

ITEM	1
MANAGER'S REPORT NO.	4
COUNCIL MEETING	95/02/06

TO: CITY MANAGER 1995 JANUARY 27

FROM: DIRECTOR PLANNING & BUILDING OUR FILE: 02.120.3

SUBJECT: DELEGATION: MR. V. HURTUBISE REGARDING CONSTRUCTION OF GREENHOUSES ON 8708 ROYAL OAK AVENUE (BAGH ENTERPRISES LTD.)

Purpose: To provide Council with background information pertaining to a request from Mr. V. Hurtubise to appear as a delegation with respect to the construction of greenhouses at 8708 Royal Oak Avenue.

RECOMMENDATIONS:

1. THAT Council rescind its conditional approval for the placement of fill materials on 8678 and 8708 Royal Oak Avenue.
2. THAT a copy of this report be forwarded to:

*Mr. Kirk Miller,
Chair and General Manager
Provincial Agricultural Land Commission
133 - 4940 Canada Way
Burnaby, B.C. V5G 4K6*

1.0 BACKGROUND

The proposal to construct greenhouses on the subject property is directly related to a proposal to remove peat soils from the subject property, place fill on site and then construct the actual greenhouses. The peat soils removed would be reused for the preparation of soil mixtures to be used inside the proposed greenhouses.

The property in question is within the Agricultural Land Reserve (Figure 1 *attached*) and is designated for A3 Market Garden use in the Big Bend Development Plan (Figure 2 *attached*). Under the terms of the Soil Conservation Act, the removal of soil or the placement of fill materials is prohibited without a permit being issued by the Enforcement Officer (Director Planning and Building) of the Local Authority (City of Burnaby). The approval of the Agricultural Land Commission (ALC), in writing, is also required.

2.0 NOTIFICATION TO MR. HURTUBISE OF THE REQUIREMENTS UNDER THE SOIL CONSERVATION ACT TO REMOVE SOIL OR PLACE FILL ON SUBJECT PROPERTY

The history pertaining to the proposal to fill the subject property dates back to June 6, 1994. At that time, staff met with Mr. B. Mathews, who is an associate of Mr. Hurtubise. Mr. Mathews was advised of the foregoing requirements and was provided with an application form. In the meeting with Mr. Mathews, staff advised that a report would be required by a consultant on how the operation was to be conducted.

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In response to a subsequent enquiry regarding landfill activity taking place on 8678 Royal Oak Avenue and the subject property, staff visited the properties on June 23 and found several large backhoes on site. A considerable amount of peat had been excavated and stockpiled. Fill materials had been placed and several trucks were waiting to place additional fill.

Mr. Hurtubise arrived shortly thereafter. He was advised of the previous discussions with his associate, including the need to obtain the approval of the City as well as the Provincial Agricultural Land Commission. Staff again outlined the requirements under the Soil Conservation Act and stated that all landfill activity must cease until a permit had been issued. Mr. Hurtubise said he had been away and wasn't aware of the requirements. It was agreed that he would contact his associate (Mr. Mathews) and submit an application for a permit. In the interim, all landfill activity would cease.

3.0 CONDITIONAL APPROVAL BY THE CITY

An application was received from the property owner on June 27, 1994. Mr. Hurtubise's company was named as the agent / operator. Several meetings were subsequently held and correspondence exchanged with the owner and Mr. Hurtubise. A report was received from HBT AGRA Limited Engineering and Environmental Services (HBT) establishing preliminary guidelines for the landfill operation. These guidelines were expanded upon in a further report on July 15, 1994.

On July 25, 1994 Council received the City Manager's Report No. 44, Supplementary Item 22, regarding the application received for the subject property. Council adopted a motion authorizing the issuance of a permit as illustrated on Figure 3 *attached*, subject to certain conditions including the following:

- Adherence to the preliminary guidelines established in the HBT report,
- The receipt and review by the Enforcement Officer of the further geotechnical information to be provided by HBT after further soil investigation identified in the preliminary information. Any terms and conditions deemed appropriate as a consequence of the receipt and review of this information were specifically noted as having to be included in the permit,
- Adherence to HBT's operational and monitoring procedures to ensure that the operation respects the fragile soils in the area and to control drainage impacts, etc.
- The submission, by the applicant, of weekly certification reports to HBT ensuring that all fill materials comply with the Ministry of Environment's Level B criteria or better for residential and/or agricultural lands. HBT is then to submit monthly letters of assurance to the Enforcement Officer attesting to the fact that the applicant is, or is not, adhering to the terms of the landfill permit.
- The receipt of a bond in the amount of \$70,500 (\$15,000 per acre) to guarantee adherence to the terms of the permit.

