

ITEM	30
MANAGER'S REPORT NO.	87
COUNCIL MEETING	1978 12 11

Re: APPLICATION FOR PERMIT TO FILL MUNICIPAL LANDS IN  
AGRICULTURAL LAND RESERVE - PROPOSED LAND USE  
(Item 9, Report No. 83, 1978 November 27)

Attached is a report from the Director of Planning regarding filling of certain lands in the Agricultural Land Reserve.

When Item #9, Report No. 83 came forward on November 27, the Municipal Manager recommended:

"THAT Council instruct staff to advise the applicants who have applied for a permit to place fill on Lots 18, 19 and 20, District Lot 155B, Plan 1248, N.W.D., that the Municipality is prepared to support the granting of a permit subject to the satisfactory completion of a consultants report as outlined in the Director of Planning's report."

It was then moved by Alderman Ast and seconded by Alderman Mercier that:

"THAT the recommendation of the Municipal Manager be adopted."

It was then moved by Alderman Gunn and seconded by Alderman Ast that:

"THAT action on the aforementioned recommendation of the Municipal Manager be postponed until such time as Council is in receipt of a staff report dealing with this particular land and its designation in the context of the Big Bend Area generally and for a legal opinion as to whether people who carry out filling operations on Municipal land without permission can be prosecuted."

RECOMMENDATION:

1. THAT the recommendations of the Director of Planning be adopted.

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TO: MUNICIPAL MANAGER 1978 NOVEMBER 30  
FROM: DIRECTOR OF PLANNING OUR FILE: 02.134 ALR  
SUBJECT: APPLICATION FOR PERMIT TO FILL MUNICIPAL LANDS IN  
AGRICULTURAL LAND RESERVE - PROPOSED LAND USE

RECOMMENDATIONS:

1. THAT Council receive the following report for information.
2. THAT Item 9, Report No. 83, dated 1978 November 27 be lifted from the table.
3. THAT Council instruct staff to advise the applicants for a permit to place fill on Lots 18, 19 and 20, D.L. 155B, Plan 1248, N.W.D., that the Municipality is prepared to support the granting of a permit subject to:
  - (a) the soil consultant's recommendation that it would be desirable for continued filling to take place on the subject site.
  - (b) strict compliance by the applicants with whatever conditions for continued filling may be established by the soil consultant, the Municipality and the Agricultural Land Commission.

REPORT

BACKGROUND

At the 1978 November 27 meeting of the Municipal Council, the report on the applications to fill certain Municipal lands in the Agricultural Land Reserve was tabled pending receipt of a further report on the intended use of these lands.

EXISTING SITUATION

At the present time, these lands are zoned A1 (Agricultural District) as shown on the attached Figure 1. They are designated as long range industrial in the Big Bend Development Plan which is attached as Figure 2.

At the time the Agricultural Land Reserve was adopted in 1974, certain properties were included which could be considered as marginal for agricultural use which in fact, were not suited for agriculture. The fact that those lands were adjacent to

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developed farms or were in close proximity to these farms, meant that they would require further study to determine their effect on agriculture. The Agricultural Land Reserve was adopted with the understanding that a review would be undertaken in five years and the use of these marginal lands reviewed.

This review is currently being undertaken by the Agricultural Land Commission and the Planning Department. While this review is not complete, conclusions have been reached on the use of the subject properties. At the request of the Agricultural Land Commission, a detailed soil survey of the Big Bend area was undertaken by the Resource Analysis Branch of the Ministry of the Environment, in 1977 August. This report found that the subject lands are virtually surrounded by Anthropogenic soils. These are soils which have been manipulated by man to such an extent that the original characteristics of the soil have been destroyed. This land fill has been composed of various materials including wood waste, hog fuel, gravel and earth and consequently, they are unsuited for any type of agricultural crop production. In addition to being completely surrounded by this landfill, the subject lands are covered year round with water. This is due to the fact that the peat from the area has been mined in the past.

