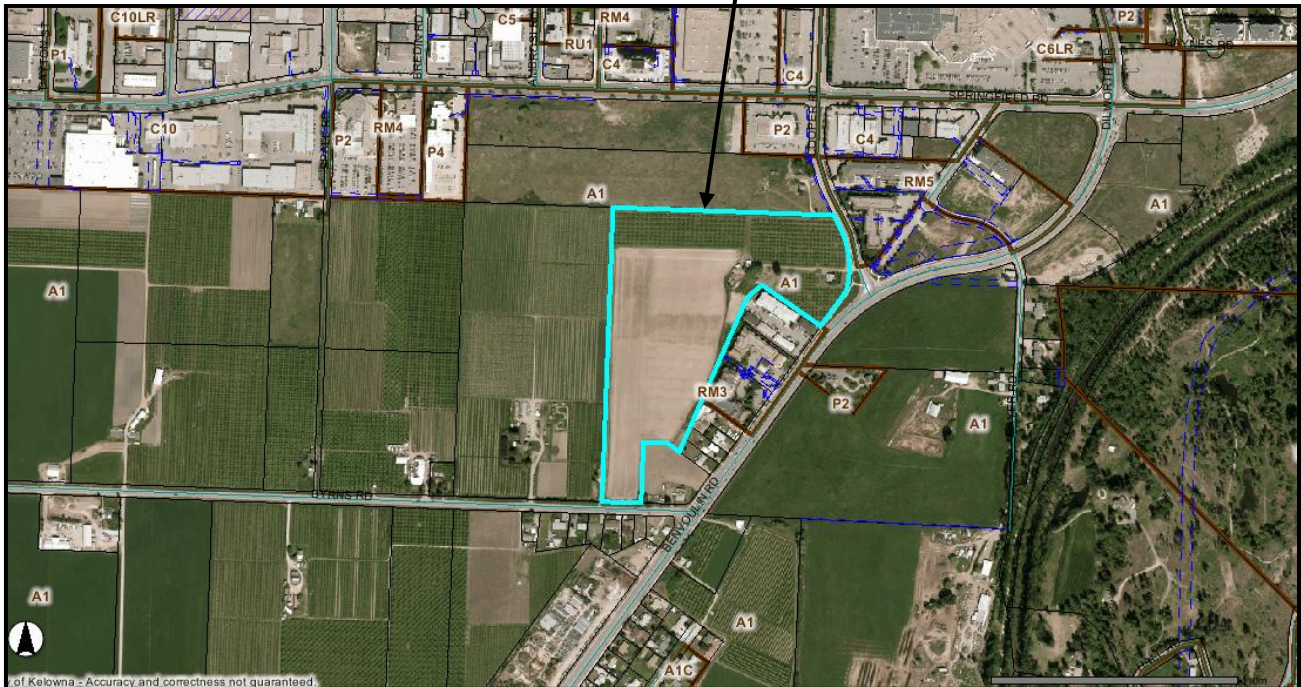




Figure 3: Subject Property and Existing Dwelling and Orchard Looking West from Cooper Road (Google Street View - Date Unknown)

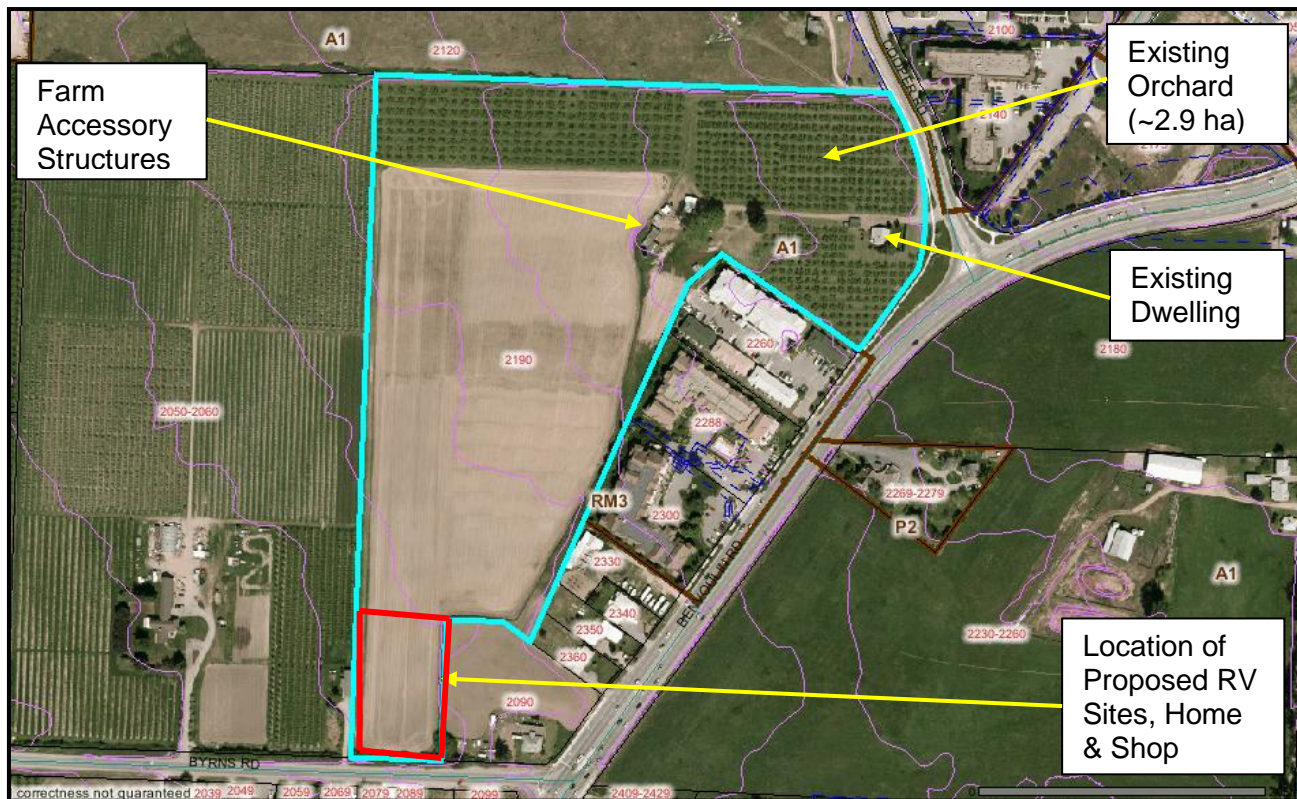


#### 4.4 Context Map : 2190 Cooper Road





#### 4.5 Subject Property Map : 2190 Cooper Road



#### 4.6 Development Criteria

CRITERIA	PROPOSAL	ZONE REQUIREMENTS
Minimum Lot Area	10.69 ha = 10 units	4 min, 10 max
Maximum setback from road	meets	30.0 m
Minimum distance from lot line	TBD	10.0 m
Maximum Site Coverage	<5%	5%

### 5.0 Current Development Regulations & Policies

#### 5.1 Zoning Bylaw 8000

##### Section 2.3 - General Definitions<sup>1</sup>

Agritourist Accommodation means the seasonal availability of short term accommodation for tourists on a farm, orchard, or vineyard in association with an agri-tourism activity which is subordinate and secondary to the principal agricultural use. Typical uses include but are not limited to seasonal farm cabins, and campsites/recreational vehicle sites. Seasonal, in this instance, means the accommodation must be available for use only between April 1 and October 31 of each year.

<sup>1</sup> City of Kelowna Zoning Bylaw 8000 - Section 2; p. 2-2.

## Section 11.1 - Agriculture <sup>12</sup>

- a) Purpose - Agri-tourist accommodation shall be accessory and subordinate to a legitimate agriculture operation. The intent is to augment or subsidize and not to replace or complete with farm income.
- c) Site coverage for agri-tourist accommodation shall not exceed 5% inclusive of buildings, landscaping, access, and servicing/sanitary facilities.

### 5.2 2030 Official Community Plan: Greening Our Future

Objective 5.33 Protect and enhance local agriculture<sup>3</sup>.

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 .6 Agri-tourist Accommodation. Agri-tourist accommodation will only be approved and operated in a manner that supports agricultural production and which limits the impact on agricultural land, City services and the surrounding community.

Objective 5.34 Preserve productive agricultural land<sup>4</sup>.

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.

### Farm Protection DP Guidelines<sup>5</sup>

#### Objectives

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

#### Guidelines

1.2 On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only;

1.3 On agricultural and non-agricultural lands, establish and maintain a landscape buffer along the agricultural and/or property boundary, except where development is for a permitted farm use that will not encourage public attendance and does not concern additional residences (including secondary suites), in accordance with the following criteria:

- 1.3.1 Consistent with guidelines provided by Ministry of Agriculture "Guide to Edge Planning" and the ALC report "Landscape Buffer Specifications" or its replacement;
- 1.3.2 Incorporate landscaping that reinforces the character of agricultural lands. A majority of plant material selected should include low maintenance, indigenous vegetation;
- 1.3.3 Preserve all healthy existing mature trees located within the buffer area;

<sup>2</sup> City of Kelowna Zoning Bylaw 8000 - Section 11; p. A1-1 to A1-4.

<sup>3</sup> City of Kelowna 2030 Official Community Plan (2011) - Development Process Chapter; p. 5.35.

<sup>4</sup> City of Kelowna 2030 Official Community Plan (2011) - Development Process Chapter; p. 5.36.

<sup>5</sup> City of Kelowna 2030 Official Community Plan (2011) - Farm Protection Development Permit Chapter; p. 15.2 - 15.4.

1.3.4 Integrate double rows of trees, including coniferous trees, and dense vegetation into the buffer;

1.3.5 Install and maintain a continuous fence along the edge of agricultural land. A permeable fence which allows for the movement of wildlife (i.e. split rail) in combination with dense and continuous evergreen hedge is preferred. Impermeable fencing will not be permitted.

### 5.3 City of Kelowna Agriculture Plan

Agri-tourist Accommodation<sup>6</sup>. Pursue an amendment to the Zoning Bylaw to include agri-tourist accommodation uses in conjunction with bona fide agricultural operation, consistent with conditions under the Land Commission Policy #375/97.

### 5.4 Agricultural Land Commission Agricultural Land Reserve Use, Subdivision and Procedure Regulation<sup>7</sup>

#### Part 1 - Definitions and Interpretation

1(1) "agri-tourism" means a tourist activity, service or facility accessory to land that is classified as a farm under the Assessment Act.

#### Part 2 -Permitted uses for land in an agricultural land reserve

3(1) The following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable first nation government:

- (a) accommodation for agri-tourism on a farm if
  - (i) all or part of the parcel on which the accommodation is located is classified as a farm under the Assessment Act,
  - (ii) the accommodation is limited to 10 sleeping units in total of seasonal campsites, seasonal cabins or short term use of bedrooms including bed and breakfast bedrooms under paragraph (d), and
  - (iii) the total developed area for buildings, landscaping and access for the accommodation is less than 5% of the parcel@

## 6.0 Technical Comments

### 6.1 Building & Permitting Department

- a. Drawings for sewer and water including details of the actual connections for the RV's will be required at Building Permit stage.
- b. A water meter and possibly an upgrade to the water service are necessary.

### 6.2 Development Engineering Department

See attached.

### 6.3 Fire Department

A six metre road width should be maintained at all times for emergency vehicle access.

### 6.4 Public Health Inspector

No concerns with drinking water or wastewater disposal based on the referenced property having connection to the City of Kelowna municipal drinking water supply and sewer systems.

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<sup>6</sup> City of Kelowna Agriculture Plan; p. 85.

## 7.0 Application Chronology

Date of Application Received: September 19, 2012

Agricultural Advisory Committee: October 11, 2012

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on October 11, 2012 (See Minutes, attached) and the following recommendation was passed (Vote: 3 - 1):

THAT the Agricultural Advisory Committee support Rezoning Application No. Z12-0062, for 2190 Cooper Road, by Brian and Linda Pahl, to rezone the subject property from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation in order to facilitate the development and operation of ten (10) recreational vehicle sites which may be operated on a seasonal basis subordinate to the agricultural operation.

### **Anecdotal Comment**

The AAC raised concern with the potential urban/rural conflict. Specifically the drifting of pesticides and herbicides both onsite and on adjacent parcels into the RV area normal hours of operation for farmers (early in the morning and late at night) were of greatest concern. The AAC strongly recommends sufficient buffering with tall trees, shrubs and fencing to minimize the interface concerns. The AAC also recommends that landscape buffering be required prior to the applicant/owner being granted an Occupancy Permit or Business License.

Date Application Placed On Hold: October 23, 2012

Direction to Proceed: April 15, 2013

Initial Consideration Scheduled: May 27, 2013

Date Application Placed On Hold: May 27, 2013

Direction to Proceed: September 11, 2013

## 8.0 Alternate Recommendation

THAT Rezoning Application No. Z12-0062 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, District Lot 128, ODYD Plan KAP80629 located at 2190 Cooper Road, Kelowna, BC from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of the Development Engineering Branch being met;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the issuance of a Farm Protection Development Permit which includes a Farm Plan prepared by a Qualified Professional (Professional Agrologist) outlining planting options and rotation schedule based on soil types and agricultural limitations for the balance of the land not presently productive;

AND THAT the Farm Protection Development Permit require that the site be developed to include a minimum 20.0 metre wide Noise, Airborne Particle & Visual Screen (buffer) consistent with attached "Schedule A";

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<sup>7</sup> Agricultural Land Reserve Use, Subdivision and Procedure Regulation; Retrieved from:  
[http://www.alc.gov.bc.ca/legislation/Reg/ALR\\_Use-Subd-Proc\\_Reg.htm#sec3](http://www.alc.gov.bc.ca/legislation/Reg/ALR_Use-Subd-Proc_Reg.htm#sec3)

AND FURTHER THAT Council direct staff to not issue a Business License to operate an RV Park until one full growing season has passed and where the Qualified Professional has monitored the production and harvesting and advises that the results are satisfactory.

**Report prepared by:**

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Greg Sauer, Environment & Land Use Planner

**Reviewed by:**



Todd Cashin, Manager, Environment & Land Use

**Approved for Inclusion**



Shelley Gambacort, Director, Subdivision, Agriculture & Environment

**Attachments:**

Schedule "A": Buffer Types - A.4: Noise, Airborne Particle & Visual Screen (1 page)

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

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

AAC Minutes (3 pages)

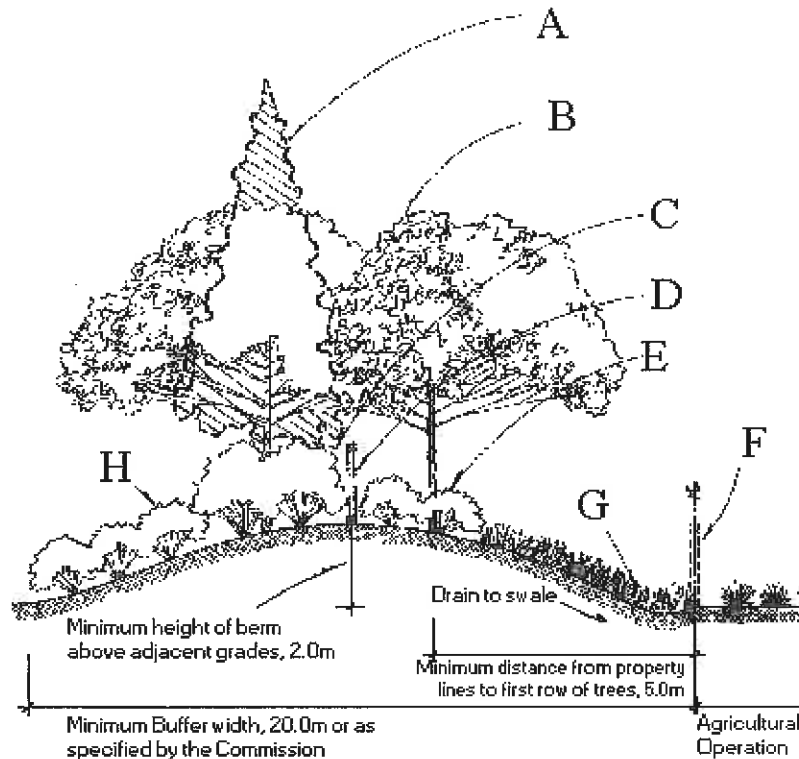
Development Engineering Comments (1 page)

Landowner's proposal (4 pages)

## Schedule "A" - Noise, Airborne Particle & Visual Screen

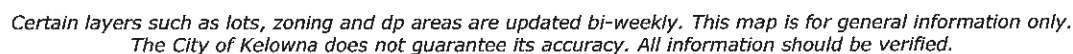
- a. Yearly screen
- b. Summer screen

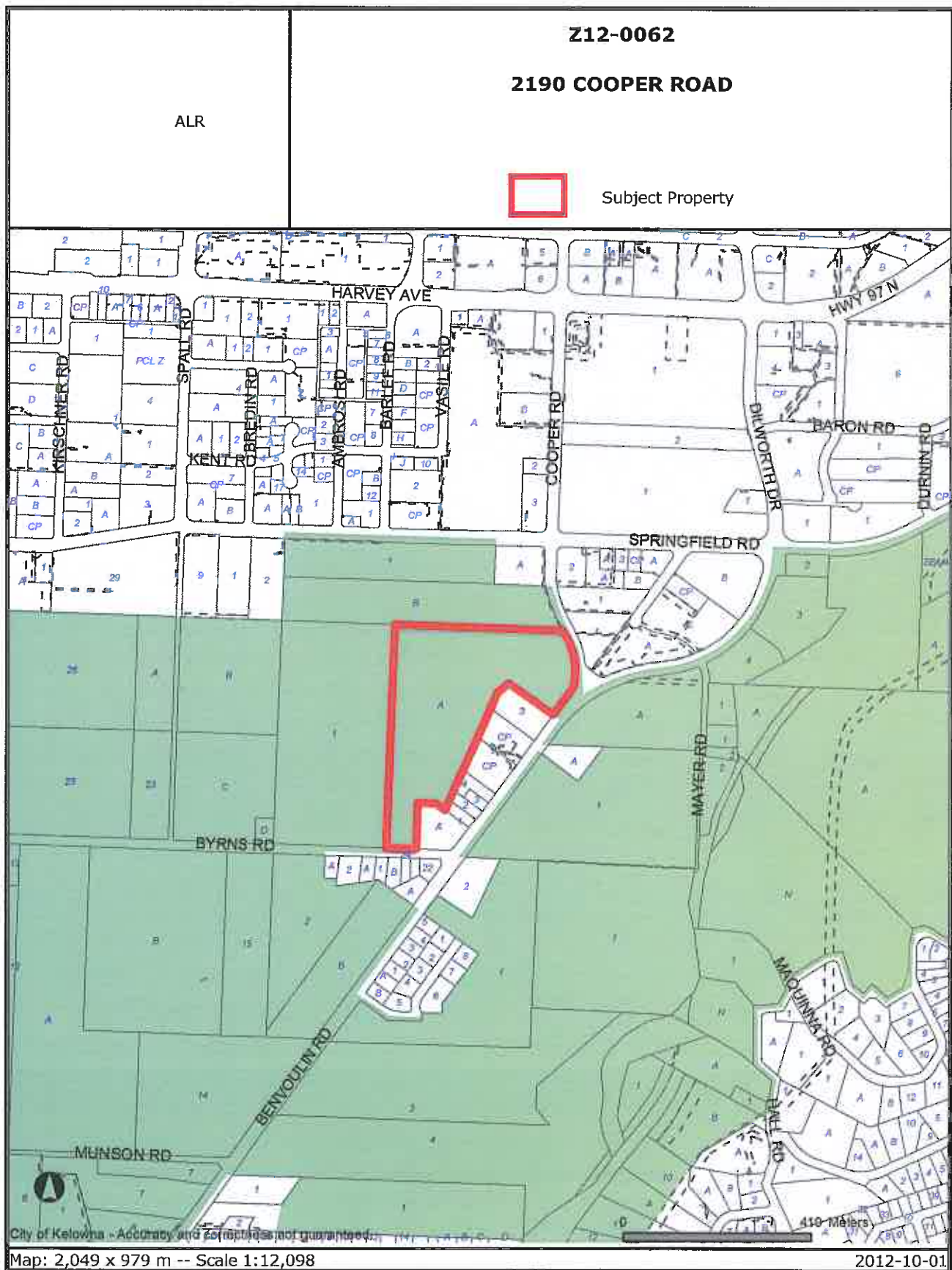
To buffer agricultural land from trespass and vandalism, visually screen incompatible uses, reduce the exchange of particulate matter between adjacent land uses and reduce the transmission of noise. (Note: Coniferous trees should be used in the buffer in situations where visual and particulate screening is required on a year round basis. Solution A.4a)



- A Yearly Screen - Minimum double row deciduous/coniferous trees. (continuous as shown)  
See Schedules B.2, C.1 & C.3  
Underplant and Fence as shown.
- B Summer Screen - Minimum double row deciduous trees. (continuous)  
See Schedules B.1, C.1  
Underplant and Fence as shown.
- C Minimum double row screening shrubs. (continuous)  
See Schedules B.6, C.6a & C.6b
- D Solid wood fence as per Schedule D.\_\_\_\_ of Fencing Specifications.
- E Minimum double row trespass inhibiting shrubs. (continuous)  
See Schedules B.5 & C.5
- F Optional/additional fence location as per Schedule D.\_\_\_\_.
- G Optional/additional fence location as per Schedule D.\_\_\_\_.
- H Minimum triple row trespass inhibiting shrubs. (continuous)  
See Schedules B.5 & C.5

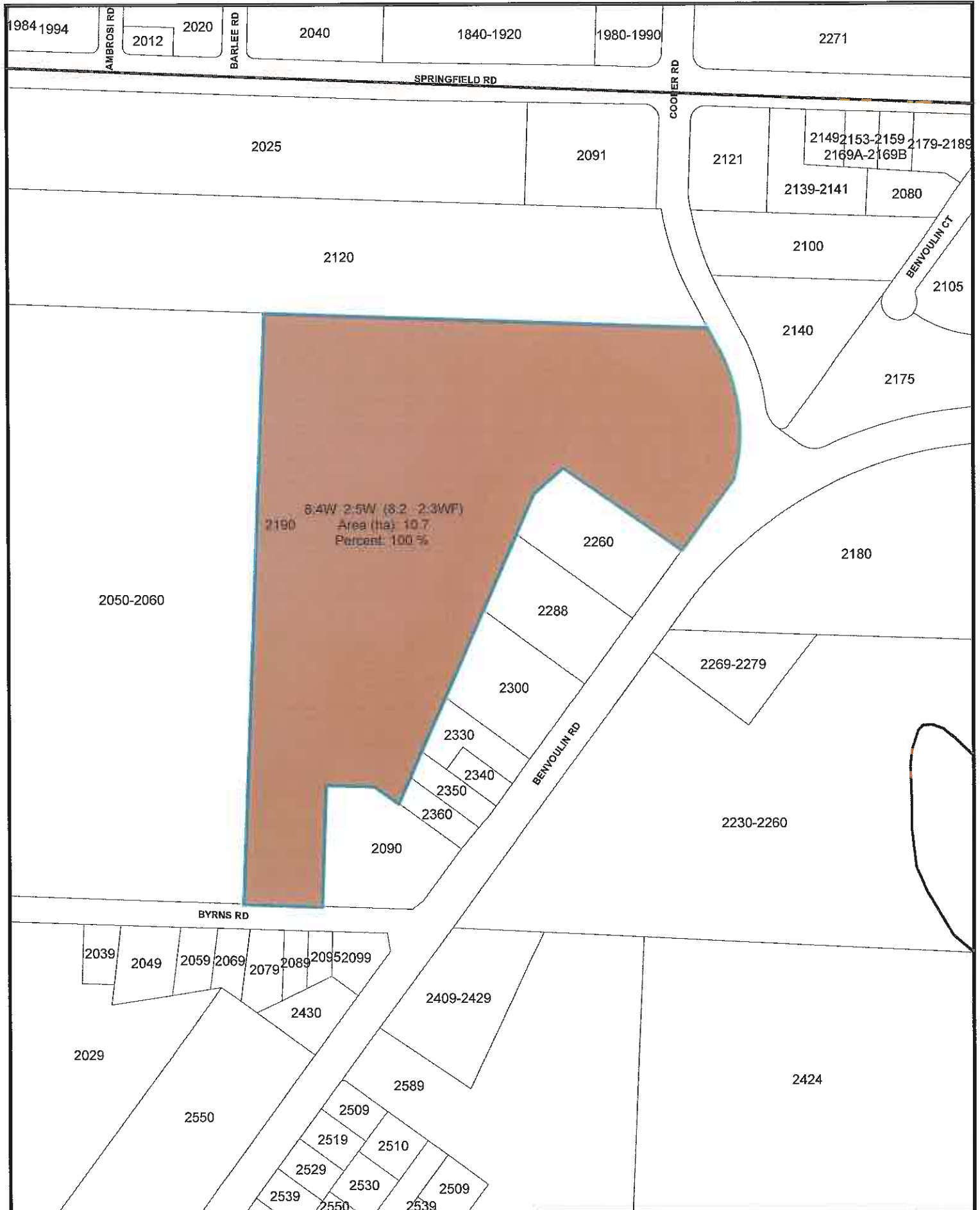






Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
The City of Kelowna does not guarantee its accuracy. All information should be verified.

# Land Capability = Brown/ Soil Class = Green





## BCLI Land Capability

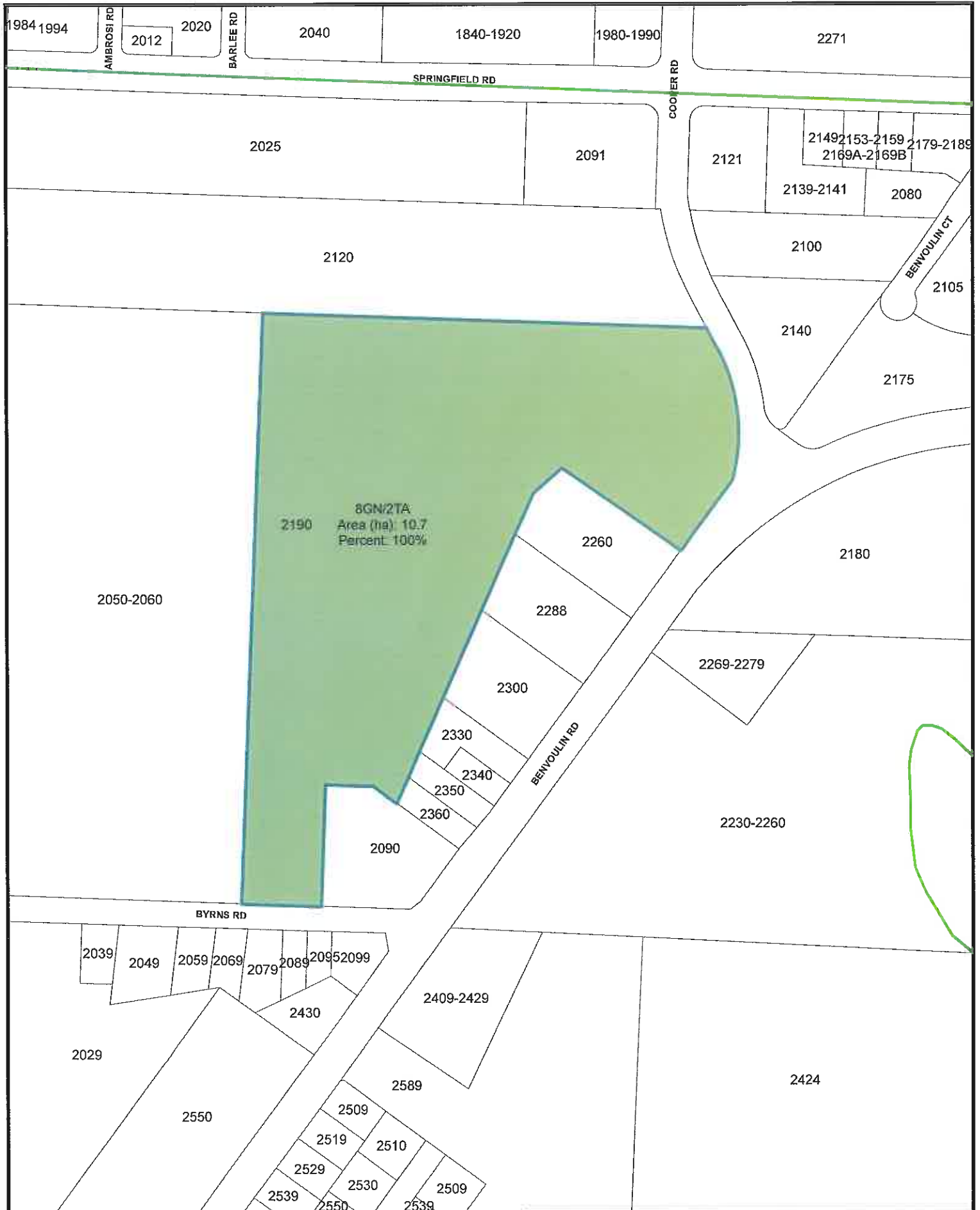
### Legend

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 land s 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
(10.7 ha / 100%)	<p><b>80% Class 4</b> with soils limited by excess water, other than from flooding, which limits agricultural use and by soluble salts which reduce crop growth or restrict the range of crops.</p> <p><b>20% Class 5</b> with soils limited by excess water, other than from flooding, which limits agricultural use and by soluble salts which reduce crop growth or restrict the range of crops.</p>	<p><b>80% Class 2.</b></p> <p><b>20% Class 3</b> with soils limited by excess water, other than from flooding, which limits agricultural use and by soluble salts which reduce crop growth or restrict the range of crops; and limited by lack of available nutrients, low cation exchange capacity or nutrient holding ability, high acidity or alkalinity, high levels of carbonates, presence of toxic elements or compounds, or high fixation of plant nutrients.</p>

# Land Capability = Brown/ Soil Class = Green



### Soil Classification

The soil classification for the subject property is homogenous with a single soil type as defined below.

Portion of Site / %	Soil Type	Description
10.7 ha / 100%	GN - Guisachan	<u>Land</u> : nearly level and very gently sloping fluvial floodplain deposits. <u>Texture</u> : 10 to 100 cm of silt loam, loam or sandy loam over loamy sand or very gravelly loamy sand. <u>Drainage</u> : poor, fluctuating groundwater table. <u>Classification</u> : Orthic Humic Gleysol.
80%		
20%	TA - Tanaka	<u>Land</u> : nearly level and very gently sloping fluvial fan deposits. <u>Texture</u> : 20 to 100 cm of sandy loam, silt loam or silty clay loam over sandy loam or minor gravelly sandy loam. <u>Drainage</u> : poor to very poor, high water table, subject to flooding. <u>Classification</u> : Rego Humic Gleysol: Calcareous phase.

# **AGRICULTURAL ADVISORY COMMITTEE**

## **Minutes of the Open Meeting**

**Date:** Thursday, October 11, 2012  
**Time:** 6:00 p.m.  
**Location:** Council Chambers, City Hall, Kelowna

**In attendance:**

Leo Gebert (Chair), Bob Hrasko, Yvonne Herbison (A), Edward Schiller (A)

**Regrets:**

Pierre Calissi (Vice Chair), Arthur (Gill) Green, Pete Spencer, Gordon Sandhu, John Janmaat

**Staff:**

Environment & Land Use Planner II, Greg Sauer

**Recording Secretary:**

Arlene McClelland

(\*Denotes partial attendance)

**1. CALL TO ORDER**

The Chair called the meeting to order at 6:01 p.m.

Opening Remarks by the Chairperson regarding Conduct of the Meeting were read.

**2. APPLICATIONS FOR CONSIDERATION**

**ITEM 1**

**Z12-0062**

2190 Cooper Road

The applicant is seeking a Rezoning from the A1 - Agriculture zone to the Agri-tourist Accommodation (A1t) zone to facilitate the development and operation of ten (10) recreational vehicle sites which may be operated on a seasonal basis subordinate to the agricultural operation.

Applicant/Owner: Brian and Linda Pahl

**Staff:**

- The applicant is requesting Council approval to rezone the parcel to allow for the addition of Agri-tourist Accommodation (A1t). The rezoning to A1t would facilitate the development and operation of ten (10) recreational vehicle sites which could be operated on a seasonal basis subordinate to the agricultural operation.
- Agri-tourist accommodation is a "permitted use" in the ALR but is not designated as a "farm use," and therefore may be regulated or prohibited by local government.
- Due to past issues with this land use, Kelowna has elected to exercise our regulatory capabilities with respect to agri-tourist accommodation in an effort to ensure better outcomes and to avoid undue hardship on adjacent agricultural operations and residents. The new zone addresses siting, buffering, and site coverage among other things.
- The subject property is located along Cooper, Benvoulin and Byrns Roads and is adjacent to both urban land uses including single and multi-family residential development and productive agricultural land.

- A Water Users irrigation ditch carrying water from Mission Creek is located along the northern property boundary and provides irrigation water to the subject property and properties downstream.
- The area proposed to be developed for Agri-tourist accommodation is currently unplanted while approximately 3.0 ha are currently in production in the form of tree fruit and the remainder cultivated and free of agricultural production in 2011.
- The applicant notes that they hope to construct a new home and shop for farm machinery maintenance and repair along with the 10 RV sites along Byrns Road. As mitigation, the applicants note that they intend to strip the topsoil from the development area for redistribution on the remainder of the subject property. In terms of buffering, the proposed site plan shows a privacy hedge, but no further details have been provided.
- The AAC is being asked to consider the appropriateness of rezoning the subject property to the A1t zone to allow for 10 RV sites as well as mitigation options for the proposal including siting, buffering and other options to minimize the potential impact to agriculture both on and offsite.

Applicant: Brian and Linda Pahl

- The property was purchased one year ago. Even though I have no farming background and have no intention of farming the property my son has indicated that he would like to manage ground crops. The existing pear orchard has been leased out and will continue to be leased.
- Believes that no one makes money in agriculture these days.
- Planted corn this year, but the crop did not work out due to the early season moisture and weed problems.
- Our background is in operating RV Parks in Texas where we just returned from.
- The current house on the property has no financial value and would like to build a new home as well as a new shop to store farm equipment. The RV Park would be in the same area.

AAC/Staff/Applicant Discussion:

- AAC raised concern with the proposed location of the house and shop. The Applicant noted that the front of the property is quite narrow and machinery cannot be turned around. The residential neighbours would most likely not appreciate the shop being at the front of the property due to the size and it maybe too large up against the road. The turning radius off of Benvoulin Road is very tight especially for those towing RV's and it would be safer being further away from the intersection.
- AAC confirmed with the Applicant that the old buildings on the property will be removed.
- AAC inquired about the location of servicing. The Applicant noted that the City advised that there would be no issue putting in sewer or water via Byrns Road which happens to be the main trunk line.
- AAC raised concern regarding the impact the RV Park would have on the neighbour's Orchard. The Applicant noted they would provide landscape buffering.
- AAC inquired if the Applicant had spoken to their neighbours regarding their proposal. The Applicant commented that they have not spoken to the neighbour to the west that operates an Apple Orchard. Have spoken to the neighbour to the east and they indicated they have no interest in farming.

There were no further comments.



**RECOMMENDATION (ITEM 1)**

**MOVED BY Bob Hrasko/SECONDED BY Leo Gebert**

THAT the Agricultural Advisory Committee support Rezoning Application No. Z12-0062, for 2190 Cooper Road, by Brian and Linda Pahl, to rezone the subject property from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation in order to facilitate the development and operation of ten (10) recreational vehicle sites which may be operated on a seasonal basis subordinate to the agricultural operation.

**CARRIED**

Yvonne Herbison- Opposed

**Anecdotal Comment:**

The Agricultural Advisory Committee raised concern with the potential urban/rural conflict. Specifically the drifting of pesticides and herbicides both onsite and on adjacent parcels into the RV area and the hours of operation (early in the morning and late at night) were of greatest concern. The AAC strongly recommends sufficient buffering with tall trees, shrubs and fencing to minimize the interface concerns. The AAC also recommends that landscape buffering be required prior to the applicant/owner being granted an Occupancy Permit or Business License.

**ITEM 2**

**A12-0015**

1155 McKenzie Road

The applicant is seeking a Non-Farm Use, pursuant to Section 20(3) of the *Agricultural Land Commission Act*, to allow for a secondary suite in accessory building (i.e. "Carriage House") on the subject property.

Applicant/Owner: Elizabeth Heier

**Staff:**

- The applicant is requesting permission from the ALC for a "non-farm use" within the ALR to allow for rezoning to a zone that would permit a second dwelling in the form of a carriage house on the subject property.
- The subject property is a 0.55 hectare or 1.38 acres parcel located south of McKenzie Road on the "McKenzie Bench". The site elevation varies between 507 m and 521 m while the soils in this area are Class 6 with improved ratings of Class 3 and 4 according to the land inventory. Soil limitations include droughtiness and topography in one portion and excess water and lack of nutrients in another.
- While not a homesite severance per se, the subject property functions as if created by a homesite severance and the background of how the lot came to be are akin to a homesite severance. As the subject parcel did not meet the minimum lot size of the A1 zone at the time of subdivision, it was rezoned to the Rural Residential zone to reflect this.
- The future rezoning would be from the RR2 zone to the RR2c zone.

**AAC/Staff/Applicant Discussion:**

- AAC commented that this proposal provides no benefit to agriculture.
- Staff provided an explanation of a carriage house.
- AAC confirmed with staff that there is currently no agricultural activity on this property.
- AAC commented that there is agriculture capability on this land.
- AAC raised concern with increasing the urban/rural conflict by adding more people who may not understand or welcome agricultural impacts.

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

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**Date:** October 3, 2012  
**File No.:** Z12-0062

**To:** Land Use Management Department (GS)

**From:** Development Engineering Manager

**Subject:** 2190 Cooper Road

A1 to A1t

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Development Engineering has the following requirements associated with this rezoning application.

1. Domestic Water and Fire Protection

This property is currently serviced with a 25mm-diameter copper water service. The applicant is required to submit a report addressing the available fire flow supply to adequately protect the proposed development in accordance with current fire protection standards for the type of development contemplated with this application. All charges for service connection and upgrading costs can be provided by the City at the owner's cost. **The applicant will be required to sign a Third Party Work Order for the cost of the water service upgrades.** For estimate inquiry's please contact Sergio Sartori, by email [ssartori@kelowna.ca](mailto:ssartori@kelowna.ca) or phone, 250-469-8589.

2. Sanitary Sewer

Our records indicate that this property is not serviced. All charges for service connection and upgrading costs can be provided by the City at the owner's cost. **The applicant will be required to sign a Third Party Work Order for the cost of the water service upgrades.** For estimate inquiry's please contact Sergio Sartori, by email [ssartori@kelowna.ca](mailto:ssartori@kelowna.ca) or phone, 250-469-8589.

3. Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

---

Steve Muenz, P. Eng.  
Development Engineering Manager

ss

**BRIAN & LINDA PAHL**

Kelowna, BC V1V 2C8

Email blj

Brian's Cell

Linda's Cell

September 4, 2012

Re: 2190 Cooper Road

To Whom It May Concern,

We are writing to notify our intentions to construct 10 RV sites on the above noted property.

These 10 sites will have services of City water, City sewer, 30 & 50 amp electrical service (FortisBC). All sites will be landscaped with grass & trees, and the road & sites area will be graveled. A restroom facility will also be provided.

The location of the sites is beneficial in many ways to both the tourist industry & the ongoing farming of the property. This is Agro-Tourism at its finest. The location of this property is very central to the heart of Kelowna - Orchard Park, Farmers' Market, Father Pandosy Mission, Mission Creek Park, golfing & numerous other activities. As well, it is in the heart of orchards, fields of hay and other fruit & vegetable crops, right in the very vicinity. We are one of those fields & orchards, right on this very property. The opportunity for Visitors to Kelowna to be so close to amenities & yet have a feel for the agricultural life of the area, is unique in this setting.

With the existing home on the property being of an age & condition no longer economical to use, we are planning a new home in the location shown on the attached plans. A new shop for farm machinery maintenance & repair is necessary as well. With the location of the proposed new home & shop, the 10 RV sites is best suited between the new buildings and Byrns Road. No damage to fields or orchard trees by RV vehicles. Topsoil will be removed from the location of the road & RV sites & utilized in other areas of the farm.

We look forward to many years of farming the land while we give our traveling visitors an opportunity to see part of what makes our city so desirable.

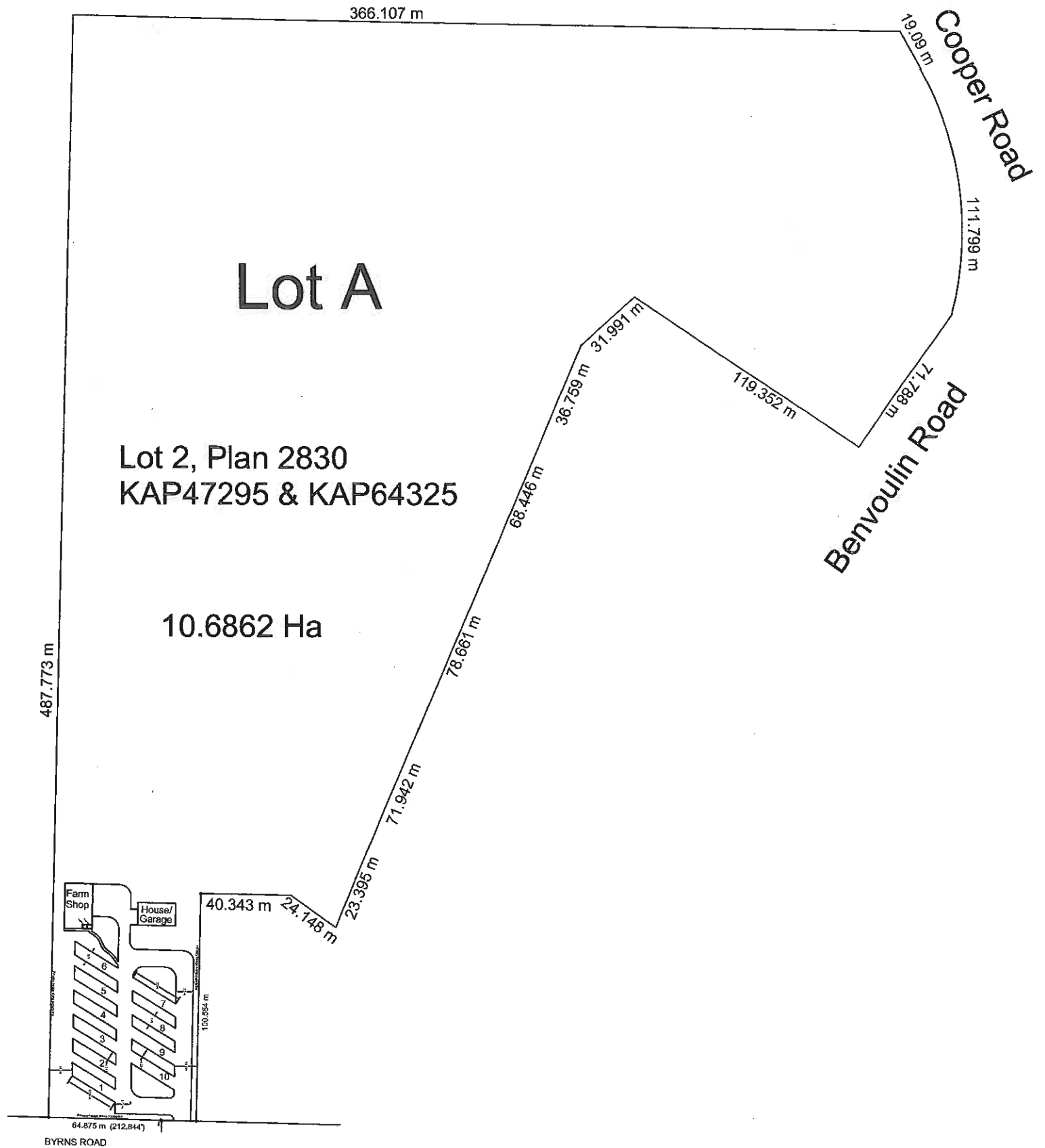
Should you need to contact us, please feel free to do so at the above numbers or email.

