

AGENDA ITEM NO: 7.11

MEETING DATE: April 18, 2023

STAFF REPORT – COVER SHEET

SUBJECT: OTG Developments Ltd (Inc No BC1152746)
Rezoning / 6360 Hopedale Road DATE: March 29, 2023

DEPARTMENT: Planning Department
RZ001595 PREPARED BY: Seamus McConville / tr

1. SUMMARY OF ISSUE:

The applicant wishes to rezone the subject property from an AL (Agricultural Lowland) Zone to an AS (Agricultural Small Lot) Zone to facilitate a future subdivision. Once the Bylaw has been to Public Hearing, staff recommend that Council give third reading and adoption to the Bylaw with respect to the property located at 6360 Hopedale Road.

2. RECOMMENDATION:


Recommendation that "Zoning Bylaw Amendment Bylaw 2023, No. 5294", which proposes to rezone property located at 6360 Hopedale Road an AL (Agricultural Lowland) Zone to an AS (Agricultural Small Lot) Zone, be given first and second reading; and further, that a Public Hearing be called for May 2, 2023. (RZ001595)



Gillian Villeneuve
Director of Planning

3. CHIEF ADMINISTRATIVE OFFICER'S RECOMMENDATION/COMMENTS:

Supports recommendation.



Chris Crosman
Chief Administrative Officer

STAFF REPORT ON REZONING APPLICATION RZ001595

PREPARED BY: Seamus McConville DATE: March 29, 2023
POSITION: Planner I DEPARTMENT: Planning Department

1. DEFINITION OF ISSUE:

The applicant wishes to rezone the subject property from an AL (Agricultural Lowland) Zone to an AS (Agricultural Small Lot) Zone to facilitate a future subdivision. Once the Bylaw has been to Public Hearing, staff recommend that Council give third reading and adoption to the Bylaw with respect to the property located at 6360 Hopedale Road.

2. BACKGROUND

The subject property is 0.6ha (1.5ac) in size and is excepted from the Agricultural Land Commission Use Regulations, in accordance with "Policy P-02 – Potential Exceptions from Restrictions of Use in the ALCA: Parcels Less Than 2 Acres" (the policy).

In January 2022, the applicant applied to rezone the property from an AL Zone to an AS Zone to facilitate a two-lot subdivision. In April 2022, the Agricultural Land Commission (ALC) amended the policy to affirm that properties within the Agricultural Land Reserve (ALR) cannot be subdivided without application to and approval from the ALC, regardless of whether they are excepted from restrictions on the use of agricultural land. As such, prior to proceeding with the rezoning application, the applicant was required to apply to the ALC to request approval of the subdivision. An ALC Subdivision application was considered by Council at the September 20, 2022 meeting and was forwarded to the ALC with support from Council.

On March 14, 2023, the ALC issued a decision approving the requested subdivision; as such, the rezoning application is being brought forward for Council's consideration. For information, a copy of the ALC decision is attached.

3. PROPOSAL:

The requested rezoning, if approved, will allow the property to be subdivided into two parcels of approximately 0.33ha and 0.28ha. As part of the proposed subdivision, the applicant intends on retaining the existing single detached dwelling, as well as the shop towards the rear of the property within proposed "Lot 1".

The final lot layout must comply with City bylaws and include a 2.44m road dedication, as well as an upgraded culvert to service the second lot. Extension of and connection to the City water system is required to facilitate the proposed subdivision. Each proposed lot must include a 3m vegetation buffer along the rear lot line, adjacent to the large agricultural operation, which will include the retention and extension of existing hedging along the north and south property lines.

Based on the conceptual site plan provided, the minimum required setbacks are anticipated to be met through the proposed subdivision.

The proposed rezoning and subdivision are consistent with best practices for development outside the City's Urban Growth Boundary, featuring a minimum lot area of 0.2ha (0.5ac), a 3m vegetative buffer adjacent to neighbouring agricultural parcels, and connection to City water service at time of subdivision.

4. FACTORS:

4.1 2040 Official Community Plan (OCP) / Land Use / Community Engagement

Current Zone AL (Agricultural Lowland) Zone.

Official Community Plan: "Agriculture" as designated within the City of Chilliwack 2040 Official Community Plan.

Land Use: A single detached dwelling, rural ancillary shop (proposed to be retained through subdivision) and agricultural buildings are currently located within the property. A small agricultural building is currently sited on the proposed property line, which will be removed at time of subdivision.

The property is currently occupied by the owners, who will continue to reside in the existing house and conduct ongoing maintenance while development is underway. Further information regarding timelines for subdivision and upkeep can be found in the submitted property maintenance plan attached to this report as "Schedule A."

Community Engagement: In March 2023, the applicant conducted a mail-out to addresses within a 30m radius of the subject property. Should any responses be received from the applicant's engagement proceedings, they will be submitted for the public record.

4.2 Neighbourhood Character

The subject property is located within an agricultural area outside the City's Urban Growth Boundary. The property neighbours parcels of varying size within the AL and AS Zones. Given the size and use of neighbouring properties, the proposed subdivision is considered to be consistent with the overall character of the neighbourhood.

4.3 Technical Issues:

Floodplain: The subject property is located within the protected floodplain and is subject to the Floodplain Regulation Bylaw.