In summary, the subject lands have been completely debilitated and have no potential for agricultural use. Based on this fact, the Planning Department is of the opinion that a properly supervised fill program could be of benefit to the Municipality in preparing the lands for future industrial development.

It should be recognized that this opinion is subject to the receipt of a soil consultant's report which will include an analysis of the fill which has been placed to date, the conditions for the continuance of the fill and as well, provision for the ongoing inspection of the fill program.

In considering the proposed landfill question, Council requested the Municipal Solicitor to determine what legal action could be initiated against those persons who had illegally filled the subject Municipal lands. In establishing the terms of reference for the soil consultant, it was stated that he should determine the effect of the existing fill on the future industrial development of the land and determine what, if any, remedial action is necessary to place the land already covered by wood waste, in a condition suitable for future development.

In the opinion of the Planning Department, the initiation of any legal action at this time would be premature. If the consultant's study determines that certain remedial action is necessary, the applicants will be required to undertake this work. If they fail to comply with this order, legal action could then be initiated.

The recently revised Soil Conservation Act provides the authority under which this action could be taken. Section 2 of this Act states:

" No person shall remove soil from or place fill on land in an agricultural land reserve unless

- (a) the commission approves in writing,
- (b) the local authority in which the land is situated issues a permit, and
- (c) the soil is removed or the fill is placed in accordance with the regulations and the terms and conditions set out in the permit. "



Section 5(1) of the Act states (in part):

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" Where a local authority, the commission or the minister determines that a person

(b) is removing soil from, or placing fill on, an agricultural land reserve without a permit

the local authority, commission or minister may, without a hearing

(g) order the person who caused fill to be placed on the land without a permit or in contravention of the terms and conditions of the permit, to remove the fill "

Section 9 of the Act further states:

" a person who

(a) contravenes Section 2 or the regulations, or

(b) fails to comply with an order or direction of the minister, an inspector, or an enforcement officer, under this Act, or

(c) interferes with an inspector or enforcement officer who is carrying out his duties under this Act,

commits an offence. "

" In addition to any other penalty, where the offence is a continuing one, a person who commits the offence is liable to a fine of not more than \$500 for each day on which the offence is continued. "

#### SUMMARY

The subject Municipal lands, while within the boundaries of the Agricultural Land Reserve, are not suited for agricultural use. In view of this and the fact that the surrounding lands are zoned industrially, it follows that the subject lands should eventually be rezoned to an industrial category. In order to facilitate this eventual industrial use, it could be to the Corporation's advantage to permit a properly supervised fill program.

In order to issue a permit, the local authority and the Agricultural Land Commission must grant approval. Municipal staff cannot advance a recommendation in this regard until such time as a soil consultant has completed a study of the matter. This study would be undertaken at the cost of the applicant and would not imply approval of the fill application, but rather provide the technical basis from which a recommendation could be submitted to Council. In the event Council approves the application, it will then be necessary to obtain the Agricultural Land Commission's approval.

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MUNICIPAL LANDS IN AGRICULTURAL  
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The salient factor in this matter is the intended use of the land. If Council supports the future industrial use, it would follow that they should support the issuance of a soil filling permit subject to the satisfactory completion of a soil consultant's report.

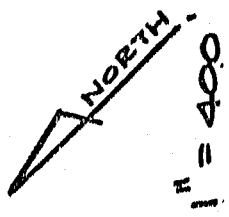
If this approach is not followed, the alternative would be to embark on a legal action with the attendant difficulties and costs with the result that the illegal fill will be removed and the land will then be vacant. It would still not be suitable for agricultural use and would remain in a dormant situation until such time as a future fill program was initiated.