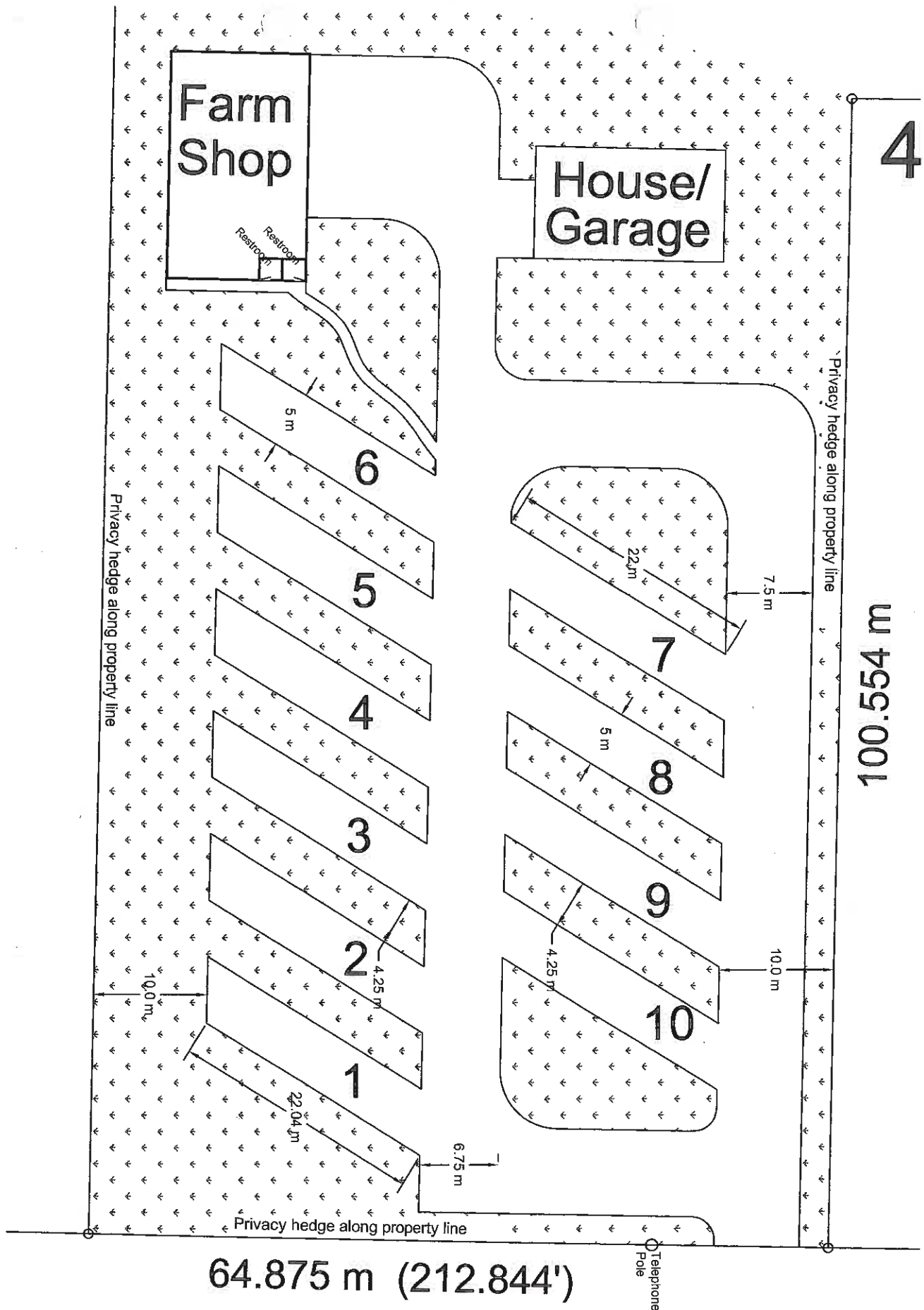
Yours Truly,



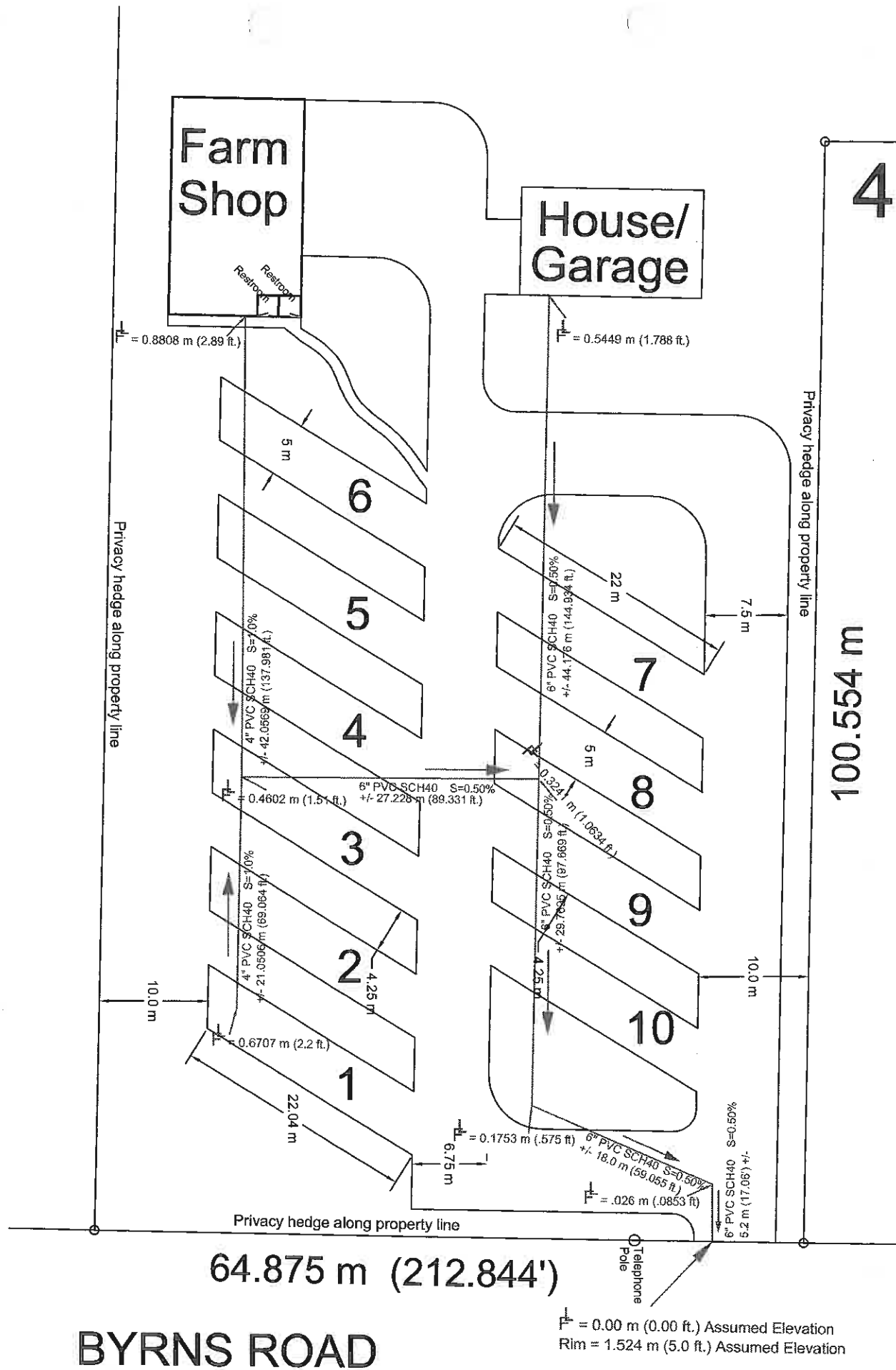
For: Brian & Linda Pahl

/lp





BYRNS ROAD



**TITLE SEARCH PRINT**

2013-05-13, 11:42:31

Requestor: PD17991

Folio/File Reference:

**\*\*CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN\*\*****Land Title District**

Land Title Office

KAMLOOPS

KAMLOOPS

**Title Number**

From Title Number

CA2231627

LA37731

**Application Received**

2011-10-14

**Application Registered**

2011-10-18

**Registered Owner in Fee Simple**

Registered Owner/Mailing Address:

BRIAN PAHL, BUSINESSMAN  
LINDA PAHL, BUSINESSWOMAN  
2255 SCENIC ROAD  
KELOWNA, BC  
V1V 2C8  
AS JOINT TENANTS**Taxation Authority**

CITY OF KELOWNA

**Description of Land**

Parcel Identifier:

026-628-937

Legal Description:

LOT A DISTRICT LOT 128 OSOYOOS DIVISION YALE DISTRICT PLAN KAP80629

**Legal Notations**THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL  
LAND COMMISSION ACT SEE PLAN M11328**Charges, Liens and Interests**

Nature:

MORTGAGE

Registration Number:

CA2231628

Registration Date and Time:

2011-10-14 13:20

Registered Owner:

FIRST WEST CREDIT UNION

Remarks:

INTER ALIA

**Duplicate Indefeasible Title**

NONE OUTSTANDING

**Transfers**

NONE

**Pending Applications**

NONE

# REPORT TO COUNCIL



**Date:** September 17, 2013

**RIM No.** 1210-21

**To:** City Manager

**Application:** A13-0003

**Owner:** McIntosh Properties Ltd.

**Address:** 2025 Springfield Road  
2120 Cooper Road

**Applicant:** Kent - Macpherson Appraisals

**Subject:** A13-0003 Report to Council (Revised)

**Existing OCP Designation:** Resource Protection Area

**Existing Zone:** A1 - Agriculture 1

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## 1.0 Recommendation

THAT Agriculture Land Reserve appeal A13-0003 for Lot 1, District Lot 128, Osoyoos Division Yale District, Plan 18971, except Plan 43996 located at 2025 Springfield Road and Lot B, District Lot 128, Osoyoos Division Yale District, Plan 970 except Plans 36410, 41244, KAP47295 and H12895 located at 2120 Cooper Road for exclusion of land in the ALR pursuant to Section 30(1) of the Agricultural Land Commission Act, be supported by Municipal Council;

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

## 2.0 Purpose

The applicant is requesting permission from the Agricultural Land Commission (ALC) to exclude two properties with a combined area of approximately 9.85 ha (24.35 ac) from the Agricultural Land Reserve (ALR). The exclusion is requested to facilitate the creation of a mixed use development.

In exchange for the exclusion, the applicant is proposing the inclusion into the ALR of 21.4 ha (53 ac) of arable land located in the Regional District of North Okanagan (RDNO) of which 16.8 ha (41.6 ac) is planted and proposing financial support which would go toward the improvements to the agricultural capability of six farm sites within the Okanagan and topsoil relocation to be used for future land remediation.

## 3.0 Land Use Management

The applicant has provided a comprehensive submission in support of their proposed exclusion application. The submission reflects significant effort and deliberation, putting forward a package of mitigation and compensation measures for the loss of ~9.8 ha (~24 acres) of agricultural land. In summary the applicant's proposal is comprised of the following:



- Exclusion from the ALR of two lots comprising 9.8 ha (24.35 acres) of land south of Springfield Road.
- Inclusion into the ALR of 21.4 ha (16.8 ha/41.6 acres of land in production and 4.6 ha/11.4 acres unplanted), located at Siwash Creek Road in the RDNO (owned by Mr. Geen).
- \$1,750,000 to be guaranteed for agricultural improvements to existing ALR Farm Lands throughout the Okanagan:
  - \$1,000,000 to go towards the improvement of 27.9 ha (69 acres) of land (leased by Mr. Geen);
  - \$315,000 to go towards the installation of 9 wind machines to improve frost protection on 4 existing cherry orchards (owned by Mr. Geen); and
  - Balance (\$435,000) to go towards the improvement of agriculture on land owned or leased by Mr. Geen.
- Approximately 15,000 cubic yards of topsoil to be removed from the subject property and relocated for future remediation of an agricultural property in Southeast Kelowna at a cost of approximately \$335,000.

The proposed ALR exclusion would provide an approximate 10 hectare greenfield development site. Upon it is proposed a multi-use development that could support 500 residential units<sup>1</sup> with an additional approximately 9290 m<sup>2</sup> (100,000 ft<sup>2</sup>) each of commercial and office space (i.e. ~18,580 m<sup>2</sup>/200,000 ft<sup>2</sup> total).

From an urban land use perspective, while the planning is conceptual in nature, the proposed development appears consistent with the *C4 - Urban Centre Commercial* zone. The subject properties while currently rural/agricultural in nature are adjacent to the 'Midtown' and in close proximity to the 'Capri' Urban Centres.

## Impact of Proposed Development on Agriculture

### i. Urban/Rural Interface

The development of the agricultural subject properties for urban uses will serve to shift the existing urban/agricultural interface at Springfield Road from currently inactive agricultural land to actively farmed land. This factor was among the primary concerns cited by the City's Agricultural Advisory Committee who recommended non-support for the proposed exclusion (see Section 7 below and attached AAC Minutes). The exclusion property (2025 Springfield) has 360 meters of road frontage along Springfield Road. While urban/rural interface is known to be a significant issue that can negatively impact agricultural production, roadways can buffer agricultural uses from urban uses and also provide a defensible boundary.

While the proposal is for a net increase in ALR land (i.e. 9.8 ha excluded and 21.4 ha included = + 11.55 ha), the math is not this simple. The agricultural land situated in the Regional District of North Okanagan and proposed to be placed into the ALR is higher elevation land originally assumed to not meet the criteria established for ALR lands. While the land has been significantly improved due to the efforts of Mr. Geen, the land may now be realizing its highest use for the owner/operator (versus woodlot, hay field or rangeland as examples). If the intent is for the land to be agriculturally productive for the foreseeable future it is in Mr. Geen's best interest to include the land into the ALR.

<sup>1</sup> Based on the 20 year average household size of 2.15 persons per unit, it is expected that the site could accommodate approximately 1075 people. Actual numbers would depend highly on the units provided (e.g. bachelor, 1, 2, 3 bedroom).

Staff are aware that the ALC is interested in working with local governments to plan for growth in a responsible manner. Under this application the area in the ALR will be increased however, there is no denying that Kelowna's immediate agricultural land base will be reduced as a result.

#### **i. Agricultural Capability**

The land/soil of the inclusion and exclusion properties are not equivalent (i.e. they are not like for like) and should not be considered at a 1:1 ratio. The agricultural assessment for the subject properties finds that the lands are improvable to Class 2 with salinity being a limiting factor and restricting the land from being improved to Class 1<sup>2</sup>. The inclusion land meanwhile has a larger range of soil capability and limitations with Class 2 and Class 3 ratings and with topographical and stoniness (i.e. coarse textured soil conditions)<sup>3</sup> constraints identified. At approximately 600 metres above sea level (masl), the elevation of the proposed inclusion results in a reduced agricultural capability relative to the Kelowna properties at 340 masl. The lower elevation of the Kelowna properties results in a longer growing season and would not require wind machines and other weather and climate interventions necessary at higher elevations.

The applicant/owner has amended the application following the meeting with the AAC to include a plan for relocation of the productive topsoil (estimated at 15,000 m<sup>3</sup>) from the site to other locations with the intent of improving agricultural capability elsewhere. While there is merit in relocating the high quality soil from this site to others with lower quality soils or where the topsoil depth is relatively thin, it is difficult to quantify the net impact of these efforts beyond a large capital expenditure to do so.

#### **ii. Agricultural Investment**

To compensate for the exclusion of the ALR land the applicants are proposing an investment into future agriculture enhancements through the provision of \$1,750,000. In addition, the applicant is proposing to relocate the soil from the subject property at a cost of \$355,000. Given the City's vast agricultural land base and relatively good agricultural capability, investment into agricultural production is encouraged.

Specifically, the application proposes a security in the amount \$1,750,000 as a financial contribution to be held in trust and in turn Mr. Geen proposes to make a \$3.66 million investment into four farms in the Okanagan<sup>4</sup>. The intent of this investment is to enhance the productivity and profitability of these farms. It is, however, unclear whether or not the investment into these agricultural improvements would be made (now or in the future) regardless of this proposed exclusion as part of normal operations and to meet growing needs for BC product (e.g. sweet cherries now, or another commodity in the future).

The decision to make an investment into agricultural land or any agricultural commodity should be based on a business case. It appears that with respect to Cholla Hills farm (the inclusion component of this submission), a decision was made to venture onto lands that while outside of the ALR, possessed good agricultural capability, with the land value making the improvements economically viable. City staff are very supportive of this type of pioneering approach, especially in an era where most of the focus is on the difficulty of farming on existing ALR land which is known to be productive albeit often unaffordable to purchase solely for agricultural production. With improvements to the land, selective planting, and good orchard maintenance, Mr. Geen appears to have created a very viable agricultural operation producing nearly 700 tons

<sup>2</sup> Class 1 soils have no significant limitations in use for crops, while Class 2 soils have moderate limitations that restrict the range of crops or require moderate conservation practices.

<sup>3</sup> Class 3 soils have moderately severe limitations that restrict the range of crops or require special conservation practices.

<sup>4</sup> The applicant notes that "Orchardist David Geen has committed to utilizing the funds received as a result of the inclusion of his lands into the Agricultural Land Reserve, plus additional funds of his own, totalling \$3,665,000 towards substantive agricultural improvements to existing farm land. The agricultural improvements will be made to lands that are either owned or leased by David Geen within the Central and North Okanagan".

of a valuable agricultural commodity (valued at \$2.5 million per annum according to the application<sup>5</sup>). It is therefore likely that continued investment (e.g. trellis, covers, wind machines) will make good business sense for Mr. Geen.

### Public Correspondence

The City has received a number of pieces of public correspondence with respect to the proposed exclusion (see attached). The relatively high number of submissions (as ALR Exclusion files generally do not generate a great deal of public input) speaks to the significance of the subject properties (including the sheer size and high visibility adjacent Springfield Road). Members of the public also attended the AAC meeting on February 7, 2013<sup>6</sup>.

The applicant obtained a single letter from an adjacent landowner (i.e. 2190 Cooper Road) stating that they have "no objection" to the exclusion.

The remaining correspondence consists of 18 letters in opposition to the proposed exclusion. The majority of the letters were generated by residents of the INvue condo (2040 Springfield Road) located directly north of the subject properties (across Springfield Road).

### Conclusions:

The staff recommendation considers a multitude of factors as discussed above in arriving at a position of support. Staff also had the opportunity to tour a number of Mr. Geen's properties including the packing plant, inclusion lands and a number of the improvement lands. Staff were very impressed by Mr. Geen and the sophistication of his farm.

To summarize, in support of the proposed exclusion application the applicant is proposing the following:

- Inclusion into the ALR of land currently in production, located at Siwash Creek Road in the RDNO.
- \$1,750,000 to be guaranteed for agricultural improvements to existing ALR Farm Lands throughout the Okanagan:
  - \$1,000,000 to go towards the improvement of 27.9 ha (69 acres) of leased land;
  - \$315,00 will go towards the installation of 9 wind machines to improve frost protection on 4 existing cherry orchards; and
  - The balance to go towards the improvement of agriculture on land owned or leased by Mr. Geen.
- Approximately 15,000 cubic yards of topsoil to be removed from the subject property relocated in order to remediate an agricultural property in the area.

Unlike most ALR files which have a heavy focus on the impact to agricultural land, this proposal also had an emphasis on considering the impact to future urban use and how the City evolves. In an effort to undertake this evaluation, staff reviewed the large proposed development through a contemporary lens. Paramount to this consideration is the question of need for additional developable land within the Permanent Growth Boundary.

The requested exclusion at this time challenges the need to ensure orderly redevelopment of the City's already large Urban Centres.

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<sup>5</sup> Pers. Comm.. Mr. David Geen

<sup>6</sup> It is rare that public attends meetings of the AAC.

However, this is a unique situation where the Agriculture Plan specifically states that the City will continue to support the future exclusion or non-farm use of these two properties given the proximity to a major Urban Town Centre and location along a major City arterial road. The OCP Policies acknowledge this position, however, it does not absolve the applicant from addressing the impacts that the development of the property would have on the current Future Land Use designations and Permanent Growth Boundary alignment.

Should the exclusion application be granted by the ALC, staff recommend that an Area Redevelopment Plan be required for this area in order to determine the best use and density. Proposing a land use change for this area must, for example, take into consideration:

- The growth management impacts as the subject properties were not identified in the OCP as necessary to meet the future growth needs of Kelowna for the 20 year time horizon;
- The economic and investment impacts on the other Urban Centres which currently have land designated and available for redevelopment; and
- Assessment of the impacts on the 20 year Servicing Plan and Financing Strategy.

## 4.0 Proposal

### 4.1 Background/Site Context

The subject properties are located on the south side of Springfield Road, between Spall and Cooper Roads. The subject properties are located within the Central City Sector of the City, and outside of the area designated as the Permanent Growth Boundary (Map 1 below).

#### Parcel Summary:

##### 2025 Springfield Road

Parcel Size: 3.83 Ha (9.48 ac)

Elevation: 361 - 364 masl

##### 2120 Cooper Road

Parcel Size: 6.02 Ha (14.88 ac)

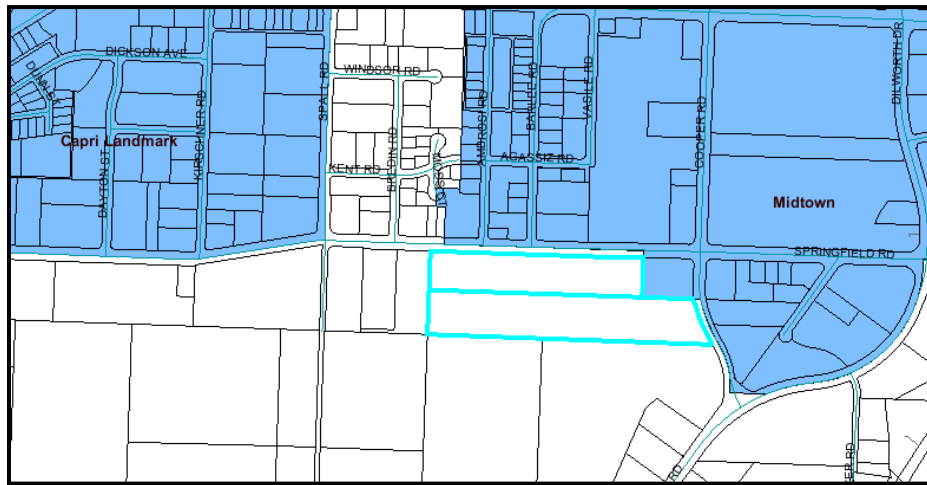
Elevation: 360 - 365 masl

#### Map 1: Permanent Growth Boundary



The subject properties are located adjacent to and south of the “Midtown” Urban Centre and in close proximity to the Capri Landmark Urban Centre.

**Map 2: Proximity to Urban Centres**



Specifically, adjacent land uses are as follows:

Orientation	Zoning	In ALR?	Land Use
North	C4 - Urban Centre Commercial C10 - Service Commercial	No	Commercial
South	A1 - Agriculture 1	Yes	Agriculture
East	P2 - Educational & Minor Institutional RM5 - Medium Density Multiple Residential Housing	No	Mission Creek Alliance Church Residential Housing
West	P4 - Utilities	No	FortisBC offices

**Map 3: Subject Properties - 2025 Springfield and 2125 Cooper Road**

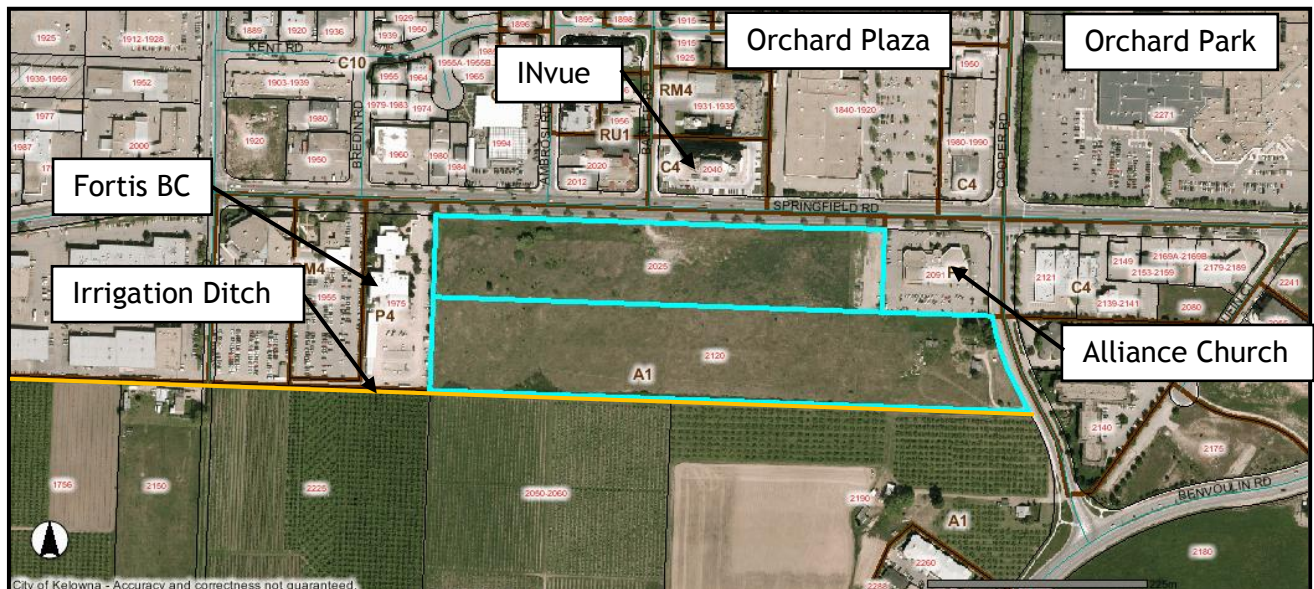
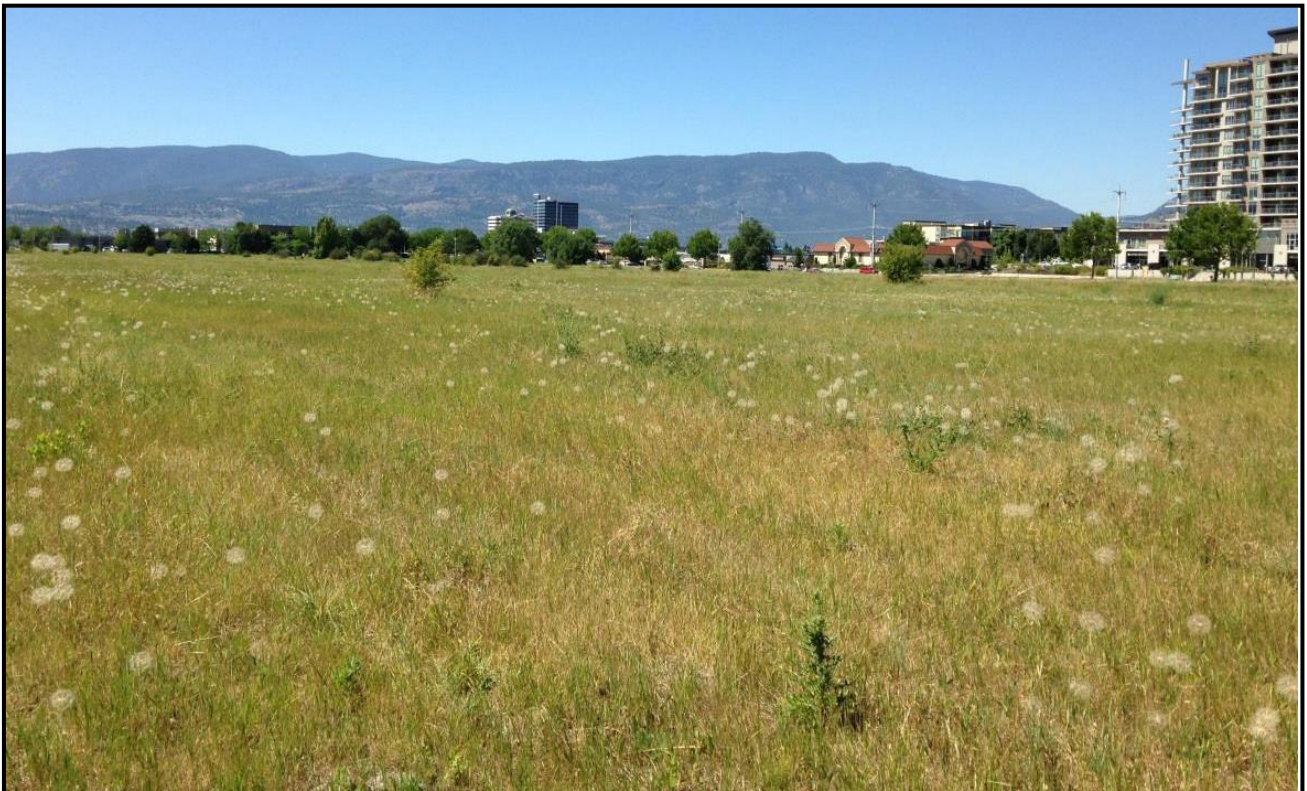




Photo 1: View from southwest corner (July 2013)



Photo 2: View from the southeast of property (July 2013)



The applicant commissioned an Agricultural Capability Assessment (2012) for the two subject properties (see applicant's submission starting on page 56). This report notes that (p.3-1):

*Both properties are currently not being used for agriculture with the exception of some bee hives being stored at the southern Lot B property. Otherwise both properties are vacant. They are presently owned by Mr. Kevin Bennett, who has owned the northern Lot 1 property for over 4 decades and just recently purchased the southern property from the Tanaka family (Bennett, K., pers. comm., 2012). Mr. Bennett indicated that his family have never farmed Lot 1, however the southern property was historically used to grow mixed fruit orchard over 30 years ago, then was converted to commercial market vegetable garden by the Tanaka's between 1980-1990, at the eastern most portion of Lot B (near the residence and outbuildings). Mr. Bennett indicated that the over the last decade the Tanaka's have not grown commercial vegetables (Bennett, pers. comm., 2012).*

The assessment included a field investigation including excavating four test pits and concludes that the overall unimproved subclass rating at this site is Class 5A (soil moisture deficiency), while the improved rating of the soils is Class 2A or better with the provision of irrigation. Classes 1-3 are considered to be "prime" agricultural land. The assessment also concludes that the previously published improved rating of 2W (soil wetness) be revised to Class 2N (salinity).

The report cites the Soil Management Handbook for the Okanagan & Similkameen Valleys stating "With irrigation and fertilization both fields can be for alfalfa, annual vegetable crops, cereals, corn and forage crops (Gough et. al. 1994)".

#### 4.2 Project Description

The owner is proposing to exclude 9.85 hectares from the Agricultural Land Reserve to develop a "comprehensive, master planned medium density multifamily residential and commercial development". The goal is to develop approximately 3.6 hectares in "clusters of 4 to 6 storey rental apartments in an open, pedestrian-friendly, phased project". The apartments would include up to 500 units with a mix of bachelor, one bedroom and two bedroom units with most parking below grade.

In addition to the residential development, an approximate 4.0 hectare commercial component is proposed and will be "modelled largely after the 'Village at Park Royal' shopping centre in North Vancouver". It is expected that the commercial component would be comprised of mainly one storey buildings with approximately 110,000 square feet of gross floor area.

Office space is also being proposed in a single office building of six to 10 floors with a 10,000 square foot footprint and 60,000 to 100,000 square feet of gross leasable area. The applicants have provided conceptual site plans (pp.41 - 47 of the applicant's submission).

A shadow impact analysis was also completed as part of the submission and included on pages 52 and 53. Given that the subject properties are located on the north side of what would be the remnant agricultural land, no shading impacts on ALR land should be expected.

In terms of buffering the proposed urban development from the remaining agricultural land to the south, a new city road is proposed to extend west from Cooper Road paralleling the southern property line along the entire parcel. It is proposed that Barlee Road to the north would extend south to the new east/west connection.

The applicant suggests that the new city road paralleling the subject property's southerly boundary abutting the ALR lands will act as the primary buffer separating the development lands from the adjoining orchards. The intent is to mitigate and minimize conflicts between the residential/commercial development and adjoining agricultural uses.

It has been proposed that a solid fence would be provided along the entire southerly boundary in addition to a bermed and landscaped buffer measuring 7.5 metres planted with trees and shrubs (see applicant's submission, pp. 48-50).

### **Proposed Inclusion**

The owner of the subject properties have teamed up with Mr. David Geen, a local orchardist, on this exclusion request. In exchange for the proposed exclusion in Kelowna, the applicants are proposing the inclusion of 21.4 ha (53 ac) of arable land at an elevation of approximately 600 metres. The inclusion lands are comprised of three contiguous parcels located in the North Okanagan of which 16.80 ha (41.6 ac) are currently producing sweet cherries. The proposed inclusion land is owned and operated by Mr. Geen. The inclusion land is not part of this application and would necessitate a new application (facilitated by the RDNO) should the ALC view the proposed exclusion favorably.

Prior to 2007 the proposed inclusion lands were used for cattle grazing, forage and hayfields. In 2007, the site was improved to include additional irrigation and a water reservoir to facilitate conversion of the site to more intensive agricultural uses. The lands were subsequently converted to high density orchard, and are currently planted in a variety of cherries.

The agricultural capability of the proposed inclusion lands was assessed in a 2010 Agricultural Land Capability Assessment (see applicant's submission beginning on page 107). This Assessment determined that the three properties were comprised of Class 2 & 3 (Improved) lands limited by stoniness and topography.

In addition to the area currently in production, the applicants are proposing to include non-arable land "as part of a rational ALR boundary extension polygon". The non-arable land accounts for an additional 4.65 ha (11.5 ac).

### **Agricultural Improvement Lands**

The applicants have also teamed up with Mr. Geen with the intention of improving the agricultural capability of a number of farm parcels already within the ALR in exchange for the proposed exclusion. The properties are located within the Central Okanagan and Mr. Geen's \$3.66 million proposed investment includes contouring and replanting, soil amendments, irrigation installation, trellis installation, tree training and pruning, tree covers, fencing and managerial salaries and labour (see applicant's submission beginning on page 113). Also included is the proposed purchase of nine wind machines to be erected on five farms in Vernon, Lake Country and Kelowna. The applicants state that approximately one half (\$1.75 million) would be held by the ALC as a performance bond.

### **Soil Relocation**

The applicants have proposed to relocate the productive layer of soil (topsoil) which they have estimated at 15,000 m<sup>3</sup> from the subject properties and replace it on another property or properties. The expectation is that the relocated topsoil could be used to improve the agricultural capability of agricultural land elsewhere. The applicant has estimated the cost to relocate the soil to a site within five kilometres of the subject properties at \$335,000.



## 5.0 Current Development Policies

### 5.1 City of Kelowna 2030 Official Community Plan

#### Chapter 5 - Development Process

##### **Objective 5.2 Develop sustainably<sup>7</sup>.**

**Policy .4 Complete Communities.** Support the development of complete communities with a minimum intensity of approximately 35 - 40 people and/or jobs per hectare to support basic transit service - a bus every 30 minutes.

##### **Objective 5.3 Focus development to designated growth areas<sup>8</sup>.**

**Policy .1 Permanent Growth Boundary.** Establish a Permanent Growth Boundary as identified on Map 4.1 and Map 5.2. Support development of property outside the Permanent Growth Boundary for more intensive uses only to the extent permitted as per the OCP Future Land Use designations in place as of initial adoption of OCP Bylaw 10500, except as per Council's specific amendment of this policy. Resource Protection Area designated properties not in the ALR and outside the Permanent Growth Boundary will not be supported for subdivision below parcel sizes of 4.0 ha (10 acres). The Permanent Growth Boundary may be reviewed as part of the next major OCP update.

**Policy .2 Compact Urban Form.** Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs per ha located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

##### **Objective 5.33 Protect and enhance local agriculture<sup>9</sup>.**

**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 .2 ALR Exclusions.** The City of Kelowna will not forward ALR exclusion applications to the ALC except in extraordinary circumstances where such exclusion is otherwise consistent with the goals, objectives and other policies of this OCP. Soil capability alone should not be used as justification for exclusion.

**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.

##### **Objective 5.40 Ensure all development is consistent with the vision, goals and objectives of the OCP<sup>10</sup>.**

**Policy .1 Evaluation Checklist.** Evaluate development applications that require an OCP amendment on the basis of the extent to which they comply with underlying OCP objectives

**Policy .2 Servicing Plan.** The 20 Year Servicing Plan and Financing Strategy has been developed assuming that growth will occur as noted in this Official Community Plan. Development in locations or of types not anticipated in this plan may trigger a requirement for an impact study to be prepared at developer expense so that impacts on the 20 Year Servicing Plan and Financing Strategy can be identified and addressed. The impact studies, may include, but will not necessarily be limited to preparation of advance road plans that identify all vehicle, transit, cycle route, and trail linkages and provide a mix of trail, local, collector and major roads necessary to create a balanced road system on and off-site.

<sup>7</sup> City of Kelowna 2030 Official Community Plan: Development Process; p. 5.2.

<sup>8</sup> City of Kelowna 2030 Official Community Plan: Development Process; p. 5.2 & 5.3.

<sup>9</sup> City of Kelowna 2030 Official Community Plan: Agricultural Land Use Policies; p. 5.35.

<sup>10</sup> City of Kelowna 2030 Official Community Plan: Development Process; p. 5.39 & 5.40.

## 5.2 City of Kelowna Agriculture Plan (1998)

### **ALR Application Criteria<sup>11</sup>**

*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.*

### **Urban - Rural/Agricultural Boundary Policies<sup>12</sup>**

*The City of Kelowna will continue to support the future exclusion or non-farm use of two properties south of Springfield Road between Cooper Road and Spall Road.*

## 6.0 Technical Comments

6.1 Building & Permitting Department - None.

6.2 Development Engineering Department - None.

6.3 Interior Health Authority - See attached.

## 7.0 Application Chronology

Date of Application Received: January 28, 2013

Agricultural Advisory Committee February 7, 2013

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on February 7, 2013 and the following recommendations were passed (see also Minutes, attached):

*MOVED BY Pierre Calissi/SECONDED BY Leo Gebert*

*THAT the Agricultural Advisory Committee NOT support Application No. A13-0003 for 2025 Springfield Road and 2120 Cooper Road, to obtain approval from the Agricultural Land Commission (ALC) for exclusion of two properties with a combined area of 9.85 ha (24.35 ac) from the Agricultural Land Reserve in order to facilitate the creation of a mixed use (retail commercial, residential, office) development.*

**CARRIED**

*Bob Hrasko - Opposed*

### **ANECDOTAL COMMENT**

*The AAC did not support the Application as the Members were not convinced that the application reflects a net benefit to agriculture as proposed. The AAC further noted that if the Application does proceed, that an Impact Assessment should be undertaken to identify impacts to remainder agricultural properties and also the mitigation opportunities and prescriptions.*

Application Placed on Hold: February 8, 2013

Application Taken off Hold: August 14, 2013

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<sup>11</sup> City of Kelowna Agriculture Plan (1998); p. 130.

<sup>12</sup> City of Kelowna Agriculture Plan (1998); p. 133.

**Report submitted by:**

Todd Cashin  
Manager, Subdivision, Agriculture & Environment

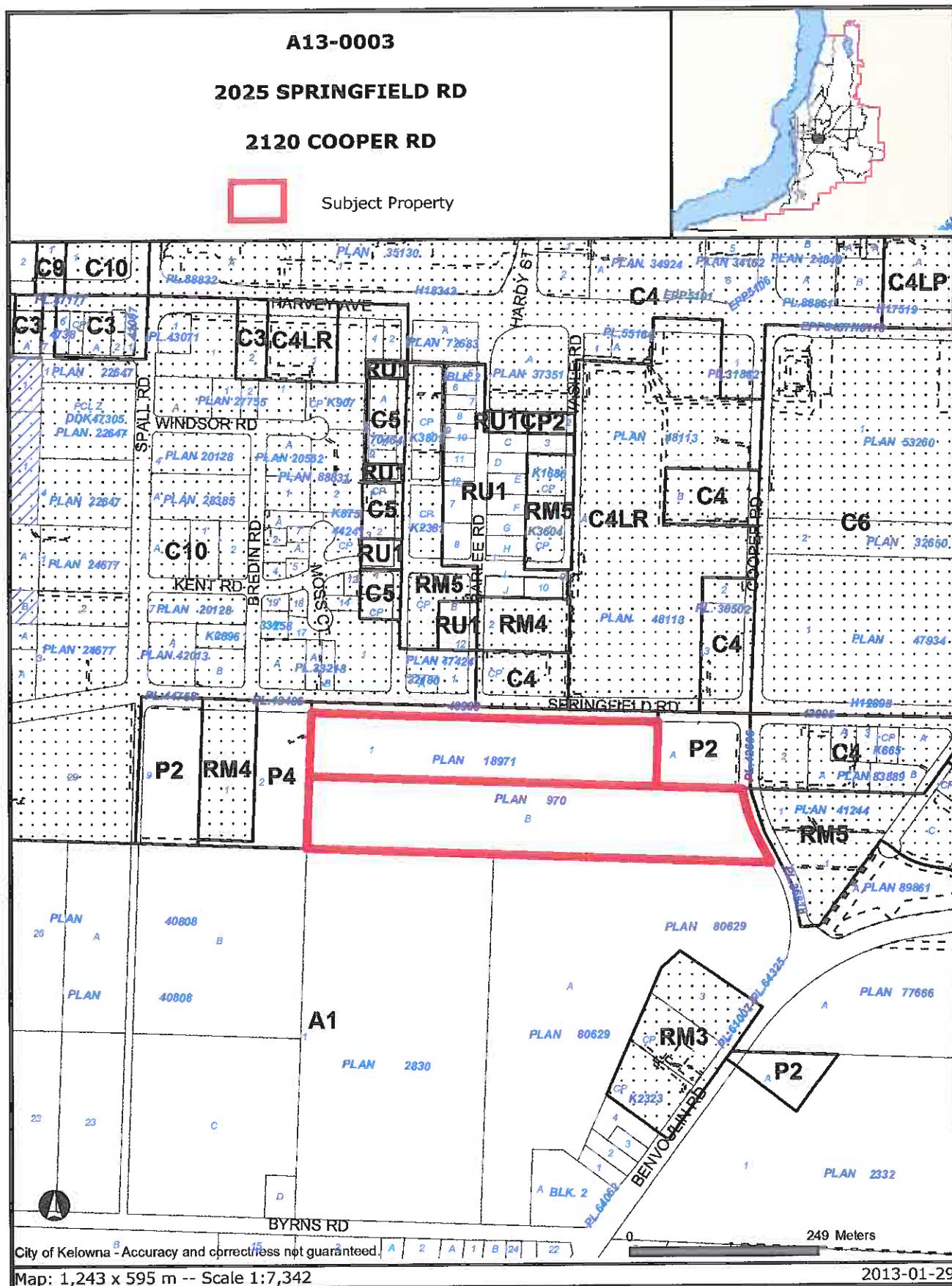
**Approved for Inclusion:**



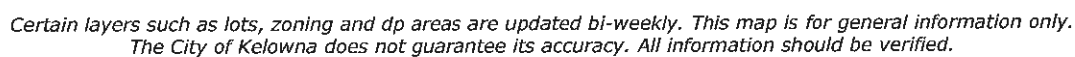
Shelley Gambacort  
Director, Subdivision, Agriculture & Environment

**Attachments:**

Location/ALR Map (2 pages)  
AAC Minutes (3 pages)  
ALC Application by landowner (188 pages)  
Interior Health Comments (1 page)  
Public Correspondence



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.





Jan 23/2013

City of Kelowna

Planning + Development  
Services Dept.

Regarding: ALR change  
2025 Springfield +  
2120 Cooper Rd.

There are some questions  
I would answered.



What is planned for the property?

Why is the Sign and Print so small? It's a Freeway

Why were we given only few weeks to enquire?

Why would this be proposed when  $\frac{1}{2}$  the population are absent Snow Birds?

Please inform me of any + all opportunities to read any info or attend any

This along with pathetic  
signage is a cause  
for concern.

I hope this is all  
being done in the  
best interest of the  
many and NOT the  
few!

THKS

P.S.

Someone is coming  
into our <sup>Involve</sup> Lobby and  
taking down the  
address + information  
we put up for the  
residents to enquire  
about this ALR change.  
I hope it is not someone  
from the city.

January 30, 2013

Re: ALC Exclusion Application 2025 Springfield Road & 2120 Cooper Road,  
Bennett/Cook Property Proposal

My name is Allen Reid. My wife, Wendy, and I own an orchard which includes adjoining properties at 1990 Byrns Road, 1890 Byrns Road and 2225 Spall Road, totaling about 27 acres bordering the Bennett/Cook property in question.

My grandfather bought adjoining lands at 1990 Byrns Road, 1980 Byrns Road, 1890 Byrns Road, 2225 Spall Road and 2150 Spall Road. Together they total about 36 acres. My father bought the farm from him, and in 1984, my wife and I purchased the farm.