- Geotechnical Issues:** The property is not subject to any known geotechnical hazards or earthquake-related risks.
- Watercourses** The property is subject to Class “E” watercourses (“Primary Drainage” and “Secondary Drainage”) which run along the west and east property lines, requiring a 30m setback. Any future development is required to be outside the setback and is subject to the requirements of Development Permit Area 3 (Riparian Area).
- Soil Classification:** According to the ALC’s soil capability mapping, the affected portion of the property is composed of 60 % Class 2 soils and 40% Class 3 having the potential to be 100% Class 2 soils with significant improvement.
- For reference, the ALC’s Soil Classes are outlined below:
- Class 2 lands have minor limitations that require ongoing management practices or slightly restrict the range of crops, or both.
 - Class 3 lands require moderately intensive management practices or restrictions in the range of crops.

5. RECOMMENDATION & SUBSTANTIATION:

Recommendation:

Recommendation that “Zoning Bylaw Amendment Bylaw 2023, No. 5294”, which proposes to rezone property located at 6360 Hopedale Road an AL (Agricultural Lowland) Zone to an AS (Agricultural Small Lot) Zone, be given first and second reading; and further, that a Public Hearing be called for May 2, 2023. (RZ001595)

Substantiation:

The requested rezoning for a 2-lot subdivision will result in a layout which is consistent with the character of the surrounding neighbourhood and meets the requirements of the recent ALC decision to permit subdivision of the subject property. Required upgrades, including road dedication and connection to municipal water, will provide an appropriate amount of urbanization, with the vegetative buffering to lessen agricultural-residential conflict.

6. SOURCES OF INFORMATION:

- Development Application Review Team (DART) Minutes – February 10, 2022
- Rezoning Application (RZ001595) – January 27, 2022
- ALC Applicant Submission (ID66159) – July 28, 2022
- ALR Application (ALR00401) – August 05, 2022

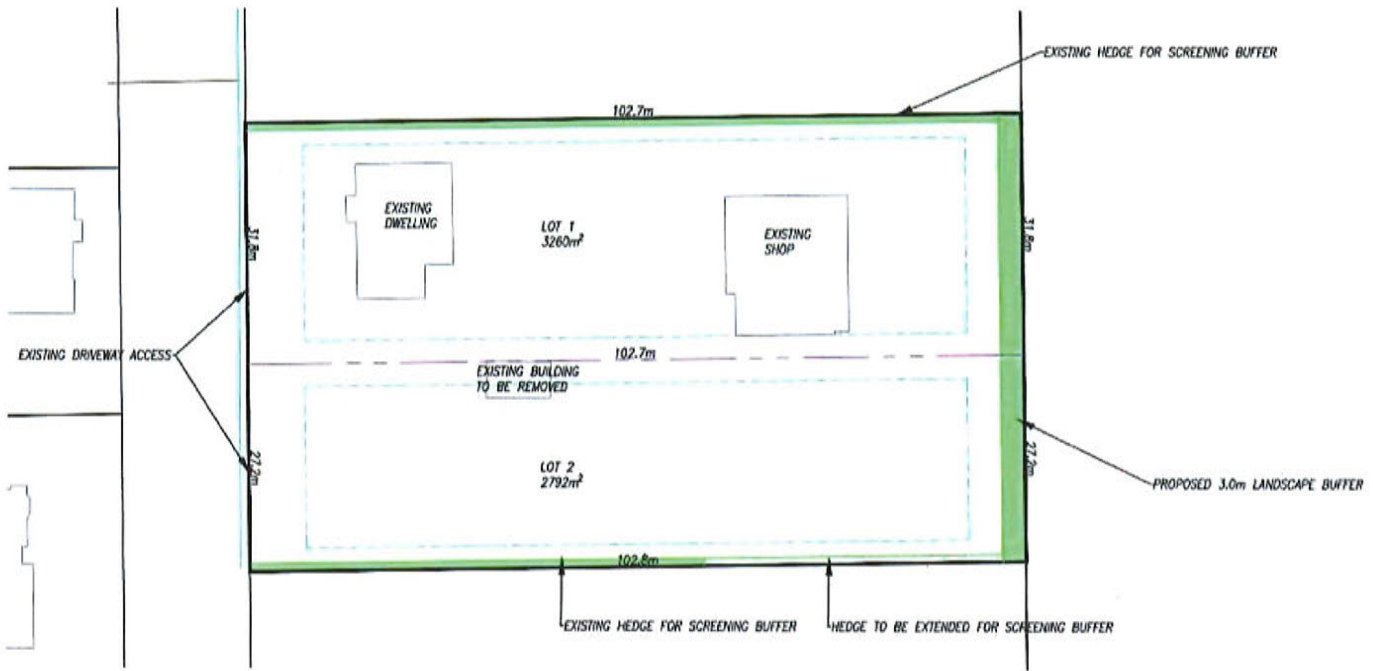
Location Map



Orthophoto



Conceptual Site Plan (as provided by the applicant)



Site Photo



Schedule A – Property Owner’s Redevelopment and Maintenance Comments



604.997.2772
604.393.7815
cassidy.silbernagel@otgdevelopments.com
Unit 520 - 45715 Hocking Ave
Chilliwack, BC, V2P 6Z6
www.otgdevelopments.com

VIA EMAIL DELIVERY

OTG File No. 21-436

March 22, 2023

City of Chilliwack
Development Services
8550 Young Road
Chilliwack, BC
V2P 8A4

Via Email Delivery

Re: 6360 HOPEDALE ROAD – MANAGEMENT PLAN

During the development process of the Subject Property, the owners Chris and Diana Visscher will continue to maintain and reside in the residence. They are planning on living on the property after the subdivision has been registered.