  
A. L. Parr  
DIRECTOR OF PLANNING

PB/sam  
Attachments

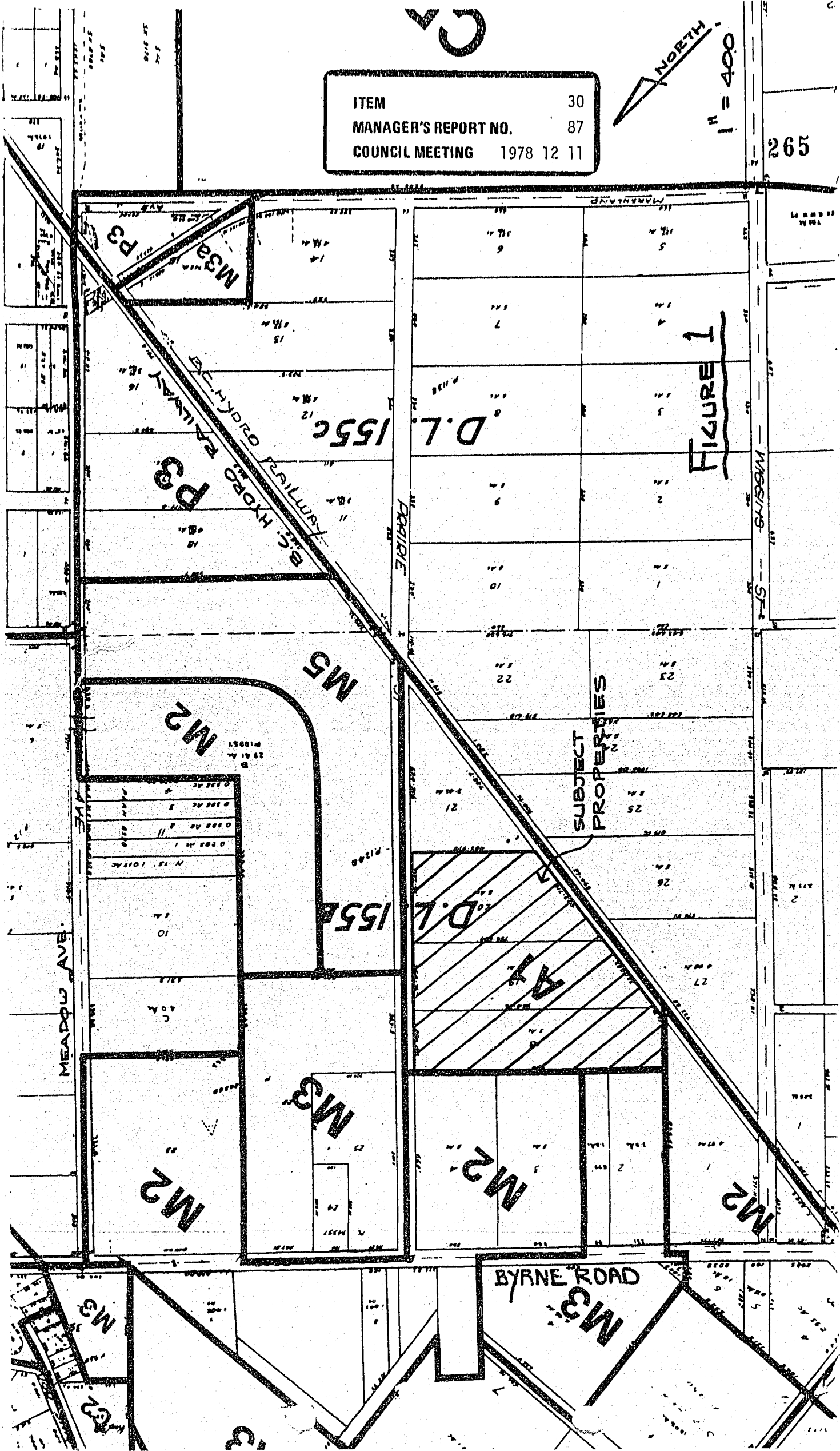
cc: Municipal Solicitor  
Municipal Engineer  
Land Agent