The Reid family has farmed these adjoining lots continually from 1903 to 2013, which is 110 years. Again, 110 years of farming the same farm, please remember this fact.

The Reid land at 1990, 1980 and 1890 Byrns Road plus 2225 Spall Road are all planted in tree fruits. The only viable way a farmer can apply product to their fruit trees is with an air blast sprayer. The sprayer is designed to break water particles containing product into tiny airborne particles that travel some 100 feet in each direction onto the fruit trees to apply an even distribution to the trees leaves. Whether a farmer is organic or not, they still need to spray their fruit trees.

In the Benvoulin area, during the growing season the breeze from Okanagan Lake normally comes from the southwest and travels to the northeast. Because of this breeze, the drift from the orchard sprayers drifts hundreds of feet to the northeast. The reality of this breeze means I cannot spray my orchard that borders Trinity Baptist Church on Sundays or any other time they are having a church function. I cannot spray my orchard which borders Fortis during the week because of employees working in their yard. Plus I can not spray at night due to City by-laws. Please tell me when I can spray these trees?

I also lease a 26 acre farm at 2190 Benvoulin Road. Part of that orchard borders the apartments along Benvoulin Road, making it almost imposable to spray that area. No matter which way the wind is blowing, the drift from an orchard sprayer lands on that building. Both the City of Kelowna and the ALR are well aware of this problem, yet they approved the building of the apartment bordering tree fruits. Why?

The entire length of the orchard at 2190 Benvoulin Road borders the ALR lands proposed to be removed from the ALR. With the normal growing season breeze blowing to the northeast, the drift from an orchard sprayer will drift hundreds of feet onto the proposed land to be removed from the ALR.

When are the ALR and the City of Kelowna going to make a decision to help Tree Fruit Growers? If this development goes ahead, it will more or less kill tree fruits grown anywhere close to it.



Burnes Farms at 1756 Byrns Road is one of the largest tree fruit farms in the Benvoulin area located just south of Rona and Chances Gaming Casino. They had to remove most of their fruit trees bordering that property because of drift onto the buildings and parking lots. How is this fair to growers locked into the ALR? Why does the buffer zone have to be on the ALR land side? The Day family that own Burnes Farms has live on their land since about 1880.

I ran cattle and grew hay in the late 1970's and early 1980's on both of the Bennett/Cook properties proposed to being removed from the ALR. The soil is basically the same as ours, which is some of the best soil in the Okanagan. Our fruitstand, Hazeldell Orchards, and Burnes Farms Fruitstand are well known for their great, sweet tasting fruit and excellent produce, which is directly because of the soil.

I have been told that the City of Kelowna and the ALR both will support the removal of these two plots of land. Why remove two parcels that are both big enough to be viable farms? Why is it okay to remove these two parcels and not any of the land south which has exactly the same soil? Two of the Reid family plots, 1890 Byrns Road are in the ALR and it is less than 5 acres, which makes it too small to be viable on its own, also 2150 Spall Road is just a bit larger than 5 acres, which is also too small to be viable on its own. Why are both these parcels locked into the ALR and the two parcels proposed to be removed considered removable just because of their location?

I would support this application if it also included the rest of the Benvoulin area being removed from the ALR. If you just remove the two parcels that are applying for removal, you are signing a death warrant for all the ALR tree fruit properties adjoining them. Look up all the problems the 2190 Benvoulin Road orchard had with the apartments to the south, plus Burnes Farms at 1756 Byrns Road having to remove many acres of fruit trees next to Rona and Chances Gaming Casino. Also if I can not spray my orchard next to Trinity Baptist on Sundays and can not spray my fruit trees next to Fortis during the week, plus I can not spray at night because of City of Kelowna by-laws, when do I spray?

It appears to me that farmers in the ALR that are actually farming their land and trying to make a go of it are penalized. While people that purchase ALR land just to develop it and make a fast dollar by putting up buildings and paving over the good soil are rewarded. Why? A bumper sticker I read said "If your going to argue with a farmer, try it on a empty stomach"

Please take time to think about this before you decide to kill this good soil. I'm sure that our Grand children will wish you had weighed all factors before you made the choice you are going to make.

Again, when are the City of Kelowna and the ALR going to make decisions that actually help the neighbouring ALR properties instead of making it harder and harder to farm?

Allen Reid

## Greg Sauer

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**From:** Lena Noel [lena.noel@gmail.com]  
**Sent:** Tuesday, February 12, 2013 11:54 AM  
**To:** Greg Sauer  
**Subject:** ARL land 2025 Springfield & 2120 Cooper rd

Dear Mr. Sauer

Thank you for your information so far please forward this email to the appropriate areas as we discussed.

This letter is to formally cite my concerns regarding releasing ALR land at 2025 Springfield & 2120 Cooper rd Kelowna.

There are several important things to consider and I propose it is in everyones best interest to perform an Impact Study some things to be considered:

- 1 The drastic & alarming decrease in ALR land in recent years
- 2 The decrease in Habitat for animals particularly birds of prey
- 3 The impact of traffic, congestion and related safety issues ( recent death Barlee & Springfield)
- 4 Increase in Pollution & Noise Pollution
- 5 This area is mainly enjoyed for fruit & veg production & Dog walking & exercising

We do not need any more Malls We Need more green space to improve quality of living

The Developments along Springfield are low level If this space is lost I hope at least it will be kept at similar heights. The skyline is important to people who live here and prop values will decrease if towers are put in.

Thank you

Helena A Noel [lena.noel@gmail.com](mailto:lena.noel@gmail.com)

- AAC member advised the Applicant of their mandate which is to determine if an application is of benefit to agriculture and this application is not.

There were no further comments.

**RECOMMENDATION (ITEM 2)**

**MOVED BY Pierre Calissi/SECONDED BY Bob Hrasko**

THAT the Agricultural Advisory Committee NOT support Application No. A13-0002 for 355-357 Valley Road, to obtain approval from the Agricultural Land Commission (ALC) for a non-farm use within the Agricultural Land Reserve to allow an additional dwelling with four dwelling units contained within the dwelling (fourplex).

**CARRIED**

**ANECDOTAL COMMENT:**

The Agricultural Advisory Committee does not support the use of the dwelling for rental purposes. However, the AAC does support farm help dwellings where the need exists. The AAC encourages the use of the property for agricultural production which could support the need for farm workers as originally intended, as opposed to decommissioning, demolition, or removal.

**ITEM 3  
A13-0003**

2025 Springfield Road/2120 Cooper Road

To exclude two properties with a combined area of 9.85 ha (24.35 ac) from the Agricultural Land Reserve (ALR). The exclusion is requested to facilitate the creation of a mixed use (i.e. retail commercial, residential, office) development.

Applicant: Kent-McPherson (Rod Cook)  
Owner: McIntosh Properties

**Staff:**

- The applicant is requesting permission from the Agricultural Land Commission (ALC) to exclude two properties with a combined area of 9.85 ha or 24.35 acres from the Agricultural Land Reserve (ALR).
- The subject property is located on the south side of Springfield Road between Spall and Cooper Roads. The subject property is located within the Central City Sector of the City in close proximity to two Urban Centres. Zoning and adjacent land uses are quite diverse with the properties to the north containing commercial, utility to the west, multi-family residential and institutional to the east and agriculture to the south.
- The Springfield Road parcel is the smaller of the two with an approximate area of 3.8 ha while the Cooper Road property is approximately 6 hectares in size. The subject properties are located just outside of the area designated as the Permanent Growth Boundary in the Official Community Plan.
- An Agricultural Capability Assessment was recently prepared for the two subject properties. The Assessment also concludes that the land is capable of producing a wide array of crops.
- The owners are proposing a mixed use development with medium density residential and commercial, retail and office uses.
- In terms of buffering remainder agricultural land to the south from urban impacts a new public road is proposed to extend west from Cooper Road paralleling the southern property line along the entire parcel. In addition to the roadway a solid fence is proposed along the entire southern boundary in addition to a landscaped buffer. The proponents have proposed a couple of buffer treatments but are open to suggestions. While it is not clear on the illustration the proposal is for the buffering to be provided on the subject properties and not the remaining agricultural lands.

- In addition to the buffering the applicant is also proposing to pipe the existing irrigation ditch at their expense. The ditch parallels the southern property boundary of the 2120 Cooper Road parcel, but is located on the adjacent properties to the south.
- In exchange for the proposed exclusion of the subject properties, the owners are proposing to include 16.80 ha of arable land comprised of portions of three contiguous parcels located in the North Okanagan. The land is currently planted in a variety of cherries.
- The inclusion land is not part of this application and would necessitate a new application should the ALC view the proposed exclusion favorably and make the inclusion a condition of the exclusion.
- Nearly all City policy with respect to ALR land seeks to preserve the agricultural nature and direct urban land uses elsewhere. The sole exception to these policies with respect to these parcels can be found within the City's Agriculture Plan. The Agriculture Plan states that the City will continue to support the future exclusion or non-farm use of these two subject properties given the proximity to a major Urban Town Centre and location along a major City arterial road.
- The AAC should also consider the proposed buffering and mitigation and potential for impacts to agriculture should the development proceed.

Applicant: Kathy Porter (Summit Environmental) presenting on behalf of Kent-McPherson (represented by Rod Cook)

- Provided a brief work history in community development.
- Provided a Powerpoint Presentation that reviewed:
  - o Proposal Overview
  - o Property
  - o History
  - o Development Concepts
  - o Proposed Inclusions and Improvements

Gallery:

Pat Nelson, INvue 2040 Springfield Road

- Do not object to development of land, however is concerned with other farmers requesting exclusions in the immediate areas also requesting exclusions should this exclusion be approved.

Harvey Nelson, INvue 2040 Springfield Road

- Raised concern with the increase of population in the area and the demands on infrastructure.
- Concerned with the extension of Barlee Road and the increase of traffic on a two lane road. Barlee Road is "currently used as a racetrack".
- Would like the existing green space to be reserved.
- AAC commented that this proposal is just adding pressure on agricultural land and that it's an extension of urban sprawl.
- AAC noted that the property is some of the best agriculture land in Kelowna.
- AAC expressed a concern that this application will add to the urban/rural conflict in the area if it is approved.
- AAC suggested an Agriculture Impact Assessment be performed to determine the impacts on the agricultural land with a major development.

AAC/Staff/Applicant Discussion:

- AAC member raised concern with the agricultural land to the south of the proposed development and how this development would limit normal farm practices and generate complaints by those occupying the new site when farmers are conducting normal farm practices.
- AAC member questioned the ability of the proposed public road and landscape buffer to adequately mitigate the impacts of the proposed development.
- The Applicant noted that in terms of the size of road it would be up to the City to determine the road standard and cross-section.

- AAC member inquired whether or not there has been any discussion with adjacent farmers on how substantial usage of the road would affect their ability to farm.
- The Applicant stated that they would work with the farmers to ensure there was an adequate buffer zone and commented that it is their intention to build to the Ministry of Agriculture's standards.
- AAC member commented that this proposal adds additional pressure on agricultural land and that it's an extension of urban sprawl in Kelowna.
- AAC member noted that the property represents some of the best agriculture land in Kelowna that he is aware of and that while proven to be arable, the land proposed for inclusion is not nearly of the same agricultural capability of the land proposed for exclusion.
- AAC member expressed a concern that this application will add to the urban/rural conflict and impact on the remaining farmland (along Burtch Road) if the proposed exclusion is allowed.
- AAC member questioned whether or not an Agriculture Impact Assessment can be completed to identify the impacts on the remaining agricultural land as a result of a major development being allowed, and also the ability to mitigate these impacts.
- Staff noted that the Impact Assessment did not account for impacts to adjacent farms and that this would be an appropriate anecdotal comment for the ALC and which could be a condition of approval.

There were no further comments.

**RECOMMENDATION (ITEM 2)**

**MOVED BY Pierre Calissi/SECONDED BY Leo Gebert**

THAT the Agricultural Advisory Committee NOT support Application No. A13-0003 for 2025 Springfield Road and 2120 Cooper Road, to obtain approval from the Agricultural Land Commission (ALC) for exclusion of two properties with a combined area of 9.85 ha (24.35 ac) from the Agricultural Land Reserve in order to facilitate the creation of a mixed use (retail commercial, residential, office) development.

**CARRIED**

Bob Hrasko - Opposed

**ANECDOTAL COMMENT:**

The Agricultural Advisory Committee did not support the Application as the Members were not convinced that the application reflects a net benefit to agriculture as proposed. The AAC further noted that if the Application does proceed, that an Agriculture Impact Assessment should be undertaken to identify impacts to remainder agricultural properties and also the mitigation opportunities and prescriptions.

**3. MINUTES**

**Moved by Pierre Calissi/Seconded by Yvonne Herbison**

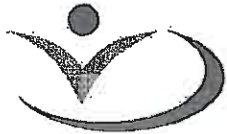
THAT the Agricultural Advisory Committee adopts the Minutes of the Meeting for the Agricultural Advisory Committee Meeting of November 8, 2013.

**CARRIED**

**4. REFERRALS**

There were no referrals.





# Interior Health

March 5, 2013

RE: ALR Application No. A13-0003 – 2120 Cooper Road & 2025 Springfield Road – Application to the ALC to exclude land from the ALR

Dear Mr. Sauer,

This is a letter of comment re: the ALCs consideration of ALR exclusion per above.

In the interest of food security, and the ability of our citizens to access nutritious and safe food that supports sustainable food systems and community self-reliance, I suggest the consideration of the following:

- The applicant does not indicate a pressing community need for the residential and commercial development proposed.
- The applicant does not indicate the agricultural suitability of the land (of note: the subject parcel abuts land that is currently used for agricultural purposes).
- The Okanagan contains some of British Columbia's prime agricultural land. Even the poorest farmland in this region is of higher quality than agricultural land in other areas of the province.
- Once developed, agricultural land can never be adequately recovered or restored for agricultural purposes.
- Community food security is threatened by overall erosion of agricultural land, both locally and across the province.
- Attempts should be made to protect and preserve any land that has potential for agricultural production so that there is no net loss to the agricultural capacity of our community, region or province.
- A strong local food system builds community food security, supports the health of our citizens and contributes to a thriving local economy.

On behalf of the Food Security and Community Nutrition Programs, I appreciate the opportunity to provide comment on the aforementioned application.

Kind regards,

Heather Deegan, MSc, RD  
Manager, Population Health Services  
Community Integrated Health Services

**Bus:** (250) 980-5041  
**Fax:** (250) 980-5060  
**Email:** heather.deegan@interiorhealth.ca  
**Web:** interiorhealth.ca

INTERIOR HEALTH  
Promotion and Prevention, CIHS  
200-1835 Gordon Drive  
Kelowna, BC, V1Y 3H5

March 25, 2013

City of Kelowna  
1435 Water Street  
Kelowna, B.C.  
V1Y 1J4

Attn: Agricultural Advisory Committee

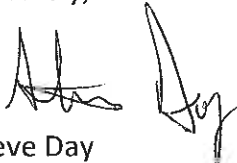
Subject: ALR exclusion application  
Lot 1 Plan 18971 DL128 – 2025 Springfield Road, Kelowna B.C.  
Lot B Plan 970 DL128 – 2120 Cooper Road, Kelowna, B.C.

I am the owner and operator of the orchard at 2050 Byrns Road, Lot 1 Plan 2830, directly to the south of the subject property. I would like to express my concern and objection to the proposed exclusion from the ALR. The agricultural capability of all the lands in this area is superb and if the ALC has any credibility it cannot justify the removal of such prime agricultural property. The agricultural lands in this area have the ability to produce a large variety of crops with great success. The fact that they have sat vacant for years has little to do with the productive capability of the land and everything to do with how difficult it is to farm profitably. The lot size is also consistent with the goal of preserving commercially viable parcels.

The urban rural interface has always created conflict between uses and this location is no different. I would like to see the ALR boundaries stay where it is because it makes it easier for me personally to farm commercially. Moving ALR boundaries does not eliminate conflict it only moves the problems. If the ALC and city councils around the province continue to allow changes to the ALR the speculative pressure on farmland will keep farmers from being able to own the land they cultivate. I have no hard feeling towards my neighbors for asking for an exclusion from the ALR as this would result in them achieving the highest value use for their property. That being said I also expect the ALC to do its job and maintain the integrity of the most productive agricultural lands in the province.

I am very concerned that a dangerous precedent could be set if these ALR acres are traded for acres currently outside the ALR. If you allow people to buy their way out of the ALR with offers of less valuable, less productive acres, the credibility of the ALC will be further eroded. I hope the correct decisions will be made to allow me to continue to support the ALC and its mandate. Most owners of ALR property bought their property knowing that they were in the ALR. The lot directly next to mine was in the ALR when purchased. All owners of ALR land need to be treated equally and have access to equal opportunity. If any of my comments are unclear or you would like further information please feel free to call me anytime at 250-718-8364.

Sincerely,

  
Steve Day

# ALR EXCLUSION APPLICATION

*24.35± Acres*

*Springfield and Cooper Roads*

*Kelowna, BC*

*Prepared For:*

*City of Kelowna &*

*The Agricultural Land Commission*



J. Hettinga, B.Sc., RI  
R. S. Cook, AACI, P. App, RI, C. Arb.

August 14, 2013



August 14, 2013

City of Kelowna  
1435 Water Street  
Kelowna, British Columbia  
V1Y 1J4

**Attention: Greg Sauer and Todd Cashin**

Dear Sirs:

**Re: ALR Exclusion Application  
24.35 Acres Springfield and Cooper Roads  
Kelowna, British Columbia**

As per requirements for Agricultural Land Reserve property exclusions, attached please find an ALR Exclusion Application for the above noted properties legally described herein.

This application has been revised from the initial report provided to the City of Kelowna in response to feedback from the Agricultural Advisory Committee and other stakeholders.

If you have any questions pertaining to this Application, please do not hesitate to contact us.

Sincerely,

**KENT-MACPHERSON**

Per: \_\_\_\_\_  
R. S. Cook, AACI, P. App, RI, C. Arb.

\_\_\_\_\_  
J. Hettinga, B.Sc., RI

/jh

cc: McIntosh Properties Ltd.



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## *Executive Summary*

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This report is for the exclusion of a 24.35± acre parcel of land within the ALR. The subject property is located adjoining a major thoroughfare in the heart of Kelowna's retail/commercial shopping area, located directly south of Orchard Plaza and surrounded on three sides by urban development.

Although the site is within the ALR, the exclusion of the entire subject area is supported by both the City of Kelowna's Agriculture Plan and their Official Community Plan, and has been for well over a decade.

The property is proposed to be developed to a comprehensive, master planned mixed use medium density multi-family apartment and commercial development.

The goal of this application is to provide benefits for all parties involved, including but not limited to: the benefiting farmers (financial support and topsoil placement); the City of Kelowna (property tax, DCC's, community planning objectives, improved road network); the community (densification of urban centres, support of local produce providers); and the ALC (increase the gross and net ALR land area, financial support and topsoil relocation to enhance existing farming operations for regional food production). This file has been reviewed by the City of Kelowna's Agricultural Advisory Committee on February 7<sup>th</sup>, 2013, and based on their feedback, this application has been revised and improved

### **Benefits to Agriculture**

To ensure that this application can help the ALC deliver on its mandate, we have reviewed this proposal against the purpose of the Commission as outlined in Section 6 of the Agricultural Land Commission Act (the 'Act'). Section 6 states "**The following are the purposes of the commission**":

#### **6a – to preserve agricultural land;**

This application proposes the inclusion of 53 acres into the Agricultural Land Reserve, of which 41.6 acres are currently planted, Class 2 and Class 3 lands. This provides an increase in both gross (218%) and net (171%) ALR land, and protects quality agricultural land for the future. Although geographically different then the exclusion property, similar crops can be produced on both properties.



To encourage farm use of agricultural land and help its profitability, an additional \$3,665,000 is earmarked for agricultural improvements to existing ALR farm lands throughout the Okanagan with \$1,750,000 of that to be guaranteed by way of a letter of credit or other security, as required by the ALC. These funds will allow for immediate and substantive improvements to existing farm lands that would otherwise be significantly scaled back or deferred for a long period of time. \$1,000,000 of this money will be spent improving 69 acres of leased agricultural land; \$315,000 will go towards the installation of 9 wind machines to improve frost protection on 4 existing cherry orchards, and the balance (\$2,350,000) will go towards the improvement of agriculture on 118 acres of ALR land owned by Mr. David Geen. Agricultural improvements valued at approximately \$955,000 have already been initiated this spring and completed at the time of submission of this application.

Additionally, approximately 15,000 cubic yards of topsoil from the subject site will be removed and relocated to remediate an agricultural property in the area to significantly improve the agricultural capability of the recipient site. The relocation and placement of this topsoil represents an improvement to agriculture of approximately \$335,000.

**6b – to encourage farming on agricultural land in collaboration with other communities of interest;**

By creating a 25 meter buffer of road, landscaping and fencing, exceeding the “Guide to Edge Planning” standards published by the Ministry of Agriculture and Lands, the urban-agricultural interface south of the subject will eliminate trespassing through agricultural lands. Additionally, the property owner will support a section 219 covenant being registered on their title (and in all Leases / Rental Agreements) notifying future property owners, tenants and lessees of the existence of adjacent farm practices to effectively eliminate future complaints.

With the goal of community health, the irrigation ditch which parallels the subject property’s southerly boundary is proposed to be piped and filled which provides the adjoining growers with additional headlands; eliminates concerns regarding overspray contaminating the water source and eliminates the potential for transients now living in the brush/ scrub along the ditch.



**6c – 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.**

Throughout the Okanagan, municipalities and regional districts have been trying to encourage and support agricultural activities on lands identified in their OCP's for agricultural uses. By supporting multiple properties with both capital and topsoil relocation, local governments will see new farms created and existing farms become more viable. The majority of the \$3,665,000 will go towards site preparation and irrigation installation – both of which will support agriculture in perpetuity.

In the same way, by working with the City of Kelowna on the future redevelopment of the subject exclusion lands, numerous City plans will be realized, such as: the 1994-2013 OCP regarding Urban Town Centre areas; the 2030 OCP regarding Core Area and Agricultural Land Use Policies in the Development Process; and the City's current Agricultural Plan.

Overall, the exclusion results in a substantive net benefit to agriculture and delivers on all three primary purposes of the ALC Act.

### **Application Highlights**

1. Removal of 24.35 acres from ALR status
2. Inclusion of 53 acres (41.6 acres planted) into ALR status
3. Contributes \$400,000 towards land preparation, fencing and irrigation of 30 acres and trellis system installation on 14 acres of ALR (Oyama)
4. Contributes \$600,000 towards site preparation and irrigation of 25 acres of ALR (Kelowna)
5. Contributes \$2,080,000 towards land preparation, irrigation system and planting 35,000 cherry trees, plus rain covers for 95 acres of ALR (Lavington)
6. Contributes \$270,000 towards Voen covers on 8 acres and trellis system on 15 acres of cherries in the ALR (North Okanagan Regional District)
7. Contributes \$315,000 towards the installation of 9 "Orchard Rite" wind machines for frost protection in Lake Country, Regional District of North Okanagan and Kelowna
8. Piping the existing irrigation ditch and creating a significant buffer between the subject property and neighbouring lands
9. Relocation of 15,000 cubic yards of topsoil to substantially improve ALR land in Kelowna
10. Complies with the City of Kelowna's Agricultural Plan and Urban Core Area of the OCP



## ***ALR Exclusion Application Overview***

---

### **EXCLUSION LANDS:**

Proposed Exclusion Area:	-	24.35 acres
Soil Classification Unimproved	-	Class 5A
Soil Classification Improved	-	Class 2N

### **INCLUSION LANDS:**

Gross ALR Inclusion Area	-	53 acres
Planted Portion of Gross Area	-	41.6 acres
Soil Classification – Improved:	-	Class 2T (19.3 acres)
	-	Class 3T (9.4 acres)
	-	Class 3P (12.9 acres)

### **GEEN LANDS - IMPROVEMENTS TO AGRICULTURE:**

Agricultural Improvements	-	\$3,665,000 (improvements of approx. \$955,000 are currently underway)
Amt. Guaranteed by Letter of Credit	-	\$1,750,000

### **TOPSOIL RELOCATION – IMPROVEMENTS TO AGRICULTURE:**

Estimated Value of Topsoil Relocation	-	\$335,000
---------------------------------------	---	-----------





## ***PROPOSED ALR EXCLUSION LANDS***

*24.35± Acres*

*Springfield and Cooper Roads*

*Kelowna, BC*



## *Summary of Facts Pertaining to the Exclusion Lands*

---

<b>LEGAL DESCRIPTIONS:</b>	-	Lot 1, District Lot 128, Osoyoos Division Yale District, Plan 18971. PID: 008-162-883
	-	Lot B, District Lot 128, Osoyoos Division Yale District, Plan 970 except Plans 36410, 41244, KAP47295 and H12895. PID: 002-865-602
<b>OWNER:</b>	-	McIntosh Properties Ltd. 201-1980 Cooper Road, Kelowna, BC
<b>SITE AREA:</b>		
Lot 1:	-	9.47 acres; 3.83 ha
Lot B:	-	<u>14.88</u> acres; <u>6.02</u> ha
Total:	-	24.35 acres; 9.85 ha
<b>ZONING:</b>	-	A1; Agricultural
<b>OCP DESIGNATION:</b>	-	Agricultural
<b>AGRICULTURAL PLAN:</b>	-	Exclusion from ALR or non-farm use
<b>CURRENT ALR STATUS:</b>	-	<u>±</u> 24.35 acres in the ALR
<b>PROPOSED ALR EXCLUSION:</b>	-	<u>±</u> 24.35 acres
<b>TOPOGRAPHY OF ALR AREA:</b>	-	Flat
<b>SOIL CLASSIFICATION:</b>	-	Unimproved Class 5A
	-	Improved Class 2N (with irrigation and fertilization)
<b>SURROUNDING LAND USES:</b>	-	North: C4; Commercial & Residential C10; Service Commercial



East: RM5; Residential Multiple Zone  
P2; Educational and Minor Educational  
South: A1; Agriculture  
West: P4; Utilities (Fortis Offices)



## ***Section 1***

## ***Property Description***

---

### **1.1 Location**

The proposed exclusion comprises two contiguous parcels located adjoining and south of Springfield Road and west of Cooper Road, Kelowna, British Columbia. Refer to the orientation map, Figure 1.

### **1.2 Civic Address**

Lot 1: 2025 Springfield Road, Kelowna BC.

Lot B: 2120 Cooper Road, Kelowna BC.

### **1.3 Lot Size**

Lot 1: 9.48 ac., 3.83 ha

Lot B: 14.88 ac., 6.02 ha

### **1.4 Access**

Lot 1: Accessible from Springfield Road.

Lot B: Accessible from Cooper Road.

### **1.5 Services**

Lot 1, 2025 Springfield Road, is fully serviced with all municipal utilities, including water, storm, sewer, sidewalks, curb and gutter, and boulevard. This work occurred when the City of Kelowna widened Springfield Road. At that time the owner (McIntosh Properties Ltd.), was required to provide an access point for the future extension of Barlee Road southward.

Lot B, 2120 Cooper Road, has curb, gutter, sidewalk, storm and sewer along the Cooper Road frontage.





**Figure 1 – Kelowna Orientation Map**



**Subject**

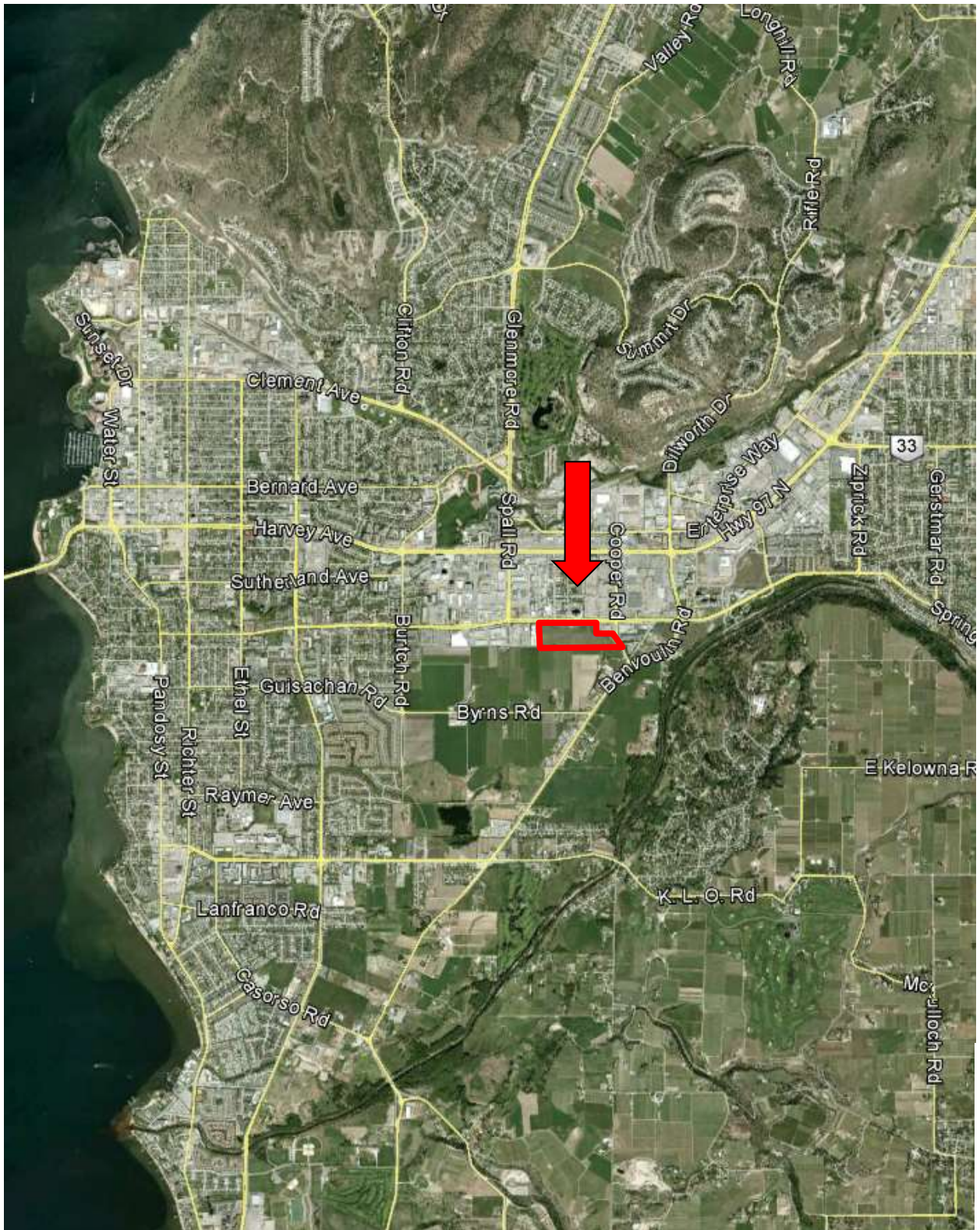




Figure 2 – Aerial Ortho



Subject





## **1.6 Topography**

The entire parcel is flat (0-0.5%), and located at an elevation of approximately 340 meters (1,129 feet) above sea level.

## **1.7 History and Use**

Lot 1, 2025 Springfield Road, was purchased by McIntosh Properties Ltd in 1969. The property has been unused for 43 years.

The southern property, Lot B, 2120 Cooper Road, was a mixed use orchard in the 1970's, owned by the Tanaka family. In the 1980's through 1990, the property was converted to a commercial market vegetable garden and for the last 10+ years the land has not been used for agriculture.

## **1.8 Current Use**

The property is effectively unused and mowed periodically to reduce noxious weeds and the threat of grass fires. The old circa 1950's home was removed from Lot B along with the dilapidated outbuildings.

## **1.9 Adjacent Properties**

The subject property is bordered by 4 properties, two of which are farms (Day Family, Pahl Family), one church (Mission Creek Alliance) and one utility company (FortisBC).

Both farm properties that are adjacent to the subject exclusion lands have made comment regarding separation between any new development and their current farm activities. After conversations with both property owners, the application has changed to include a mounded berm and a 6 metre high buffer with continuous foliage throughout the entire height. In addition, to prevent trespass into the adjacent properties, this application proposes an 8 foot fence along property line, as well as 3 rows of trespass inhibiting shrubs and one row of screening shrubs. The proposed cross sections can be seen in the "Buffering" section.



The applicant is continuing to work with the Day family exploring the relocation of the exclusion sites' topsoil to the Day's gravel pit located within the ALR in hopes to improve the agricultural abilities of the lands. More information on this can be found under the "Proposed Topsoil Relocation" section.

The Pahl family, FortisBC, and Mission Creek Alliance Church have continuously supported this exclusion application.

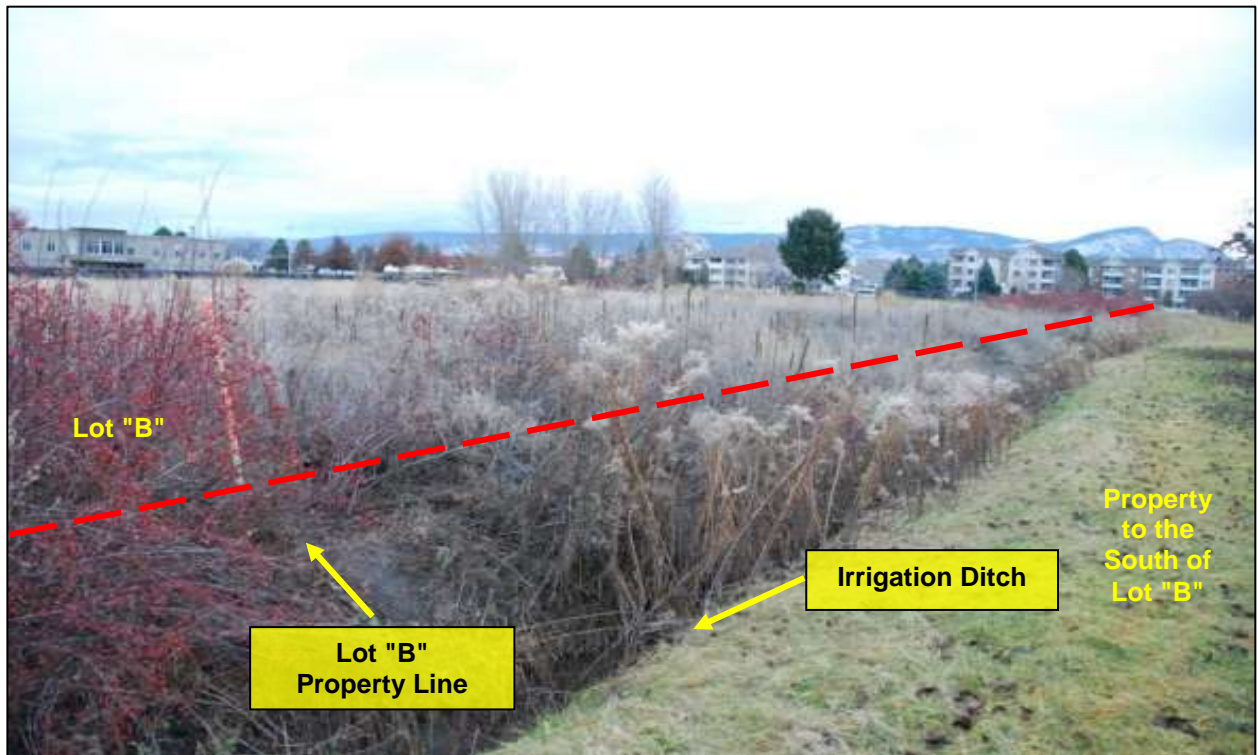
### **1.10 Irrigation Ditch**

An irrigation ditch parallels the southern boundary of Lot B, controlled by the Benvoulin Water Users Community, as shown on the following photographs, shown on Figure 3.

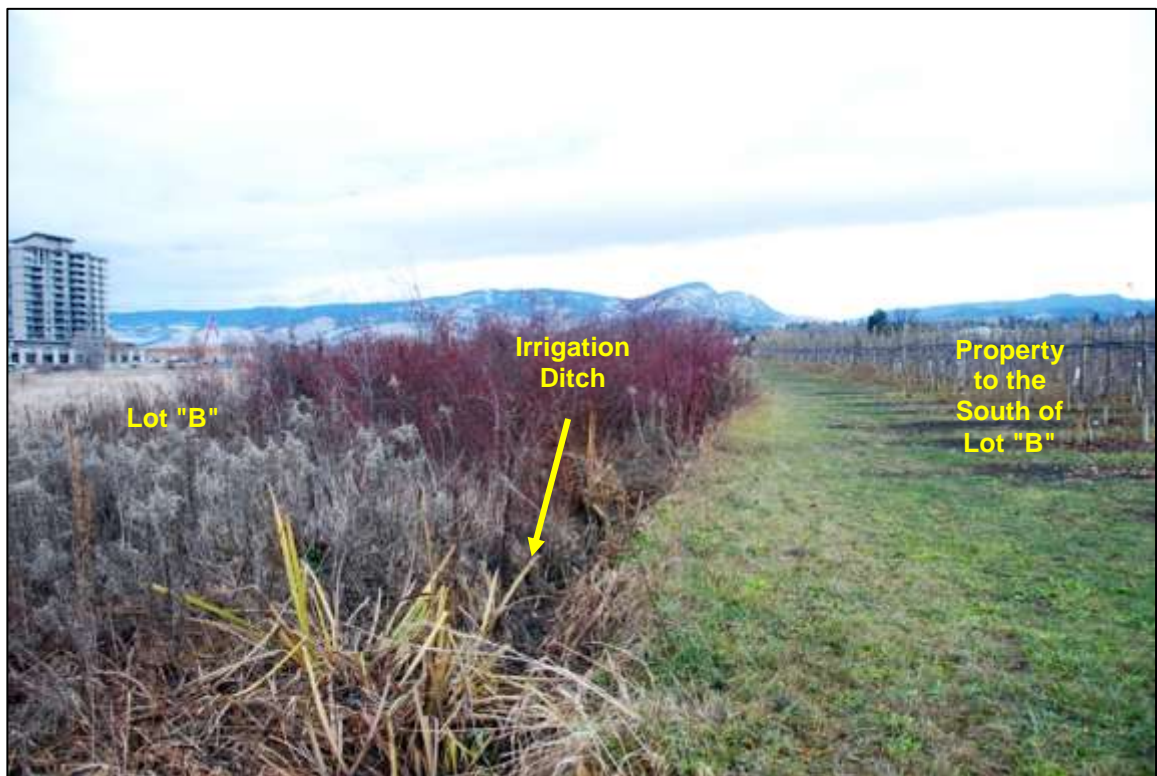
A survey sketch plan was prepared identifying the exact location, shown on Figure 4.



**Figure 3 – Irrigation Ditch Photographs**



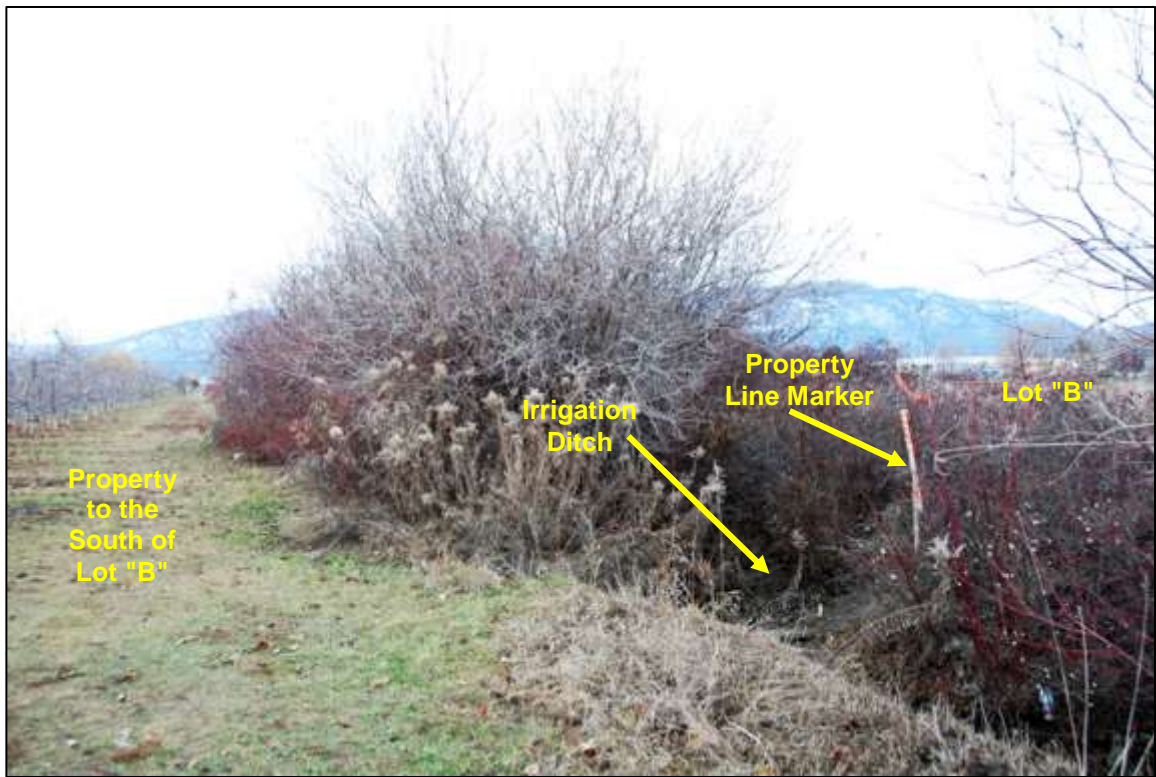
View of irrigation ditch looking northeast.



View east overlooking irrigation ditch.







View west overlooking irrigation ditch.



View east overlooking property and irrigation ditch.







*Figure 5 – Neighbourhood Map*

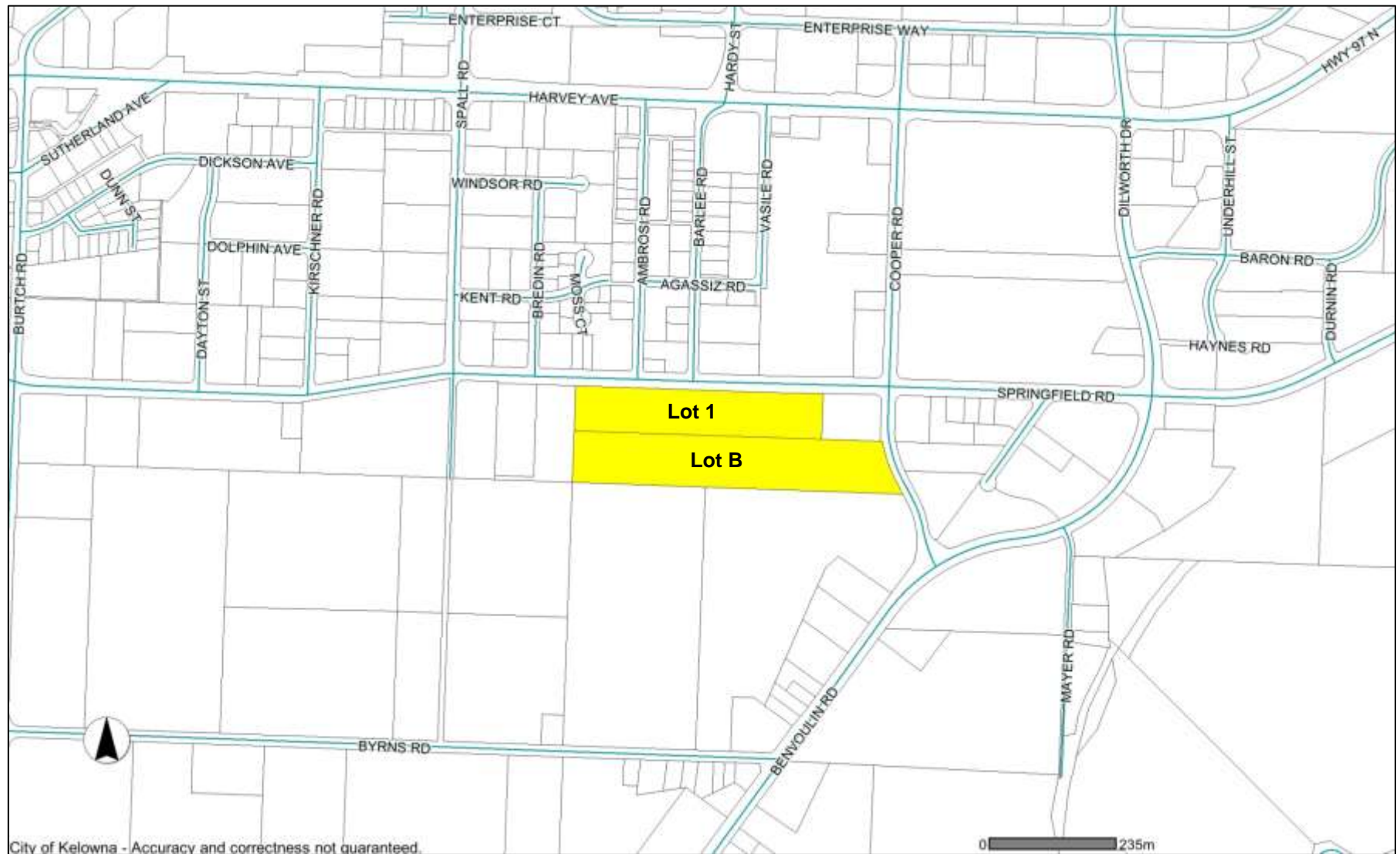
Subject





**Figure 6 – Composite Map**

**Subject**



*Figure 7 – Air Photographs*

*Lot 1, 2025 Springfield and Lot B, 2120 Cooper Road*



View east overlooking the property along Springfield Road, December 2012.