If the rezoning is approved, the subdivision application will be submitted within a few weeks of adoption.

Regards,

Cassidy Silbernagel
Project Manager
604 997 2772
cassidy.silbernagel@otgdevelopments.com

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"A plan without action is a dream,
an action without a plan is a nightmare."





Agricultural Land Commission
201 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

March 14, 2023

ALC File: 66159

Cassidy Silbernagel
OTG Developments Ltd.
DELIVERED ELECTRONICALLY

Dear Cassidy Silbernagel:

Re: Reasons for Decision - ALC Application 66159

Please find attached the Reasons for Decision of the South Coast Panel for the above noted application (Resolution #86/2023). As agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with s. 11(2)(b) of the ALR General Regulation.

Under section 33.1 of the *Agricultural Land Commission Act* ("ALCA"), the Chair of the Agricultural Land Commission (the "Commission") has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:


- No previous request by an affected person has been made, and
- The request provides either:
 - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or
 - Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

Please direct further correspondence with respect to this application to ALC.SouthCoast@gov.bc.ca.

Yours truly,



Jennifer Carson, Land Use Planner

Enclosures: Reasons for Decision (Resolution #86/2023)
 Schedule A: Buffer Specifications
 Schedule A: Decision Map

cc: City of Chilliwack (File ALR000401) Attention: Erin Leary

66159d1



**AGRICULTURAL LAND COMMISSION FILE 66159
REASONS FOR DECISION OF THE SOUTH COAST PANEL**

Subdivision Application Submitted Under s.21(2) of the Agricultural Land Commission
Act

Applicants: Diana Visscher
Christopher Visscher

Agent: Cassidy Silbernagel, OTG Developments Ltd.

Property: Parcel Identifier: 011-403-039
Legal Description: Lot 2, District Lot 287, Group
2, New Westminster District, Plan 9130
Civic: 6360 Hopedale Road, Chilliwack, BC
Area: 0.61 ha (within the ALR)

Panel: Ione Smith, South Coast Panel Chair
Susan Gimse
Holger Schwichtenberg



OVERVIEW

- [1] The Property is located within the Agricultural Land Reserve (“ALR”) as defined in s. 1 of the *Agricultural Land Commission Act* (“ALCA”).
- [2] On November 23, 2021, Commission staff issued a letter (52437m1) stating that the Property is not subject to restrictions on the use of agricultural land contained in the ALCA and BC Regulation 30/2019 (Agricultural Land Reserve Use Regulation) per s. 23(1) of the ALCA.
- [3] Subsequently, on January 10, 2022, the Applicants submitted a rezoning application (RZ001959) to the City of Chilliwack to begin the subdivision process in the belief that an exception from the restrictions of “use” of ALR land, under s. 23(1) of the ALCA, meant that subdivision of ALR land was also permitted despite the restriction on subdivision of agricultural land set out at s. 21 of the ALCA. On May 12, 2022, the Agent submits that neighbourhood consultation was completed in anticipation of the City of Chilliwack Council meeting. The Agent notes that no comments of concern were received.
- [4] In April 2022, the Commission updated ALC Policy P-02 - Potential Exceptions from Restrictions of Use in the ALCA: Parcels Less Than 2 Acres to clarify that the section 23(1) exception for use is limited and does not provide for a general exemption from the ALCA or its regulations and does not apply to the ALCA's restriction on subdivision of land in the ALR. The ALC was unaware until recently that subdivision plans were being deposited by LTSA in the ALR without ALC authorization following a determination that a parcel had a “use” exception under the ALCA. Once the ALC became aware this was happening, additional language was added to ALC Policy P-02 to help clarify what the law sets out.

- [5] According to the Applicants, the rezoning application was scheduled to be presented and heard by City of Chilliwack Council at the end of May 2022 or the beginning of June 2022.
- [6] On June 13, 2022, the ALC issued a letter to the attention of all Approving Officers (both local government and provincial), Managers of Planning, and the Registrar and Deputy Registrar of Land Titles to remind them that section 23(1) exception is limited and does not provide a general exemption from the ALCA or its regulations, and that the section 23(1) exception does not apply to the ALCA's restrictions on subdivision of land in the ALR. Under the ALCA, "use" and "subdivision" are legally distinct concepts. Since this letter was issued, the Land Titles Office has not been accepting plans for registration that cause subdivision under the Land Title Act for parcels with a confirmed use exception under the ALCA.
- [7] The Applicants are applying to the Agricultural Land Commission (the "Commission" or "ALC") under s. 21(2) of the ALCA to subdivide the Property into two parcels of approximately 0.32 ha and 0.27 ha with a 0.01 ha road dedication (the "Proposal"). The City of Chilliwack also requires a 2.44m wide road dedication, as well as an upgraded culvert to service the second lot.
- [8] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA:
- 6 (1) The following are the purposes of the commission:
- (a) to preserve the agricultural land reserve;
 - (b) to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest; and,
 - (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of land within the



agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.