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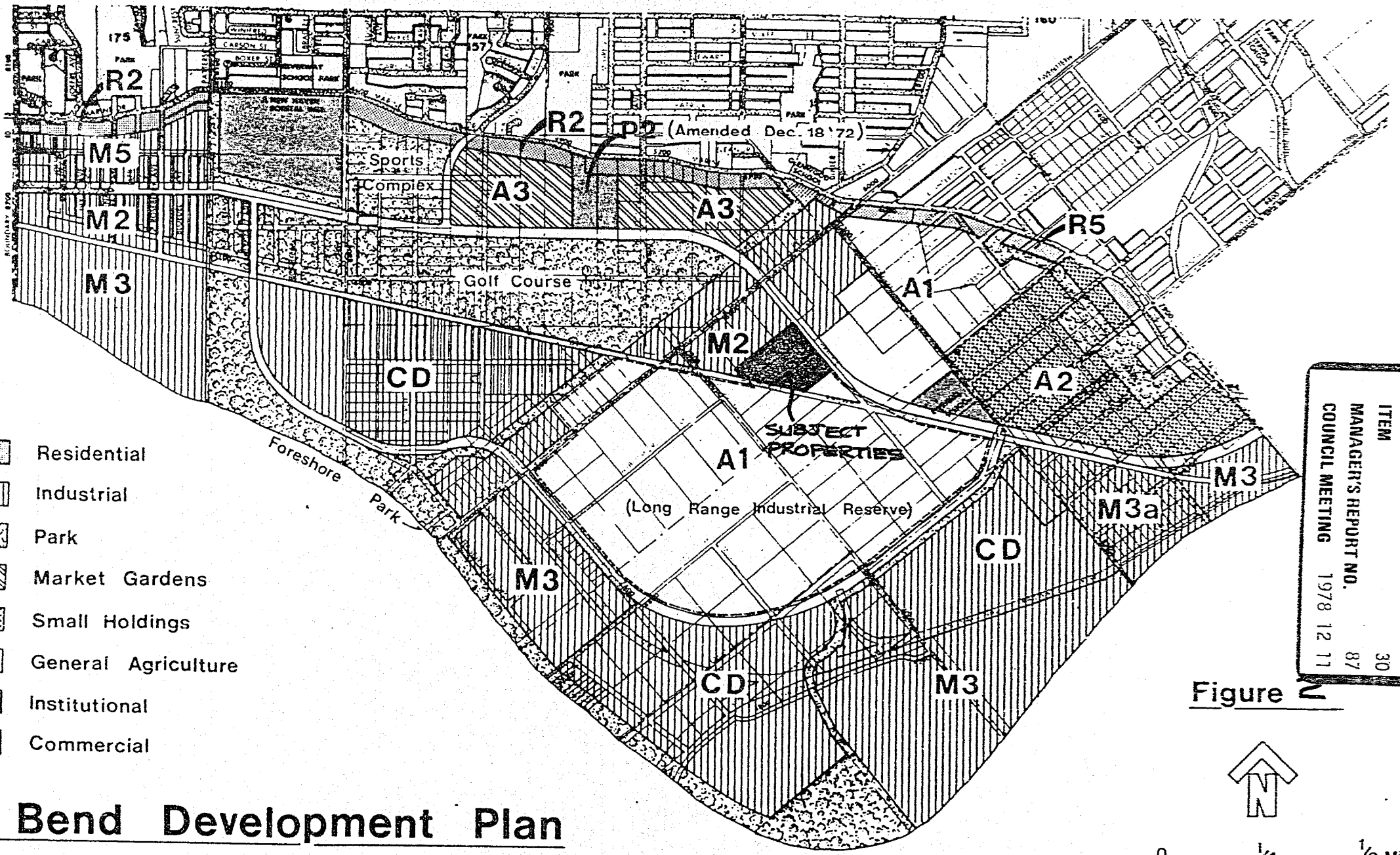


1" = 400'

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266 **Big Bend Development Plan**

Adopted March 27, 1972

Figure 2  
 0 1/4 1/2 Mi.