Aerial view east along Springfield Road, May 2012.







Southeasterly view, May 2012.







Aerial view west, May 2012.







Aerial view north, May 2012.





***Figure 8 – Site Photographs***



View northeast from the southwest corner, July 2013



View northwest from the southeast corner, July 2013





View southeast from northwest corner, July 2013



View northwest from the southeast corner, July 2013







Panoramic view east to west from the mid-point of the north boundary.



Panoramic view west to east from mid-point of the south boundary.



## ***Section 2***

## ***Land Use Controls***

### **2.1 Zoning**

The property is zoned A1 Agricultural, pursuant to the City of Kelowna Zoning Bylaw No. 8000.

Minimum lot size is 9.88 acres, except the minimum lot area is 4.94 acres when located within the Agricultural Land Reserve.

As per the City of Kelowna's Zoning Bylaw;

- Permitted Uses:**
- (a) agriculture**
  - (b) animal clinics, major where in existence prior to July 1<sup>st</sup>, 1998**
  - (c) aquaculture**
  - (d) greenhouses and plant nurseries**
  - (e) intensive agriculture**
  - (f) utility services, minor impact**
  - (g) single dwelling housing**

Refer to the following Zoning Map, Figure 9.

### **2.2 Official Community Plan**

The City of Kelowna adopted their 2030 Official Community Plan on May 30, 2011. This documents goal is that it “provides a policy framework for Council by addressing issues such as housing, transportation, infrastructure, parks, economic development and the natural and social environment”.

Under the OCP, the subject property is identified as "Resource Protection Area". The 2030 Official Community Plan designates the subject parcels outside of the Permanent Growth Boundary Area as can be seen on the attached Official Community Plan Map, Figure 10. In the previous OCP Kelowna: 2020, the property was identified as part of the Springfield Highway 97 Urban Town Centre development permit area.

The subject property is located adjacent to the Midtown Urban Centre, 230 metres from the Capri Landmark Urban Centre, and less than 3 kilometres from the remaining three Urban Centres in Kelowna (City Centre, South Pandosy and Rutland).





Throughout the current and previous OCP's, the subject site's designation as part of the Urban Centre and Permanent Growth Boundary has varied, there is consistent language that the City will support their Agricultural Plan that contemplates the subject property as excluded (see section 2.4, City of Kelowna Agricultural Plan).

Chapter 5 of the current OCP is specific to the Development Process and references any conflict that the subject site has with the OCP in Objective 5.33: Protect and enhance local agriculture. Under 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.

As the subject properties are identified in the City of Kelowna Agricultural Plan, the OCP supports the redevelopment of the subject site.

The OCP further endorses this site for future commercial and residential development in Objective 5.2: Develop Sustainability. Under Policy .3:

**Complete Suburbs.** Support a mix of uses within Kelowna's suburbs (see Map 5.1 - Urban Core Area), in accordance with "Smart Growth" principles to ensure complete communities. Uses that should be present in all areas of the City (consistent with Map 4.1 - Future Land Use Map), at appropriate locations, include: commercial, institutional, and all types of residential uses (including affordable and special needs housing) at densities appropriate to their context. Building heights in excess of four storeys will not be supported within the suburban areas, unless provided for by zoning existing prior to adoption of OCP Bylaw 10500.

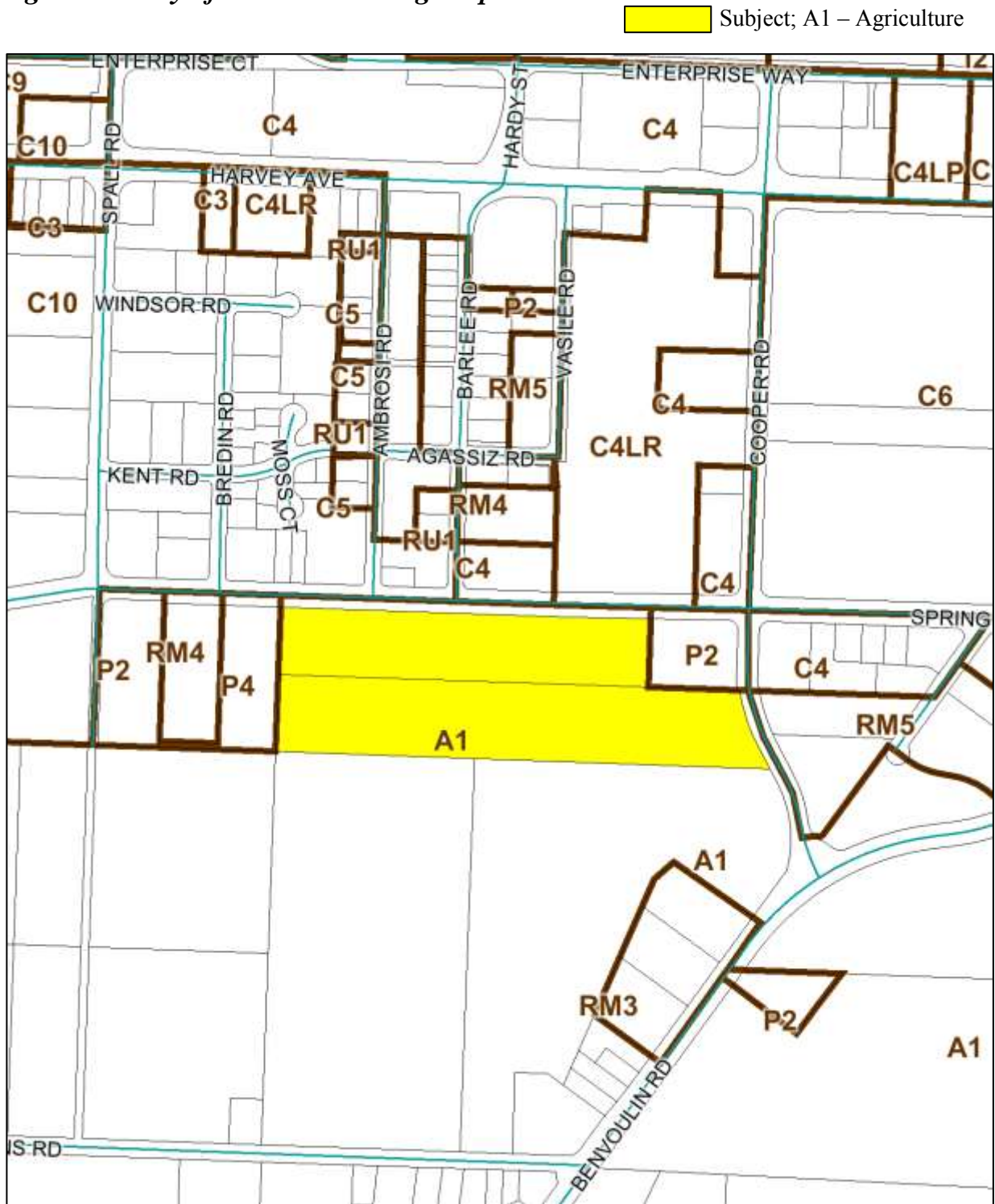
The referenced Map 5.1 – Urban Core Area is shown in Figure 11, and the subject property is clearly shown to be within the Core Area.

### 2.3 Agricultural Land Reserve

The entire property is included within the Agricultural Land Reserve as shown on Figures 12 and 13.



**Figure 9 – City of Kelowna Zoning Map**



A1; Agriculture

P2; Education and Minor Institutional

P4; Utilities

C4LR; Urban Centre Comm. (Retail Liquor)

C4; Urban Centre Commercial

C5; Transitional Comm.

C6; Regional Commercial

C10; Service Commercial

RM5; Medium Density Multiple Housing

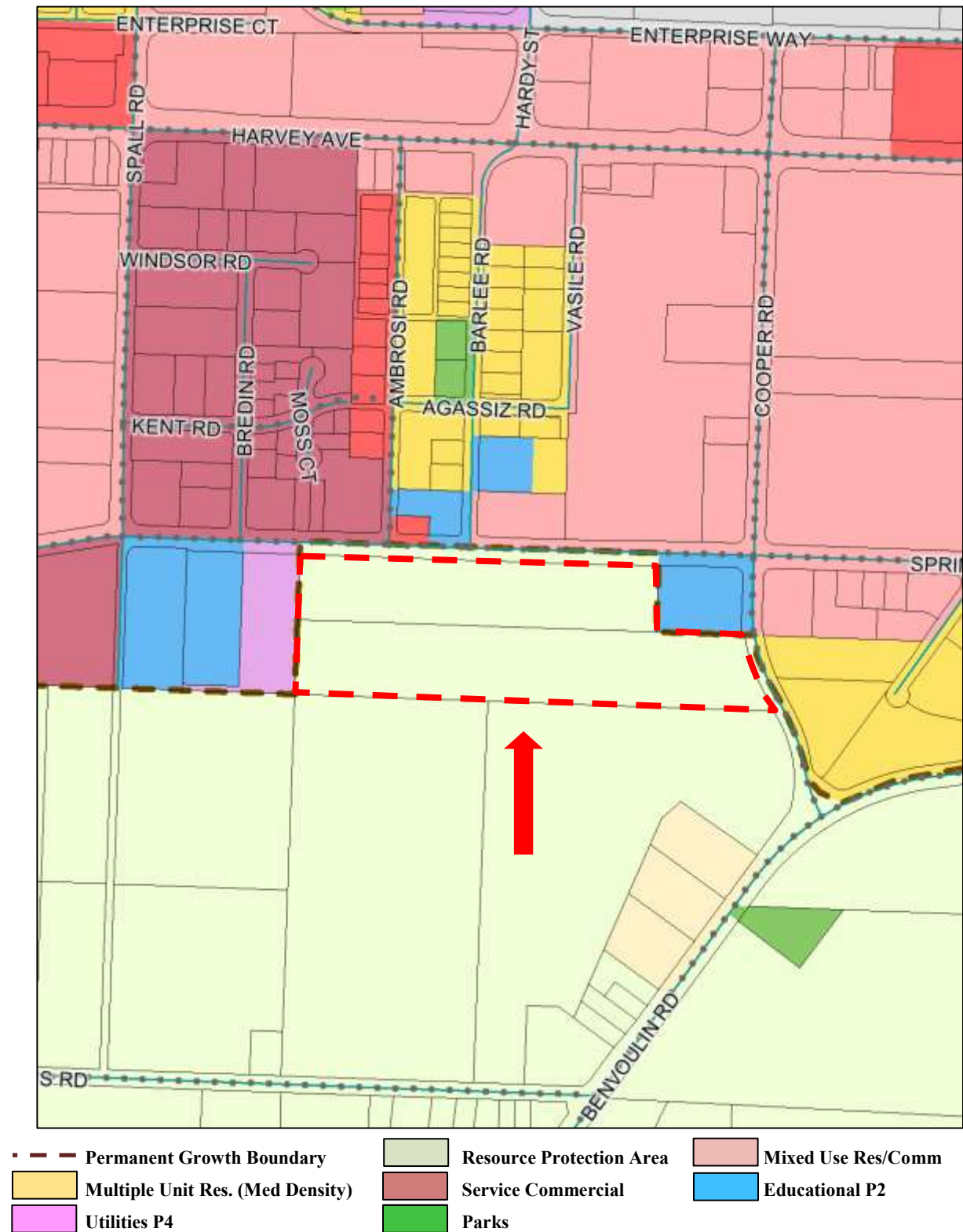
RM4; Transitional Low Density Housing





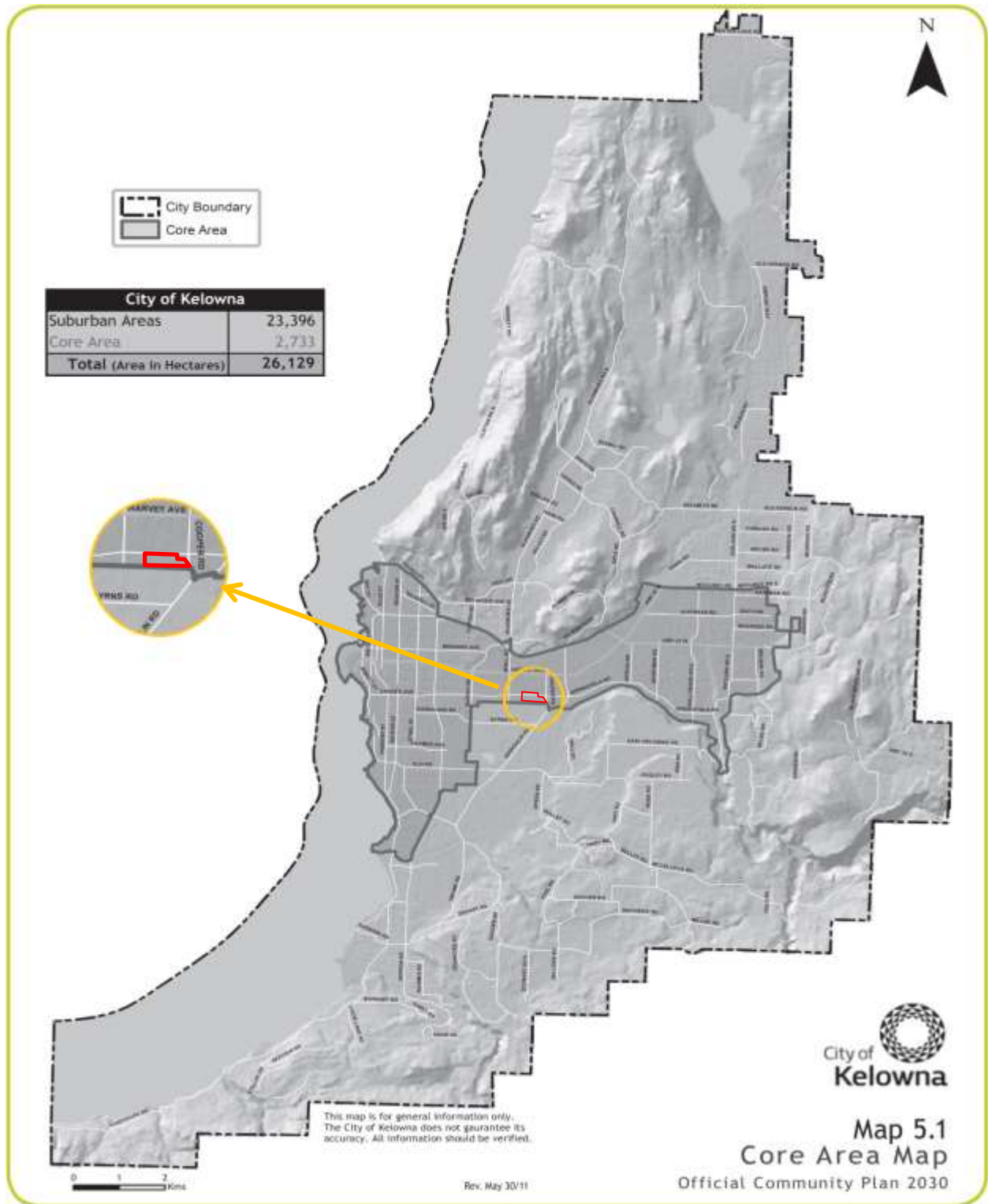
**Figure 10 – 2030 Official Community Plan Future Land Use Plan**

**Subject; Resource Protection Area**



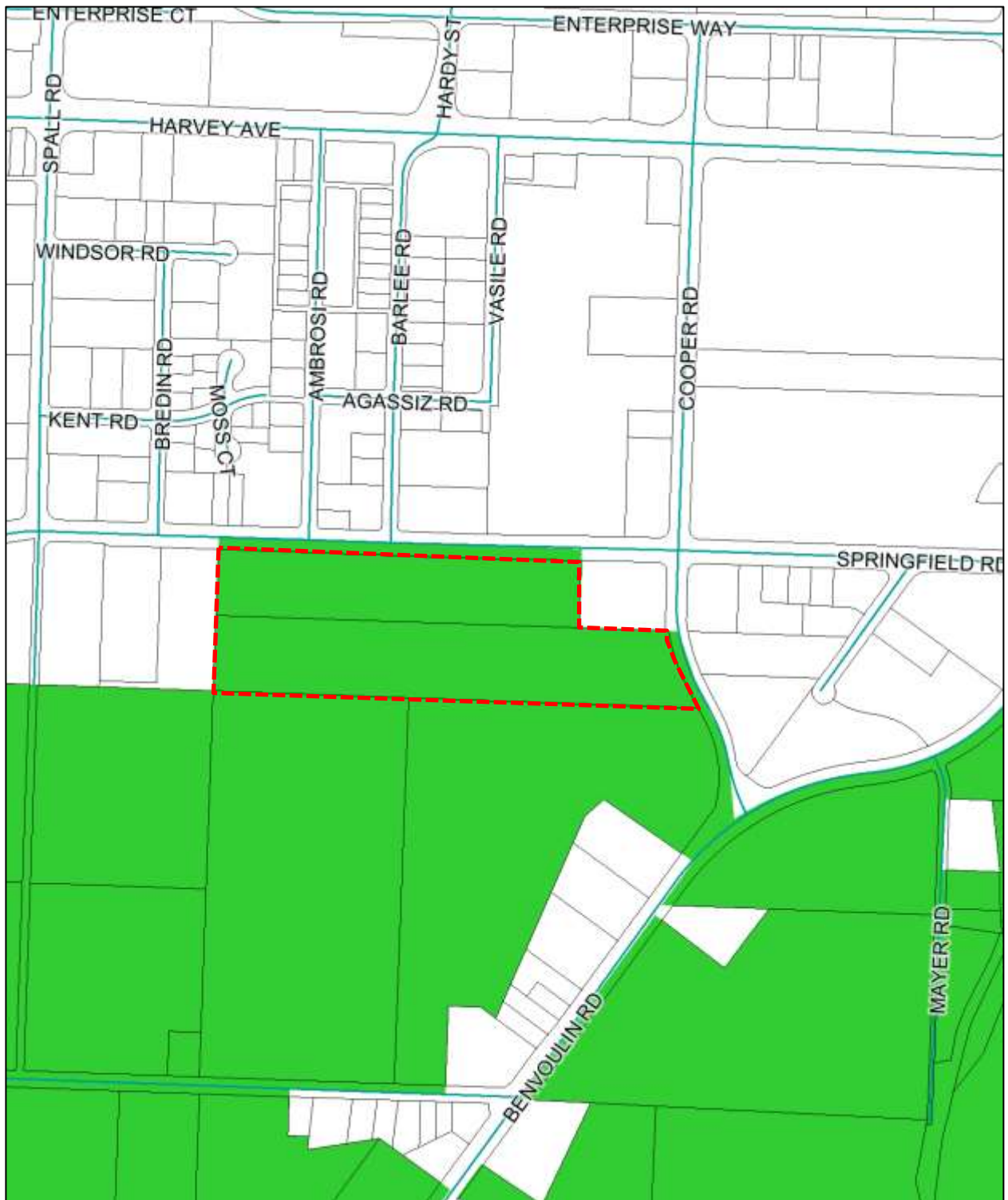
**Figure 11 – Official Community Plan – Core Area Map**

 Subject



**Figure 12 –Agricultural Land Reserve Map**

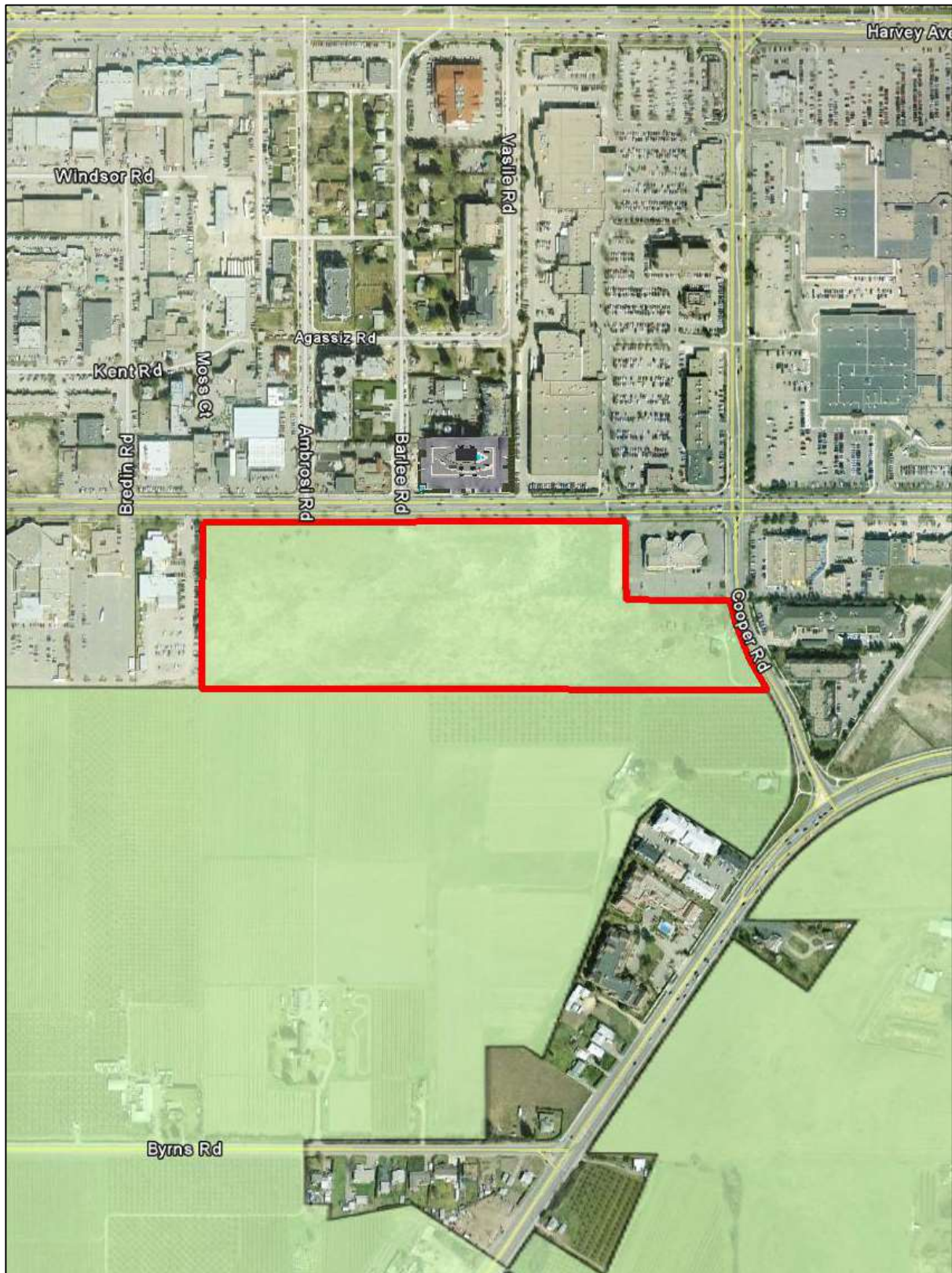
 Subject





*Figure 13 –Agricultural Land Reserve Map*

 Subject



## 2.4 City of Kelowna Agricultural Plan

Under the City of Kelowna Agriculture Plan, the subject properties are identified as ALR.


However, the Agriculture Plan states in two separate locations, the City's support of removal of agricultural land reserve status for the subject properties. Refer to the following excerpts from the Agriculture Plan, pages 122 and 133 that specifically reference the subject property.

26. **Springfield Road.** Continue to support the future exclusion or non-farm use of two properties south of Springfield Road between Cooper Road and Spall Road;

27. **ALR Application Criteria.** Require applicants to substantiate the marginal nature of farming (for a full range of cropping options) based on soil capability, climate, topography (slope), elevation, and/or drainage/wetland conditions. In addition to the above background data, any City decision will use the following criteria as the basis of support or non-support of individual applications:

- Location / use context in terms of impact on adjacent agricultural properties with respect to conflict of uses and speculation/land value;
- Necessity for urban growth needs or as logical infill;
- Availability of sufficient services, particularly road access and sanitary sewer, and the impact of expansion of these services on adjacent agricultural properties;
- Benefits or sensitivity to agriculture in the form of buffering or complementary / transition uses.





Two large ALR properties south of Springfield Road between Cooper Road and Spall Road have been a long-standing source of discussion and disagreement on ALR status. Given the proximity to a major Urban Town Centre and location along a major City arterial road the City will continue to support the future exclusion or non-farm use of these properties.

ALR lands east of Dilworth Drive/Rifle Road north of Mt. Baldy Drive have been suggested by owners as future urban land due to potential urban uses surrounding the area, however, this area is suitable for some tree fruits, berries, and vegetables. Some on-site drainage improvements and reclamation of land inappropriately filled would increase productivity and support retention of this area in ALR, as part of the rural/agricultural defined area. Further consideration of portions of this area for other uses may be appropriate when an alignment for the extension of McCurdy Road from Highway 97 to Dilworth Drive has been identified.





**3.1 Agricultural Capability of the Exclusion Lands**

The Agricultural Capability of subject properties Lot 1, Plan 18971 and Lot B, Plan 970 shows that the soil textures in the upper horizons are consistent with previous published soil mapping. However, agricultural capability ratings have changed; from soil wetness (W) limitations to soil moisture deficiencies (A), due to the combination of coarse textures and significant reduction in flooding. The soils on the subject property are primarily limited by a soil moisture deficit with some fertility (salinity) limitations.

The overall unimproved subclass rating at the site is Class 5A. With a fertility of the soils rating Subclass 3F, this may be improved to a 2N after adding fertility, while still being dominantly limited by salinity.

Refer to the Summit Environmental Agricultural Capability in the Addenda.

The conclusion of the report indicates that the unimproved rating is Class 5A, with an improved rating of Class 2N, with irrigation and fertilization.



**4.1 Land Use**

McIntosh Properties proposes a comprehensive master planned development comprising a mix of multi-family residential and commercial as shown on the attached concept plans.

With reference to the attached exhibits, Barlee Road is proposed to extend southward across Springfield Road bisecting the subject property and intersecting with a new/east road paralleling the southerly boundary. The Barlee/Springfield Road intersection will be signalized.

The subject lands lying west of the Barlee Road extension comprising approximately 9 acres are proposed to be developed to clusters of 4 to 6 storey rental apartments in an open, pedestrian-friendly, phased project.

With most of the parking underground, the site would accommodate up to 500 units with a mix of bachelor, one bedroom and two bedroom units.

The easterly commercial component lying between the Barlee Road extension and Cooper Road comprising approximately 10 acres is proposed to reflect a "Village" concept modelled largely after the "Village at Park Royal" shopping centre in North Vancouver.

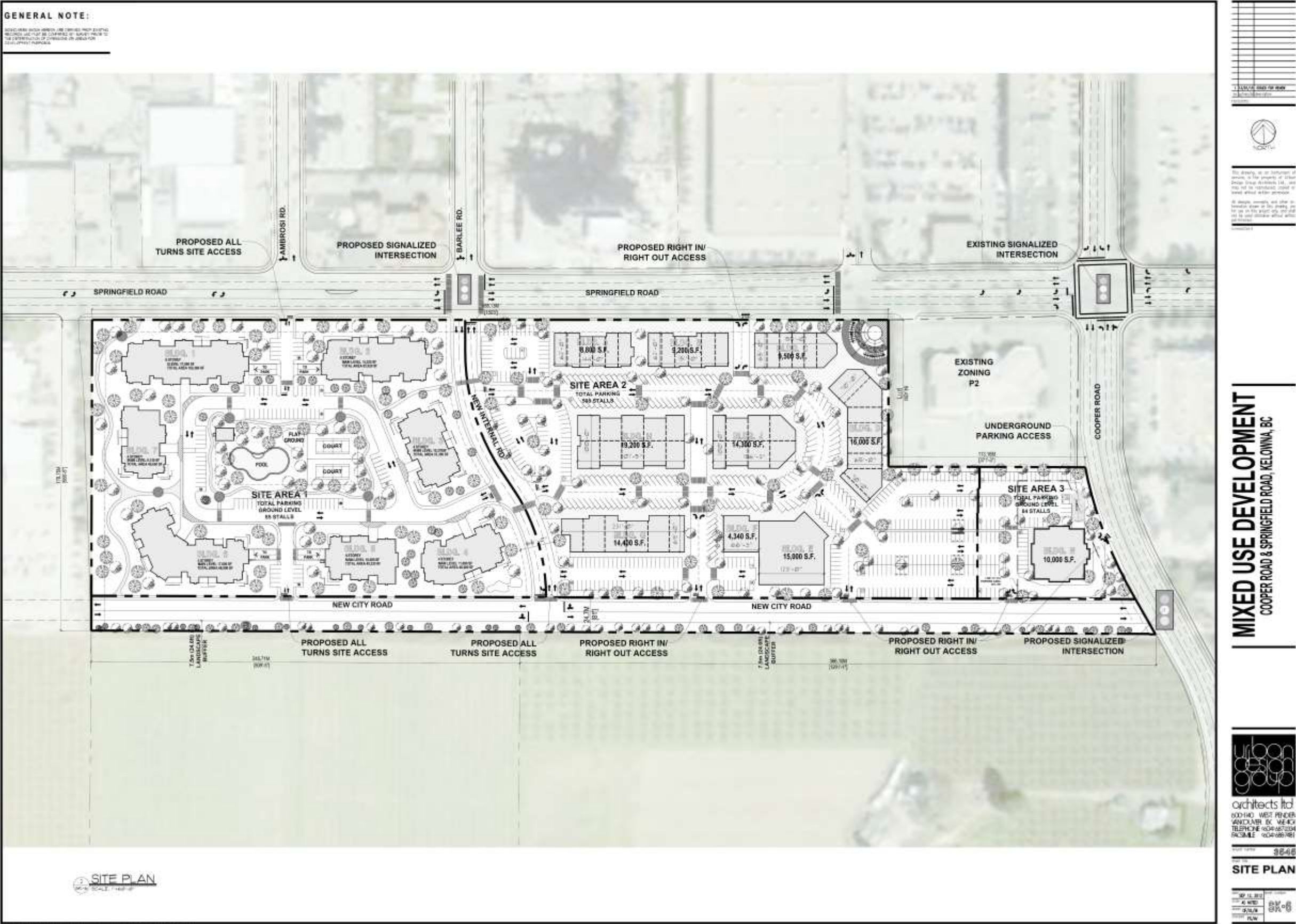
The concept raises the bar from a retail perspective with a much more open, pedestrian oriented environment with wide sidewalks, open patios and green space.

The predominantly one storey buildings could comprise a gross building area of approximately 110,000 square feet.

An office building of 6 to 10 floors is proposed for the easterly extremity of the site fronting Cooper Road. With a 10,000 square foot footprint, the building would offer between 60,000 and 100,000 square feet of gross leasable area.



Figure 14 – Proposed Mixed Use Development – Site Plan





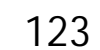




Figure 16 – Proposed Mixed Use Development – Commercial Component





# *Concept Images*













## 4.2 Future Roads

A new city road is proposed extending from Cooper Road westward paralleling the southerly boundary of the property through to the easterly boundary abutting the Fortis office site. The potential exists for extending the road further westward to connect to Spall Road.

As noted, Barlee Road would extend southward across Springfield Road via a controlled intersection to connect with the new city road.

## 4.3 Buffering

The new city road paralleling the subject's southerly boundary abutting the ALR lands is one of the primary buffers separating the development lands from the adjoining orchards. In addition, fencing would be provided along the entire southerly boundary as well as landscaped buffering in accordance with the Ministry of Agriculture and Lands "Guide to Edge Planning" which is a "guide promoting compatibility along urban/agricultural edges." As per this guide, a 7.5 metre wide landscape buffer would be constructed in addition to the 17.2 metre wide proposed road, giving 24.7 metres to the nearest property line.

The intent is to mitigate and minimize conflicts between the proposed residential/commercial development and adjoining agricultural uses. An example of urban/side buffers taken from the Ministry of Agriculture guide is shown below.

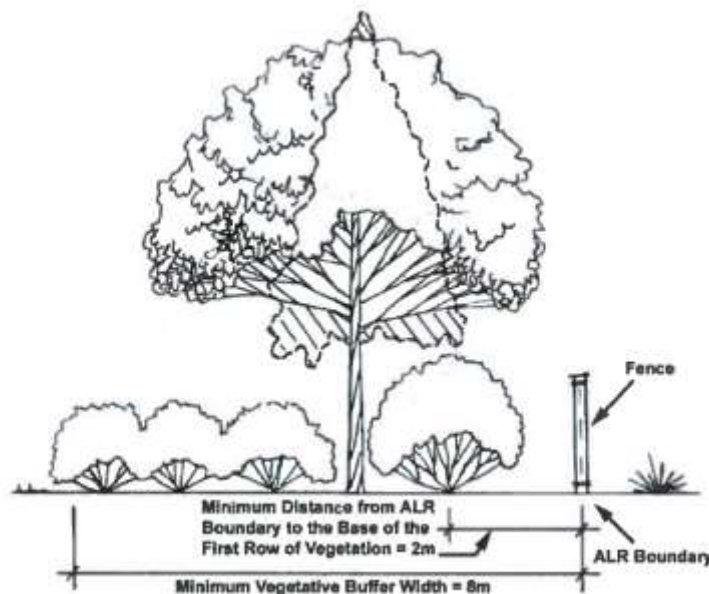




Figure 17 – Proposed New City Road – Schematic Section

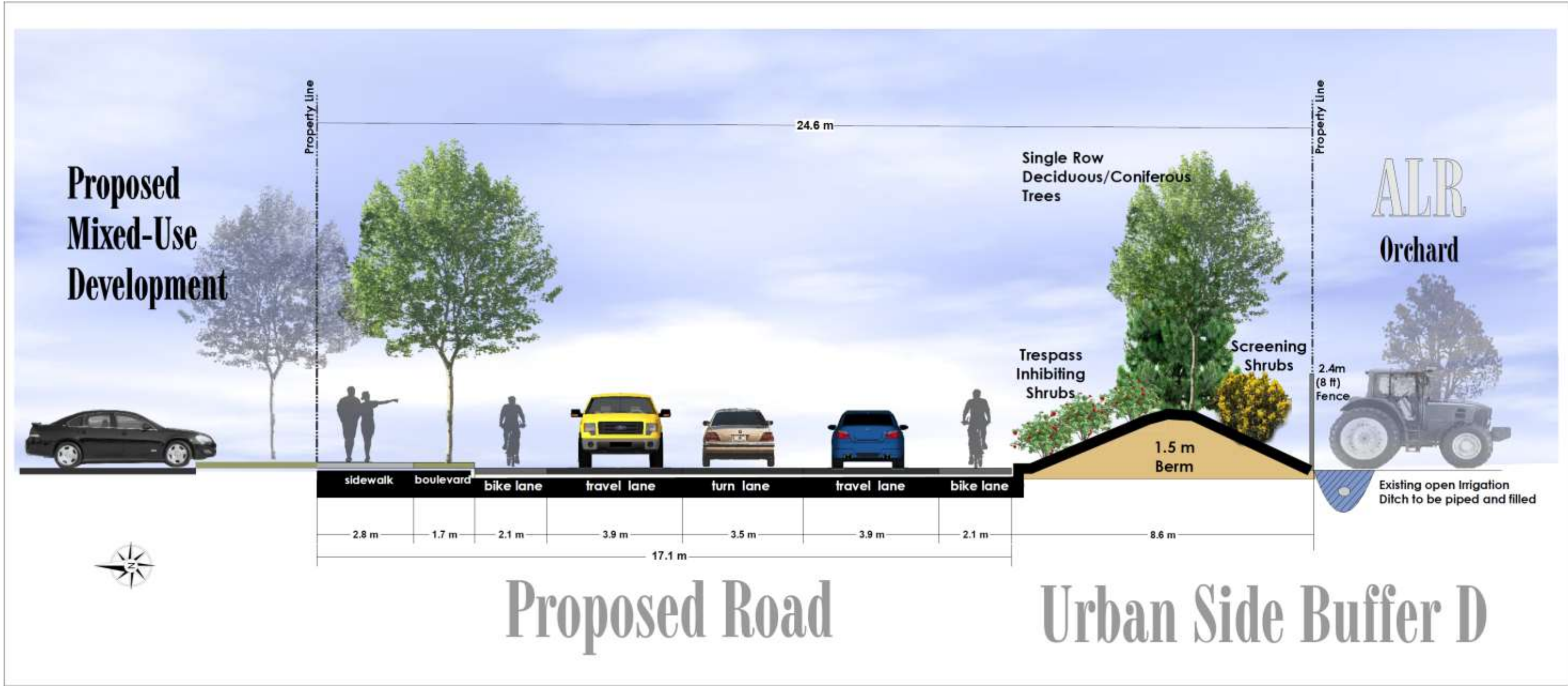
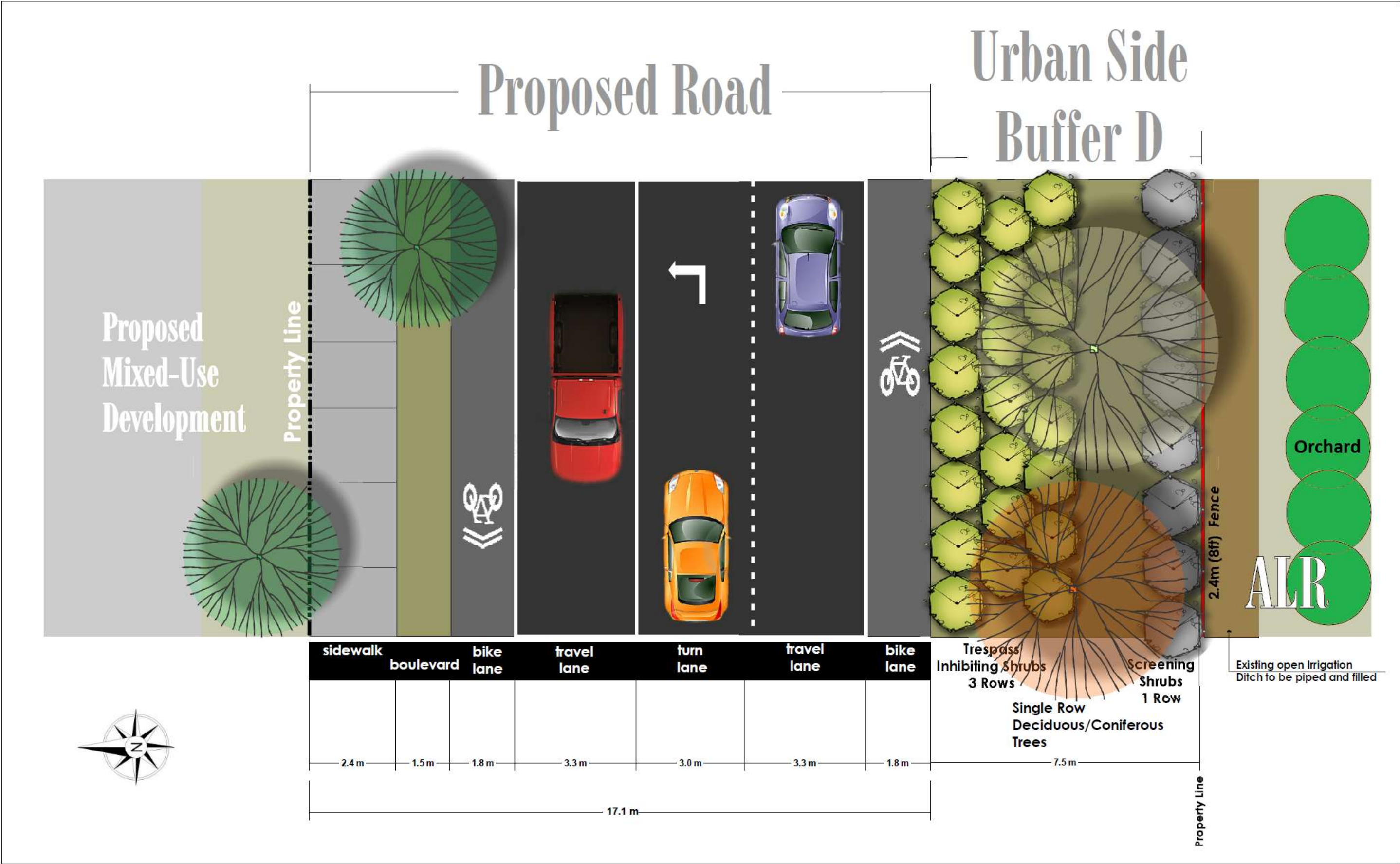


Figure 18– Proposed New City Road – Plan View





#### **4.4 Drainage and Runoff**

The new city road paralleling the agricultural lands will be constructed to a full urban cross section with curb, gutter and storm sewer. Any runoff or leaching from the road will be picked up by the storm sewer with no runoff permitted or possible to the adjoining agricultural lands.

#### **4.5 Irrigation Ditch**

Discussions are underway with the Benvoulin Water Users Community and adjoining farmers regarding proposed piping the existing irrigation ditch. Benefits would include:

1. Increased usable farm land/head land as the filled irrigation ditch area could be utilized by farm equipment.
2. The water source would be protected from agricultural sprays and fertilizers by underground piping.
3. The high level of maintenance of the open ditch would be eliminated.
4. Wild overgrowth along the ditch which encourages transient camps would be eliminated.

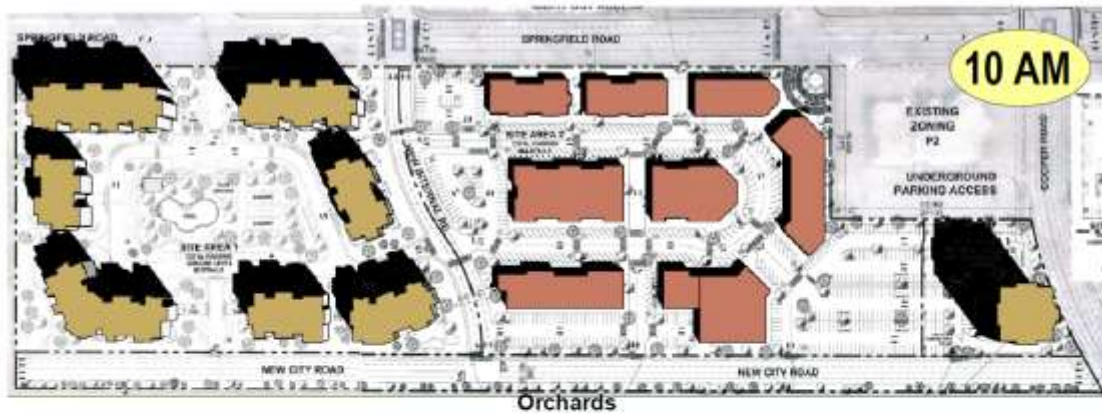
The piping and filling of the ditch is supported by the manager of the Benvoulin Community Water Users.