The property owner and Mr. Hurtubise were notified by letter dated August 10, 1994 of the requirements for obtaining a permit. This letter concluded by stating that the application requires the approval of the Provincial Agricultural Land Commission and that any further items arising from the Commission's review will need to be addressed. The only requirement of the above which was partially met was the submission of a \$15,000 Letter of Credit in December of 1994, which was later returned.

4.0 CONSIDERATION BY THE PROVINCIAL AGRICULTURAL LAND COMMISSION

In an August 17, 1994 letter, the property owner and Mr. Hurtubise were notified that after carefully considering the proposal the Commission had several concerns. They were:

- That the subject property is comprised of soils with good agricultural quality that can support a variety of agricultural activities. The existing blueberry field is evidence of this potential.
- That the amount of fill seems excessive, especially since the greenhouses appear to be of a relatively simple design.
- That the proposed layout of the greenhouses involves the placement of fill over the majority of the property when there are only 52,000 sq. ft. (4,830 m²) of greenhouses proposed. The Commission was curious why fill had to be placed on 1.9 ha when only 0.45 ha would be used for the actual structures.

The applicant was advised, therefore, that the Commission had refused the application. The Commission did, however, advise that it may be prepared to reconsider the proposal if the applicant provided the following:

- Additional information detailing the required fill relative to the structural requirements of the proposed greenhouses. The Commission wanted to know why the greenhouses require such a substantial foundation especially since the greenhouses appear to be of a relatively simple design. Furthermore, the Commission wished to know if other methods of anchoring the greenhouses were investigated (ie: using piles).
- A professional layout plan indicating the location of the proposed greenhouses, roads, etc. In addition, the Commission would like the applicant to explain the rationale behind the decision to equally space the greenhouses over the fill area. The Commission is curious as to how this configuration is more efficient than centralizing the greenhouses.
- A professional business plan for the proposed development.

The applicant was given 60 days to forward this additional information.

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5.0 CONTINUING PLACEMENT OF FILL WITHOUT A PERMIT

On August 31, 1994 City staff observed several truck loads of fill being placed on site. The landfill operator was advised that the site was in the ALR and that a permit had not been granted to fill the properties. As a result of the foregoing, letters were sent by the Enforcement Officer (Director Planning and Building) to both property owners, with copies to Mr. Hurtubise, advising that pursuant to the Soil Conservation Act, a person who:

1. contravenes Section 2 of the Act or regulations (requiring a permit to place fill in the Agricultural Land Reserve);
2. fails to comply with an order or direction of the Minister, or inspector, or enforcement officer; or
3. interferes with an inspector or enforcement officer,

commits an offence and can be charged under the Summary Convictions Act.

Accordingly, these letters advised that, as property owners, they must take appropriate action to ensure that no landfill or soil removal activities take place without benefit of a permit. This letter concluded by reiterating the need to respond to the ALC's August 17, 1994 letter.

On September 6, 1994 staff visited the site and met with the owner of 8678 Royal Oak Avenue and Mr. Hurtubise. Contrary to the previous advice, fill material had been placed along the north property line. Mr. Hurtubise said that it was for an access road to remove debris placed by others at the rear of the property. Mr. Hurtubise said that no more fill would be placed.

6.0 APPLICATION FOR BUILDING PERMIT

An application was subsequently received for the construction of 4 greenhouses on the subject property, which involved the extraction of peat and the placement of fill on approximately one acre. The applicant was advised that the project could not be advanced until such time as the Provincial Agricultural Land Commission's approval had been obtained to the revised site preparation and development plan.