- (2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:
- (a) the size, integrity and continuity of the land base of the agricultural land reserve;
 - (b) the use of the agricultural land reserve for farm use.

EVIDENTIARY RECORD

[9] The Proposal, along with related documentation from the Applicants, Agent, local government, and Commission is collectively referred to as the "Application". All documentation in the Application was disclosed to the Agent in advance of this decision.

ANALYSIS AND FINDINGS

[10] On November 23, 2021, Applicants received confirmation that the Property qualified for an exception from the restriction of use of agricultural land under s. 23(1) of the ALCA.

[11] There is an existing residence on the Property and no agricultural activity is currently occurring on the Property. The existing residential and accessory residential infrastructure will be located on the ~0.32 ha lot, while the ~0.27 ha lot would be undeveloped. Both proposed lots have frontage along Hopedale Road.

[12] The Panel considered the timeline of events which led to pausing of the Applicants' rezoning application and Development Variance Permit, and the subsequent submission of ALC Application 66159 (Visscher). The Applicants appear to have proceeded in the mistaken but good faith belief that the ALCA's restriction on subdivision did not apply to the Property because of the s. 23(1) exception. The Applicants spent their time and money applying for rezoning and the applicable subdivision authorizations. There is no evidence that the Applicants are professional developers or real estate investors.

[13] The Panel considered the size of the proposed lots (~0.32 ha and ~0.27 ha) and the additional infrastructure required to accommodate the lots (e.g. 2.44 m wide road dedication) in the context of the parcels surrounding the Property. The Panel finds that the parcels to the south, west and north of the Property are marginally larger than the proposed lots. The parcel to the east of the Property is substantially larger at 42.5 ha. In the Panel's experience, an increased concentration of small lots in agricultural areas can lead to increased conflicts between residential small lot owners and adjacent agricultural operators over normal farm practices that generate noise, dust, and odors.

[14] However, the Panel acknowledges the amount of preparation carried out by the Applicants for the purpose of completing the rezoning and subdivision prior to the ALC's April 2022 update to ALC Policy P-02. In this particular case, the Panel is inclined to give consideration to the degree of preparation and investment that the Applicants completed prior to April 2022 in anticipation of the City public hearing and rezoning. For this reason, the Panel will allow the proposed subdivision and associated 2.44 m wide road dedication on the Property.

[15] Despite the Panel's ability to accommodate the Proposal, the Panel's approval should not be misconstrued as the Commission's general support for continued subdivision of small lots in the ALR.

[16] The Applicants propose the planting of a 3 m vegetation buffer along the eastern lot line adjacent to the large agricultural operation, with retention and extension of the existing cedar hedging along the north and south property lines as is consistent with the best practices for development outside the City's Urban Growth Boundary.

[17] The Panel also notes that the proposed buffer along the eastern Property boundary will help to reduce the potential impact of the additional residential lot on the agricultural operation to the east of the Property. The Panel finds that a covenant ensuring upkeep of the vegetative buffer by future owners of the proposed parcels would be necessary to ensure that the benefits of the buffer remain.

DECISION

[18] For the reasons given above, the Panel approves the Proposal to subdivide the Property into two parcels of approximately 0.32 ha and 0.27 ha with a 0.01 ha road dedication subject to the following conditions:

- (a) the planting of vegetation for buffering on the eastern boundary for the purpose of reducing the potential impact of the proposed residential parcels on the agricultural operation to the east in accordance with Schedule A;
- (b) the registration of a covenant for the purpose of ensuring that the vegetative buffer is maintained by future property owners; and,



- (c) the submission of a surveyed subdivision plan to the Commission, within three years of the date of the release of this decision, that is in compliance with Schedule B of this decision; and,
- (d) Approval of the subdivision is granted for the sole benefit of the Applicants and is non-transferable.

[19] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan.

[20] Should the above conditions of approval not be completed to the satisfaction of the ALC within the timeframe(s) specified, the approval will expire and a new application may be required.

[21] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[22] These are the unanimous reasons of the Panel.

[23] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

[24] Resolution #86/2023

Released on March 14, 2023

A handwritten signature in black ink that reads 'Ione Smith'.

Ione Smith, Panel Chair

On behalf of the South Coast Panel

Schedule A: Buffer Design Specifications

Urban-side buffer design criteria

Below are the setback distances for principal buildings and design criteria for installing an urban-side buffer along the ALR boundary. This is followed with four examples of design specifications and layouts.

Urban-Side Setback & Buffer Design Criteria for Urban-ALR EPAs

	Setback Distance & Buffer Size	Buffer Height	Buffer Design Features
<p>Level 1 Urban-side Residential Setback & Buffer*</p> <p>* See Note 1 below</p>	<p>Setback 30 m from ALR boundary</p> <p>Buffer Width 15 m – buffer is located within the 30 m setback</p>	<p>6 m ** (finished height)</p> <p>**See Note 2 below</p>	<ul style="list-style-type: none"> Mixed planting of fast growing tree and shrub species with foliage from base to crown – long thin foliage desirable. Include at least 60% evergreen conifers to collect dust & spray drift. No gaps in buffer and no tightly packed hedges; crown density of 50-75%. Design as wedge shaped if odour dilution desired. Design specifications and layout will be as per urban-side Buffer A or B (p.22); or existing vegetation may be retained as part of buffer (Buffer C, p.24). Leave 2 m of low growing or no vegetation from ALR boundary. If paths and passive recreational uses (e.g. picnic areas) are part of the landscaped buffer, the recreational features will not take up more than 1/3 the width of the buffer and they will be located away from the ALR boundary.³
<p>Level 2 Urban-side Non-Residential Setback & Buffer</p> <p>(e.g. passive recreation, industrial, or commercial)</p>	<p>Setback 15 m from ALR boundary</p> <p>Buffer Width 8 m – buffer is located within the 15 m setback</p>	<p>6 m** (finished height)</p> <p>**See Note 2 below</p>	<ul style="list-style-type: none"> Either a double row of mixed deciduous/coniferous (with at least 60% evergreen conifers) or just coniferous, and hedging/screening shrub species with foliage from base to crown. Design specifications and layout will be as per urban-side Buffer D (p.25); or retain existing vegetation (Buffer C, p.24). Leave 2 m of low growing or no vegetation from ALR boundary.

Note 1: Exception to Level 1 Residential Urban-side Buffer requirements:

Residential parcels that are separated from the ALR by a road allowance can reduce the size of the Level 1 buffer provided new driveway accesses from these parcels onto the subject road allowance are avoided or minimized. The siting of the residence should still be 30 m but the vegetative buffer can be reduced to a 7.5 metre width and located as near and parallel to the ALR boundary as possible.

Note 2:

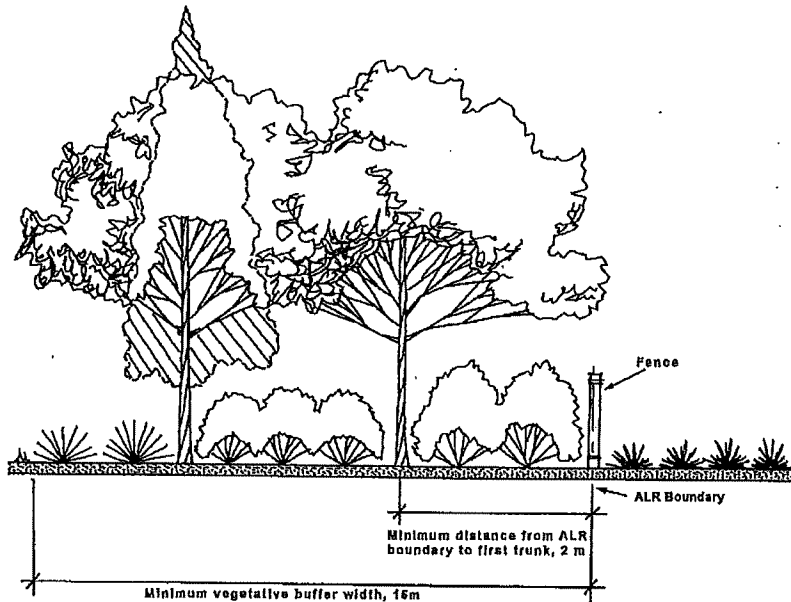
If spray drift is a concern, tree height should be 1.5 times the spray release height or target height, whichever is higher.

³ Information about developing trails in farm and ranch areas, including “A Guide to Trail Development in Farm and Ranch Areas”, can be found at <http://www.agf.gov.bc.ca/resmgmt/sf/trails/index.htm>

Urban-Side Buffer A (no berm) - Design specifications & layout

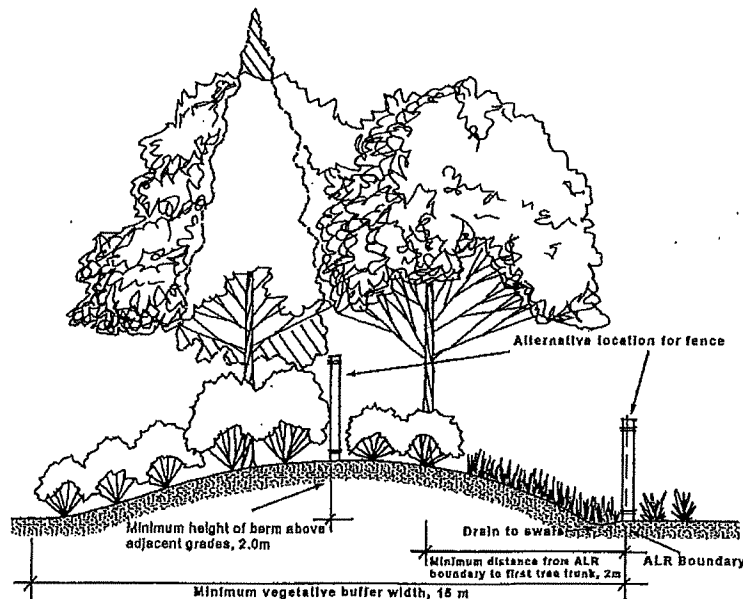
The Urban-side **Buffer A** includes:

- a.) double row deciduous/coniferous trees (see Appendix B for plant list)
- b.) triple row trespass inhibiting shrubs (see Appendix B for plant list)
- c.) double row screening shrubs (see Appendix B for plant list)
- d.) solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C or as per the local government's fencing specifications.



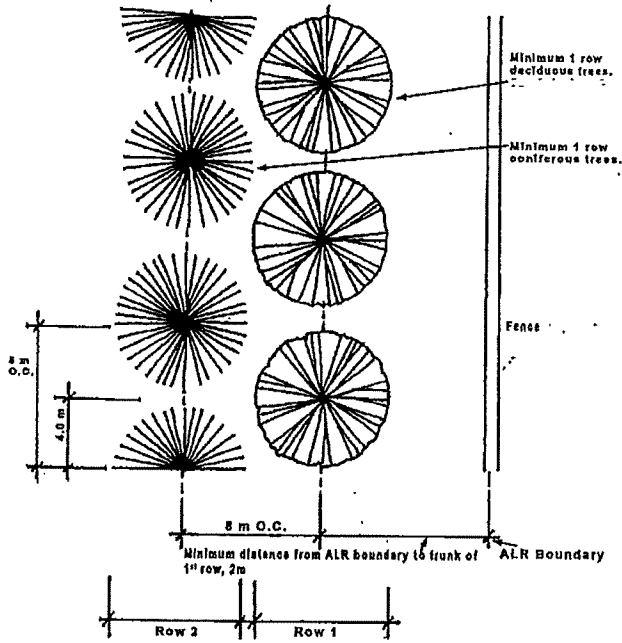
Urban-Side Buffer B (with berm) - Design specifications & layout

The Urban-side **Buffer B** includes all elements of Buffer A as well as a berm with minimum height 2 m above adjacent grades.

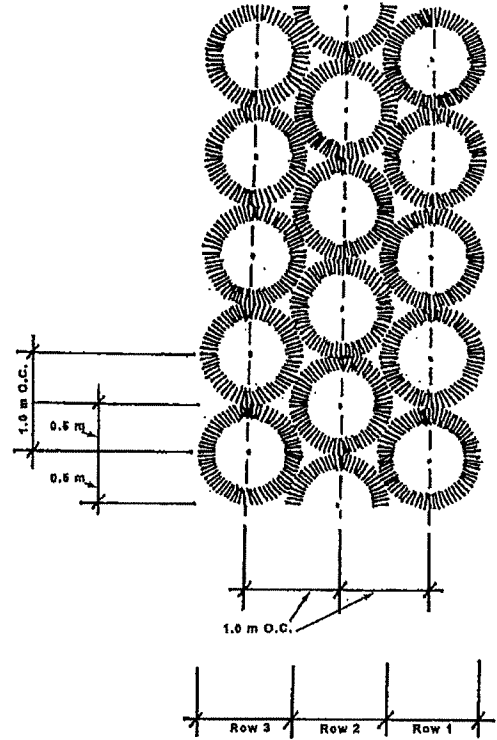


Urban-Side Buffer A, Buffer B or Buffer D - Spacing

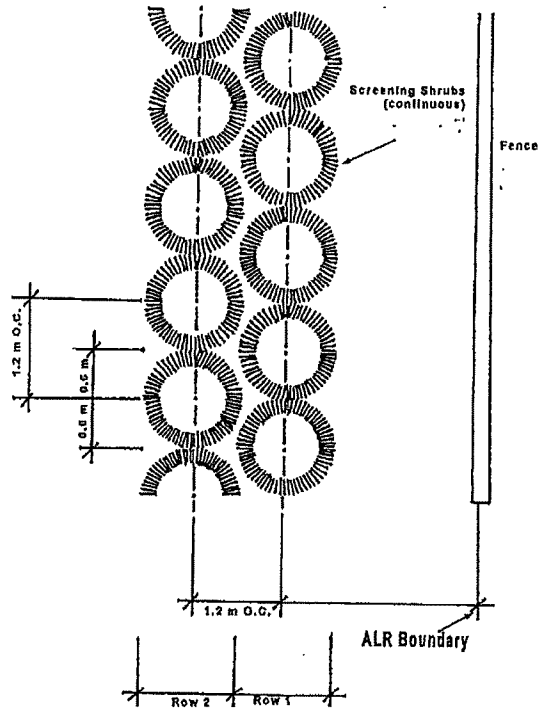
Double row deciduous/coniferous trees



Triple row trespass inhibiting shrubs

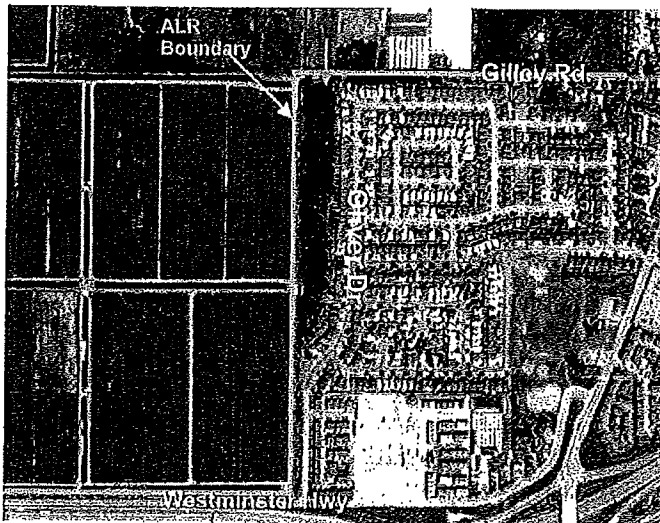
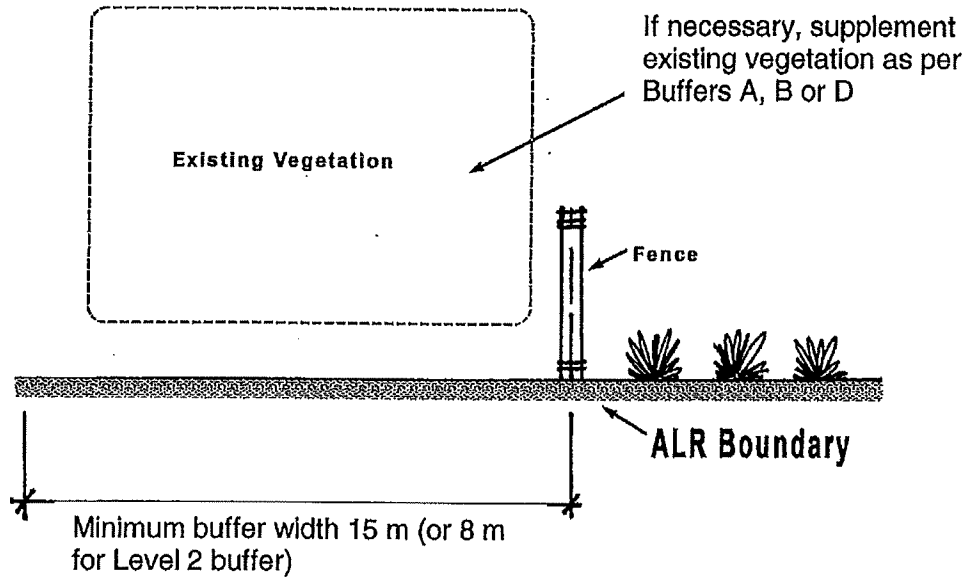


Double row screening shrubs



Urban-Side Buffer C (Existing Vegetation) - Design specifications & layout

The Urban-side **Buffer C** should retain existing vegetation and install either a solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C or as per the local government's fencing specifications.

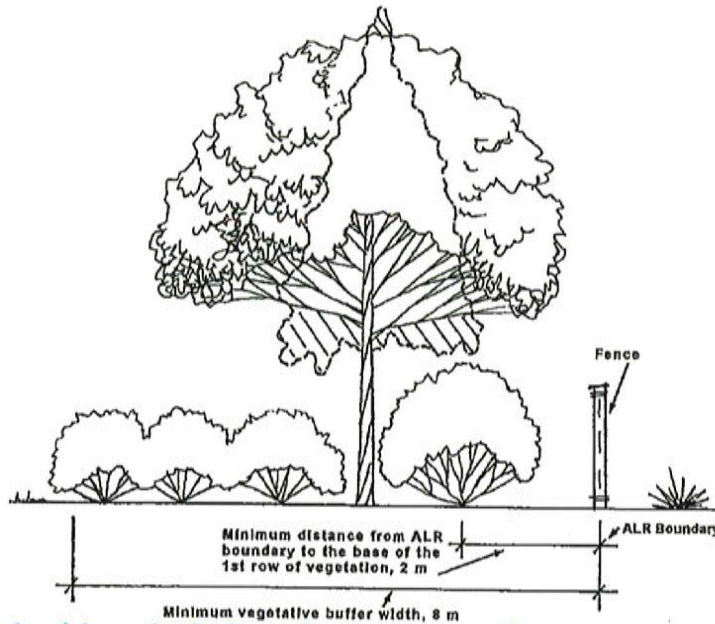


Hamilton area, Richmond, BC
 An example of an existing area of vegetation maintained between residential development and cranberry fields. The width of most of this buffer is approximately 50 metres.

Urban-Side Buffer D - Design specifications, layout & spacing

The Urban-side **Buffer D** includes:

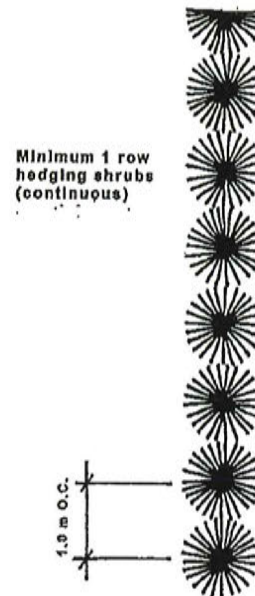
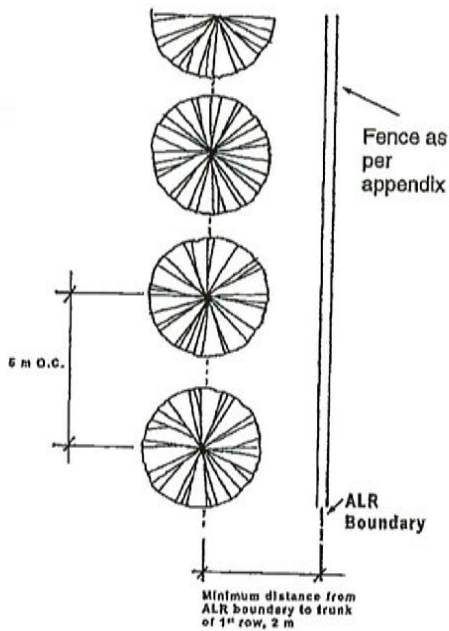
- a.) single row deciduous/coniferous or just coniferous trees (see Appendix B for plant list)
- b.) triple row trespass inhibiting shrubs (see Appendix B for plant list)
- c.) single row screening shrubs (see Appendix B for plant list)
- d.) solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C or as per the local government's fencing specifications.

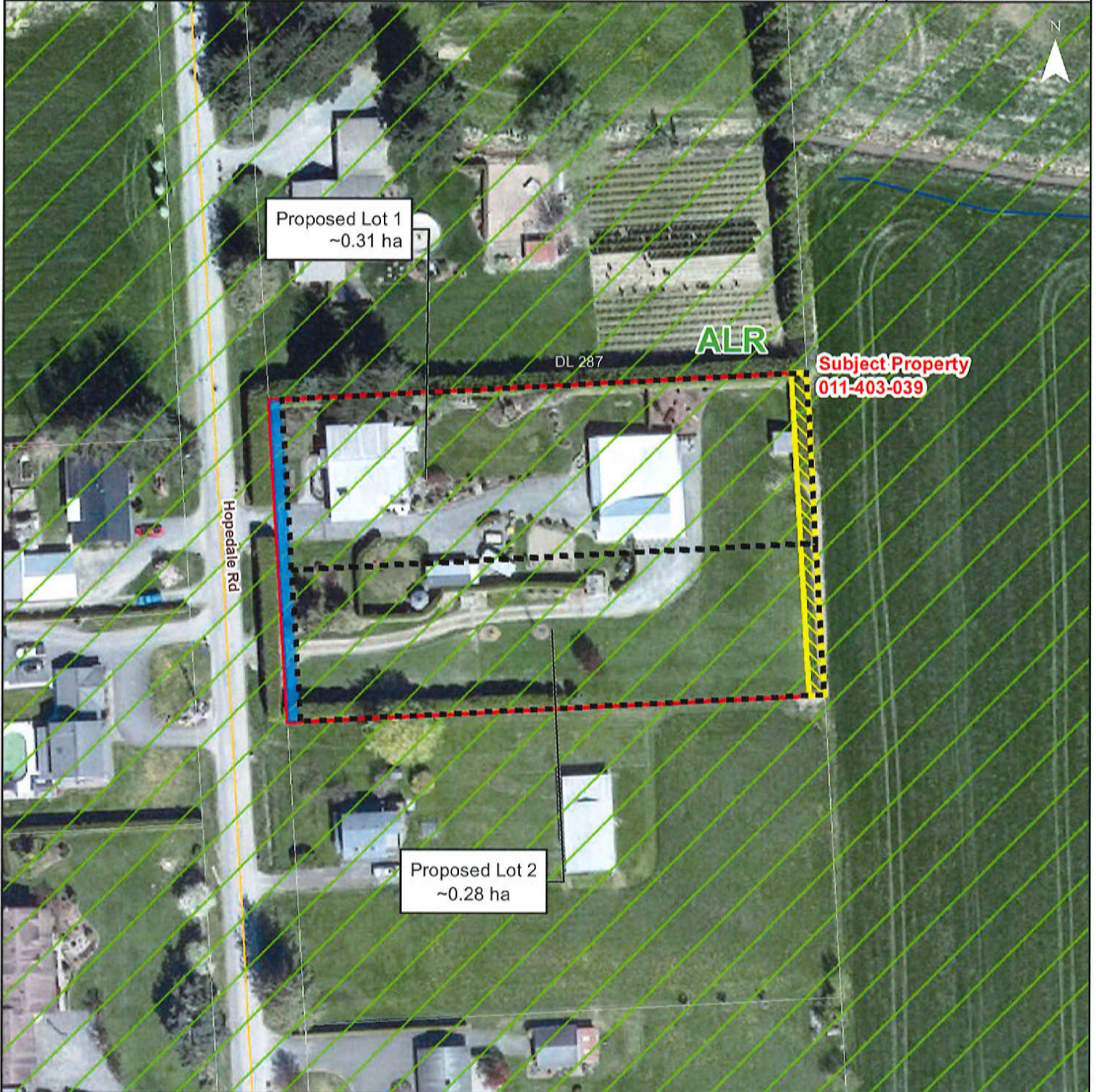


This is the an example of the cedar hedging that was proposed

Single row deciduous/coniferous trees

Single row screening shrubs





ALC FILE NO: 66159
RESOLUTION NO: XX/2023

MAP PRODUCED: March 8, 2023

MAP SCALE: 1:1,000

DATA SOURCES & NOTES:
ALC, BCGW & ESRI / City of Chilliwack. Contains information licensed under Open Government License - British Columbia.

Map for reference only. Accuracy not guaranteed.

- Conditionally Approved Subdivision
- Subject Property
- Agricultural Land Reserve
- 3.0 m Wide Landscape Buffer (~0.018 ha)
- 2.44 m Wide Road Dedication (~0.015 ha)
- PMBC Parcel Cadastre