#### **4.6 Shadow Impact**

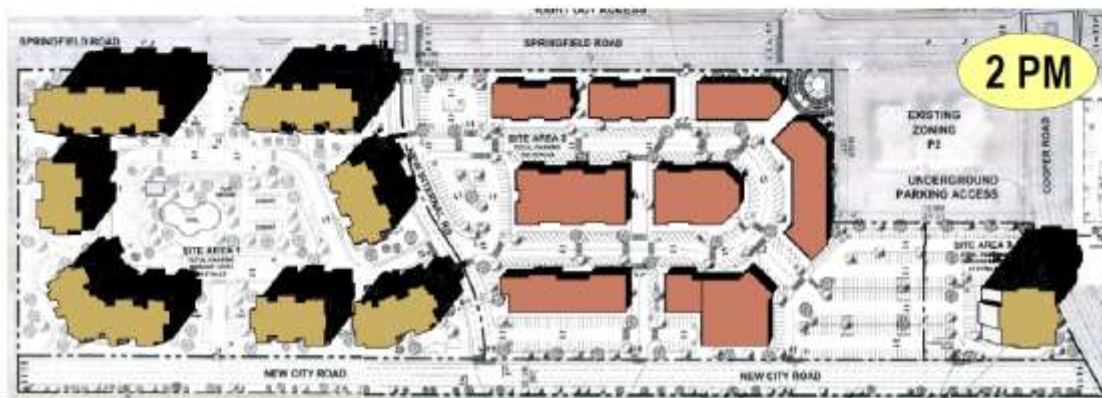
Based on the location and height of each building, there will be no impact to agricultural land, nor any impact to adjacent properties from building shadows. Figures 19 thru 21 show the shadow impact during the Spring Equinox (March 21<sup>st</sup>), Summer Solstice (June 21<sup>st</sup>), and Fall Equinox (September 21<sup>st</sup>).



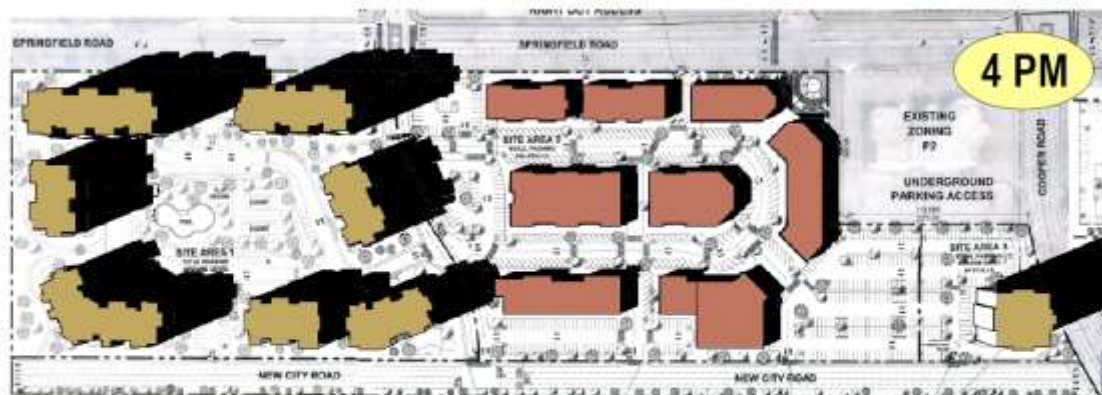
*Figure 19 – Shadow Impact Study – March 21st*



Orchards



Orchards

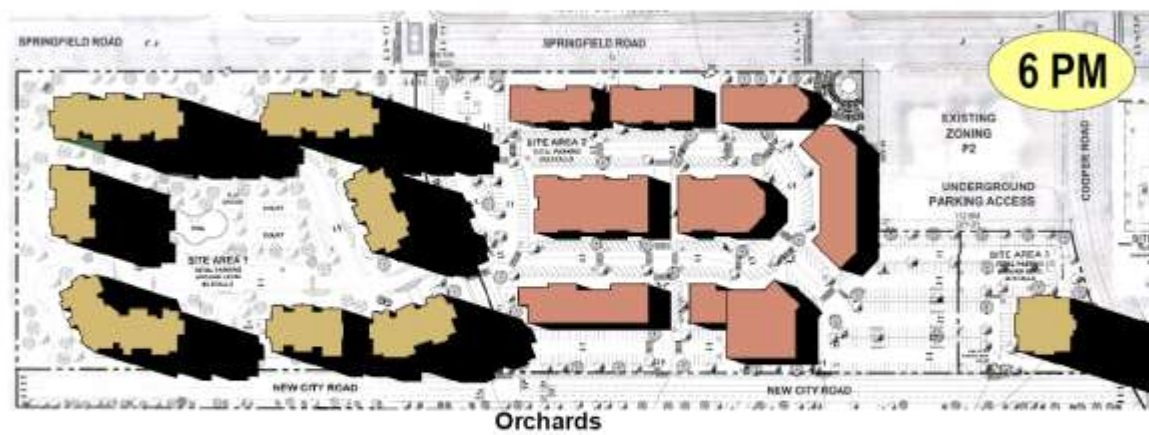
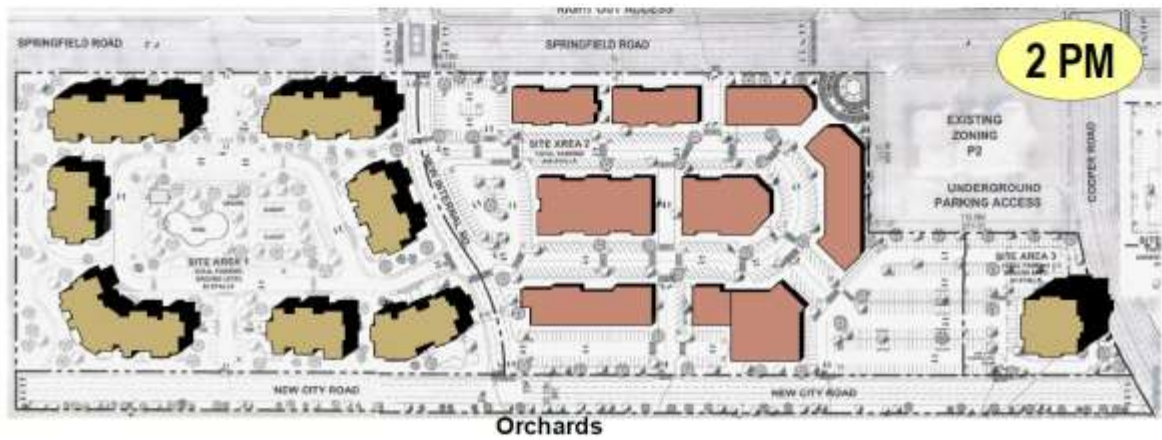
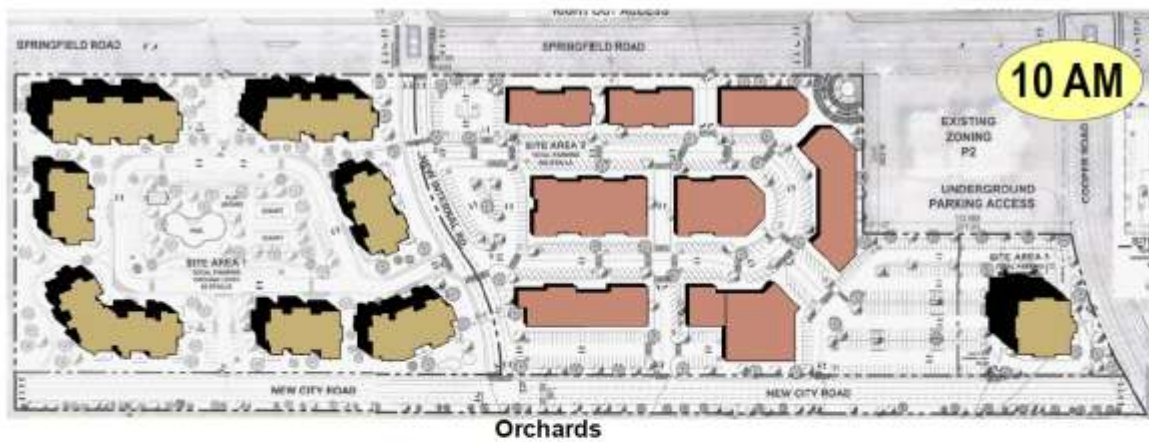


Orchards

MARCH 21



*Figure 20 – Shadow Impact Study – June 21st*

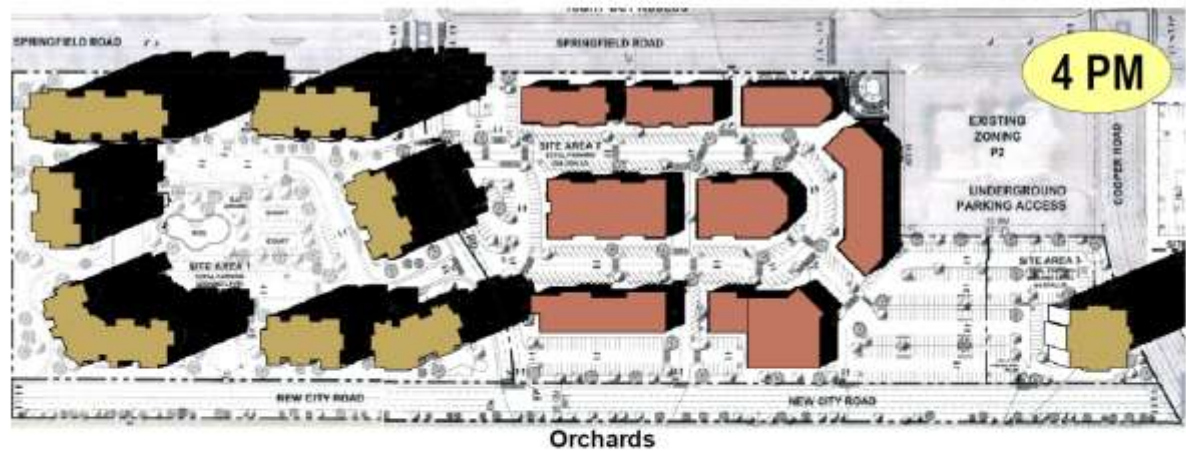
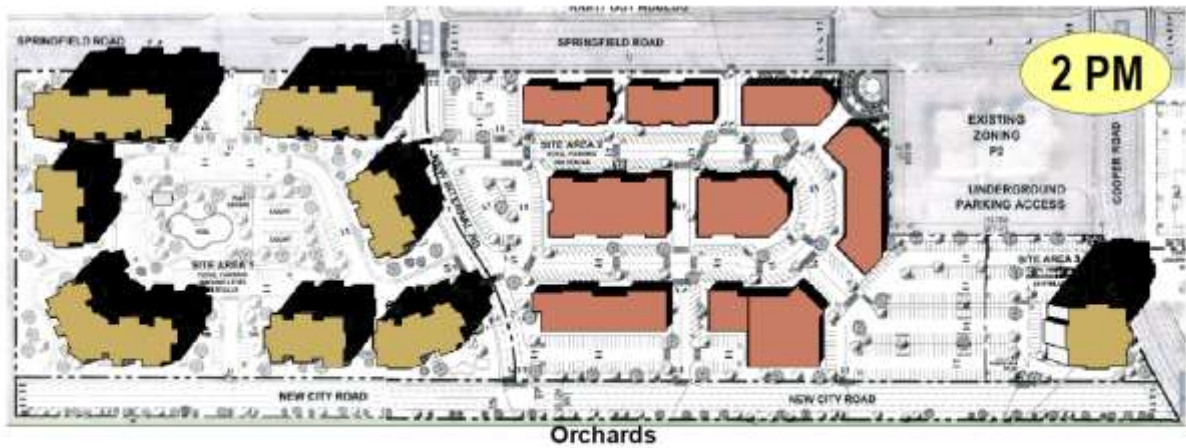
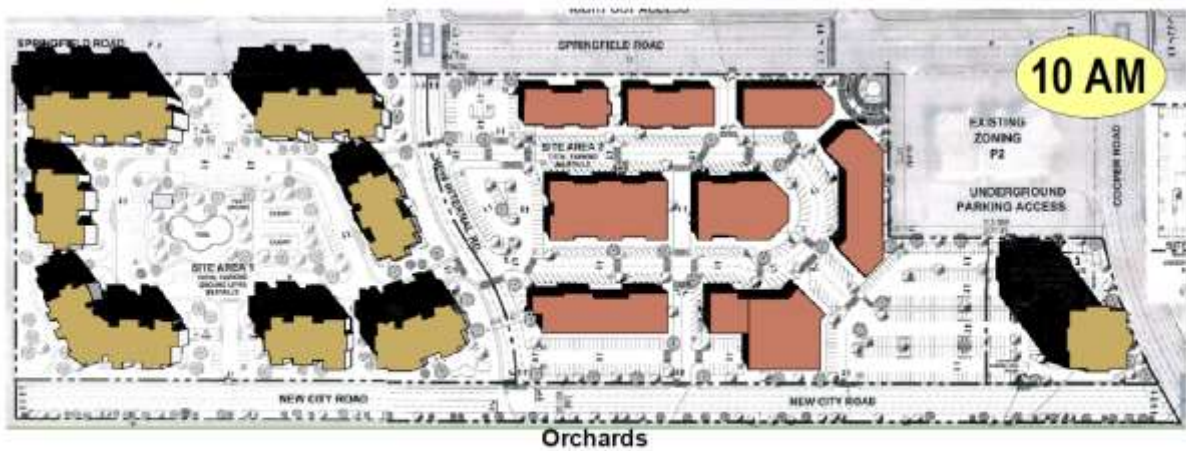


JUNE 21





*Figure 21 – Shadow Impact Study – September 21st*



SEPTEMBER 21 





***ADDENDA -  
EXCLUSION LANDS***



***EXHIBIT 1***  
***SUMMIT ENVIRONMENTAL CONSULTANTS INC.***  
***AGRICULTURE CAPABILITY ASSESSMENT***



## ***EXHIBIT 2***

### ***ALC APPLICATION***





## APPLICATION BY LAND OWNER

*NOTE: The information required by this form and the documents you provide with it are collected to process your application under the Agricultural Land Commission Act and regulation. This information will be available for review by any member of the public. If you have any questions about the collection or use of this information, contact the Agricultural Land Commission and ask for the staff member who will be handling your application.*

### TYPE OF APPLICATION (Check appropriate box)

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> <b>EXCLUSION</b><br>under Sec. 30(1) of the Agricultural Land Commission Act | <input type="checkbox"/> <b>SUBDIVISION</b> in the ALR<br>under Sec. 21(2) of the Agricultural Land Commission Act  |
| <input type="checkbox"/> <b>INCLUSION</b><br>under Sec. 17(3) of the Agricultural Land Commission Act            | <input type="checkbox"/> <b>Non-farm USE</b> in the ALR<br>under Sec. 20(3) of the Agricultural Land Commission Act |

### APPLICANT

Registered Owner: MCINTOSH PROPERTIES Ltd.		Agent: Kent - Macpherson	
Address:		Address: 304 - 1708 Dolphin Avenue	
Kelowna, BC		Kelowna, British Columbia	
Postal Code V1Y 8K5		Postal Code V1Y 9S4	
Tel. (home) (    ) (work) (    )		Tel. (250 ) 763 - 2236	
Fax (    )		Fax (250 ) 763 - 3365	
E-mail		E-mail rcook@kent-macpherson.com	

### LOCAL GOVERNMENT JURISDICTION (Indicate name of Regional District or Municipality)

City of Kelowna, British Columbia

### LAND UNDER APPLICATION (Show land on plan or sketch)

Title Number	Size of Each Parcel (Ha.)	Date of Purchase	
		Month	Year
CA1063938	3.83	Mar	1969
KC44536	6.02	Sept	2012

### OWNERSHIP OR INTERESTS IN OTHER LANDS WITHIN THIS COMMUNITY

(Show information on plan or sketch)

If you have interests in other lands within this community complete the following:

Title Number(s): CA1063922; CA1063923; CA1063933; CA1063936; CA1063937





**PROPOSAL** *(Please describe and show on plan or sketch)*

The proposed use for the property is a mixed use residential/commercial development.

**CURRENT USE OF LAND** *(Show information on plan or sketch)*

List all existing uses on the parcel(s) and describe all buildings.  
No buildings or current use is occurring on either property.

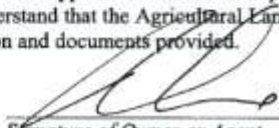
**USES ON ADJACENT LOTS** *(Show information on plan or sketch)*

North C4 - Commercial Residential, P2 Educational and Minor Educational  
East RM5 - Residential Multiple Zone  
South A1 - Agriculture  
West P4 - Utilities

**DECLARATION**

I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the *Agricultural Land Commission Act* and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

Jan 15/13  
Date

  
Signature of Owner or Agent

RANDY LOWE  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Owner or Agent

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Owner or Agent

\_\_\_\_\_  
Print Name

**Please ensure the following documents are enclosed with your application:**

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application \*(See instructions)
- Photographs (optional)



***EXHIBIT 3***

***PROPERTY TITLES***



## Lot 1 Title

Date: 18-Jan-2013      TITLE SEARCH PRINT      Time: 10:22:19  
 Requestor: (PA99716)      KENT-MACPHERSON APPRAISALS      Page 001 of 001  
 Folio: RC      TITLE - CA1063938

KAMLOOPS      LAND TITLE OFFICE      TITLE NO: CA1063938  
    FROM TITLE NO: KV137934

APPLICATION FOR REGISTRATION RECEIVED ON: 20 MARCH, 2009  
    ENTERED: 06 APRIL, 2009

REGISTERED OWNER IN FEE SIMPLE:  
 MCINTOSH PROPERTIES LTD., 0846631  
 #201-1980 COOPER ROAD  
 KELOWNA, BC  
 V1Y 8K5

TAXATION AUTHORITY:  
 CITY OF KELOWNA

DESCRIPTION OF LAND:  
 PARCEL IDENTIFIER: 008-162-883  
 LOT 1 DISTRICT LOT 128 OSOYOOS DIVISION YALE DISTRICT PLAN 18971  
 EXCEPT PLAN 43996

### LEGAL NOTATIONS:

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND  
 COMMISSION ACT; SEE PLAN M11328

### CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE  
 CHARGE NUMBER      DATE      TIME

STATUTORY RIGHT OF WAY  
 KF23498      1992-03-18      11:57  
 REGISTERED OWNER OF CHARGE:  
 WEST KOOTENAY POWER LTD.  
 KF23498  
 REMARKS: PART SHOWN ON PLAN KAP46867

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*



## Lot B Title

Date: 18-Jan-2013      TITLE SEARCH PRINT      Time: 10:23:51  
 Requestor: (PA99716)      KENT-MACPHERSON APPRAISALS      Page 001 of 001  
 Folio: RC      TITLE - CA2769810

KAMLOOPS      LAND TITLE OFFICE      TITLE NO: CA2769810  
    FROM TITLE NO: CA2649582

APPLICATION FOR REGISTRATION RECEIVED ON: 14 SEPTEMBER, 2012  
    ENTERED: 20 SEPTEMBER, 2012

REGISTERED OWNER IN FEE SIMPLE:  
 MCINTOSH PROPERTIES LTD., INC.NO. BC0846631  
 201 - 1980 COOPER ROAD  
 KELOWNA, BC  
 V1Y 8K5

TAXATION AUTHORITY:  
 CITY OF KELOWNA

DESCRIPTION OF LAND:  
 PARCEL IDENTIFIER: 002-865-602  
 LOT B DISTRICT LOT 128 OSOYOOS DIVISION YALE DISTRICT PLAN 970 EXCEPT PLANS  
 36410, 41244 , KAP47295 AND H12895

### LEGAL NOTATIONS:

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL  
 LAND COMMISSION ACT SEE PLAN M11328

### CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE  
 CHARGE NUMBER      DATE      TIME

STATUTORY RIGHT OF WAY  
 KE21082      1991-04-08      09:31  
 REGISTERED OWNER OF CHARGE:  
 BRITISH COLUMBIA TELEPHONE COMPANY  
 WEST KOOTENAY POWER LTD.  
 KE21082

REMARKS: INTER ALIA  
                  PART SHOWN ON PLAN KAP44841 WITH ANCILLARY  
                  RIGHTS OVER THE REMAINDER

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*





***EXHIBIT 4***

***LETTER OF AGENCY***



# Letter of Agency from Kevin Bennett

REAL ESTATE APPRAISAL CONSULTATION & ARBITRATION



**Kent Macpherson**

January 8, 2013  
City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

## LETTER OF AGENCY

Subject Property: Lot 1, Plan 18971; DL: 128; ODYD 41, Except Plan  
Property ID# 008-162-883  
Address: 2025 Springfield Rd, Kelowna BC

Subject Property: Lot B, DL 128, ODYD Plan 970 Except Plans 36410, 41244, KAP47295 and  
H12895  
Property ID# 002-865-602  
Address: 2120 Cooper Rd, Kelowna BC V1W 2C6

This document gives:


Agent: Rod Cook of Kent-Macpherson

- Permission to act as the agent in the matter of the Agricultural Land Exclusion Application.

On Behalf of:

Property Owner: McIntosh Properties Ltd  
Suite 201-1980 Cooper Rd, Kelowna, BC V1Y 8K5  
phone:(250) 763-7787

I/We hereby certify with the printing and signing of my/our name(s), that I/We am/are the registered owner(s) of the above noted property, and , accordingly, have the authority to grant this permission.

Signed:   
Kevin Bennett

Address: \_\_\_\_\_

(please print and sign names of all registered owners)

Signature of Agent: 

Date: JAN 8 / 2013



# Letter of Agency from Steve Bennett

REAL ESTATE APPRAISAL, CONSULTATION & ARBITRATION



**Kent-Macpherson**

January 8, 2013  
City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

## LETTER OF AGENCY

Subject Property: Lot 1, Plan 18971; DL: 128; ODYD 41, Except Plan  
Property ID# 008-162-883  
Address: 2025 Springfield Rd, Kelowna BC

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H12895  
Property ID# 002-865-602  
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Suite 201-1980 Cooper Rd, Kelowna, BC V1Y 8K5  
phone:(250) 763-7787

I/We hereby certify with the printing and signing of my/our name(s), that I/We am/are the registered owner(s) of the above noted property, and , accordingly, have the authority to grant this permission.

Signed:

  
Steve Bennett

Address:

201-1980 Cooper Road  
Kelowna, B.C.  
V1Y-8K5

(please print and sign names of all registered owners)

Signature of Agent:

Date:

Jan 8 / 2013



***EXHIBIT 5***

***PROOF OF PUBLICATION NOTICES***





# Newspaper Notification - Capital News – January 17th and 24th, 2013

Capital News Thursday, January 17, 2013

## Transportation

### Auto Services

**NEW** collision repair facility looking to impress. Our exp'd staff can repair all makes and models. Motorhome and custom work avail. All equip. ICBC approved. We are willing to go that extra mile to ensure your satisfaction and quality repair. Visit our website valleyimpactcollision@gmail.com Call today (250)-863-9979

### Cars - Domestic

'07 Honda Civic, 5spd manual, 2 door coupe, MSRP \$11,500 & 1895 Nissan Frontier 4wd, auto, gas, \$1400. Call (250)762-7273

2006 Cadillac STS 121km Mint condition. \$13,700 Call (250)503-4776

## AUTOMOTIVE SPECIAL

Limited time offer!! Buy 2 weeks, get 30% off the 2nd week

**ONLY \$59.99** plus HST 1 col x 2" size with or without picture for 3 insertions (1 week) (Reg. price \$196.25)

Call your classified representative today! 250-763-7114

**LOOKING FOR A DEAL ON A NEW VEHICLE?** Save up to 40% OFF your next new vehicle... No games or gimmicks, deal direct with local dealerships. www.newcarsellsoff.com



No qr code reader? Text info: 778.766.8271



While we try to ensure all advertisements appearing in the Kelowna Capital News are placed by reputable businesses with legitimate offers, we do caution our readers to undertake due diligence when answering any advertisement, particularly when the advertiser is asking for monies up front.

### Refund Policy

Our ads are non-refundable when booked for less than 4 weeks (12 issues), when cancelling a 4 week ad you will be refunded in weekly increments only calculated at the appropriate discount level. Refunds not available for 1/2 price promotion.

## Recreational/Rent

## Transportation

### Trucks & Vans

2004 TOYOTA Tundra Crew Cab TRD- off rd, 4x4, loaded, power sunroof, leather seats, only 112,000 km. \$17,900. Tonneau cover. (250)864-5414.

2005 FORD F150 XLT 4x4 Supercrew \$5300 Call (250)503-4776

2007 Dodge 1500 4x4, box liner, running boards, new brakes & tires \$11,200. 250-542-6156

## Legal

### Legal Notices

**NOTICE OF EXCLUSION APPLICATION REGARDING LAND IN THE AGRICULTURAL LAND RESERVE**

Kent Macpherson of 304-1708 Dolphin Avenue, Kelowna BC, V1Y 9S4 agent for McIntosh Properties Ltd. of Kelowna, BC intends on making an application pursuant to Section 30(1) of the Agricultural Land Commission Act to exclude from the Agricultural Land Reserve the following property which is legally described as Lot 1; Plan 18971, DL:128 LD Osoyoos Div of Yale (41); Except Plan 43996 and Lot B, Plan 970, District Lot 128, Osoyoos Div of Yale Land District (41), Except Plans 36410, 41244, KAP47295 and H12895. Any person wishing to express an interest in the application may do so by forwarding their comments in writing to the City of Kelowna, Land Use Management Department, 1435 Water Street, Kelowna, BC V1Y 1J4 by January 31, 2013.

**NOTICE TO CREDITORS AND OTHERS Re: The Estate of BARBARA AMELIA HARRIS**, deceased, formerly of 457 Abel Street, West Kelowna, V1Z 2Z6 NOTICE is hereby given, under Section 38 of the Trustee Act, that Creditors and others, having claims against the Estate of BARBARA AMELIA HARRIS, who died on April 10th, 2009, are hereby required to send particulars of their claim to the Executor, Daniel M. Harris, c/o Peter Clarke, 14271 Easthill Road, Oryama, B.C. V4V 2V9, before February 15, 2013, after which date the Executor will distribute the said Estate among the parties entitled to it, having regard to the claims of which the Executor then has notice.

## Cars - Domestic

Buy Direct & Save \$\$\$

**GIA AUTO**

Capital News Thursday, January 24, 2013

## Rentals

### Rooms for Rent

1bdm in shared bsmt suite. Downtown area, incl's cable & utils. Phone (250)717-1696

1bd, shared kitchen & bath. New incl. int'cl., NS, ND no pets, nr bus/school. \$430ea. Avail now. 250-899-5152

Room for rent \$475. Mature male only, tv/cbl/utills incl'd. Indry. 250-861-8907, 250-317-2546

**WESTSIDE** Lrg room for rent. Own bathroom, high ceilings, fireplace, hardwood floors, \$400 + utilities (250)859-7026

## Senior Assisted Living

**GLENWOOD HOMES** Supportive living for seniors, **SPECIAL RATE**, all meals & house keeping, 24hr on site monitoring. Private room with ensuite. 766 Glenwood Ave \$1200/mo. Phone: 250-300-3436

## Shared Accommodation

1bdm, newly furn'd, priv. LR, shared kitchen/bath, includes: laundry, cable & utils. Avail. Immed. \$600/m. 250-860-2194

2bdms for rent in 5bdm house comes completely furnished utills, internet, landline, W/D, 2 baths, NP, NP, ND, NS, Apple Bowl area 2 min to bus. Avail. Immed. \$500 per bdrm per month 250-868-1314

**NEWLY** Renovated: Student, Disability or Working. Includes utills, cable & wifi. Shared suite with 1 person, \$800/mo. 5 min. to bus. Phon: 250-868-7146

## Suites, Lower

1BD, avail now Rutland. Near schools/shops. \$700 incl utills. NP bus route. 250-863-1302

1 BDRM + DEN main level suite in Lakewind Hts, West Kelowna. \$800/mo incl utills. Call Mira (604) 889-5362.

2bdm large, bright kitchen, all appls, partially furn'd, pets ok. Quiet, private, charming & very clean, \$850mo. 766-1265

2BD suite, north Rutland, above grd, wood fir, cabl, sep ent, W/D, A/C, NS, NP, close to bus & school. \$350 incl utills. Feb.1, (250)-491-3935

**BEAUTIFUL** Large, two room bachelor suite, includes sat TV, int & utills, fridge, st, w/d, sep. enr, NS, NP, quiet area Feb 1st, \$875 + DD. 250-713-5530

**COLDSTREAM** Walk Out Bsm, Sep entry, 2bdm, n-suite laundry, storage, covered parking. Full use of pool in summer, pets welcome, huge yard, FP, DW \$1200 utills, cable & internet incl'd. Available February 1st Call (250)-938-8886

## Suites, Upper

2bd, close to Parkinson, resp. people w/ good refs. \$950/mo. utills incl'd. 250-763-6473

2bd, Flemish St., fr., st., dw, shared indry, carport prking, 1000ent & storage NS not

## Transportation

### Auto Accessories/Parts

Say "OK Big Three" to advertise in the Capital News, the Vernon Morningstar and the Penticton Western News! Call 250-763-7114 or email your ad to classified@kelownacapnews.com

SET of 5 brand new Toyo open country A20's, removed from 2013 Toyota Highlander at 302km. 245 x 55 x 19 (103S) \$1250 for the set. Phone: 250-862-2136

## Auto Financing

**GUARANTEED AUTO LOAN** APPLY NOW! UaplyUdrive.CA Get \$1000 Cash Back! APPROVED 1-877-680-1231 Reps • Bankruptcy • No Credit

**DreamTeam Auto Financing** 0% Down, Bankruptcy OK - Cash Back! 15 min Approvals 1-800-961-7022 www.DreamAuto.com ad 7157

## Auto Services

**NEW** collision repair facility looking to impress. Our exp'd staff can repair all makes and models. Motorhome and custom work avail. All equip. ICBC approved. We are willing to go that extra mile to ensure your satisfaction and quality repair. Visit our website valleyimpactcollision@gmail.com Call today (250)-863-9979

## Cars - Domestic

2005 VW Jetta Diesel, 85,000km. Excellent condition, extra rims & winters. Asking \$11,600. Call: (250)768-7717

2006 Cadillac STS 121km Mint condition. \$13,700 Call (250)503-4776

## AUTOMOTIVE SPECIAL

Limited time offer!! Buy 2 weeks, get 30% off the 2nd week

**ONLY \$59.99** plus HST 1 col x 2" size with or without picture for 3 insertions (1 week) (Reg. price \$196.25)

Call your classified representative today! 250-763-7114



While we try to ensure all advertisements appearing in

## Transportation

### Scrap Car Removal

**1AA ARMOUR TOWING.** Will meet or beat all competitors pricing. (250) 601-4199

**SCRAP** Car Removal. \$100 cash paid for unwanted vehicles 7 days a week. Call Paul Haul (250)808-9593

## Sport Utility Vehicle

**1990 RED 2 Door TRACKER** 4 cyl., 4 x 4. Hard Top. New clutch & front brakes replaced last summer. Good city and bush vehicle. Runs good. Tires in good condition. New manual hubs have receipts for all work done. \$4500 Call (250)-769-0415

2001 Toyota 4-Runner, 165K, good cond. 8 tires, heavy hitch. \$8500 250-546-8896

**CHECK** bcdclassified.com

**FOR DEALS TO CROW ABOUT**

## Trucks & Vans

2005 FORD F150 XLT 4x4 Supercrew \$5300 Call (250)503-4776

## Legal

### Legal Notices

**NOTICE OF EXCLUSION APPLICATION REGARDING LAND IN THE AGRICULTURAL LAND RESERVE**

Kent Macpherson of 304-1708 Dolphin Avenue, Kelowna BC, V1Y 9S4 agent for McIntosh Properties Ltd. of Kelowna, BC intends on making an application pursuant to Section 30(1) of the Agricultural Land Commission Act to exclude from the Agricultural Land Reserve the following property which is legally described as Lot 1; Plan 18971, DL:128 LD Osoyoos Div of Yale (41); Except Plan 43996 and Lot B, Plan 970, District Lot 128, Osoyoos Div of Yale Land District (41), Except Plans 36410, 41244, KAP47295 and H12895. Any person wishing to express an interest in the application may do so by forwarding their comments in writing to the City of Kelowna, Land Use Management Department, 1435 Water Street, Kelowna, BC V1Y 1J4 by January 31, 2013.

**ANNOUNCE** Birth • Mar Engagem In Memori

***EXHIBIT 6***

***PROOF OF SERVING NOTICE FORM***





# Appendix - Applicant Information Package

## PROOF OF SERVING NOTICE

AS REQUIRED BY SECTION 16 OF THE *AGRICULTURAL LAND RESERVE USE, SUBDIVISION AND PROCEDURE REGULATION*

I, Rod Cook (full name of declarant)

Of 304 - 1708 Dolphin Avenue, Kelowna, B.C., V1Y 9S4 (mailing address)

do solemnly declare that a copy of the notice of application and a copy of the signed application as required by Section 16 of the *Agricultural Land Reserve Procedure Regulation*

for land legally described as Lot 1, District Lot 128, Osoyoos Division Yale District, Plan 18971, PID: 008-162-883 & Lot B, District Lot 128, Osoyoos Division Yale District, Plan 970 except Plans 36410, 41244, KAP47295 and H12895, PID: 002-865-602, was served on the following owners of land:

NAME AND ADDRESS:	LEGAL DESCRIPTION OF LAND:	DATE OF SERVICE:	HOW SERVED: (Registered mail or delivered)
Steven Day 2050 Byrns Road Kelowna, BC, V1W 2G4	Lot: 1; Pl: KAP2830; DL: 128; LD: Osoyoos Div of Yale (41); Section: 17; Town: 26	January 21, 2013	Registered Mail
Brian & Linda Pahl 2255 Scenic Road Kelowna, BC, V1V 2C3 & 81765 Brown Deer Park La Quinta, California, USA, 92253	Lot: A; Pl: KAP80629; DL: 128; LD: Osoyoos Div of Yale (41);	January 26, 2013 & February 13, 2013	Registered Mail
Allen & Wendy Reid 1980 Byrns Road Kelowna, BC, V1W 2G4	Lot: C; Pl: KAP40808; DL: 129; LD: Osoyoos Div of Yale (41);	January 21, 2013	Registered Mail
BC Gas In 16705 Fraser Highway Surry, BC, V3S 2X7	Lot: 2; Pl: KAP45185; DL: 129; LD: Osoyoos Div of Yale (41);	January 18, 2013	Registered Mail
Christian Missionary Alliance 210-11471 Blacksmith Place Richmond, BC, V7A 4T7	Lot: A; Pl: KAP20452; DL: 128; LD: Osoyoos Div of Yale (41); Narrative: Except Plan 43402.	February 7, 2013	Registered Mail

And I make this solemn declaration believing it to be true and correct to the best of my knowledge.

.....  
(Signature of declarant)

Aug. 1. 2013  
(Date)

**IMPORTANT - AN APPLICATION FILED UNDER SECTION 30 OF THE *AGRICULTURAL LAND COMMISSION ACT* MUST INCLUDE A COPY OF THIS STATEMENT COMPLETED IN FULL, AND SIGNED AND DATED BY THE PERSON WHO SERVED THE NOTICE.**



***EXHIBIT 7***

***NOTICE TO ADJACENT PROPERTY OWNER***







Kent-Macpherson

January 17, 2013

Steven Day  
2050 Byrns Road  
Kelowna, BC V1W 2G4

**Attention: Steven Day**

Dear Mr. Day:

**Re: ALC Exclusion Application**  
**2025 Springfield Rd, Kelowna, B.C.**  
**Lot 1; Plan 18971; DL:128 LD ODYD (41); Except Plan 43996**  
**2120 Cooper Road, Kelowna, B.C.**  
**Lot B, Plan 970, DL:128, ODYD (41), Except Plans 36410, 41244, KAP47295, H12895**  
**Applicant: Kent-Macpherson, agent for property owner McIntosh Properties Ltd.**


Lot 1, Plan 18971, District Lot 128, is located at 2025 Springfield Road, and Lot B, Plan 970, District Lot 128, ODYD, is located at 2120 Cooper Road, Kelowna, B.C. The above noted properties are the subject of an Agricultural Land Reserve exclusion application and adjoin the northerly boundary of 2050 Byrns Road.

As per the Agricultural Land Commission's exclusion application requirements regarding notification of adjacent Agricultural Land Reserve property owners, attached please find a copy of the Notice of Exclusion Application and an ortho photo of the property for your review.

Any questions or comments regarding the pending application can be forwarded to the Planning Department City of Kelowna, in writing at the address provided in the attached Notice, by January 31, 2013.

Sincerely,

**KENT-MACPHERSON**

Per:   
**R. S. Cook, AACI, P. App, RI**  
 /rsc

Dennis Parkhill, AACI, P.App, RI  
 Rodney S. Cook, AACI, P.App, R.C.A.S.  
 Lionel B. Hoffmann, AACI, P.App, BSA

Sharon A. Long, AACI, P.App, RI  
 Russ Martinuk, AACI, P.App  
 D. Allan Beatty, AACI, P.App

Clifford Smith, AACI, P.App

CANADA POST / POSTES CANADA		REGISTERED DOMESTIC / RÉGIME INTÉRIEUR		R
CUSTOMER RECEIPT / REÇU DU CLIENT				
No. 8	Destination	FOR DELIVERY CONFIRMATION / CONFIRMATION DE LIVRAISON		
Name	Steven Day	CONTACT PERSON / PERSONNE À CONTACTER		
Address	2050 Byrns Road	1 888 550-6333		
City / Ville / Postal Code	Kelowna BC V1W 2G4	CPC Tracking Number / Numéro de suivi de la CPC		
Amount / Montant	\$	RW 722 554 411 CA		
33-886-584 (11-04)				





Kent Macpherson

January 17, 2013

Brian & Linda Pahl  
81765 Brown Deer Park  
La Quinta, California, USA  
92253

**Attention: Brian & Linda Pahl**

Dear Mr. and Mrs. Pahl:

**Re: ALC Exclusion Application**  
2025 Springfield Rd, Kelowna, B.C.  
Lot 1; Plan 18971; DL:128 LD ODYD (41); Except Plan 43996  
2120 Cooper Road, Kelowna, B.C.  
Lot B, Plan 970, DL:128, ODYD (41), Except Plans 36410, 41244, KAP47295, H12895  
**Applicant: Kent-Macpherson, agent for property owner McIntosh Properties Ltd.**

Lot 1, Plan 18971, District Lot 128, is located at 2025 Springfield Road, and Lot B, Plan 970, District Lot 128, ODYD, is located at 2120 Cooper Road, Kelowna, B.C. The above noted properties are the subject of an Agricultural Land Reserve exclusion application and adjoin the north easterly boundary of 2190 Cooper Road.

As per the Agricultural Land Commission's exclusion application requirements regarding notification of adjacent Agricultural Land Reserve property owners, attached please find a copy of the Notice of Exclusion Application and an ortho photo of the property for your review.

Any questions or comments regarding the pending application can be forwarded to the Planning Department City of Kelowna, in writing at the address provided in the attached Notice, by January 31, 2013.

Sincerely,

**KENT-MACPHERSON**

Per:   
R. S. Cook, AACI, P. App, RI, C

/rsc

cc 2255 Scenic Road, Kelowna, BC

Dennis Parkhill, AACI, P.App. RI  
Rodney S. Cook, AACI, P.App. RI, C, App.  
Lionel B. Hoffmann, AACI, P.App. RBA

Sean Hughes, AACI, P.App. RI  
Russ Marlinuk, AACI, P.App.  
D. Allen Beatty, AACI, P.App.

Adrian Rizzo, AACI, P.App.  
Clifford Smith, AACI, P.App.

304 - 1708 Dolphin Avenue, Kelowna, British Columbia V1Y 3S4 • Telephone 250-763-2235 • Fax 250-763-3365 • [www.kent-macpherson.com](http://www.kent-macpherson.com)

<b>Registered</b> International/USA		<b>Recommandé</b> International/É. U.			
To: <b>Brian &amp; Linda Pahl</b>		Destinataire		For enquiry call: <b>1 888 550-6333</b>	
Address: <b>81765 Brown Deer Park</b>		City: <b>La Quinta</b>		Country: <b>USA</b>	
State: <b>CA</b>		Zip: <b>92253</b>		Declared Value: <b>\$</b>	
CUSTOMER RECEIPT		REÇU DU CLIENT		Item No. <b>RW 680 666 882 CA</b>	
33-089-582 (88-10)					

		<b>REGISTERED</b> DOMESTIC		<b>RECOMMANDÉ</b> RÉGIME INTÉRIEUR	
CUSTOMER RECEIPT		REÇU DU CLIENT			
To: <b>Brian &amp; Linda Pahl</b>		Destinataire		FOR INFO ONLY COMPLÉMENT D'INFORMATION	
Address: <b>2255 Scenic Road</b>		City: <b>Kelowna, BC</b>		VIA / Par avion	
State: <b>BC</b>		Zip: <b>V1Y 3S5</b>		1 888 550-6333	
Declared Value: <b>\$</b>		CPC Tracking Number		Régime de régimes de la SCP	
33-089-584 (11-04)				<b>RW 722 579 475 CA</b>	





Kent Macpherson

January 17, 2013

Allen Reid & Wendy Reid  
1980 Byrns Road  
Kelowna, BC V1W 2G4

**Attention: Allen & Wendy Reid**

Dear Mr. and Mrs. Reid:

**Re: ALC Exclusion Application**  
2025 Springfield Rd, Kelowna, B.C.  
Lot 1; Plan 18971; DL:128 LD ODYD (41); Except Plan 43996  
2120 Cooper Road, Kelowna, B.C.  
Lot B, Plan 970, DL:128, ODYD (41), Except Plans 36410, 41244, KAP47295, H12895  
Applicant: Kent-Macpherson, agent for property owner McIntosh Properties Ltd.

Lot 1, Plan 18971, District Lot 128, is located at 2025 Springfield Road, and Lot B, Plan 970, District Lot 128, ODYD, is located at 2120 Cooper Road, Kelowna, B.C. The above noted properties are the subject of an Agricultural Land Reserve exclusion application and adjoin the north easterly corner of 2225 Spall Road.

As per the Agricultural Land Commission's exclusion application requirements regarding notification of adjacent Agricultural Land Reserve property owners, attached please find a copy of the Notice of Exclusion Application and an ortho photo of the property for your review.

Any questions or comments regarding the pending application can be forwarded to the Planning Department City of Kelowna, in writing at the address provided in the attached Notice, by January 31, 2013.

Sincerely,

KENT-MACPHERSON

Per:   
R. S. Cook, AACI, P. App, RI, C.

/rsc

Dennis Panthill, AACI, P. App, RI  
Rodney S. Cook, AACI, P. App, RI, C. App.  
Lionel B. Hoffmann, AACI, P. App, ISA

Seán M. Hargrave, AACI, P. App, RI  
Russ Martinuk, AACI, P. App  
D. Allan Beatty, AACI, P. App

Clifford Smart, AACI, P. App

304 - 1708 Dolphin Avenue, Kelowna, British Columbia V1Y 9S4 • Telephone 250-763-2236 • Fax 250-763-3365 • www.kent-macpherson.com

CANADA POSTES 1015		REGISTERED DOMESTIC CUSTOMER RECEIPT	RECOMMANDÉ RÉGIME INTÉRIEUR REÇU DU CLIENT	R
To: <i>Allen &amp; Wendy Reid</i> Address: <i>1980 Byrns Road</i> <i>Kelowna BC V1W 2G4</i>		FOR DELIVERY CONFIRMATION DE LA LIVRAISON 1 888 550-6333 RW 722 554 399 CA		
33-688-684 (11-64)				







Kent-Macpherson

January 17, 2013

BC Gas Inc.  
16705 Fraser Highway  
Surrey, BC V3S 2X7

**Attention: BC Gas Inc./FortisBC Electric Head Office**

**Re: ALC Exclusion Application**  
2025 Springfield Rd, Kelowna, B.C.  
Lot 1; Plan 18971; DL:128 LD ODYD (41); Except Plan 43996  
2120 Cooper Road, Kelowna, B.C.  
Lot B, Plan 970, DL:128, ODYD (41), Except Plans 36410, 41244, KAP47295, H12895  
**Applicant: Kent-Macpherson, agent for property owner McIntosh Properties Ltd.**


Lot 1, Plan 18971, District Lot 128, is located at 2025 Springfield Road, and Lot B, Plan 970, District Lot 128, ODYD, is located at 2120 Cooper Road, Kelowna, B.C. The above noted properties are the subject of an Agricultural Land Reserve exclusion application and adjoin the easterly boundary of 1975 Springfield Road.

As per the Agricultural Land Commission's exclusion application requirements regarding notification of adjacent Agricultural Land Reserve property owners, attached please find a copy of the Notice of Exclusion Application and an ortho photo of the property for your review.

Any questions or comments regarding the pending application can be forwarded to the Planning Department City of Kelowna, in writing at the address provided in the attached Notice, by January 31, 2013.