7.0 FURTHER FILL PLACEMENT ON 8678 ROYAL OAK AND SUBJECT PROPERTY WITHOUT A PERMIT

On 1994 November 02 staff observed dumping activities on these properties. It was determined that the operation was being conducted under the auspices of Mr. Hurtubise. Staff was told that approximately 60 to 70 trucks a day had been hauling to the site for over 3 weeks. Staff again visited the site and delivered an order to stop placing fill on these lands. Copies of the order were also provided to the property owners.

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8.0 FURTHER REVIEW BY PROVINCIAL AGRICULTURAL LAND COMMISSION AND CITY STAFF, ADDITIONAL LANDFILL ACTIVITY WITHOUT A PERMIT

Additional information was then provided to the ALC. On November 23, 1994 the Commission advised the owner of the subject property and Mr. Hurtubise that it would be reviewing this information and that, in the meantime, no further fill activity is to be conducted until the Commission approves the project and the City of Burnaby issues a soil placement permit.

A meeting was subsequently held with Mr. Hurtubise, the owner of the subject property and City staff. Staff again advised of the requirements for obtaining a permit and gave both parties copies of the previous letter outlining the City's requirements in this regard. Again it was emphasized that the approval of the Land Commission must also be obtained before filling could take place.

A Letter of Credit in the amount of \$15,000 was received in early December. No additional information was provided as required in the previous documentation.

City staff once again observed fill materials being placed on site on December 06. The operation was again shut down.

9.0 RECONSIDERATION OF APPLICATION AND REJECTION BY AGRICULTURAL LAND COMMISSION

In a December 21, 1994 letter to the applicant (copied to Mr. Hurtubise) the ALC advised that it had identified several discrepancies in the file information and concluded that the applicant had failed to justify the need for the fill to facilitate greenhouse development. In its letter, the Commission stressed that it does not object to the development of greenhouses, as these structures are legitimate farm buildings. Therefore, the Commission's consideration was restricted to the fill proposal. The Commission also stated that of equal concern is the fact that filling has continued in defiance of repeated warnings and orders by both the City of Burnaby and the Commission, noting that a significant amount of fill had been deposited on the subject property since the activity was originally stopped in July 1994. The applicant was further advised that the Commission would be contacting the City to arrange for the rehabilitation of the property.

As the applicant has not met the requirements for obtaining a permit, no action was taken with respect to the \$15,000 Letter of Credit, and it was returned with the consent of ALC staff.

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10.0 REHABILITATION OF SUBJECT PROPERTY AND 8678 ROYAL OAK AVENUE

The Commission, by resolution, has concluded that both properties must be rehabilitated. To this end, the City has been requested to be the lead agency in dealing with the enforcement and rehabilitation pursuant to its responsibilities under the Soil Conservation Act. In this regard, the Commission's Soil Specialist will be providing a remediation plan. Once we are in receipt of this information, we will contact the property owners and their agent, Mr. Hurtubise, to arrange for the required works to be completed.

11.0 CONCLUSION

It is evident from the foregoing that the need to obtain a permit to remove soil or place fill on lands in the Agricultural Land Reserve has been made abundantly clear to Mr. Hurtubise. Notwithstanding this fact, landfill operations have repeatedly taken place without a permit.

No substantive effort has been made to satisfy the conditions established by Council for obtaining the approval of the City of Burnaby. The Provincial Agricultural Land Commission has now denied the fill application and will be providing the City with direction as to how the property must be rehabilitated.

A recommendation has been advanced, therefore, that Council rescind its conditional approval for the placement of fill materials on 8678 and 8708 Royal Oak Avenue.



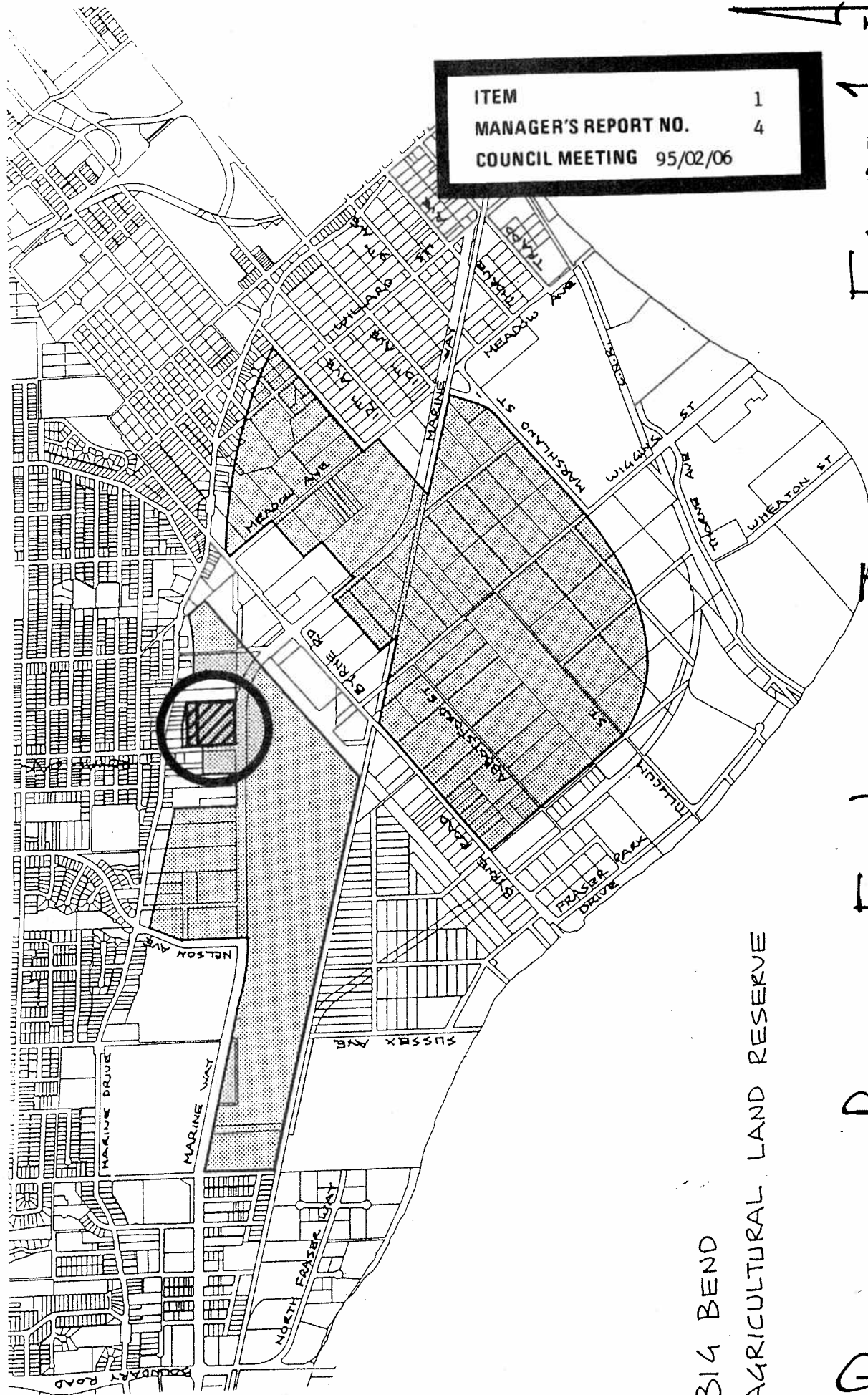
D.G. Stenson, Director
PLANNING & BUILDING



PB/jp

Attachments (3)

cc: Director Engineering
City Solicitor



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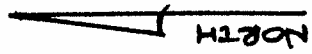
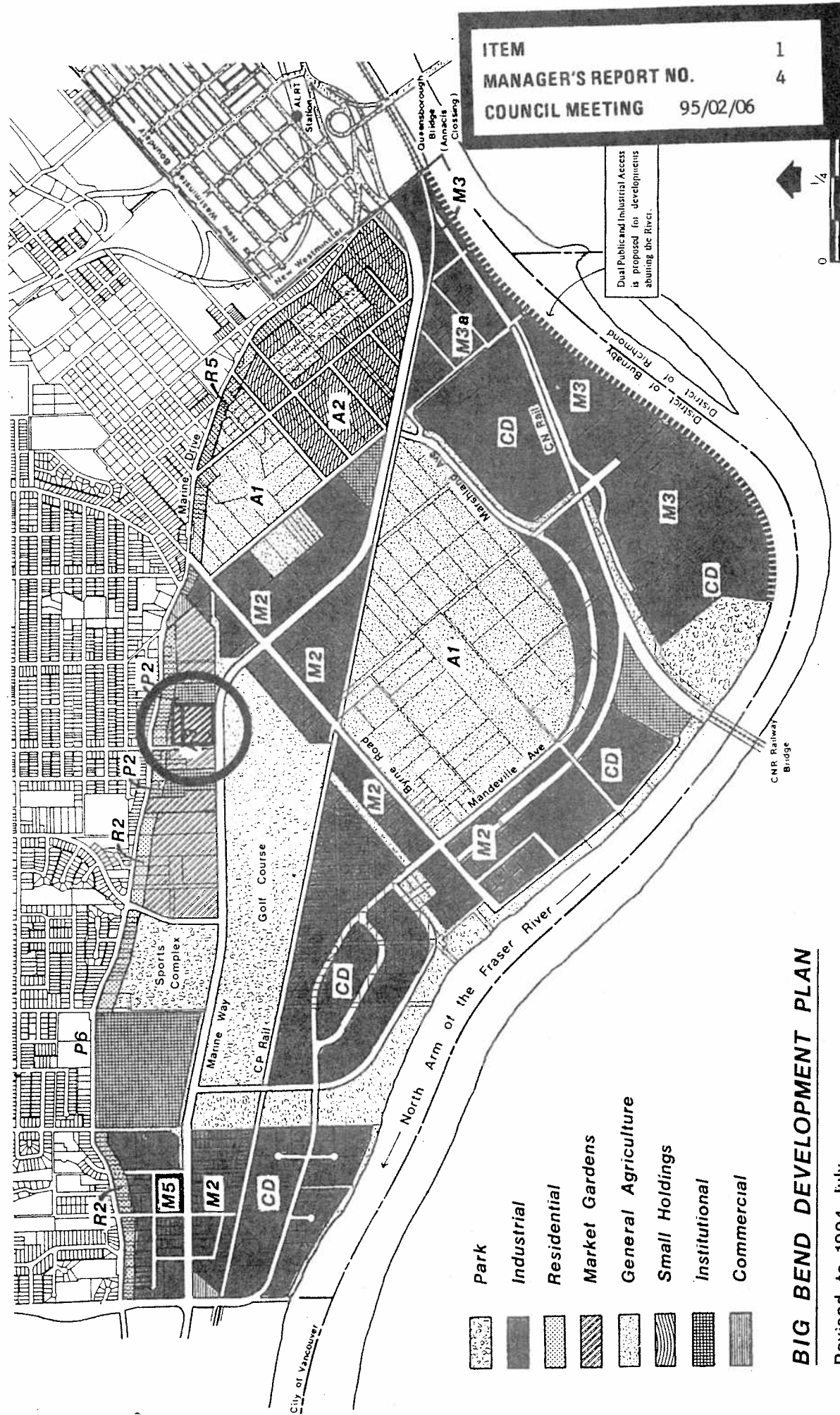


FIGURE 1
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BIG BEND
AGRICULTURAL LAND RESERVE

PROPERTIES PROPOSED FOR LANDFILL TO
SUPPORT CONSTRUCTION OF GREENHOUSES



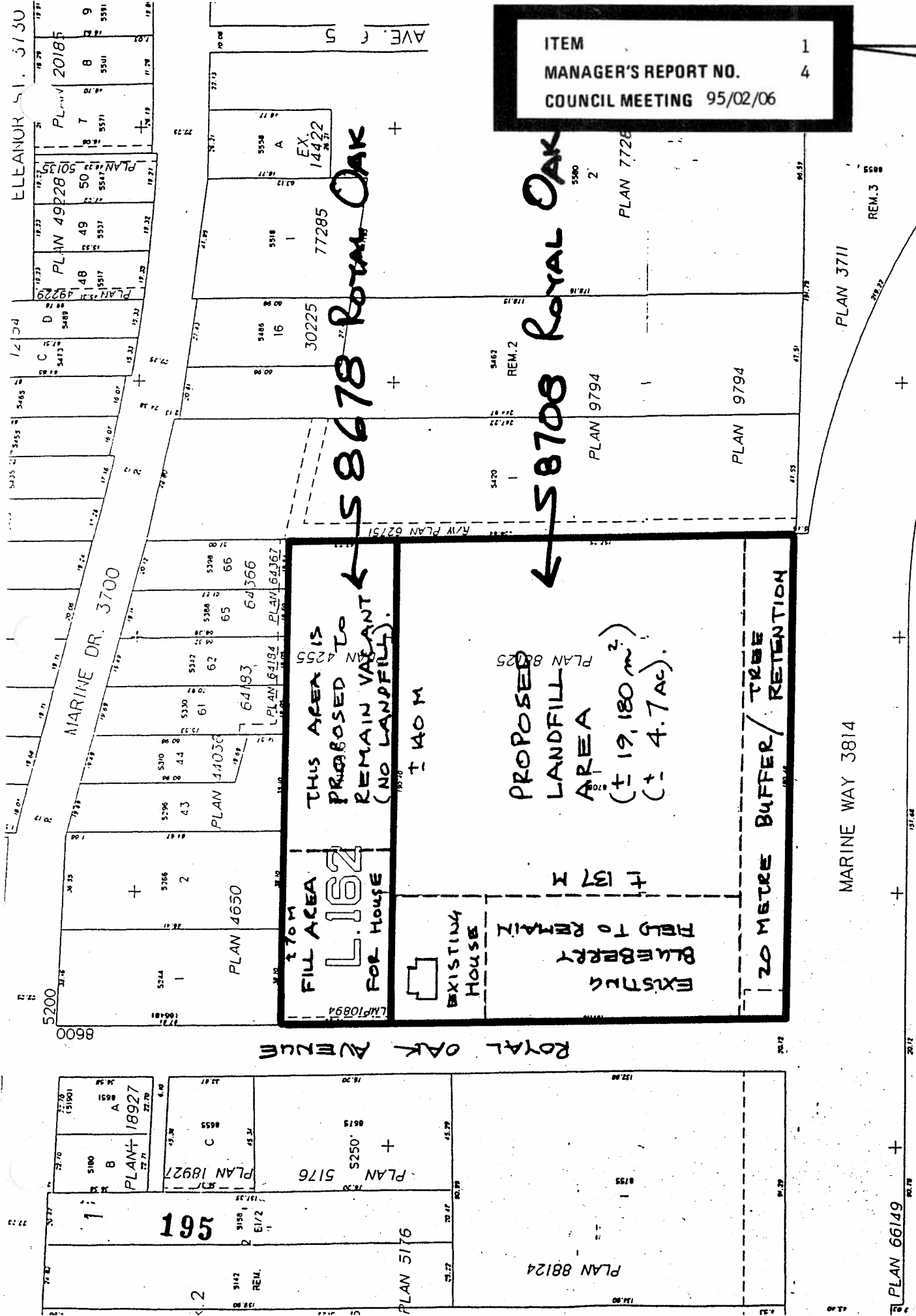
- Park
- Industrial
- Residential
- Market Gardens
- General Agriculture
- Small Holdings
- Institutional
- Commercial

BIG BEND DEVELOPMENT PLAN

Revised to 1994 July

Figure 2
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PROPERTIES PROPOSED FOR LANDFILL TO SUPPORT CONSTRUCTION OF GREENHOUSES



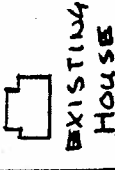
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Figure 3
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THIS AREA IS PROPOSED TO REMAIN VACANT (NO LANDFILL).

PROPOSED LANDFILL AREA (± 19,180 m²) (± 4.7 ac.)

FILL AREA FOR HOUSE L162



EXISTING BLUEBERRY FIELD TO REMAIN

120 METRE BUFFER / TREE RETENTION

AREAS FOR WHICH CONDITIONAL APPROVAL WAS GIVEN TO PLACE LANDFILL.