Sincerely,

**KENT-MACPHERSON**

Per:   
R. S. Cook, AACI, P. App, RI, C  
/rsc

Dennis Parkhill, AACI, P. App, RI  
Rodney S. Cook, AACI, P. App, RI, C, AS  
Lionel B. Hoffmann, AACI, P. App, SBA

Seán Hughes, AACI, P. App, RI  
Russ Martinuk, AACI, P. App  
D. Allan Beatty, AACI, P. App

Michael J. Havel, AACI, P. App  
Clifford Smail, AACI, P. App

304 - 1708 Dolphin Avenue, Kelowna, British Columbia V1Y 9S4 • Telephone 250-763-2236 • Fax 250-763-3365 • [www.kent-macpherson.com](http://www.kent-macpherson.com)

		<b>REGISTERED DOMESTIC</b> CUSTOMER RECEIPT	<b>RECOMMANDÉ RÉGIME INTÉRIEUR</b> REÇU DU CLIENT	
To: <b>BC Gas Inc.</b> Name: <b>16705 Fraser Hwy</b> Address: <b>Surrey, BC</b> City / Prov. / Postal Code: <b>V3S 2X7</b>		FOR DELIVERY CONTRIBUTION		
Estimated Weight: <b>5</b>		1 888 550-6333 RW 722 554 408 CA		







Kent Macpherson

January 17, 2013

Christian and Missionary Alliance  
201-11471 Blacksmith Place  
Richmond, BC V7A 4T7

**Attention: Christian and Missionary Alliance**

**Re: ALC Exclusion Application**  
**2025 Springfield Rd, Kelowna, B.C.**  
**Lot 1; Plan 18971; DL:128 LD ODYD (41); Except Plan 43996**  
**2120 Cooper Road, Kelowna, B.C.**  
**Lot B, Plan 970, DL:128, ODYD (41), Except Plans 36410, 41244, KAP47295, H12895**  
**Applicant: Kent-Macpherson, agent for property owner McIntosh Properties Ltd.**

Lot 1, Plan 18971, District Lot 128, is located at 2025 Springfield Road, and Lot B, Plan 970, District Lot 128, ODYD, is located at 2120 Cooper Road, Kelowna, B.C. The above noted properties are the subject of an Agricultural Land Reserve exclusion application and adjoin the southern and western boundaries of 2091 Springfield Road.

As per the Agricultural Land Commission's exclusion application requirements regarding notification of adjacent Agricultural Land Reserve property owners, attached please find a copy of the Notice of Exclusion Application and an ortho photo of the property for your review.

Any questions or comments regarding the pending application can be forwarded to the Planning Department City of Kelowna, in writing at the address provided in the attached Notice, by January 31, 2013.

Sincerely,

**KENT-MACPHERSON**

Per:   
R. S. Cook, AACI, P. App, RI, C. /

/rsc

cc Christian and Missionary Alliance;

Dennis Parkhill, AACI, P.App, RI  
Rodney S. Cook, AACI, P.App, RI, C.A.  
Lionel B. Hoffmann, AACI, P.App, SBA

Sean Hu  
Russ Ma  
D. Allan Beatty, AACI, P.App

		<b>REGISTERED DOMESTIC</b> CUSTOMER RECEIPT	<b>RECOMMANDÉ RÉGIME INTÉRIEUR</b> REÇU DU CLIENT	
Destinataire No. 100 Christian & Missionary Alliance Address 201-11471 Blacksmith Place City / Pavs. / Postal Code Richmond, BC V7A 4T7		FOR DELIVERY CITE PHANTOM WWW.KENTMACPHERSON.COM 1 888 550-6333		
\$ 33-086-584 (11-04)		EPO Tracking Number Numéro de suivi de la SGP <b>RW 722 554 425 CA</b>		



***EXHIBIT 8***

***PROOF OF SIGN POSTING***





**Jordan Hettinga**

---

**From:** Sales <Sales@inter-mtn.com>  
**Sent:** January 17, 2013 11:59 AM  
**To:** Anita Rea  
**Subject:** Instal on Cooper and Springfield  
**Attachments:** P1170001.jpg; P1170002.jpg; P1170003.jpg; P1170004.jpg; P1170005.jpg; P1170006.jpg; P1170007.jpg; P1170008.jpg

Hi Anita

Here are the photographs of the three signs all installed - two along Springfield and one on Cooper. We were completed by 11.00 AM.

All are legible from the paths. So shouldn't be any issues from that point of view.

Each is approx. 4ft to the bottom and 8ft to the top. There is cement in each leg - so they shouldn't go anywhere. We used screws and washers so that the only way they can be removed is on purpose by ripping them down or unscrewing them! Staples are OK but are easy to remove hence wanted to ensure these stay put as long as possible.

Please let me know if you require any additional signs or frames.

Many thanks

Grant

250 826 5859





***EXHIBIT 9***

***RESPONSE FROM EXCLUSION APPLICATION***



## Letter from Neighbouring Property – January 25th, 2013

Brian & Linda Pahl  
2255 Scenic Road  
Kelowna, BC V1V 2C8

Kent-Macpherson  
304 - 1708 Dolphín Avenue  
Kelowna, BC V1Y 9S4

Re: ALC Exclusion Application  
2025 Springfield Rd & 2120 Cooper Rd

January 25, 2013

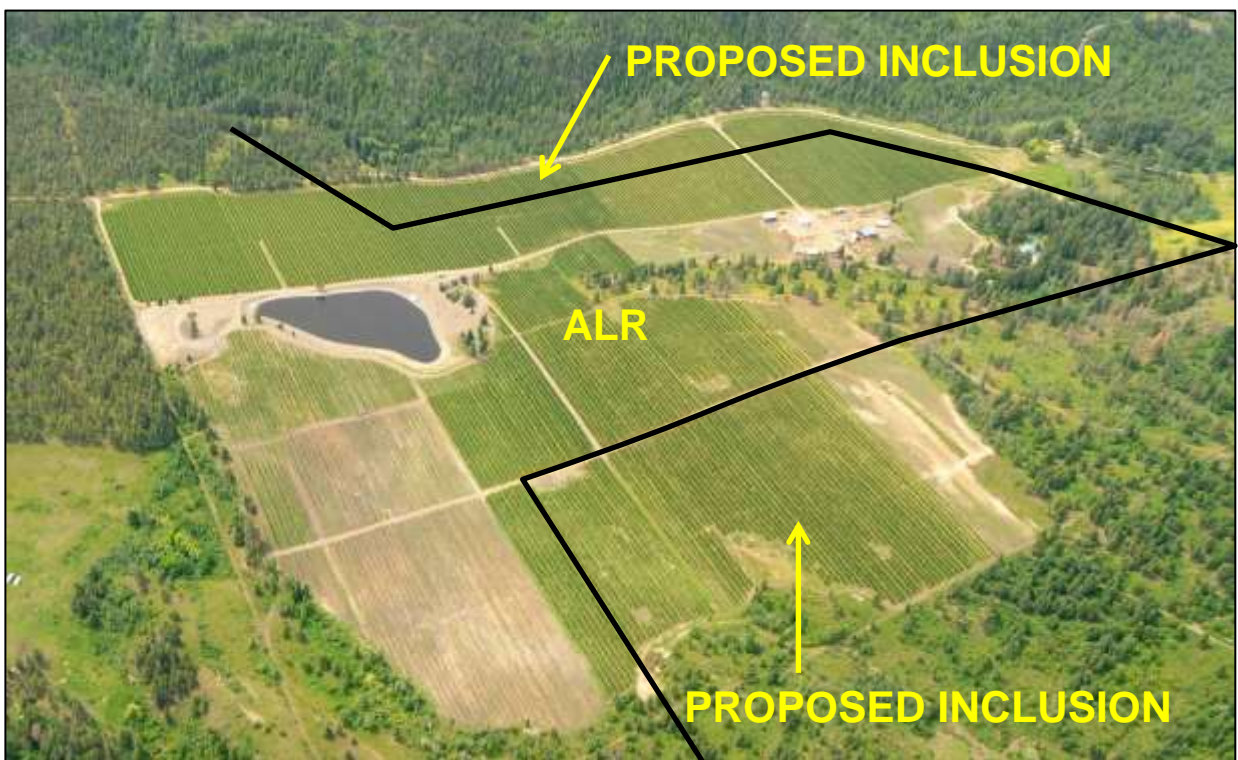
We have received a copy of the application for exclusion from the ALR for the above noted properties. We own the property at 2190 Cooper Road, that borders approximately 1200 feet of the above noted properties South property line from Cooper Road heading West. This boundary is also where the irrigation ditch is currently located.

We have no objections to the above noted properties being excluded from the ALR.



## ***PROPOSED ALR INCLUSION LANDS***

### ***Cholla Hills Farm***



## ***Summary of Facts Pertaining to the Inclusion Lands***

---

### **OVERVIEW:**

- The Cholla Hills farm comprises a high density cherry orchard located east of Vernon, on the east side of Okanagan Lake, approximately 1,850 – 2,050 feet above sea level. The owner, David Geen, is a renowned Okanagan orchardist specializing in high density cherries. A biography of Mr. Geen is attached.

Mr. Geen identified these lands as having an ideal micro-climate and good air drainage for late season cherry production. Since acquiring the property in late 2006, substantive improvements have been made in site contouring, irrigation, fencing and planting. The property is currently planted in over 40,000 cherry trees over 110 acres of the property.

Cholla Hills Farm is highly productive, producing yields of excellent quality sweet cherries comprising 130 tons in 2010, 620 tons in 2011 and 670 tons in 2012. The property is currently generating farm gate revenues in excess of \$2.5 million per annum.

### **TYPE OF PROPERTY:**

- High density cherry orchard

### **CIVIC ADDRESS:**

- Site 11, Comp. 8, RR7 Station Main,  
1 - 278 Siwash Creek Road, Vernon, BC, V1T 7Z3

### **LEGAL DESCRIPTIONS:**

- Lot 1, District Lot 511, Osoyoos Division Yale District, Plan 28829. PID: 004-485-050
- District Lot 511, Osoyoos Division Yale District, except Plan 28829. PID: 011-515-287





**OWNERS:**

- Emily Kaitlin Geen & Eric Gerald Geen (Lot 1)
- Naswhito Creek Farms Ltd. (DL 511)

**CHOLLA HILLS FARM SITE AREA:**

Lot 1:	-	160.40 acres
DL 511:	-	150.64 acres
Total:	-	311.04 acres

**ZONING:**

- LH (Large Holdings)

**CURRENT ALR AREA:**

Lot 1:	-	57.99 acres
DL 511:	-	63.1 acres

**PROPOSED ALR INCLUSION:**

**Gross Inclusion Area**

Lot 1:	-	40 acres
DL 511:	-	<u>13 acres</u>
Total Gross Area		53 acres

**Planted Portion of Gross Area**

Lot 1:	-	28.6 acres
DL 511:	-	<u>13.0 acres</u>
Total Planted Area		41.6 acres

**Soil Classification - Improved**

Class 2T:	-	19.3 acres
Class 3T:	-	9.4 acres
Class 3P:	-	<u>12.9 acres</u>
Total		41.6 acres

**TOPOGRAPHY:**

- Flat too gently, and moderately sloping



## ***Biography of the Cholla Lands Farmer - David Geen***

---

### **BIOGRAPHY**

David Geen is a fourth generation member of a prominent Okanagan fruit growing family that settled in the Okanagan Valley in 1903. David's father, grandfather, great-grandfather, several uncles and cousins have all raised fruit in the Kelowna area. After initially farming on family land in the Ellison district of Kelowna, David ventured out on his own in 1990, purchasing 70 acres of land in Carr's Landing, District of Lake Country. From this base David expanded operations on both deeded and leased land to the present operation's size of 470 acres.

David was born in 1962, educated in Kelowna, and started farming full time in 1981. Over the years, David has raised apples, pears and cherries, with the focus over the last twenty years shifting relentlessly to production of premium cherries for the export market.

David has served in the past as a director of the Okanagan North Growers Co-op, a director of the Okanagan Plant Improvement Company, and a director of the Okanagan Kootenay Cherry Growers Association.

Just recently, David has become the Vice Chair of the BC Cherry Association, and Chair of its Market Access Committee. In this roll, David has been very active on the Associations access to China file and currently working on Japan.

David has received several awards over the years, including "Soft Fruit Grower of the Year" from the BC Fruit Growers association, "Outstanding Contribution to Agriculture" from the Lake Country Chamber of Commerce, and in 2012, was a top three finalist in the "Export Awards (consumer goods category)" from the Canadian Manufacturers and Exporters association.

David is President and CEO of his two companies; Coral Beach Farms Ltd, and its marketing arm, Jealous Fruits Ltd.

David is married to Laura, and together they have raised 3 children, presently aged 17 to 22. All of the children have worked in the business in some capacity during cherry season, and are presently working on university educations.

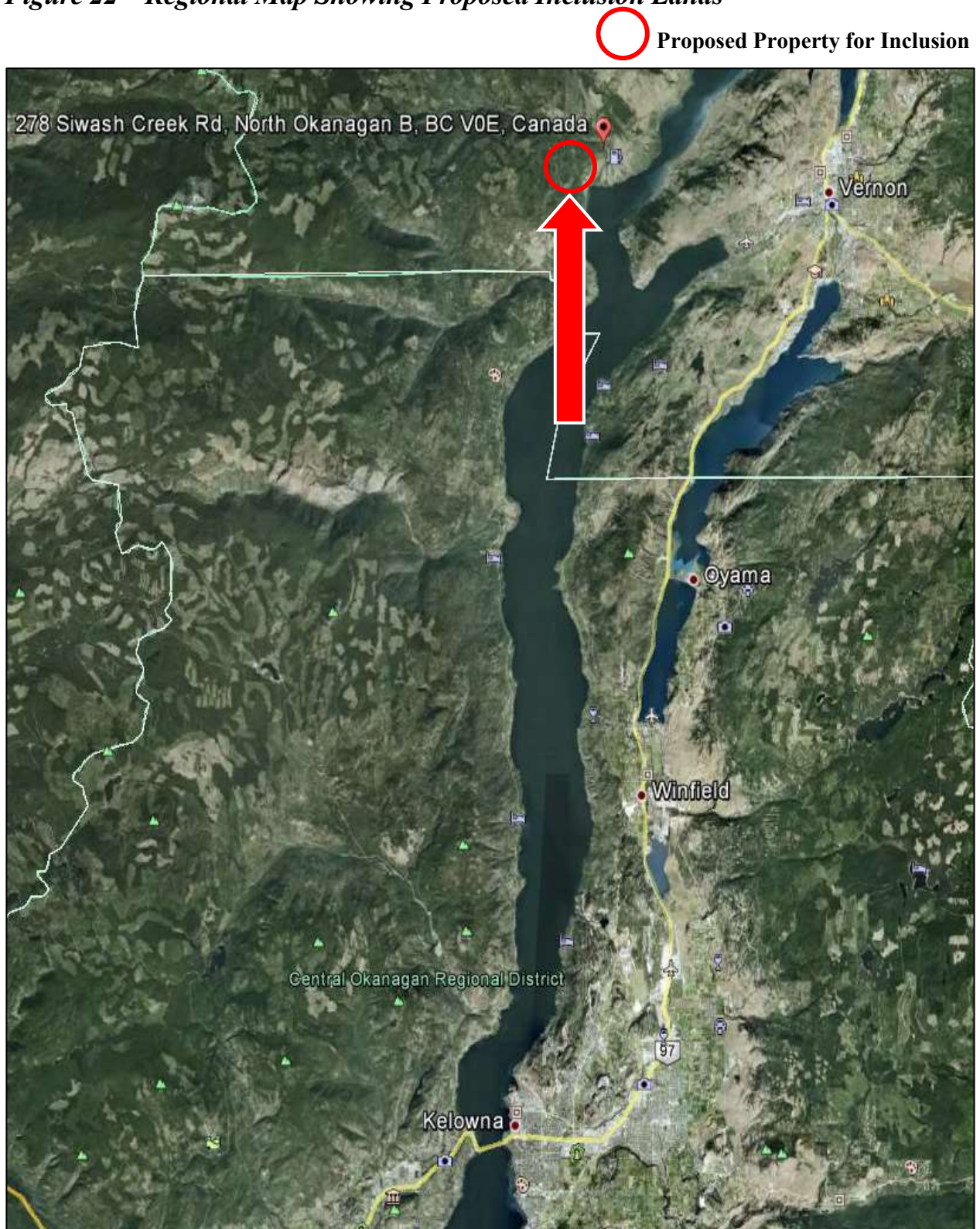


## KEY ACCOMPLISHMENTS

- Industry leader in the development of the export based cherry industry which has emerged in British Columbia over the last twenty years. Pioneered the testing and planting of many of the new cherry selections developed at the breeding program in Summerland, in most cases planting these varieties while they were still in the embryonic stage. At present, David's cherry plantings represent 10% of the total acreage for the BC cherry industry, and his volume presence in world export markets is approximately 20% of the BC total.
- Pioneered the development of high density cherry orchards in the Okanagan valley, using special pruning and tree training techniques to obtain early production, high quality cherries, and lower production costs. The aim of the production system is to produce exceptionally large, firm, and highly sugared cherries, which are prized as a luxury good in world markets.
- Planted over 200,000 cherry trees on 370 acres since 1991, with another 100 acres on the books for 2013, and 85 acres planned for 2014. Production in 2012 reached 2,600 tons, and is projected to reach 5,000 tons by 2018.
- Extended the BC cherry season into September, capturing market windows with strong cherry demand and little competing supply. This has been accomplished by the planting of late ripening cultivars on late maturing sites. As an example, David developed the Cholla Hills Farm, situated at 1,850 to 2,200 feet in elevation, on the west side of Okanagan Lake opposite Vernon.
- Added value and improved quality by integrating on-farm packing into his production systems, starting in 1994. The first packing plant started as a very simple sorting belt system, and has grown over the years to now occupy a 30,000 foot building incorporating the latest technology including optical sizing and defect sorting.
- Added value by taking the marketing functions for his cherries in-house, forming "Jealous Fruits Ltd" in 2008. Jealous Fruits is now recognized as the top Canadian cherry brand in many export markets of the world. The company regularly makes market visits and exhibits at trade shows worldwide. Jealous Fruits sells cherries in over 30 countries around the world.
- David packs and sells cherries for a small number of outside growers, who benefit by the company's expertise, facilities, and marketing programs.
- International renown and stature in the cherry industry is significant. Coral Beach Farms is visited by leading cherry industry figures worldwide including those in Washington State, Chile, France, New Zealand and Australia. David, and several Coral Beach managers, has also made reciprocal visits to leading orchardists in all of these countries. In May of 2011, David addressed the Tasmanian Fruit Growers Association, on the topic of competing in today's global markets.

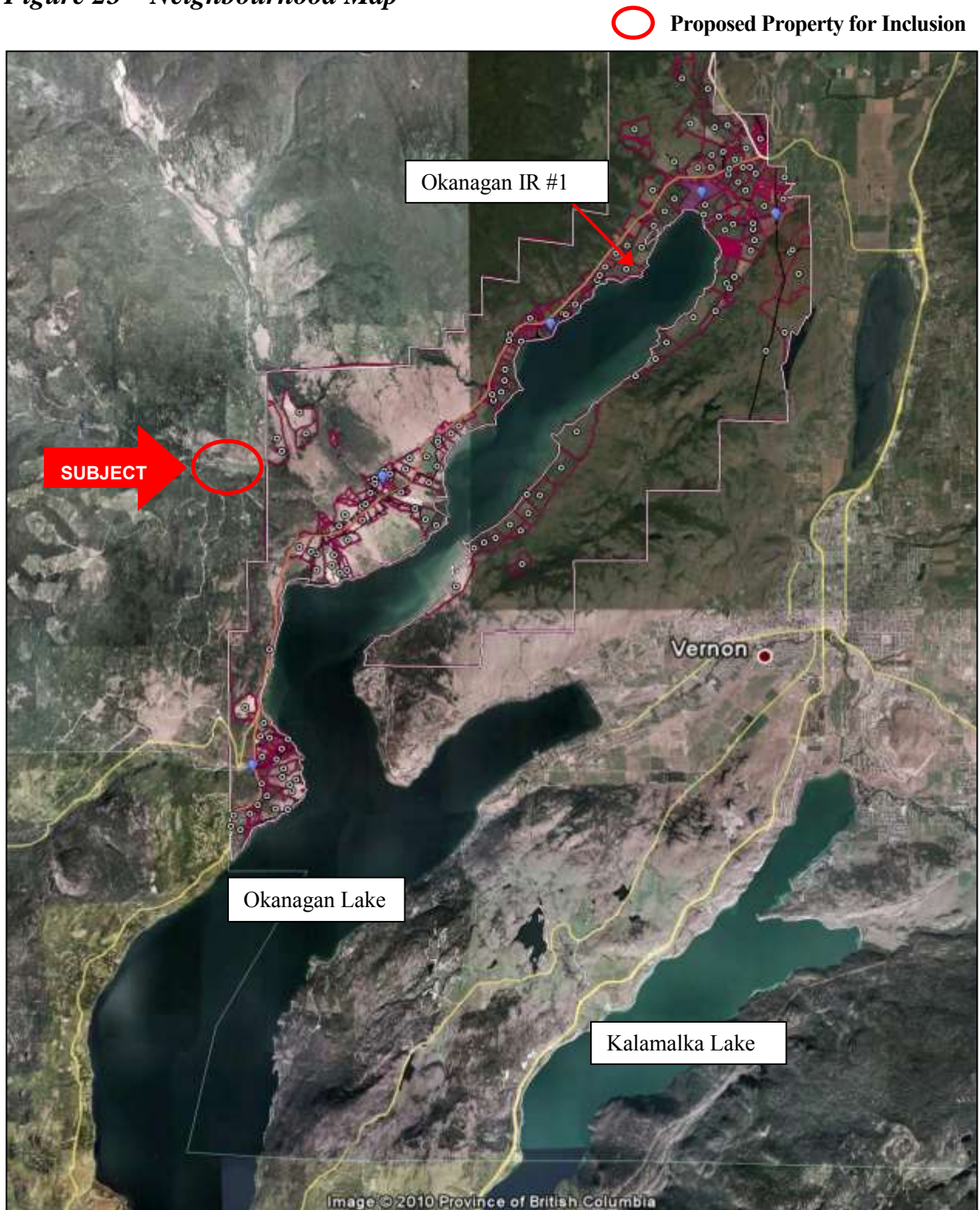


**Figure 22 – Regional Map Showing Proposed Inclusion Lands**



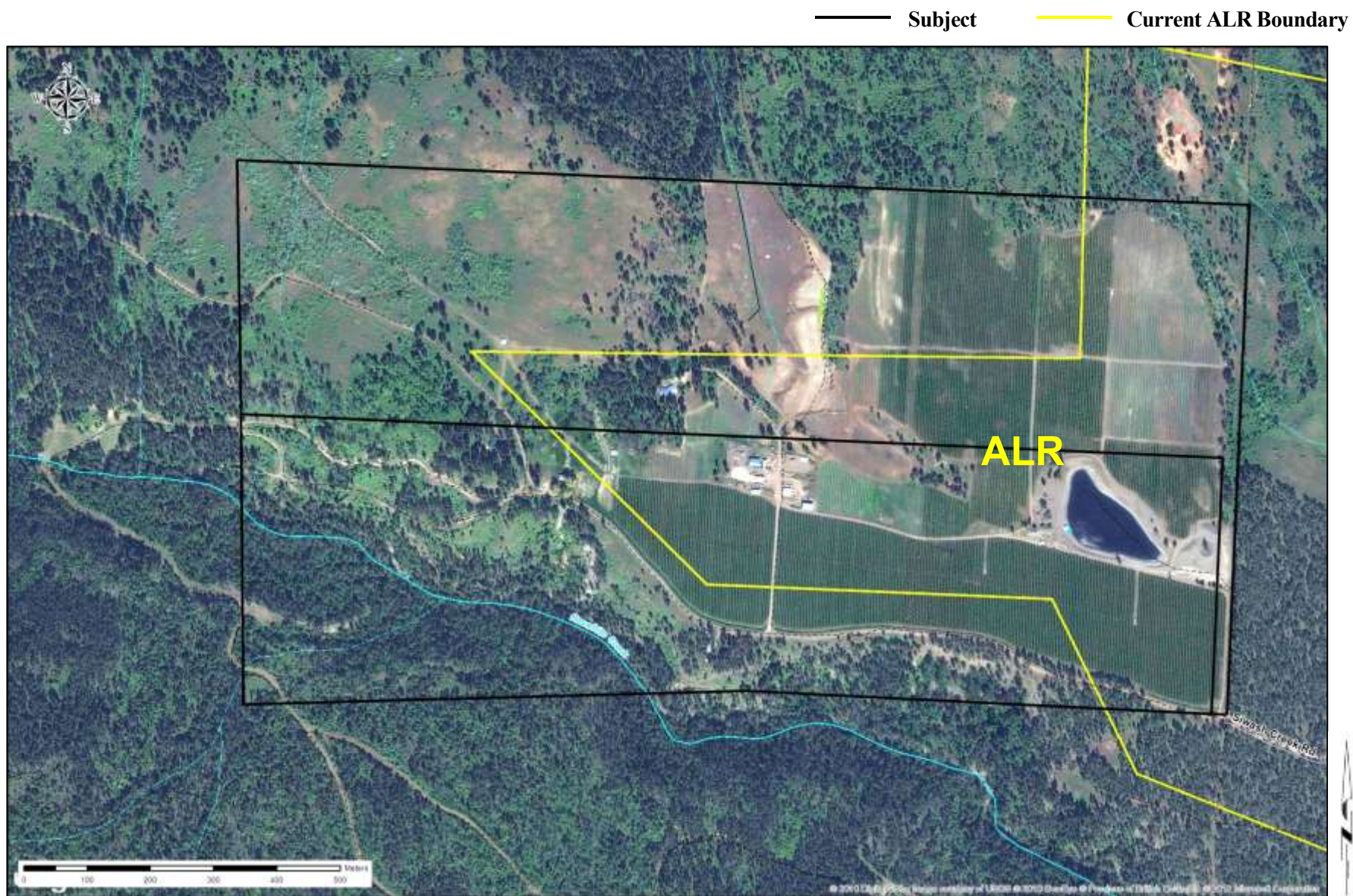


*Figure 23 – Neighbourhood Map*



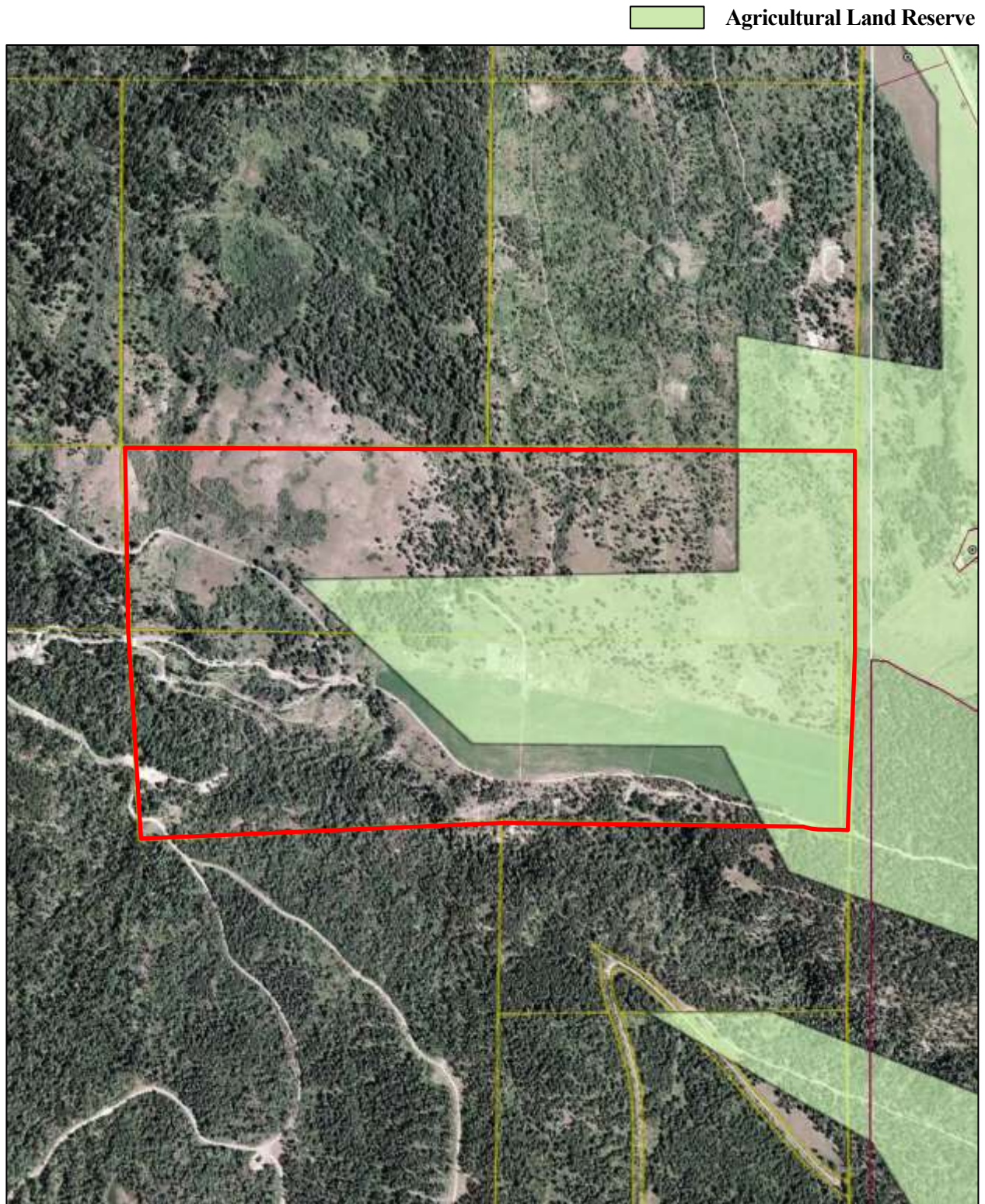


*Figure 24 – Aerial View of Cholla Hills Farm*



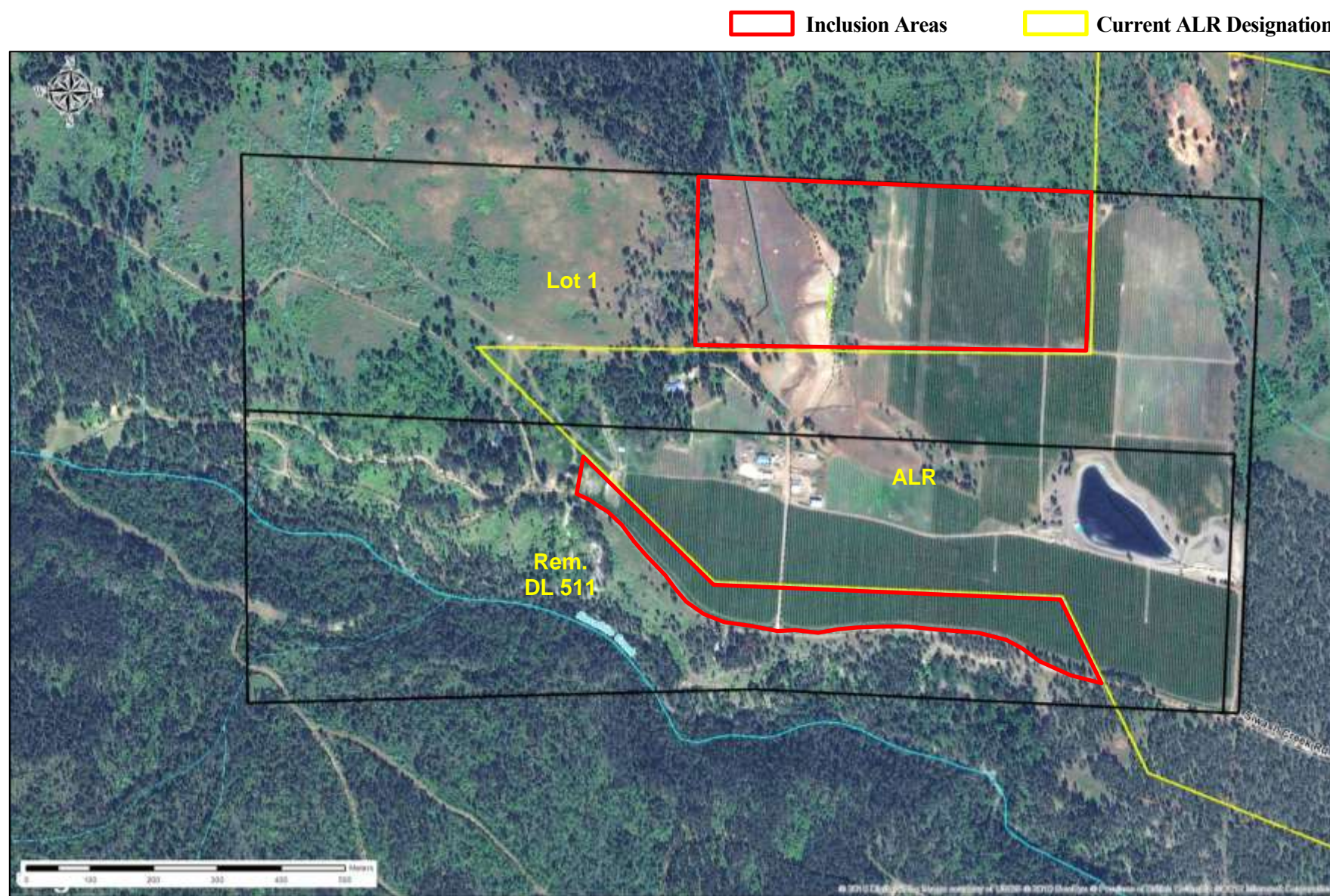


*Figure 25 – Agricultural Land Reserve Map – Cholla Hills Farm*



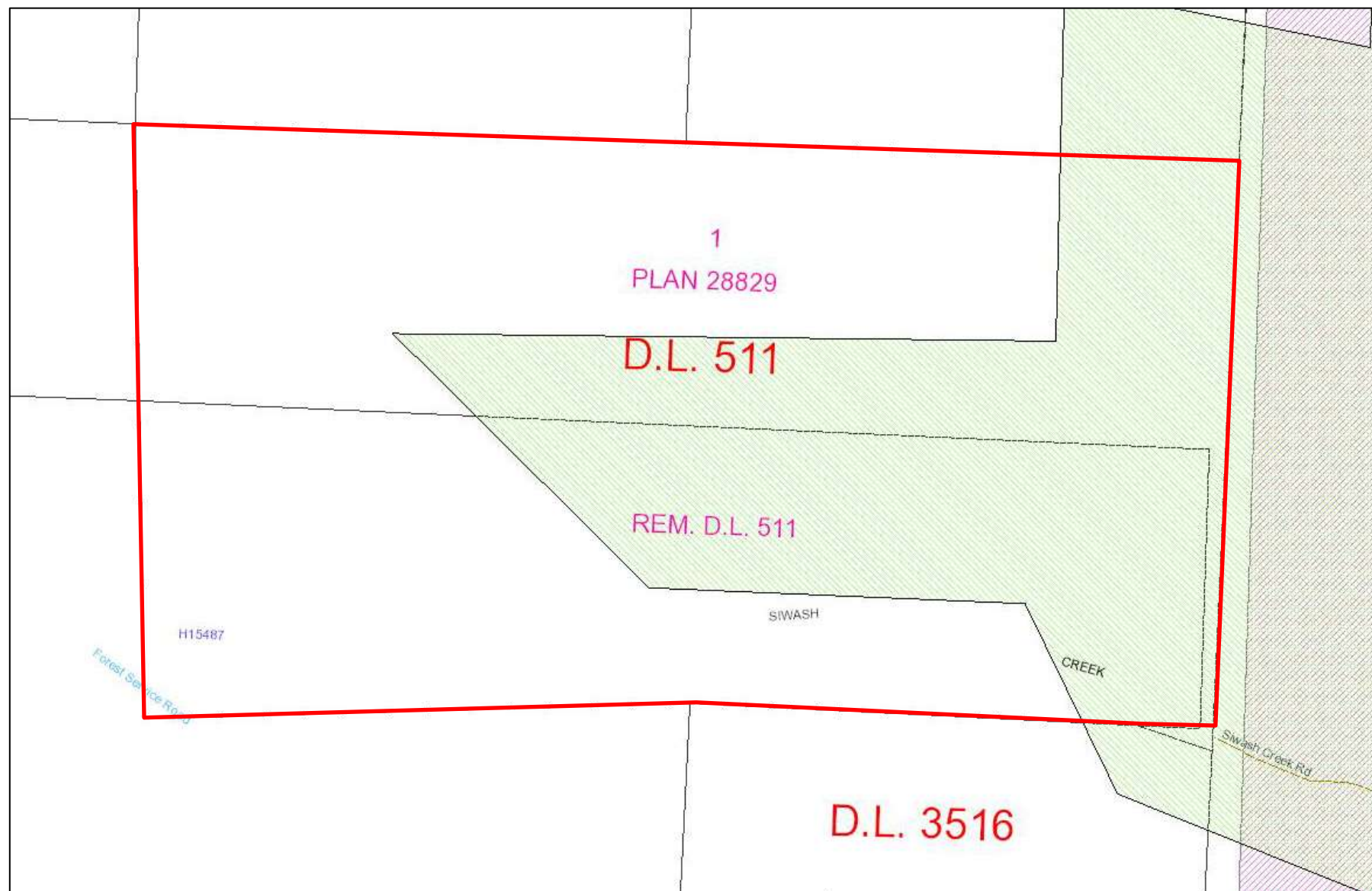


*Figure 26 – Proposed ALR Inclusion Map*



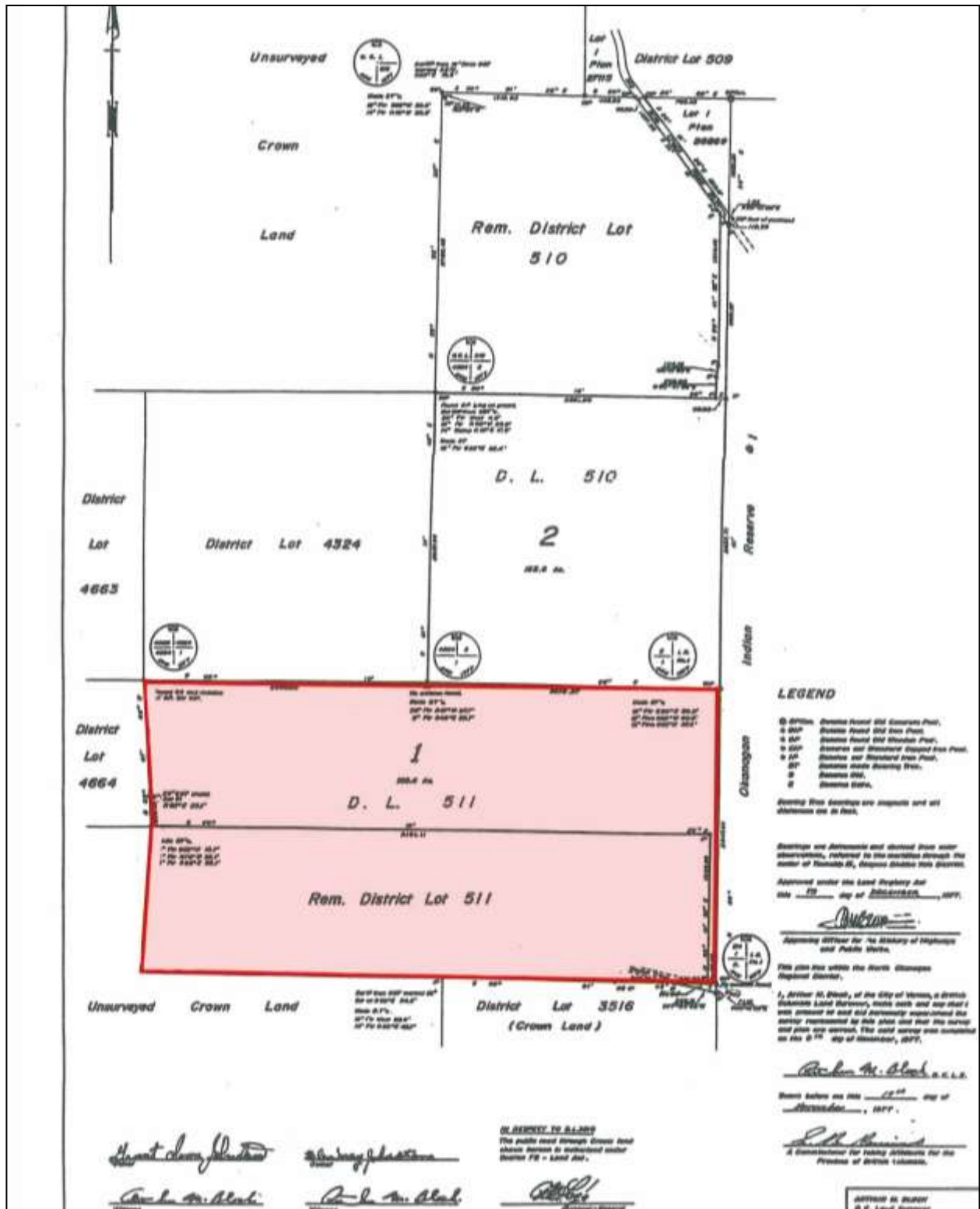


**Figure 27 – Composite Map - Cholla Hills Farm**



**Figure 28 – Copy of Registered Plan 28892 – Cholla Hills Farm**

## Proposed Inclusion Lands



## ***Section 5***

## ***Historical and Current Uses***

### **5.1 Historical Use of the Inclusion Lands**

From 1980 to 2007, the proposed inclusion lands were used for cattle grazing, forage and hayfields. The northerly portion was utilized primarily for cattle grazing, while the southerly portion adjacent to Siwash Creek was utilized for hay production.



2006 views of hayfields and grazing lands





## 5.2 Current Use of the Inclusion Lands

In 2007, the site was improved to include additional irrigation and a water reservoir to facilitate conversion of the site to intensive agricultural uses. The lands were subsequently converted to high density orchard, and are currently planted in a variety of cherries.





*Figure 29 - Photographs of Cholla Hills Farm*



Aerial photo looking south east, 2010







Aerial photo looking west, 2010 (boundaries approximate)







Aerial Photo facing south west, 2010







Aerial photo looking north, 2010







Aerial photograph of Cholla Hills Farm, December 2012







Aerial photo of Cholla Hills Farm, December 2012







Panoramic view north to south from mid-point near to north boundary



Panoramic view east to west from middle of site overlooking central compound



Panoramic view south to west along east boundary near southeast corner







Internal views of proposed inclusion lands





**6.1 Agricultural Capability of the Inclusion Lands**

The agricultural capability of the proposed inclusion lands based on Summit Environmental Consultants Inc.'s Agricultural Land Capability Assessment, dated November, 24, 2010, is summarized as follows:

Northwest area 9.4 acres (3.8 ha)	Class 5T unimproved; <b>Class 3T improved</b>
Northeast area 19.3 acres (7.8 ha)	Class 4T unimproved; <b>Class 2T improved</b>
South area 12.9 acres (5.2 ha)	Class 5P unimproved; <b>Class 3P improved</b>

Total planted area 41.6 acres; 16.80 ha.

Total area to be included in ALR = 53 acres; 21.5 ha.

The gross area of 53 acres for inclusion into the Agricultural Land Reserve includes some non-arable land or lands that require additional work before being arable. These areas are included in the ALR as part of a rational ALR boundary extension polygon.

The agricultural capability assessment supports inclusion of the proposed areas adjacent to the existing ALR to enhance the long term viability of the farm. Refer to the full copy of the agricultural land capability assessment in the Addenda and a copy of Summit Environmental's Agricultural Capability plan on the following page.





***ADDENDA -  
INCLUSION LANDS***





***EXHIBIT 1***  
***SUMMIT ENVIRONMENTAL CONSULTANTS INC.***  
***AGRICULTURE CAPABILITY ASSESSMENT***



***EXHIBIT 2***

***PROPERTY TITLES***



## Lot 1 Title (page 1 of 2)

Date: 18-Jan-2013      TITLE SEARCH PRINT      Time: 11:05:55  
 Requestor: (PA99716)      KENT-MACPHERSON APPRAISALS      Page 001 of 002  
 Folio: RC      TITLE - CA2056333

KAMLOOPS      LAND TITLE OFFICE      TITLE NO: CA2056333  
    FROM TITLE NO: CA320072

APPLICATION FOR REGISTRATION RECEIVED ON: 15 JUNE, 2011  
 ENTERED: 21 JUNE, 2011

### REGISTERED OWNER IN FEE SIMPLE:

EMILY KAITLIN GEEN, STUDENT  
 ERIC GERALD GEEN, STUDENT  
 C/O 16351 CARRS LANDING ROAD  
 LAKE COUNTRY, BC  
 V4V 1A9  
 AS JOINT TENANTS

### TAXATION AUTHORITY:

VERNON ASSESSMENT AREA

### DESCRIPTION OF LAND:

PARCEL IDENTIFIER: 004-485-050  
 LOT 1 DISTRICT LOT 511 OSOYOOS DIVISION YALE DISTRICT PLAN 28829

### LEGAL NOTATIONS:

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL  
 LAND COMMISSION ACT, SEE PLAN M11122

RE PARAGRAPHS (E) AND (F) OF SECTION 23(1), LAND TITLE ACT  
 SEE DF W47055 28/08/1984

### CHARGES, LIENS AND INTERESTS:

#### NATURE OF CHARGE

CHARGE NUMBER	DATE	TIME
---------------	------	------

#### RIGHT OF WAY

KF116224	1992-11-19	13:29
----------	------------	-------

#### REGISTERED OWNER OF CHARGE:

TOLKO INDUSTRIES LTD.  
 INCORPORATION NO. A0066883  
 LB63813

#### REMARKS: INTER ALIA

ASSIGNMENT OF M59536 REC'D 06/10/1977

#### STATUTORY RIGHT OF WAY

KG40712	1993-05-07	09:03
---------	------------	-------

#### REGISTERED OWNER OF CHARGE:

TOLKO INDUSTRIES LTD.  
 INCORPORATION NO. A0066883  
 LB63817

#### REMARKS: INTER ALIA

#### STATUTORY RIGHT OF WAY

KT15325	2002-02-11	13:48
---------	------------	-------

#### REGISTERED OWNER OF CHARGE:

THE CROWN IN RIGHT OF BRITISH COLUMBIA





**Lot 1 Title (page 2 of 2)**

AS REPRESENTED BY THE MINISTER OF FORESTS  
 Date: 18-Jan-2013 TITLE SEARCH PRINT  
 Requestor: (PA99716) KENT-MACPHERSON APPRAISALS  
 Folio: RC TITLE - CA2056333

Time: 11:05:55  
 Page 002 of 002

KT15325  
 REMARKS: INTER ALIA

MORTGAGE  
 CA1070315 2009-03-27 13:27  
 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1070315  
 REMARKS: INTER ALIA

ASSIGNMENT OF RENTS  
 CA1070316 2009-03-27 13:27  
 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1070316  
 REMARKS: INTER ALIA

MORTGAGE  
 CA1408572 2009-12-31 09:38  
 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1408572  
 REMARKS: INTER ALIA

ASSIGNMENT OF RENTS  
 CA1408573 2009-12-31 09:38  
 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1408573  
 REMARKS: INTER ALIA

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A.

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*



## District Lot 511 Title (page 1 of 3)

Date: 18-Jan-2013      TITLE SEARCH PRINT      Time: 13:04:34  
 Requestor: (PA99716)      KENT-MACPHERSON APPRAISALS      Page 001 of 003  
 Folio: RC      TITLE - CA2056332

KAMLOOPS      LAND TITLE OFFICE      TITLE NO: CA2056332  
    FROM TITLE NO: CA320073

APPLICATION FOR REGISTRATION RECEIVED ON: 15 JUNE, 2011  
    ENTERED: 21 JUNE, 2011

REGISTERED OWNER IN FEE SIMPLE:  
 NASWHITE CREEK FARMS LTD., INC.NO. BC0900988  
 16351 CARRS LANDING ROAD  
 LAKE COUNTRY, BC  
 V4V 1A9

TAXATION AUTHORITY:  
 VERNON ASSESSMENT AREA

DESCRIPTION OF LAND:  
 PARCEL IDENTIFIER: 011-515-287  
 DISTRICT LOT 511 OSOYOOS DIVISION YALE DISTRICT EXCEPT PLAN 28829

### LEGAL NOTATIONS:

RE PARAGRAPHS (E) AND (F) SEC 23(1) LTA SEE DF T31816, 23/06/1982

RE PARAGRAPHS (E) AND (F) SEC 23(1) LTA SEE DF W47055, 28/08/84

RE PARAGRAPHS (E) AND (F) SEC 23(1) LTA SEE DF T31821, 23/06/82

RE PARAGRAPHS (E) AND (F) SEC 23(1) LTA SEE DF R22640, 30/04/1980

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND  
 COMMISSION ACT, SEE AGRICULTURAL LAND RESERVE PLAN NO. M11122

### CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE  
 CHARGE NUMBER      DATE      TIME

#### RIGHT OF WAY

KF116224      1992-11-19      13:29

REGISTERED OWNER OF CHARGE:

TOLKO INDUSTRIES LTD.

INCORPORATION NO. A0066883

LB63813

REMARKS: INTER ALIA

ASSIGNMENT OF M59536 REC'D 06/10/1977

#### STATUTORY RIGHT OF WAY

KG40712      1993-05-07      09:03

REGISTERED OWNER OF CHARGE:

TOLKO INDUSTRIES LTD.

INCORPORATION NO. A0066883

LB63817

REMARKS: INTER ALIA

#### EASEMENT



**District Lot 511 Title (page 2 of 3)**

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 Date: 18-Jan-2013      TITLE SEARCH PRINT      Time: 13:04:34  
 Requestor: (PA99716)      KENT-MACPHERSON APPRAISALS      Page 002 of 003  
 Folio: RC      TITLE - CA2056332

REMARKS: APPURTENANT TO DISTRICT LOT 3487, ODYD, AND  
 DISTRICT LOT 478, ODYD, EXCEPT PLAN 25346

STATUTORY RIGHT OF WAY  
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 REGISTERED OWNER OF CHARGE:  
 THE CROWN IN RIGHT OF BRITISH COLUMBIA  
 AS REPRESENTED BY THE MINISTER OF FORESTS  
 KT15325  
 REMARKS: INTER ALIA

MORTGAGE  
 CA1070315      2009-03-27   13:27  
 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1070315  
 REMARKS: INTER ALIA

ASSIGNMENT OF RENTS  
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 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1070316  
 REMARKS: INTER ALIA

MORTGAGE  
 CA1408572      2009-12-31   09:38  
 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1408572  
 REMARKS: INTER ALIA

ASSIGNMENT OF RENTS  
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 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA1408573  
 REMARKS: INTER ALIA

MORTGAGE  
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 CA2581276  
 REMARKS: INTER ALIA

ASSIGNMENT OF RENTS  
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 REGISTERED OWNER OF CHARGE:  
 BANK OF MONTREAL  
 CA2581277  
 REMARKS: INTER ALIA

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."





**District Lot 511 Title (page 3 of 3)**

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING  
Date: 18-Jan-2013 TITLE SEARCH PRINT  
Requestor: (PA99716) KENT-MACPHERSON APPRAISALS  
Folio: RC TITLE - CA2056332

Time: 13:04:34  
Page 003 of 003

TRANSFERS: NONE

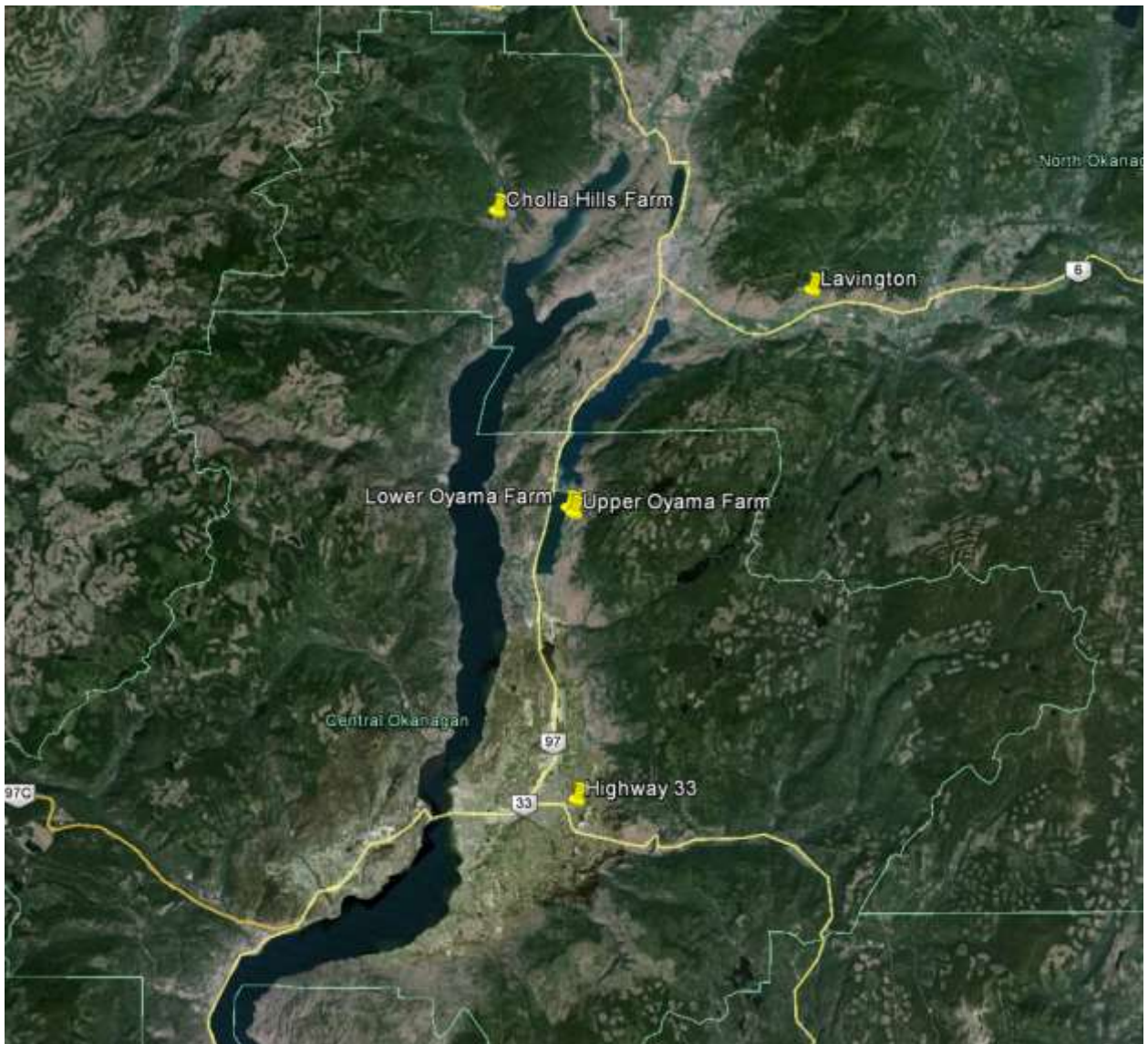
PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*



## ***PROPOSED AGRICULTURAL IMPROVEMENT LANDS – GEEN PROPERTIES***

*Oyama Farms; Highway 33; Lavington; Cholla Hills Farm*



## *Agricultural Improvement Lands – Geen Properties*

---

### OVERVIEW:

- Orchardist David Geen has committed to utilizing the funds received as a result of the inclusion of his lands into the Agricultural Land Reserve, plus additional funds of his own, totalling \$3,665,000 towards substantive agricultural improvements to existing farm land.

The agricultural improvements will be made to lands that are either owned or leased by David Geen within the Central and North Okanagan, as described on the following pages.

A brief summary of proposed agricultural improvement expenditures is provided below.

### PROPOSED EXPENDITURE SUMMARY:

#### OYAMA FARMS: (Lower & Upper)

- Total expenditure - \$ 400,000

#### HIGHWAY 33:

- Total expenditure - \$ 600,000

#### LAVINGTON:

- Total expenditure - \$2,080,000

#### CHOLLA HILLS FARM:

- Total expenditure - \$ 270,000

#### WIND MACHINES:

Total expenditure - \$ 315,000

#### TOTAL OF PROPOSED EXPENDITURES:

- **\$3,665,000** (less \$955,000 for work just commenced and currently underway)

#### TOTAL CAPITAL EXPENDITURES TO BE GUARANTEED BY LETTER OF CREDIT:

- **\$1,750,000**





## ***Summary of Facts for Improvement Lands***

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### **LOWER OYAMA FARM**

- OVERVIEW:**
- The lower Oyama farm lands are located on the east side of Wood Lake and have been leased by Coral Beach Farms Ltd. (David Geen), for a term of 20 years commencing November 1, 2013.
- PROPOSED IMPROVEMENTS:**
- Removal of 30 acres of obsolete apples, and preparation of land for replanting.
  - Installation of 30 acres of automated irrigation system, in preparation for spring 2014 planting of high density cherries.
  - Installation of deer fencing.
- LEGAL DESCRIPTIONS:**
- Lots A, B & C, Sections 35 and 36, Township 20 Osoyoos Division Yale District Plan, KAP56341 except Plan KAP56342
- OWNER:**
- Dorothy Margaret Marshall
- SITE AREA:**
- |        |   |                    |
|--------|---|--------------------|
| Lot A: | - | 12.97 acres        |
| Lot B: | - | 13.80 acres        |
| Lot C: | - | <u>14.03 acres</u> |
| Total: | - | 40.80 acres        |
- ZONING:**
- A1; Agricultural & RR2; Rural Residential 2



**CURRENT ALR STATUS:**

		<u>ALR Area</u>	<u>Non-ALR Area</u>
Lot A:	-	11.52± acres	1.45± acres
Lot B:	-	11.15± acres	2.72± acres
Lot C:	-	<u>12.64±</u> acres	<u>1.39±</u> acres
Total:	-	35.31± acres	5.56± acres

**TOPOGRAPHY:**

- Gently sloping

**TOTAL CAPITAL****EXPENDITURES:**

- Refer to Upper Oyama Farm for combined Lower & Upper expenditures



*Figure 31 – Aerial Photo – Lower Oyama Farm*

 Subject





*Figure 32 – ALR Map – District of Lake Country Lower Oyama Farm*

 Subject



## *Summary of Facts for Improvement Lands*

---

### **UPPER OYAMA FARM**

- OVERVIEW:**
- The upper Oyama farm lands are located on the east side of Wood Lake at the corner of Allison Road and Oyama Road. These four parcels have been leased by Coral Beach Farms Ltd. (David Geen), for a term of 20 years commencing November 1, 2011.
- PROPOSED IMPROVEMENTS:**
- Installation of trellis system on 14 acres of Regina cherries, similar to Cholla Hills Farm. Work has just commenced and is currently underway on the trellis system installation.
- LEGAL DESCRIPTIONS:**
- Lots 26, 27, 28 & 29, Section 36, Township 20, Osoyoos Division Yale District, Plan 808, except plan Attached to DD 26871
- OWNERS:**
- Alan Arthur Marshall, & Donald Marie Marshall;
  - Alarmer Investments Ltd., Inc. No. 188768
- SITE AREA:**
- |               |   |                    |
|---------------|---|--------------------|
| Lot 26:       | - | 8.85 acres         |
| Lot 27:       | - | 3.25 acres         |
| Lots 28 & 29: | - | <u>17.07 acres</u> |
| Total:        | - | 29.17 acres.       |
- ZONING:**
- A1; Agricultural
- CURRENT ALR STATUS:**
- All included within the ALR
- TOTAL CAPITAL EXPENDITURES (UPPER & LOWER):**
- **Approximately \$400,000**



*Figure 33 – Aerial Photo – Upper Oyama Farm*

 Subject





**Figure 34 – ALR Map – Upper Oyama Farm**

 Subject



## *Summary of Facts for Improvement Lands*

---

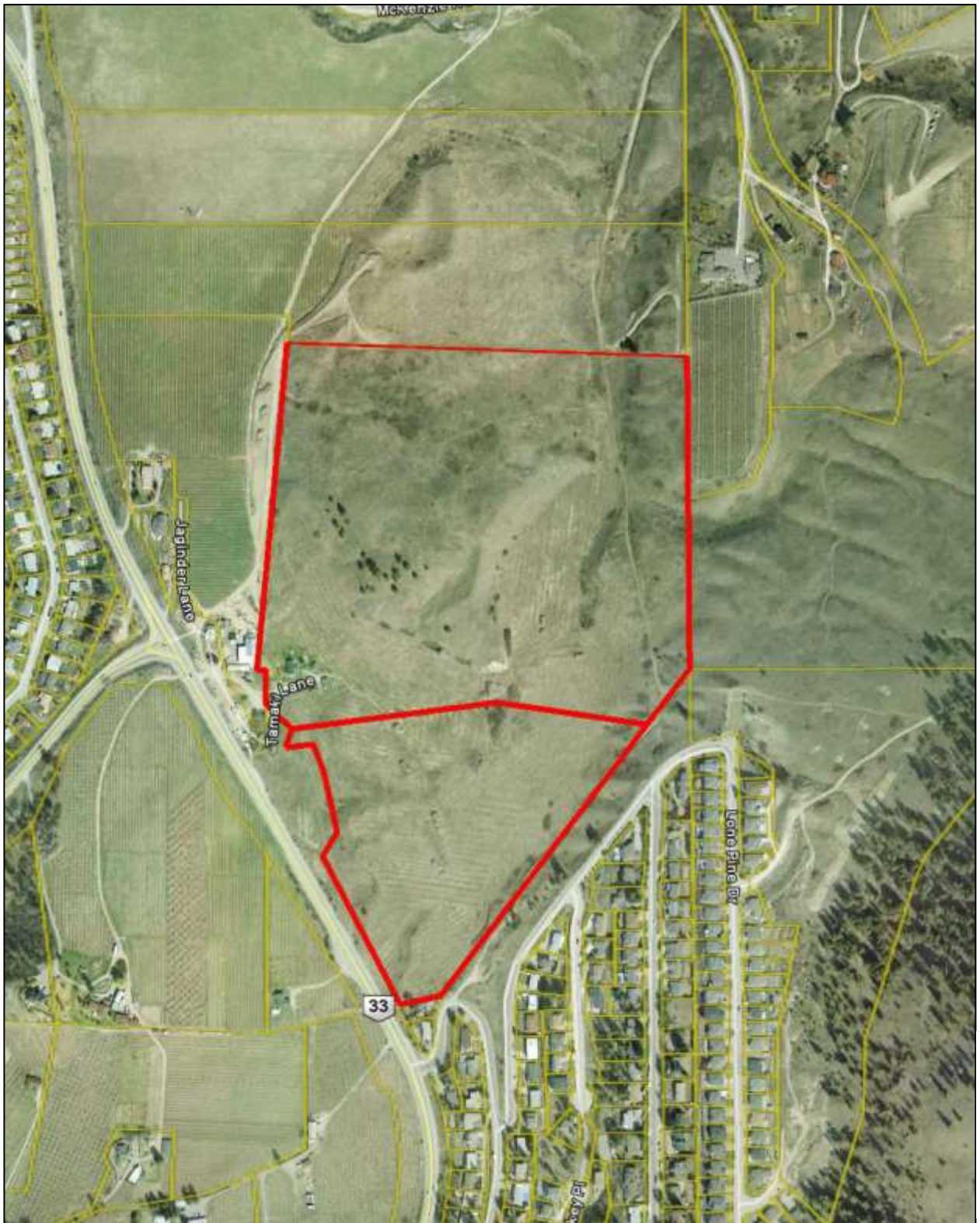
### **HIGHWAY 33**

<b>OVERVIEW:</b>	- The Highway 33 farm lands are located on the east side of Highway 33 immediately east of the Springfield Road intersection off Tamaki Lane. These two parcels have been leased by Coral Beach Farms Ltd. (David Geen), for a term of 22 years commencing October 1, 2013.
<b>PROPOSED IMPROVEMENTS:</b>	- Land contouring, site preparation and irrigation, including breaking 25 acres of virgin ground.
<b>LEGAL DESCRIPTIONS:</b>	- Lots A & B, Section 24, Township 26, Osoyoos Division Yale District, Plan 28350, except Plan KAP81726
<b>OWNER:</b>	- Toyoko Tamaki (executrix of the estate of Masaru Tamaki)
<b>SITE AREA:</b>	
Lot A:	- 48.48 acres
Lot B:	- <u>18.78 acres</u>
Total:	- 67.26 acres
<b>ZONING:</b>	- A1; Agricultural
<b>CURRENT ALR STATUS:</b>	- All included within the ALR
<b>TOTAL CAPITAL EXPENDITURES:</b>	- Approximately \$600,000



*Figure 35 – Aerial Photo –Highway 33*

 Subject





*Figure 36 – ALR Map –Highway 33*

 Subject



## ***Summary of Facts for Improvement Lands***

---

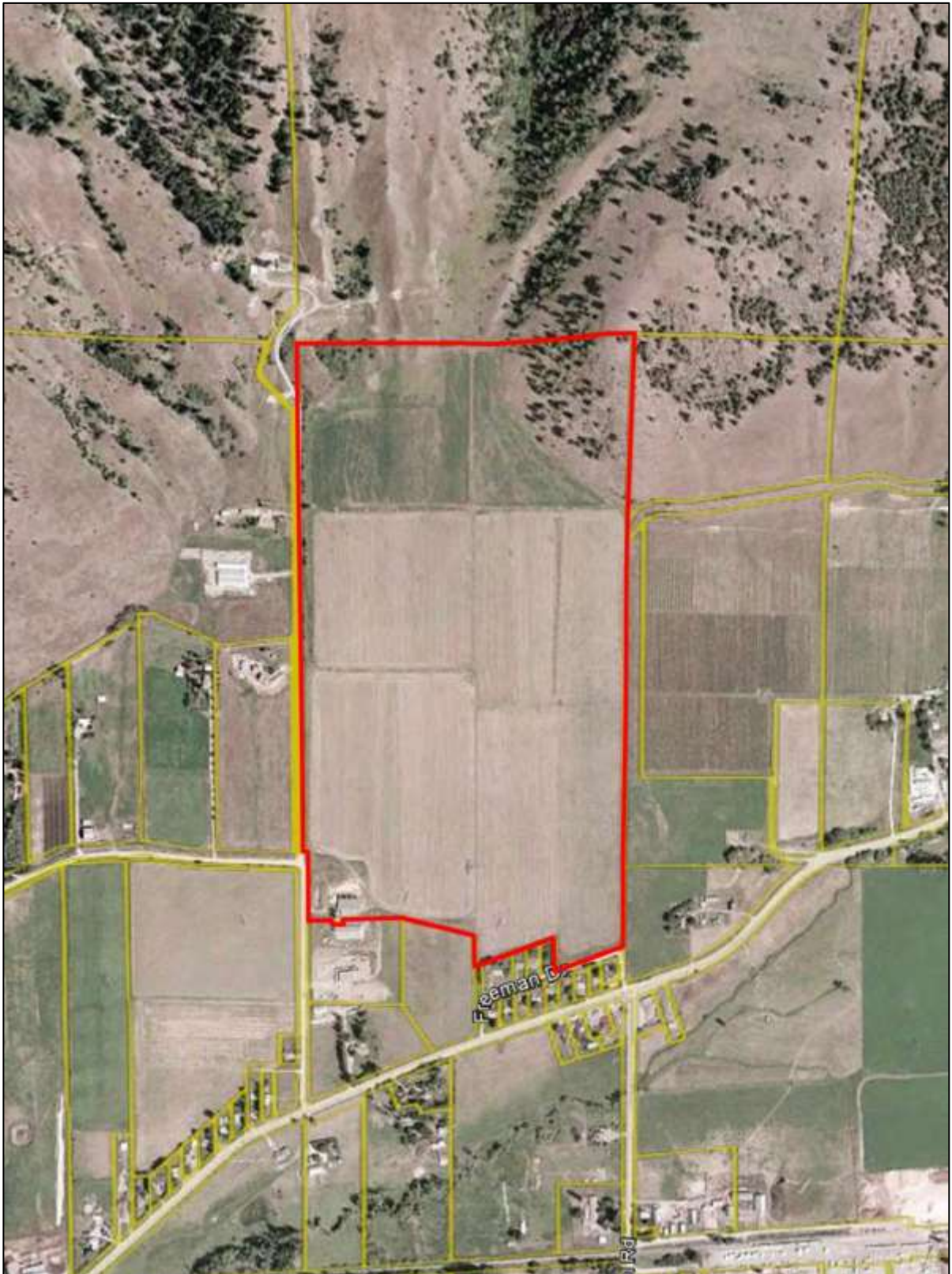
### **LAVINGTON LANDS**

<b>OVERVIEW:</b>	- The Lavington farm lands are located north of Highway 6 in Lavington, at Buchanan Road.
<b>PROPOSED IMPROVEMENTS:</b>	<ul style="list-style-type: none"> <li>- Completion of land preparation and access road ways for 95 acres of cherries.</li> <li>- Completion of irrigation system installation</li> <li>- Planting of 35,000 cherry trees. (Plants, peat moss, labour). Planting to occur in 2013.</li> <li>- Installation of rain covers (proposed for 2015).</li> </ul>
<b>LEGAL DESCRIPTION:</b>	- Lot 4, Sections 23 and 26, Township 6, Osoyoos Division Yale District, Plan KAP56680
<b>OWNERS:</b>	- David Arthur Geen & Laura Lorraine Geen
<b>SITE AREA:</b>	- 113.66 acres
<b>ZONING:</b>	- A1; Agricultural
<b>CURRENT ALR STATUS:</b>	- Included within the ALR
<b>TOPOGRAPHY:</b>	- Gradually sloping
<b>TOTAL CAPITAL EXPENDITURES:</b>	- <b>Approximately \$2,080,000</b>



*Figure 37 – Aerial Photo – Lavington Lands*

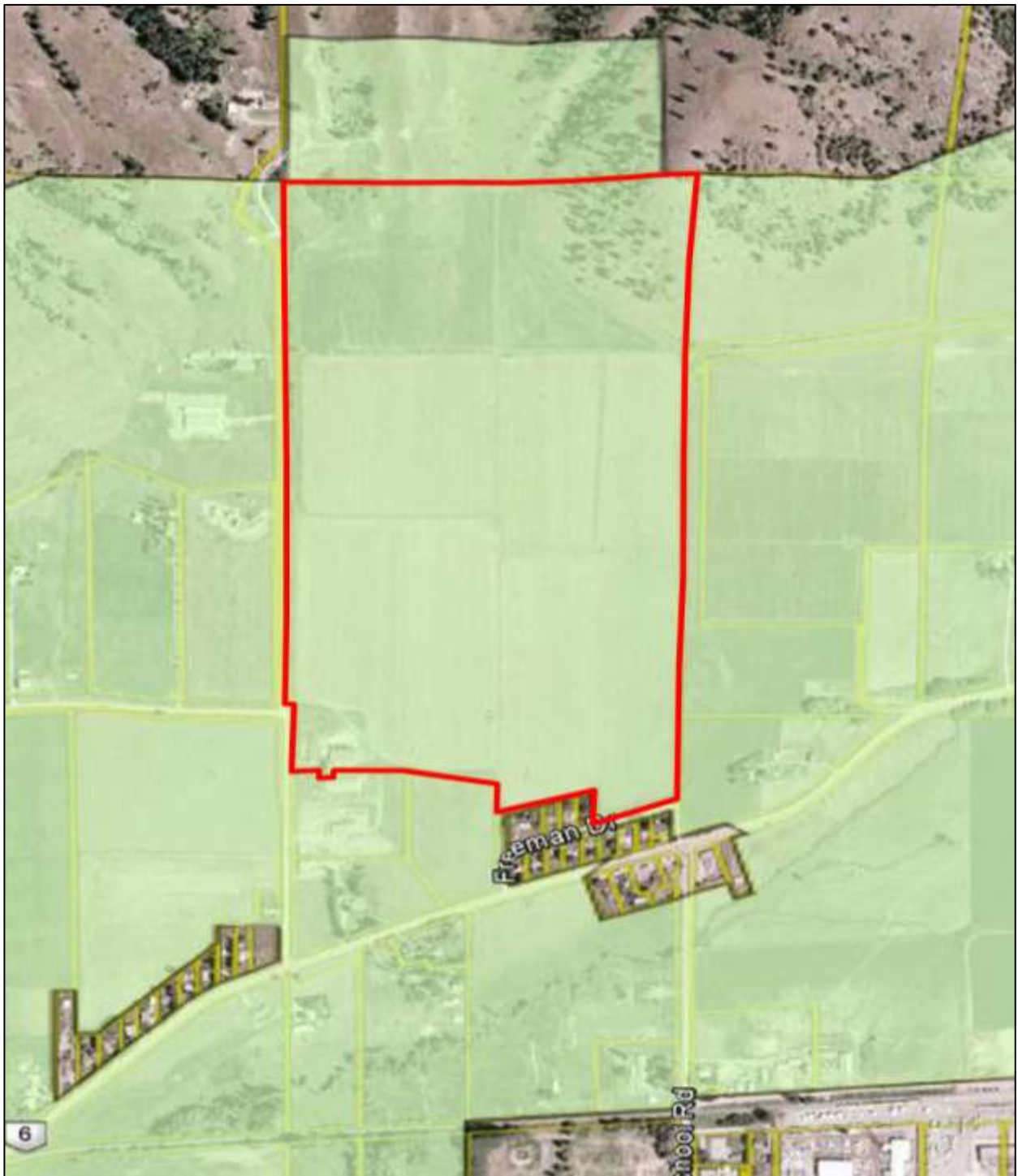
 Subject





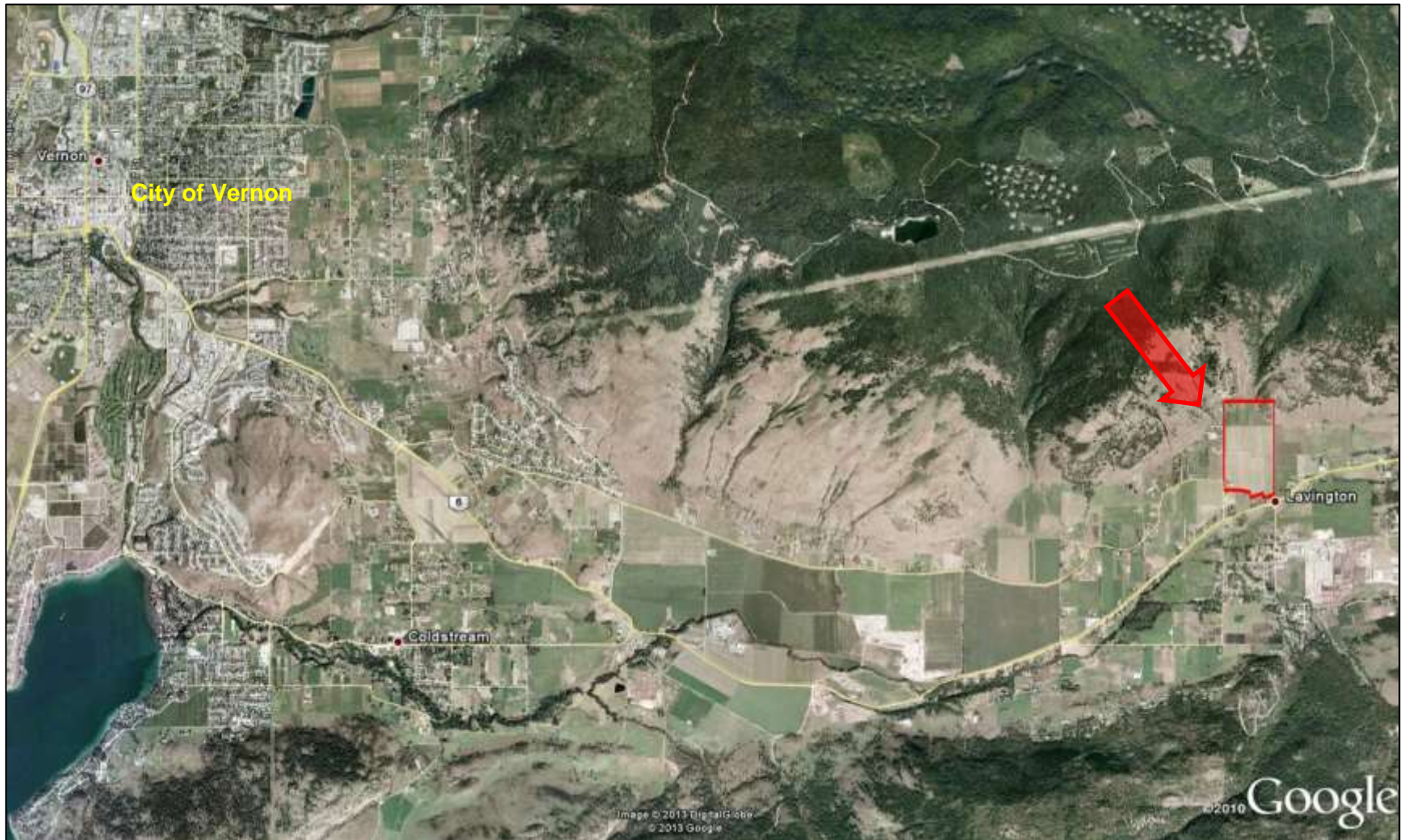
*Figure 38 – ALR Map – Lavington Lands*

 Subject



*Figure 39 – Aerial Orientation Map – Lavington Lands*

 Subject





## *Summary of Facts for Improvement Lands*

---

### **CHOLLA HILLS FARM**

#### **OVERVIEW:**

- The Cholla Hills Farm lands are located along Siwash Creek Road, west of Vernon. This parcel is owned by Emily and Eric Geen and Naswhito Creek Farms Ltd.

#### **PROPOSED IMPROVEMENTS:**

- Installation of state of the art Voen covers on 8 acres of cherries. The covers are vented to allow them to stand up to wind storms, and prevent the buildup of heat and humidity under the covers. They also act as protective covering from hail and birds. Installation of Voen covers commenced this spring.





- Installation of a trellis system on 15 acres of Regina cherries. Regina is a German variety which is not widely planted yet in Canada due to the attention required for growing. Trees were planted in 2012 with the intent of installing a Vee trellis and applying special training techniques in 2013. The trellis will cant each tree in to alternating alleyways, at about 20 degrees from vertical inducing precocity.

**CIVIC ADDRESS:**

- Site 11, Comp. 8, RR7 Station Main,  
1 - 278 Siwash Creek Road, Vernon, BC, V1T 7Z3

**LEGAL DESCRIPTIONS:**

- Lot 1, District Lot 511 & District Lot 511, Osoyoos  
Division Yale District, Plan 28829

**OWNERS:**

- Emily Kaitlin Geen & Eric Gerald Geen
- Naswhito Creek Farms Ltd.

**CHOLLA HILLS FARM SITE AREA:**

Lot 1:	-	160.40 acres
DL 511:	-	<u>150.64 acres</u>
Total:	-	311.04 acres

**ZONING:**

- LH (Large Holdings)

**CURRENT ALR STATUS:**

Lot 1:	-	57.99 acres included in the ALR
DL 511:	-	63.1 acres included in the ALR

**TOPOGRAPHY:**

- Area is predominately flat with increasing slope in the north west portion of the property.

**TOTAL CAPITAL  
EXPENDITURES:**

- **Approximately \$270,000**

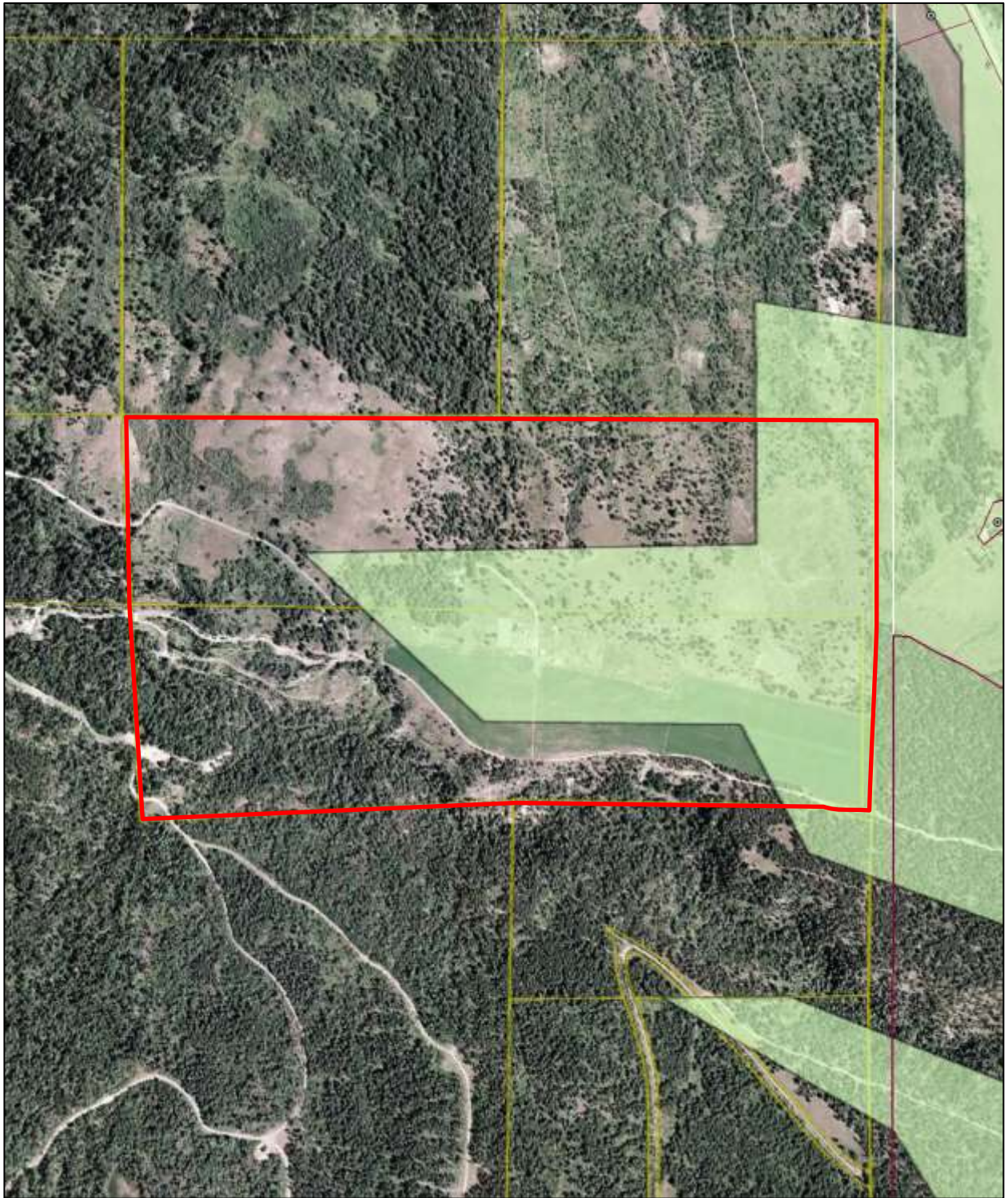






*Figure 41 – Agricultural Land Reserve Map – Cholla Hills Farm*

 Subject





## *Summary of Facts for Improvement Lands*

---

### WIND MACHINES

#### **OVERVIEW:**

- The addition of wind machines help protect crops by pulling the warm air down into the orchard, raising temperatures and saving crops from the damaging effects of spring frosts and winter freezes.

#### **PROPOSED IMPROVEMENTS:**

- Installation of 9 'Orchard Rite' wind machines. Each costing ~\$35,000.



#### **PROPERTY LOCATIONS:**

Cholla Hills Farm – 278 Siwash Creek Road, Vernon  
 Geen Family Farm – 16351 Carrs Landing Road,  
 Lake Country  
 Rainbow Hill Farm – 12520 Pow Road, Lake Country  
 Glenmore Road Farm – 697 Valley Road N, Kelowna  
 and 499 Valley Road N, Kelowna



**OWNERS:**

Cholla Hills Farm – Geen Family and Naswhito Creek  
 Farms Ltd  
 Geen Family Farm – David Geen  
 Rainbow Hill Farm – Coral Beach Farms Ltd  
 Glenmore Road Farm – Johannus Janmaat and Jane  
 Reschke

**SITE AREA:**

Cholla Hills Farm:	-	311± acres
Geen Family Farm:	-	110± acres
Rainbow Hill Farm:	-	50± acres
Glenmore Road Farm:	-	<u>12± acres</u>
Total:	-	483± acres

**ZONING:**

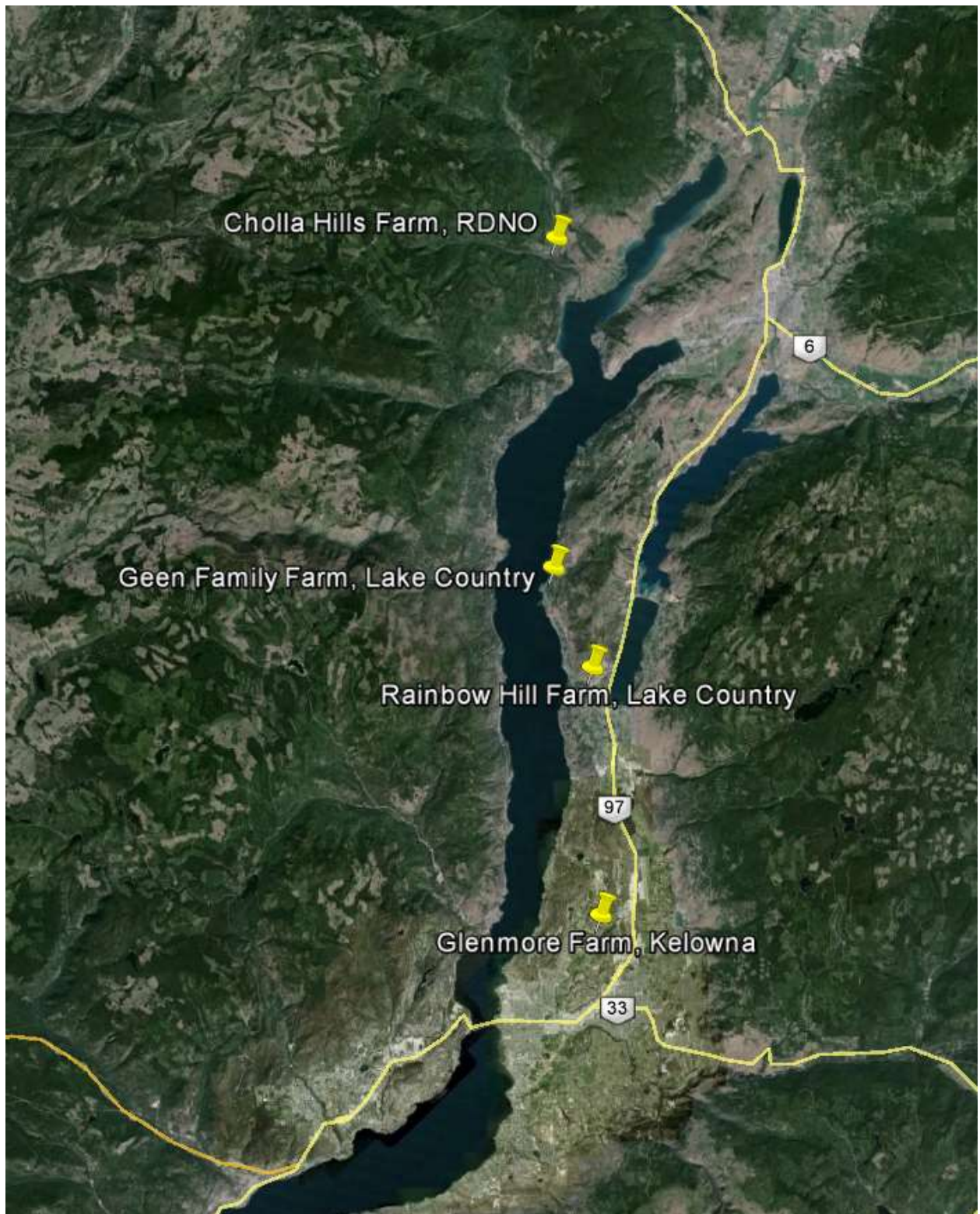
- Various

**TOTAL CAPITAL****EXPENDITURES:**

- **Approximately \$315,000**



*Figure 42 – Proposed Wind Machine Locations*





# ***PROPOSED TOPSOIL RELOCATION – DAY PROPERTIES***

*Days Dirt Ventures*



## ***Topsoil Relocation Lands – Day Properties***

---

### **STEVE DAY**

Steve Day is a third generation Kelowna farmer, following in the footsteps of his father, Ken Day, and his grandfather George Day. Steve was born and raised in Kelowna, and has been farming in Kelowna for the past 27 years. Steve, along with his brother Michael and mother Annie, currently farm 120 acres on Byrns Road in Kelowna, and own over 150 acres of land within the City of Kelowna. Other members of the Day family still own and operate farms in other parts of the city.

### **OWNERSHIP**

The Day family properties are owned by three separate ownership names. The three properties on Byrnes Road are owned in the name of Kalsam Orchards Ltd and Steven Day, the gravel pits are owned by Day's Dirt Ventures Inc, the orchard directly west of the gravel pit is owned by Kalsam Orchards Ltd and Michael Day, two of the orchards along Saucier Road are owned by Kalsam Orchards Ltd and the remaining two are owned by Annie Day.

### **OVERVIEW**

Through the process of working with the City of Kelowna and with the community as a whole, the applicant has had numerous conversations with Steve Day, one of the adjoining orchardists, regarding the exclusion of the subject property. To meet the ALC's mandate:

- reduce the impact on adjacent properties
- improve the interface area through proper buffer planning.

One opportunity that arose through conversation was the potential to relocate topsoil from the exclusion lands (soils under paved surfaces and buildings), and relocate the topsoil to Steve Day's lands (or his family's lands) to improve agriculture. One property that has significant opportunity for agricultural improvement is the Day's gravel pit, located at 4163, 4203 Bedford Road in Kelowna (approximately 5 kilometres from the exclusion site). The site consists of two properties that are used for gravel extraction, 79% of which is in the ALR.



Upon closure or phased closure of the pit, the Day's would remediate the site for agricultural purposes. The 15,000 cubic yards of topsoil would substantially increase the agricultural capability of the site and would significantly reduce remediation costs. Figure 43 shows the Day's gravel pit that would receive the topsoil.

The empty trucks would be able to back-haul engineered fill and aggregate as needed for the exclusion site.

### **TOPSOIL QUANTITY**

The topsoil proposed for relocation from the McIntosh Properties site is estimated to be approximately 15,000 cubic yards.

### **TOPSOIL VALUE**

Based on consultation and input from landscaping companies and contractors, the unscreened topsoil would command a value of approximately \$10 per cubic yard.

The value of the topsoil (in-situ) for 15,000 cubic yards at \$10 per cubic yard is estimated at \$150,000.

The cost of removal, trucking and placement on the recipient site is estimated at \$165,000.

The budgeted cost to spread soil on the recipient site is estimated at \$20,000, but can vary substantially depending on the recipient site's remediation plan.

The total agricultural improvement value for topsoil removal and relocation, as broken down above, is estimated at \$335,000.





## *Summary of Facts for Improvement Lands*

---

### **DAY'S GRAVEL PIT**

**OVERVIEW:** - The gravel pit is located in southeast Kelowna, directly east of the Saucier Road and Bedford Road intersection.

**PROPOSED IMPROVEMENTS:** - Relocation of 15,000 cubic yards of topsoil from the exclusion site to the gravel pit. Based on preparation of the gravel pit, the topsoil could be spread upon arrival, or stockpiled until the site is ready.

**LEGAL DESCRIPTIONS:** - Amended Lot 2 (DD D29969), Section 5, Township 26, and of Section 32, Township 29, Osoyoos Division Yale District Plan, KAP15793.  
Lot 235, Section 32, Township 29, Osoyoos Division Yale District, Plan 1247

**OWNER:** - DAYS DIRT VENTURES INC

**SITE AREA:**

Lot 2:	-	29.50 acres
Lot 235:	-	<u>13.39 acres</u>
Total:	-	42.89 acres.

**ZONING:** - A1; Agricultural

**CURRENT ALR STATUS:**

		<u>ALR Area</u>	<u>Non-ALR Area</u>
Lot 2:	-	20.36± acres	9.14± acres
Lot 235:	-	<u>13.39± acres</u>	<u>0.00± acres</u>
Total:	-	33.75± acres	9.14± acres



*Figure 43 – Day's Gravel Pit*

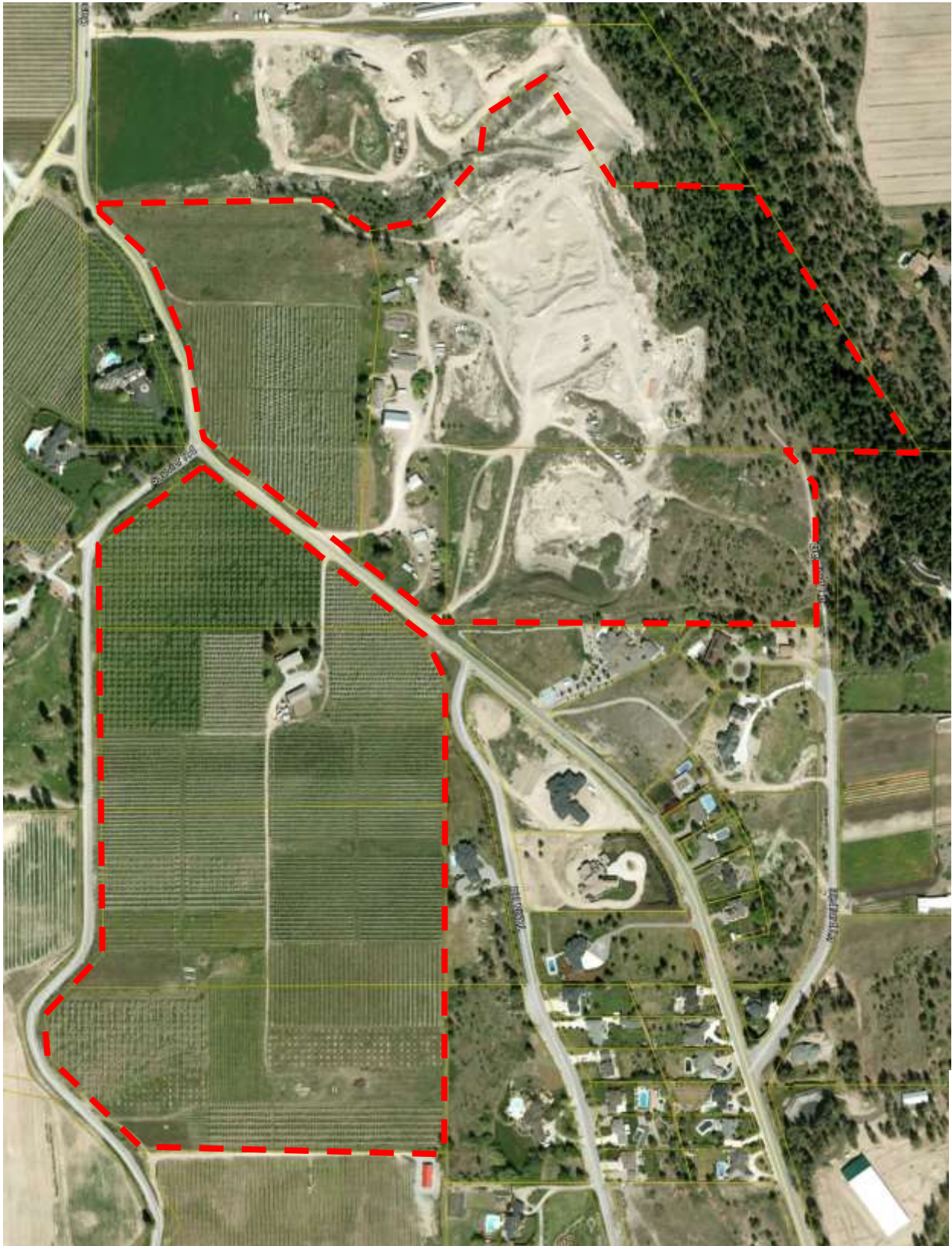
 Subject; Gravel Pit





*Figure 44 – Day’s Ownership of adjacent properties*

 Subject; Day’s Lands



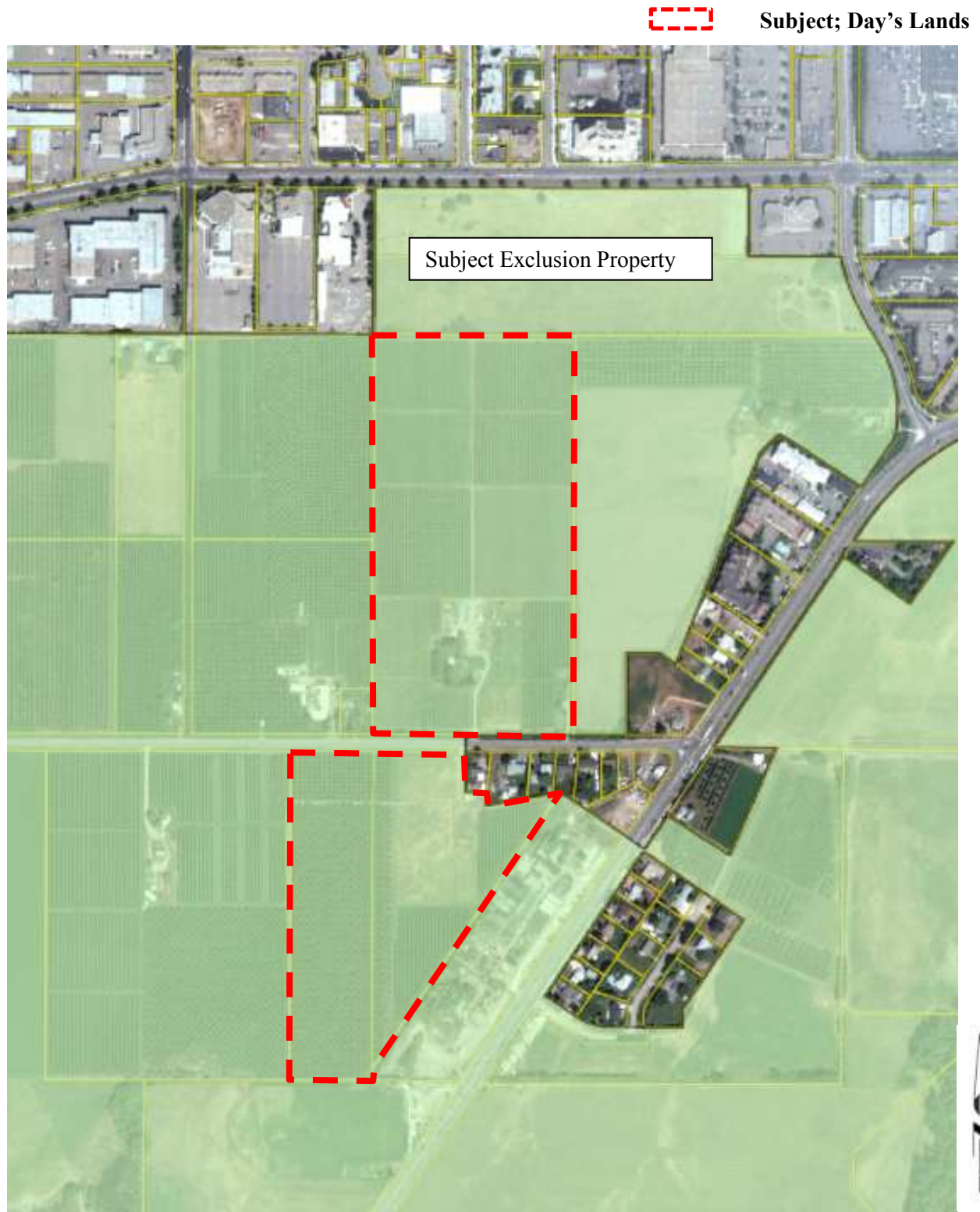


**Figure 45 – Day’s Ownership of adjacent properties and Agricultural Land Reserve**

 Subject; Day’s Lands



**Figure 46 – Day’s Ownership on Byrns Road and Agricultural Land Reserve**



# REPORT TO COUNCIL



**Date:** September 13<sup>th</sup>, 2013

**RIM No.** 1250-30

**To:** City Manager

**From:** Urban Planning, Community Planning and Real Estate (AW)

**Application:** OCP10-0008/Z10-0040      **Owner:** John Ross Marrington  
Alana Vera Marrington  
John Phillip Balla

**Address:** 2149,2159,2169,2179,and 2189 Pandosy Street, Kelowna      **Applicant:** Alana Marrington

**Subject:** Rezoning Application, Extension Request

**Existing Zone:** RU6 - Two Dwelling Housing

**Proposed Zone:** HD2 - Health District 2

---

## 1.0 Recommendation

THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Official Community Plan Amending Bylaw No. 10440 and Zone Amending Bylaw No. 10439, for Lots 1, 2, and 3, District Lot 14, Osoyoos Division Yale District, Plan 5973 and Lots 1 and 2, District Lot 14, Osoyoos Division Yale District Plan 3216 located on 2149, 2159,2169, 2179,and 2189 Pandosy Street, Kelowna,BC, be extended from July 10, 2013 to July 10, 2014.

## 2.0 Purpose

To consider a final extension to facilitate the rezoning of the subject property from the RU6 - Two Dwelling Housing zone to the HD2 - Health District 2 zone in order to permit the construction of the proposed mixed-use development.

## 3.0 Land Use Management

Section 2.12.1 of Procedure Bylaw No. 10540 states that:

In the event that an application made pursuant to this bylaw is one (1) year old or older and has been inactive for a period of six (6) months or greater:

a) The application will be deemed to be abandoned and the applicant will be notified in writing that the file will be closed;



- b) Any bylaw that has not received final adoption will be of no force and effect;
- c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, **Council** may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10439 and 10440 received second and third readings on January 10, 2012 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional twelve (12) months in order to consider all options for the project. The following conditions must be addressed prior to forwarding the application for final approval:

- Registration of a plan of subdivision to consolidate the properties into one title.
- Requirements of the Development Engineering Branch being completed to their satisfaction
- Final adoption of the zone amending bylaw be considered in conjunction with Council's consideration of a Development Permit on the subject properties.

Although there hasn't been significant activity the applicant has been in contact lately and has provided the attached letter supporting the request for an extension of the Zone and OCP amending Bylaws.

**Report prepared by:**

\_\_\_\_\_  
Alec Warrender, Land Use Planner  
/dc

**Reviewed by:**

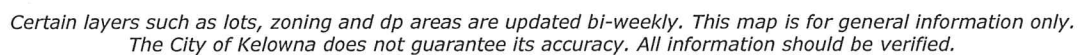
☐ Danielle Noble, Manager, Urban Planning

**Approved for Inclusion**

☐ Doug Gilchrist, Divisional Director, Community Planning  
and Real Estate

**Attachments:**

Site Plan



Alana Marrington  
1524 Woodridge Road  
Kelowna, BC V1W 3B4

City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

September 13, 2013

Re: File Z10 – 0400, Collett Manor Medical & Residential Wellness Facility

To Mayor and Council:

To explain the status of the Collett Manor project and when you can anticipate us moving ahead, Alec Warrender (Strategic Planning) stated in his e-mail September 13, 2013 (9:53 AM) that “Maybe a letter to Council would be more appropriate” to attach to the extension report.

1. We closed on the 6<sup>th</sup> house, 551 Glenwood Ave on September 3, 2013; this property has already been rezoned to Hospital District 2 (HD-2) and sitting at 3<sup>rd</sup> Reading.
2. We have had great and growing interest from investors and permanent residents’ perspective. We have gathered a list of expressed interest from non-profit groups, foundations, etc.
3. We are working on the plans, various disciplines and financing.
  - a. Plans are almost Development Permit ready; all professional disciplines have been selected.
  - b. Our team very recently had to part ways with our Interior Designer. We are currently interviewing replacements that have at minimum an IDIBC accreditation number and experience with large multi-use buildings to work with our established and experienced team.
  - c. Through our due diligence of building a green, sustainable multi-use building we are constantly fine-tuning how to incorporate these facets into the building. We have spent copious amounts of time researching and finding the right combination of features. This has been time consuming; however it has been a worth-while delay.



- d. DIRT Environmental Solutions is a world-renowned construction technology. Our building – both commercial and residential – will have the DIRT products. We will be the first multi-use mixed-use building to incorporate into the residential component, the DIRT design and philosophy. It is so new to the residential building community that it was officially launched at the end of June 2013. We are now able to fully utilize this system and offer it to the community at large.
- 4. Unfortunately we had a death in the family. The person that passed away was one of the integral people in our project – we were delayed 3-4 months with the care, declining health and the passing of this person.

We apologize for the less concrete answers; our team is arranging a meeting with the lawyer at PIHL for some direction to move forward with the City and the logistics that need to be completed. We would like nothing more to move forward quickly to create a legacy for my father as this was his dream.

Thank you,  
Alana Marrington

**CITY OF KELOWNA**  
**BYLAW NO. 10881**  
**Z13-0026 - Comfort Crafted Homes Inc. No. BC0723458**  
**330 Taylor Road**

---

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 2, Section 22, Township 26, ODYD, Plan 18558 located on Taylor Road, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 12<sup>th</sup> day of August, 2013.

Considered at a Public Hearing on the 27<sup>th</sup> day of August, 2013.

Read a second and third time by the Municipal Council this 27<sup>th</sup> day of August, 2013.

Approved under the Transportation Act

Blaine Garrison  
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# Report to Council



**Date:** September 18, 2013

**Rim No.** 1140-50

**To:** City Manager

**From:** R. Forbes, Manager, Property Management

**Subject:** Report to Council Sept 23 - Lease to Okanagan Symphony

Report Prepared by: T. Abrahamson, Property Officer

---

## **Recommendation:**

THAT Council approves the City entering into a five (5) year Lease Agreement, with the Okanagan Symphony Society, at the Knowles House at 865 Bernard Avenue for the purpose of office and storage space, with the option to renew for an additional five (5) year term at the City's sole discretion, in the form attached to the Report of the Manager, Property Management, dated September 18, 2013.

AND THAT the Mayor and City Clerk be authorized to execute the Lease Agreement.

## **Purpose:**

To obtain Council endorsement of a five (5) year lease to Okanagan Symphony Orchestra Society for the use of the house at 865 Bernard Avenue.

## **Background:**

The Knowles House, located at 865 Bernard Avenue, was recently occupied by the Alzheimer Society and became vacant in December 2012. The home was built in 1907. There has been an addition to the house that is in poor condition and needs to be removed. The house requires renovations to return the building to its original form and character. Rental revenue has been placed in a reserve to fund the renovations to the 106 year-old building, and continued revenue contributions will ensure funding for the restoration.

The City received two proposals to rent the Knowles House. The proposals came from the Okanagan Symphony Society ("OSO") and the Central Okanagan Heritage Society (COHS). A matrix was developed to evaluate the two proposals. The matrix criteria were as follows:

- Sustainability of heritage maintenance;
- Social/economic value to the community;
- Broad community based organization; and,
- Monetary value to the city.



The proposals were evaluated independently by 4 individuals with the OSO's proposal deemed to have the most merit. On this basis, Staff has recommended moving forward with a lease to OSO.

The OSO is currently renting second floor space on Springfield Road and seeking a larger space that would accommodate their office functions and storage space for the larger instruments. The wheelchair ramp at Knowles House would assist patrons and volunteers with mobility issues to access the office with greater ease, and also allow movement of the larger instruments to and from storage. The door to the building at the end of the wheelchair ramp will have to be changed to a larger door to accommodate the movement of the instruments. The Urban Planning branch has identified that a Heritage Alteration Permit would not be required for this work.

The OSO has indicated that proximity to Knowles Park opens up programming opportunities for small concerts in the park.

#### **Financial/Budgetary Considerations**

The proposed rental rate is \$10,680.00 per annum plus GST for the first year of the term, and \$13,680.00 per annum for the remainder of the term. The rent reduction in the first year recognizes the minor interior renovations required by the OSO and the need for continued outside storage space while the renovations are underway. OSO will be responsible for all utilities and property taxes associated with the lease.

An option to renew at the City's sole discretion is offered for a further five (5) year term. A rent review will be conducted at that time to ensure market rent is achieved.

#### **Internal Circulation:**

Director, Financial Services  
Planner, Policy & Planning  
Manager, Urban Planning

#### **Considerations not applicable to this report:**

Legal/Statutory Authority:  
Legal/Statutory Procedural Requirements:  
Existing Policy:  
Personnel Implications:  
External Agency/Public Comments:  
Communications Comments:  
Alternate Recommendation:

In light of the above, the Real Estate department requests Council's endorsement of this Lease.

**Submitted by:** R. Forbes, Manager, Property Management

**Approved for inclusion:** D. Edstrom, Director, Real Estate

Attachment:  
Lease

cc: K. Grayston, Director, Financial Services  
L. Sanbrooks, Planner, Policy & Planning  
D. Noble, Manager, Urban Planning

### Subject Property





## COMMERCIAL FACILITY LEASE

BETWEEN:

**CITY OF KELOWNA**, a municipal corporation having  
Offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "Landlord")

OF THE FIRST PART

AND:

**OKANAGAN SYMPHONY ORCHESTRA SOCIETY**  
#239 - 1889 Springfield Road, Kelowna, B.C. V1Y 5V5

(the "Tenant")

OF THE SECOND PART

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9. Utilities and Additional Services
10. Licenses, Assignments and Subletting
11. Fixtures and Improvements
12. Insurance and Liability
13. Environmental Matters
14. Subordination, Attornment, Registration, and Certificates
15. Occurrence of Default
16. Tenant's Default, Remedies of Landlord and Surrender
17. Miscellaneous

THIS LEASE, dated the 1<sup>st</sup> day of September 2013, is made and entered into by the Landlord and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

## 1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

### Basic Terms:

- |     |                                     |  |
|-----|-------------------------------------|--|
| (a) | Landlord:<br>Address of Landlord:   | CITY OF KELOWNA<br>City Hall, 1435 Water Street<br>Kelowna, B.C. V1Y 1J4<br>Fax: 250-862-3349<br>Email: rforbes@kelowna.ca |
| (b) | Tenant:<br>Address of Tenant:       | Okanagan Symphony Orchestra Society<br>#239-1880 Springfield Road<br>Kelowna, B.C. V1Y 5V5                                 |
| (c) | Premises:                           | Knowles House, 865 Bernard Ave, Kelowna, BC<br>A Portion of Lot A, DL 138 KAP67329<br>(see Schedule A)                     |
| (d) | License Area:                       | The Tenant shall have access to the License<br>Area as shown on Schedule A<br>(see Schedule A)                             |
| (e) | Initial Term:<br>Commencement Date: | Five (5) years<br>October 1, 2013  |
| (f) | Renewal Term (if any):              | One (1) Term of Five (5) years<br>at the City's sole discretion  |
| (g) | Annual Base Rent + Tax:             | Year 1 - \$10,680 + GST<br>Years 2-5 - \$13,680 + GST  |
| (h) | Property Taxes:                     | Tenant to pay unless approved under<br>Permissive Tax Exemption Bylaw  |
| (i) | Utilities:                          | Tenant to pay  |
| (j) | Permitted Use:                      | To occupy the premises for the purpose of<br>office, meeting and storage space   |

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

### 1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:



SCHEDULE	SUBJECT
A	Site Plan of Premises and License Area
B	Definitions
C	Landlord & Tenant Responsibility Checklist
D	Certificate of Insurance

### 1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

## 2. PREMISES AND LICENSE AREA

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Premises.

[The Landlord furthermore grants a license (the "License") to the Tenant to use the [parking area and/or landscaped area and/or surrounding property and/or other suitable description] outlined as the License Area in Schedule A, for purposes necessarily related to the permitted use of the Premises.]

## 3. TERM

### 3.1 Term

The Term of this Lease, and the related License, shall be for the initial term of Five (5) years, beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

### 3.2 Option to Renew

The Landlord covenants with the Tenant that if:

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 12 months prior to the expiration of the initial Term of Five (5) years; and
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) the Tenant has duly and regularly throughout the initial Term of Five (5) years observed and performed the covenants and conditions herein contained

then the Landlord, at its sole discretion, may grant to the Tenant at the Tenant's expense a renewal lease of the Premises and License Area for One (1) Renewal Term of Five (5) years upon the same terms and conditions, excluding Annual Base Rent and Additional Rent as are herein contained. There are no further rights of renewal.

#### 4. RENT

##### 4.1 Rent

The Tenant shall yield and pay to the Landlord, in the manner outlined in clause 4.2, at the office of the Landlord's accounts payable division, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Lease Year.

(b) Additional Rent

In addition, but subject to any operating costs the Landlord expressly agrees to pay for its own account, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and the License Area including all applicable real estate taxes and other charges.

##### 4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

In addition, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and the License Area including all applicable real estate taxes and other charges.

(c) Payment Format

The Tenant agrees to pay the Annual Base rent via Bank Transfer or post-dated cheques on a monthly basis.

#### 4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

#### 4.4 Waiver of Offset

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

#### 4.5 Application of Payments

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

#### 4.6 Net Lease

The Tenant Acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease, shall pay all charges, impositions, and costs of every nature and kind relating to the Premises and License Area whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

#### 4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

### 5. TENANT'S COVENANTS

#### 5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and License Area and commence to carry on business in all or substantially all of the Premises and License Area no later than 30 days after the Commencement Date, to use the Premises and License Area only for the purpose set out in clause 1(j) herein and not for any other purpose.



(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises or License Area including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord or anyone else; any other use or manner of use which, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises and License Area anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises or License Area to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Landlord.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises and License Area, the condition of the Leasehold Improvements, trade fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises or License Area necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Landlord's original construction of the Premises.

(h) Overholding

That if the Tenant shall continue to occupy the Premises and License Area after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(i) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the Landlord.

(j) Inspection and Access

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises and License Area for the purpose of inspection or making repairs, alterations, or improvements to the Premises or License Area as the Landlord may deem necessary or desirable, or as the Landlord may be required to make by law. The Landlord shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The Landlord shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.

(k) Showing Premises

To permit the Landlord and its authorized agents and employees to show the Premises and License Area to prospective tenants during the normal business hours of the last three months of the Term.

(l) Conduct of Business:

The Tenant shall operate the Premises in accordance with the terms set out in Section 1(j). The Tenant will not permit the sale of tobacco products from the Premises or License Area.

(m) Heritage Restoration and/or Renovation

The Knowles House is a registered property on Kelowna's Heritage Registry. In the future, the Landlord will be restoring/renovating the rear portion of the house. This may cause some inconvenience to the Tenant. The Tenant hereby acknowledges that during the restoration/renovation there may be noise and service interruptions.

(n) Lease Suspension and / or Abatement

If during the planning of the restoration and/or renovation the Landlord deems that the Premises must be unoccupied for a period of time due to safety, noise, or any other concerns, the Landlord will give the Tenant three (3) months notice to vacate the property until such time as the Landlord receives an occupancy permit and deems it safe for the Tenant to resume occupancy. The Landlord will not be responsible for providing any space nor funding for space for the Tenant during this time. At the same time, the Tenant will not be responsible for any Rent or Utilities during this period.

In the event that the Tenant's business operations (ie: power, heat, water, sewer or communication) are interrupted longer than 48 hours and are attributable to the Landlord's heritage renovation / repair activities, rent will abate on a per diem basis.

(o) Lease Cancellation

If during the period contemplated in Section 5.1(m) Lease Suspension, the Tenant finds a suitable alternate location and does not wish to return to the Knowles House, they may terminate this Lease without penalty by providing the Landlord two (2) months notice.

(p) Kelowna South-Central Association of Neighbourhoods Society (KSAN) Meeting Space

The Tenant shall allow KSAN free use of the meeting room space on a monthly basis in the Knowles House on a mutually agreed to schedule for the purpose of a monthly meeting of the Society. It is understood that due to renovations, KSAN will be unable to conduct monthly meetings. OSO will advise when renovations are concluded at which time KSAN may resume monthly meetings.

## 6. LANDLORD'S COVENANTS

### 6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises and License Area for the Term hereby granted, without any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Landlord.

(b) Heritage Restoration/Renovation

The Knowles House requires some restoration and/or renovation. The scope of the work will be determined by the Landlord in order to preserve and protect the Knowles House to the appropriate heritage standard. If the restoration / renovation takes place during the Term of this lease, then the Landlord shall inform the Tenant of the scope of the work and will attempt to minimize disruption to the Tenant's business.

(c) Landscaping

The Landlord will be responsible for landscaping and cutting grass on the Premises and License Area.

## 7. REPAIR, DAMAGE, AND DESTRUCTION

### 7.1 Landlord's Repairs

The Landlord covenants with the Tenant that the major building components will be maintained in a good and reasonable state of repair, consistent with the general standards of structures of similar age and character in Kelowna. This includes the main structure, roof and mechanical systems.



## 7.2 Tenant's Repairs

The Tenant covenants with the Landlord:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises and License Area including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (b) that the Landlord may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises and License Area in a good and reasonable state of repair, allowing for reasonable wear and tear.

## 7.3 Abatement and Termination

It is agreed between the Landlord and the Tenant that in the event of damage to the Premises or License Area:

- (a) if the damage is such that the Premises or License Area or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
  - (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises or License Area are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises or License Area not reasonably capable of use and occupancy; and
  - (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises or License Area is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and
- (b) if the Premises or License Area are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the Landlord or Tenant may at its option, exercisable by written notice to the Tenant or Landlord, given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and License Area to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid

to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises or License Area having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

#### 7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities for which the Landlord is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord.

### 8. TAXES AND OTHER COSTS

#### 8.1 Tenant Tax Obligation

The Tenant covenants with the Landlord:

- (a) to pay when due, all Property Taxes, business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Leased Premises by the Landlord, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Leased Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Landlord or which may be removed by the Tenant;
- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises; and

#### 8.2 Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Lease.

### 9. UTILITIES AND ADDITIONAL SERVICES

#### 9.1 Utilities

The Tenant shall be responsible for all aspects of, including payment of costs related to, utilities and services of whatever nature or kind required in connection with the Premises and License Area and the conduct by the Tenant of the Tenant's business as described herein including without limitation, water, telephone, sewer, hydro, power, heating, air conditioning and garbage disposal.



## 10. LICENSES, ASSIGNMENTS, AND SUBLETTING

### 10.1 General

It is understood and agreed that the Tenant may not assign this Lease, or sublease the Premises or License Area, to another party.

## 11. FIXTURES AND IMPROVEMENTS

### 11.1 Installation of Fixtures and Improvements

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises or License Area, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises or License Area shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

### 11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Premises or License Area, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

### 11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then



or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

#### 11.4 Removal of Fixtures and Improvements

All Leasehold Improvements in or upon the Premises and License Area shall immediately upon affixation be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by the Tenant from the Premises or License Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Landlord shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in Section 12.2 (b) unless otherwise agreed in writing by the Landlord.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or License Area by the installation and removal.

#### 11.5 Alterations by Landlord

The Landlord reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Landlord will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises and License Area, but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the Landlord.

### 12. INSURANCE AND LIABILITY

#### 12.1 Landlord's Insurance

The Landlord shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Premises and all improvements and installations made by the Landlord in the Premises or License Area, except to the extent hereinafter specified, in respect of perils and to amounts and on terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Premises, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the Landlord, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the Landlord will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Premises. The Landlord may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.

## 12.2 Tenant's Insurance

The Tenant shall take out and keep in force during the Term:

- (a) comprehensive general liability (including bodily injury, death and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises or the License Area and the Tenant's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the Landlord as a named insured and shall protect the Landlord in respect of claims by the Tenant as if the Landlord were separately insured, shall include a cross liability clause and have a deductible of not more than \$5,000 per occurrence or claim; and
- (b) insurance in such amounts as may be reasonably required by the Landlord in respect of fire and other such perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Premises, and which insurance shall include the Landlord as a named insured as the Landlord's interest may appear with respect to the insured Leasehold Improvements and provided that any proceeds recoverable in the event of loss to Leasehold Improvements;

and if the Landlord shall require the same from time to time, then also:

- (c) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and
- (d) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass; and
- (e) motor vehicle insurance for all motor vehicles used by the Tenant in the conduct of its business shall have a minimum public liability and third party property damage insurance coverage of at least \$2,000,000.

All insurance required to be maintained by the Tenant hereunder shall be on terms and with insurers to which the Landlord has no reasonable objection and shall provide that such insurers shall provide to the Landlord 30 days' prior written notice of cancellation or material alteration of such terms.

The Tenant shall furnish to the Landlord the completed certificate as set out in Schedule D or other evidence acceptable to the Landlord as to the insurance within 14 days of the execution of this agreement. Failure to provide such documents shall constitute default resulting in termination of this agreement. The Tenant shall also furnish to the Landlord certificates of other evidence acceptable to the Landlord as to the insurance from time to time required to be effected by the Tenant and its renewal or continuation in force, either by means of a certified copy of the policy or policies which, in the case of comprehensive general liability insurance, shall provide such information as the Landlord reasonably requires. If the Tenant shall fail to take out, renew and keep in force such insurance the Landlord may do so as the agent of the Tenant and the Tenant shall repay to the Landlord any amounts paid by the Landlord as premiums forthwith upon demand.

## 12.3 Limitation of Landlord's Liability

The Tenant agrees that:



- (a) the Landlord shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees, or licensees or any other person in, on, or about the Premises, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event shall the Landlord be liable:
  - (i) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, sub-surface, or other part or parts of the Premises of property, or from the streets, lanes, and other properties adjacent thereto;
  - (ii) for any damage, injury, or death caused by anything done or omitted by the Tenant or any of its servants or agents or by any other person;
  - (iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Landlord in effect from time to time or of any lease by another tenant or premises in the same building or on the same property or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
  - (iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Premises or the property;
  - (v) for the failure to do anything required to be done by the Landlord.
- (b) The Tenant releases and discharges the Landlord from any and all action, causes of action, claims, damages, demands, expenses, and liabilities which the Tenant now or hereafter may have, suffer, or incur which arise from any matter for which the Landlord is not liable under sub-clause 12.3(a), notwithstanding that negligence or other conduct of the Landlord or anyone for whose conduct the Landlord is responsible may have caused or contributed to such matter.

#### 12.4 Indemnity of Landlord

The Tenant agrees to indemnify and save harmless the Landlord in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, sub-tenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord in connection with or arising out of all such claims including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.



### 13. ENVIRONMENTAL MATTERS

#### (a) Definitions

For the purposes of this Section and Agreement, the following terms shall have the following meanings:

(i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;

(ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);

(iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and

(iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

#### (b) Tenant's Representations and Warranties

The Tenant represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

(i) except as disclosed to the City in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and

(ii) except as disclosed to and approved in writing by the City, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 6.01 of this Agreement.

#### (c) Condition of Premises

The Tenant acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental

condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.

(d) Use of Contaminants

The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

(e) Compliance with Environmental Laws

The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.

(f) Evidence of Compliance

The Tenant shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.

(g) Confidentiality of Environmental Reports

The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.

(h) Records

The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.



(i) Access by City

Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.

(j) Authorizations

The Tenant shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.

(k) Notices

The Tenant shall promptly notify the City in writing of:

- (i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
- (iii) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.
- (iv) the Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

(l) Removal of Contaminants

Prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to



perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

(m) Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the City, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

(n) Indemnity

The Tenant shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:

(i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or

(ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

(o) Survival of Tenant's Obligations

The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

**14. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES**

**14.1 Tenant's Covenants**

The Tenant agrees with the Landlord that:

(a) Sale or Financing of Building

The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Tenant agrees to attorn to and become the tenant of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

(b) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

(c) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(d) Assignment by Landlord

In the event of the sale by the Landlord of the Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

## 15. OCCURRENCE OF DEFAULT

### 15.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by



reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises and License Area.

#### 15.2 No Admission

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

#### 15.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

### 16. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER

#### 16.1 Remedying by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general law, and the event of default is not remedied within the respective time period for doing so, the Landlord:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises and License Area to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent; and
- (c) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.



## 16.2 Remedies Cumulative

The Landlord and the Tenant may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant or the Landlord, as the case may be, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord or the Tenant, as the case may be, by statute or the general law.

## 16.3 Right of Re-entry on Default

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or
- (b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or
- (c) if without the written consent of the Landlord the Premises and License Area shall be used by any other persons than the Tenant or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- (e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or
- (f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Premises from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises or License Area by the Tenant or any assignee, sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises or License Area and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or

- (h) if the Landlord shall have become entitled to Terminate this Lease or to re-enter the Premises or License Area under any provision hereof;

then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises and License Area or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises and License Area, and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

#### 16.4 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises and License Area under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises and License Area to the Landlord in accordance with clause 16.9.

#### 16.5 Right of Termination - No Default

In the event that the Landlord requires the use of the Premises for whatever reason, the Landlord shall have the right to terminate this Lease after giving the Tenant One Hundred Twenty (120) days written notice of the Landlord's intention to terminate. The Tenant shall have the reciprocal right to terminate the lease upon One Hundred Twenty (120) days written notice to the Landlord.

#### 16.6 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises and License Area or if this Lease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the Landlord's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and License Area in good order, and the expenses of repairing the Premises and preparing them for re-letting.



#### 16.7 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Tenant will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlords' consent, repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and if required by the Landlord, waives in favour of the Landlord the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

#### 16.8 Re-letting and Sale of Personalty

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and License Area and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises and License Area upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

#### 16.9 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises and License Area in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises and License Area, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.4, and subject to reasonable wear and tear. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises and License Area, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Premises.

### 17. MISCELLANEOUS

#### 17.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in sub-clause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises. Every such notice shall be



deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

#### 17.2 Extraneous Agreements

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease, the Premises or License Area save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant, and no verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

#### 17.3 Time of Essence

Time shall be of the essence in this Lease.

#### 17.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

#### 17.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

#### 17.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liability of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

#### 17.7 Waiver

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of

Rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

#### 17.8 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

#### 17.9 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

#### 17.10 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises and License Area shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be completed by the Landlord prior to the Commencement Date of the Term and the Premises and License Area were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

#### 17.11 Deposit

If the Landlord is holding any deposit in connection with this Lease, then unless the Landlord agreed in writing to different arrangements at the time the Landlord received the deposit, the deposit shall be held by the Landlord on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

#### 17.12 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the Landlord may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises and License Area and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the Landlord the apportioned Rent and all other amounts which may be due to the Landlord up to the date of termination, and clause 16.9 shall apply. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of

this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award to the Tenant, the Landlord shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.


#### 17.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Landlord of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the Landlord in the presence of:

The City of Kelowna, by its Authorized Signatories:	)	
	)	Witness
	)	
Mayor	)	
	)	Address
	)	
City Clerk	)	
	)	Occupation

The Okanagan Symphony Orchestra Society by its Authorized Signatories:	)	
	)	Witness
	)	
	)	
	)	Address
	)	
	)	
	)	Occupation



## SCHEDULE A

### PLAN OF THE LEASED PREMISE AND LICENSE AREA

A Portion of Lot A, DL 138 KAP67329



## SCHEDULE B

### DEFINITIONS

In this Lease the following expressions shall have the following meanings:

“Additional Rent” means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant.

“Annual Base Rent” means the annual Rent set out in sub-clause 1.1(g) and payable by the Tenant as set forth in clause 4.2.

“Basic Terms” means those terms set out in clause 1.1.

“Commencement Date” means the date the term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

“Goods and Services Tax” or “GST” means and includes any and all sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

“Insured Damage” means that part of any damage occurring to any portion of the Premises for which the Landlord is responsible, of which the entire cost of repair is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

“Land” means that parcel of land on Bernard Avenue in the City of Kelowna, British Columbia, more particularly described as Lot A, DL 138, KAP67329.

“Lease Year” means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

“Leasehold Improvements” means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Tenant, and the Landlord or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

“License Area” means the parking lot and landscaped area adjacent to the Premises, as set out in sub-clause 1.1(c) and shown on Schedule A.

“Premises” means the Knowles House at 865 Bernard Avenue, Kelowna, BC as set out in sub-clause 1.1(c) and shown on Schedule A.

“Prime Rate” means the rate of interest declared from time to time by the main branch, Bank of Montreal, Kelowna, British Columbia, to the Landlord as the annual rate of interest.

“Rent” means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for Good and Services Tax payable by the Tenant.

“Taxes” means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

“Tax Cost” for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

Tenant’s Share” means the proportion of Taxes attributed to the Premises.

“Term” means the Term of this Lease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.



SCHEDULE C

<b>Tenant Responsibility Checklist</b> <b>Okanagan Symphony Orchestra Society</b>		Provided by the City, Cost borne by the City	Provided by the City, Cost borne by the Tenant	Provided by the Tenant, Cost borne by the City	Provided by the Tenant, cost borne by the tenant	Does not apply
Boiler operating permits						X
Electrical field safety representative						X
Electrical operating permit						X
Electrical system preventative maintenance					X	
Electrical system repairs		X				
Electrical/lights - lamp & tube replacement					X	
Elevator equipment repairs						X
Elevator maintenance contract						X
Elevator operating permits						X
Emergency lighting testing & repairs					X	
Exterior doors, windows, facades, etc.					X	
Fire alarm system repairs		X				
Fire alarm system testing & inspection contracts					X	
Fire extinguisher monthly & annual inspections					X	
Fire safety plan and fire drills					X	
Fire sprinkler system repairs						X
Fire sprinkler system testing and inspection contracts					X	
Furnishings (maintain & replace)					X	
Garbage removal					X	
HVAC preventative maintenance					X	
HVAC repairs		X				
Insurance - automotive					X	
Insurance - liability					X	
Insurance - property, building		X				
Insurance - tenant owned furnishings & fixtures					X	
Insurance - tenant owned operation equipment, computers, & furnishings					X	
Interior walls, flooring, doors, ceilings, etc.					X	
Internet					X	
Janitorial services & supplies					X	
Kitchen Exhaust Hood preventative maintenance						X

Kitchen Exhaust Hood repairs					X
Kitchen Hood Fire suppression system preventative maintenance					X
Kitchen Hood Fire suppression repairs					X
Kitchen Hood Fire suppression testing					X
Landscape maintenance	X				
Licenses & permits				X	
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.	X				
Pest control				X	
Plumbing system preventative maintenance				X	
Plumbing system repairs	X				
Recycling program				X	
Roof inspection & maintenance	X				
Roof repairs	X				
Security system				X	
Signage				X	
Snow removal	X				
Taxes				X	
Telephone				X	
Tenant improvements				X	
Tenant improvements - Maintenance				X	
Tree removal	X				
Utilities - electricity				X	
Utilities - natural gas				X	
Utilities - propane					X
Utilities - water, sewer				X	
Vandalism (exterior)	X				
Vandalism (interior)				X	
Window Cleaning				X	
Window Cleaning (interior)				X	
Appendix "A,B,C,D,E" contains a list of equipment specific to the building in question. The tenant, as per the lease agreement, must provide a detailed maintenance program to the City.					

Document Revision History:			
Revision			
1	Description	Revised by	Date

SCHEDULE D



**CERTIFICATE OF INSURANCE**

<p><u>City staff to complete prior to circulation</u></p> <p>City Dept.: _____</p> <p>Dept. Contact: _____</p> <p>Project/Contract/Event: _____</p>
---

**Insured**

Name:	_____
Address:	_____

**Broker**

Name:	_____
Address:	_____

**Location and nature of operation and/or contract reference to which this Certificate applies:**

--

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
<b>Section 1</b> Comprehensive General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Broad Form Property Damage;</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage \$ 2,000,000 Inclusive \$ _____ Aggregate \$ _____ Deductible
<b>Section 2</b> Automobile Liability				Bodily Injury and Property Damage \$ 2,000,000 Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company (Insurer or Broker)

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Date



# CITY OF KELOWNA

## BYLAW NO. 10863

### Amendment No. 2 to Development Application Procedures Bylaw No. 10540

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The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Development Application Procedures Bylaw No. 10540 be amended as follows:

1. THAT SECTION 4 - PUBLIC NOTIFICATION & CONSULTATION, 4.1 PUBLIC NOTIFICATION & CONSULTATION REQUIREMENT, 4.2 PUBLIC NOTIFICATION, 4.2.1 Giving Notice be amended by:

- a) deleting the following in sub-paragraph a) that reads:

“In accordance with the *Local Government Act*, the City will mail or otherwise deliver individual notices to all Owners and tenants of the subject property for which an application is being made, and all Owners and tenants of all other properties within a distance of not less than 50 metres measured from the boundaries of any subject property to which the application pertains, advising of:”

and replacing it with:

“In accordance with the *Local Government Act*, the City will mail or otherwise deliver individual notices to all Owners and tenants of the subject property for which an application is being made, and all Owners and tenants of properties that are abutting and adjoining to the subject property to which the application pertains, advising of:”

- 2. This bylaw may be cited for all purposes as "Bylaw No. 10863, being Amendment No. 2 to Development Application Procedures Bylaw No. 10540."
  3. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this 9<sup>th</sup> day of September, 2013.

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk