

Schedule 5 to the Minutes of the Public Hearing meeting of Richmond City Council held on Monday, May 17, 2021.

TO: MAYOR & EACH COUNCILLOR
FROM: CITY CLERK'S OFFICE

From: MayorandCouncillors
Sent: May 14, 2021 11:40 AM
To: 'Kelly McCaffrey'; MayorandCouncillors
Subject: RE: Pythagoras Academy Society - Richmond Zoning Bylaw 8500, Amendment Bylaw 10259 [BLC-ACTIVE.FID1781705]
Attachments: 2021-05-14 LT City of Richmond.pdf
Categories: TO: MAYOR & EACH COUNCILLOR / FROM: CITY CLERK'S OFFICE



Good Morning,

Thank you for your email and letter. Please note that copies will be provided to the Mayor and each Councillor in advance of the Public Hearing on May 17. In addition, your comments will be received by John Hopkins, Director, Policy Planning.

Sincerely

Matt O'Halloran | Manager, Legislative Services
City of Richmond | 6911 No.3 Road, Richmond, BC V6Y 2C1
Phone: 604-276-4098 | Fax: 604-278-5139
Email: mohalloran@richmond.ca



From: Kelly McCaffrey <kmccaffrey@boughtonlaw.com>
Sent: May 14, 2021 10:04 AM
To: MayorandCouncillors <MayorandCouncillors@richmond.ca>; shannon.lambie@gov.bc.ca
Cc: Shaun Driver <sdriver@boughtonlaw.com>
Subject: Pythagoras Academy Society - Richmond Zoning Bylaw 8500, Amendment Bylaw 10259 [BLC-ACTIVE.FID1781705]

City of Richmond Security Warning: This email was sent from an external source outside the City. Please do not click or open attachments unless you recognize the source of this email and the content is safe.

Good morning,

We are legal counsel for Pythagoras Academy Society who own property at 9500 No. 5 Road.

Please see attached our letter with respect to the above noted matter.

We look forward to hearing from you.

Regards,

Kelly McCaffrey, Legal Administrative Assistant
P 604 647 4110

Boughton Law Corporation
700 - 595 Burrard Street | Vancouver, BC V7X 1S8 | P 604 687 6789 | F 604 683 5317
[Blog](#) | [Member of Meritas](#)

MAY 14 2021
K. McCaffrey

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boughtonlaw

May 14, 2020

File #: 93201.1
Direct: 604 647 4154
Email: sdriver@boughtonlaw.com

EMAIL (mayorandcouncillors@richmond.ca)

EMAIL (shannon.lambie@gov.bc.ca)

City of Richmond
6911 No. 3 Road
Richmond, British Columbia
V6Y 2C1

Agricultural Land Commission
201-4940 Canada Way
Burnaby, BC
5G 4K6

Attention: City of Richmond Mayor and Council

Attention: Shannon Lambie

Dear Sirs and Mesdames:

Re: Richmond Zoning Bylaw 8500, Amendment Bylaw 10259

We write with respect to Amendment Bylaw 10258 being a Bylaw to amend Bylaws 7100 and 9000 to revise permitted uses and related policies for religious assembly use in the No. 5 Road Backlands Policy Area (Schedule 1) (the "**Backlands Policy**") and the East Richmond Area McLennan Sub-Area Plan (Schedule 2.13A) (the "**Proposed Bylaw**"). We are legal counsel for Pythagoras Academy Society who own property at 9500 No. 5 Road.

SUMMARY

The Agricultural Land Commission ("**ALC**") have provided a letter that contains contradicting statements. The ALC purports to rely on a previous resolution to justify limiting land-use to "Religious Assembly". However, review of the resolution shows the resolution specifically allows land-use beyond "Religious Assembly", namely Assembly District, School, and Public Uses (ie. public park, public recreation facility, municipal works, health and safety measures, and community use). The obvious and apparent disconnect has not been explained.

The public cannot be anticipated to reconcile or understand how the decision was reached to approve the Proposed Bylaw which results in a substantial change to the Official Community Plan, a seminal planning document for the City of Richmond. The result is a significant altering to the visioning document of the city without adequate and thoughtful deliberation.

The duty of procedural fairness demands that clear and meaningful reasons for decisions be provided. Decision makers must transparently demonstrate the rationale behind decisions. This has not been done.

The City of Richmond and ALC have an obligation to provide full information and to rectify and explain the inconsistency. To do otherwise, is a breach of their duty and, in these circumstances, subject to judicial review if the Proposed Bylaw is passed as currently presented.

The appropriate action is to adjourn the public hearing, provide the particulars to the public of how the decision of the ALC was developed such that the public may make an informed decision.

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REVIEW*Inconsistency in ALC Communication*

On January 21, 2021, Jennifer Dyson, Chair of the ALC authored a letter to Mayor and Council (the "**ALC Letter**"). The ALC Letter identifies months of discussion regarding the Backlands Policy and issues arising following a 2017 review and on learning that an OCP bylaw amendment occurred in Richmond without review and endorsement of the ALC.

The ALC Letter discusses policy concerns related to its mandate to protect farmland and encourage farming, and in particular, whether the Policy had been effective in encouraging agricultural activity on the Backlands. The ALC Letter's focus is, appropriately, agricultural with one exception. That exception cannot be reconciled with the source for which the statement relies.

On page 3, the ALC Letter asserts that it wishes to re-affirm the ALC's support for its Resolution #147/2000 titled the "*Amended No. 5 Road Backlands Policy (Endorsed by Planning Committee on March 21, 2000)*" (the "**2000 Resolution**"). The undersigned has confirmed the 2000 Resolution is actually #174/2000 with Shannon Lambie of the ALC. Irrespective of the typographical error, the issue is that the 2000 Resolution is not included in the materials considered by City Council or the public within the City of Richmond Agenda or the Report to Committee of John Hopkins dated April 8, 2021 that was provided to City Council prior to First Reading of the Proposed Bylaw and included in the package to the public.

More concerning, the ALC Letter intimates in subparagraph (e) on page 3 that the 2000 Resolution limits use to "existing Religious Assembly use on the Frontlands" and specifically:

*"The City of Richmond is asked to update their Assembly and Institutional Zoning Bylaw to limit the uses permitted in the Backlands Policy area. **The intent of the original policy was to support religious assembly uses (i.e. places of worship) – not to permit residential or educational activities that are adjacent to religious assembly.**" (emphasis added)*

The dilemma is that the conclusion in the ALC Letter is antithetical to the language of #174/2000. Specifically, the 2000 Resolution states:

*1. **The area outlined in bold lines as "Area Proposed for Public and Institutional Use"** on the accompanying plan dated 01/24/00 may be considered for non-farm use.*

2. The types of non-farm use which may be considered are:

- **"Assembly District" uses, and***
- **Certain "School / Public Use District" uses (i.e. public park, public recreation facility, municipal works, health and safety measures, community use).** (emphasis added)*

The disconnect is obvious and apparent. The ALC purports to limit uses to Religious Assembly while re-affirming a resolution that allows uses other than Religious Assembly.

Significance of the OCP

The OCP is a "statement of objectives and policies to guide decisions on planning and land use management, within the area covered by the plan, respecting the purposes of local government"¹ (s. 471 of the *Local Government Act*, R.S.B.C. 2015, c. 1). The City of Richmond appropriately describes the OCP as a "... statement of its long-term future community planning vision by describing the kind of community into which the City wishes to evolve."² It is ultimately a statement of objectives and policies to guide decisions on planning and land use management, respecting the purposes of local government.³ In short, the OCP is a fundamental as is represented by three major rounds of community consultation and over 30 Open Houses over a 2 ½ year period.⁴

Duty of Fairness

At the heart of municipal governance is the obligation of fairness. As described by the Office of the Ombudsperson, fairness allows people to be heard. It also requires decisions to be based on relevant information. The Ombudsperson states:

"[Fairness] is also about making decisions that are considerate of the individual's needs and circumstances and based on relevant information. Fairness is also about providing clear and meaningful reasons for decisions so the person affected can understand what process your organization followed and how it came to the decision it did.

By following a fair process, members of the public can better understand the reasons for decisions being made by those in positions of authority. It helps to build public trust in public services if decision makers can clearly demonstrate and explain how and why decisions are made. We find in our work that when public bodies deliver their services in a fair and transparent manner, people are more likely to accept a decision or outcome, even when they don't agree with the decision itself." (emphasis added)

In the circumstances, there is an obvious and apparent incongruity in the statements of the ALC. The reasons for the decision are not clear and meaningful. The public is not in a position to understand the reason for decisions being made by those in a position of authority, to approve the Proposed Bylaw as presented or to assess the legality of the purported change.

To approve the Proposed Bylaw as presented would be patently unfair and would breach the City of Richmond's duties of procedural fairness and natural justice especially considering the Proposed Bylaw serves to impart substantive changes to a fundamentally important document,

The requirements of procedural fairness and natural justice equally apply to the ALC. Further, the ALC is additionally obligated to satisfy purposes pursuant to section 6 of the *Agricultural Land Commission Act*.⁵

The issue is this – the public is left in no position to review, understand, or appreciate the context as to how the ALC came to decide that the Backlands Policy should be restricted to "Religious Assembly," irrespective of

¹ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 471 ("LGA")

² Official Community Plan (OCP) Schedule 1 of Bylaw 9000; 2041 OCP – Moving Towards Sustainability, City of Richmond, November 19, 2012 at pg. 1-1 ("OCP")

³ LGA, *supra*, s. 474(1)

⁴ OCP, *supra*, at pg. 1-2

⁵ *Agricultural Land Commission Act*, SBC 2002, c. 36

whether it was in their mandate to do so. The ALC Letter conflicts with the stated policy it explicitly states that it relies on. It is incumbent on the City of Richmond to allow the public an opportunity to understand the reasons for a decision being made by providing the public with the information necessary to make a knowledgeable decision.

The appropriate action is to adjourn the public hearing, provide the particulars to the public of how the decision of the ALC was developed such that the public may make an informed decision.

Yours truly,

BOUGHTON LAW CORPORATION

Per: 
Shaun C. Driver

SCD/km

Encl: Amended No. 5 Road Backlands Policy – Resolution #174/2000

ALRA - Minutes

Resolution #174/2000
Application #19621

MINUTES OF THE LAND RESERVE COMMISSION

Minutes of a meeting by the Land Reserve Commission (the "Commission") held on August 24, 2000 at the Commission's offices at 4940 Canada Way, Burnaby, B.C.

Present:	G. Horn	Commissioner
	C. Hunt	Commissioner
	R. Veiner	Commissioner

Staff Present: Bruce Gunn, Planning Officer and Sherry Sumpton, Regional Research Officer

Consideration of LRC File #19621 regarding the No. 5 Road Back Lands Policy submitted by the City of Richmond.

Staff Report

Planning Officer Bruce Gunn presented his report dated July 25, 2000.

Discussion

The Commission acknowledged that the current Policy represents the final stage of a consultation process with the City. The Commission has reviewed and commented on previous drafts of the Policy. The Commission concluded that the March 21/2000 version of the Policy incorporates the Commission's previous comments. As a result, the Commission agreed to endorse the Policy as presented. Therefore:

IT WAS

MOVED BY: Commissioner C. Hunt
SECONDED BY: Commissioner R. Veiner

THAT the Staff Report be received and that the Commission endorse the March 21/2000 "Amended No. 5 Road Back Lands Policy" as presented and communicate same to the City of Richmond.

Carried.

September 8, 2000

Reply to the attention of Bruce Gunn.

J. Richard McKenna
City Clerk
City of Richmond
6911 No. 3 Road
Richmond, B.C.
V6Y 2C1

Dear Sir:

RE: No. 5 Road Back Lands Policy
Our File: #50-O-RICH-85-19621

Thank you for forwarding to the Commission a copy of the March 21, 2000 No. 5 Road Back Lands Policy. The Commission acknowledges, with the appreciation, the work undertaken by the City in the development of this Policy. We note that the Policy includes the comments and suggestions made by the Commission as per our review of previous drafts of the Policy. Based on the co-operative and collaborative approach established between the City and the Commission we view the March 21, 2000 Policy as the final document in this process. By **Resolution #174/2000** the Commission is pleased to endorse the March 21, 2000 No. 5 Road Back Lands Policy as presented by the City and will use this Policy as a basis for dealing with Agricultural Land Reserve applications in this area of Richmond. If you have any questions please contact Bruce Gunn, Planning Officer at 660-7019.

Yours truly,

LAND RESERVE COMMISSION

As Per:

Alan Chambers, Chair

BGI:19621d5.doc

March 22, 2000

**AMENDED NO. 5 ROAD BACKLANDS POLICY
(Endorsed by Planning Committee on March 21, 2000)**

CITY POLICIES

1. The area outlined in bold lines as "Area Proposed for Public and Institutional Use" on the accompanying plan dated 01/24/00 may be considered for non-farm use.
2. The types of non-farm use which may be considered are:
 - "Assembly District" uses, and
 - Certain "School / Public Use District" uses (i.e., public park, public recreation facility, municipal works, health and safety measures, community use),
3. The amount of land on each property which may be developed for approved non-farm uses is limited to the westerly 110 m (360.892 ft) for properties fronting onto No. 5 Road.

The remaining back land portion of each property shall be retained for farm use only.
4. Satisfactory sanitary sewage disposal is required as a condition of Development Permit approval.
5. Continue to strive for a partnership approach, with back land owner prepared farm plans to achieve farming, but allow for a limited infrastructure component (e.g., little or no regional and on-site drainage, irrigation or access roads), where a full infrastructure component is not practical.
6. The current moratorium on non-farm use approvals (initiated by the Land Commission and adopted by Council in February, 1996) should be retained and may be lifted on an individual lot basis for owners who:
 - a) prepare farm plans;
 - b) explore farm consolidation;
 - c) commit to do any necessary on-site infrastructure improvements;
 - d) co-operate as necessary to remove constraints (e.g., required infrastructure) to farming the back lands, in partnership with others; and
 - e) commit to legal requirements as may be stipulated by Council to achieve acceptable land uses (e.g., farming the back lands).
 - f) undertake active farming of the back lands.
7. The following procedure will apply when considering applications for non-farm use and Assembly District rezoning.

March 22, 2000

Approvals Procedure
Proponent applies to City and Commission for non-farm use approval.
Commission reviews proposal and may give approval in principle for non-farm use based on the proponent:
<ul style="list-style-type: none">• preparing an acceptable farm plan;• entering into a restrictive covenant;• providing a financial guarantee to farm; and• agreeing to undertake active farming first
Proponent undertakes active farming based on the approved farm plan.
Commission gives final approval for non-farm use.
Proponent applies to City for rezoning of site to Assembly District (ASY).
City approves rezoning application after proponent meets all City requirements.

Amendments to the above policies

If either the City or the Land Commission intends to amend any of the above procedures, the initiating party will advise the other party of this intent and seek comment on the proposed amendments prior to concluding any approvals.

Co-ordination of review process

The City and the Commission will co-ordinate efforts when reviewing applications for non-farm use, in order to ensure that the interests of each party are addressed. This co-ordinated effort will be done prior to granting any approvals.

LAND COMMISSION POLICIES (for information)

In addition to the City policies described above, the Land Commission policies also apply to the No. 5 Road back lands.

The Commission's policies may change from time to time.

Currently (i.e., February, 2000), the Commission's policies are as follows:

1. Proponents must prepare farm plans that:
 - describe how the proponent intends to bring the back land portion of the subject site into commercial scale agricultural production (i.e., type and method of farming) ¹, and
 - describe the net agricultural benefits that will be created.

Indicators of net agricultural benefits include:

- ✓ consolidation of parcels,
- ✓ improved road access to the subject and adjacent sites,
- ✓ long term agricultural lease options,
- ✓ non-farm infrastructure improvements (including fencing and buffering) and/or improvements to adjacent sites,
- ✓ options for more intensive farm use than is currently occurring on site, and
- ✓ commitment by an experienced farm operator to farm the site as per the farm plan.

2. Proponents must enter into a Restrictive Covenant with the Commission to ensure that:
 - Farming is established,
 - Farming is maintained, and
 - The back land portion of the subject site is not used for any other purpose than farming.
3. Where required, proponents must provide a financial guarantee in a form determined by the Commission ².

¹ Commercial scale agriculture means:

- production carried on by a full time farmer, and
- who derives all or most of his/her income from farming activity.

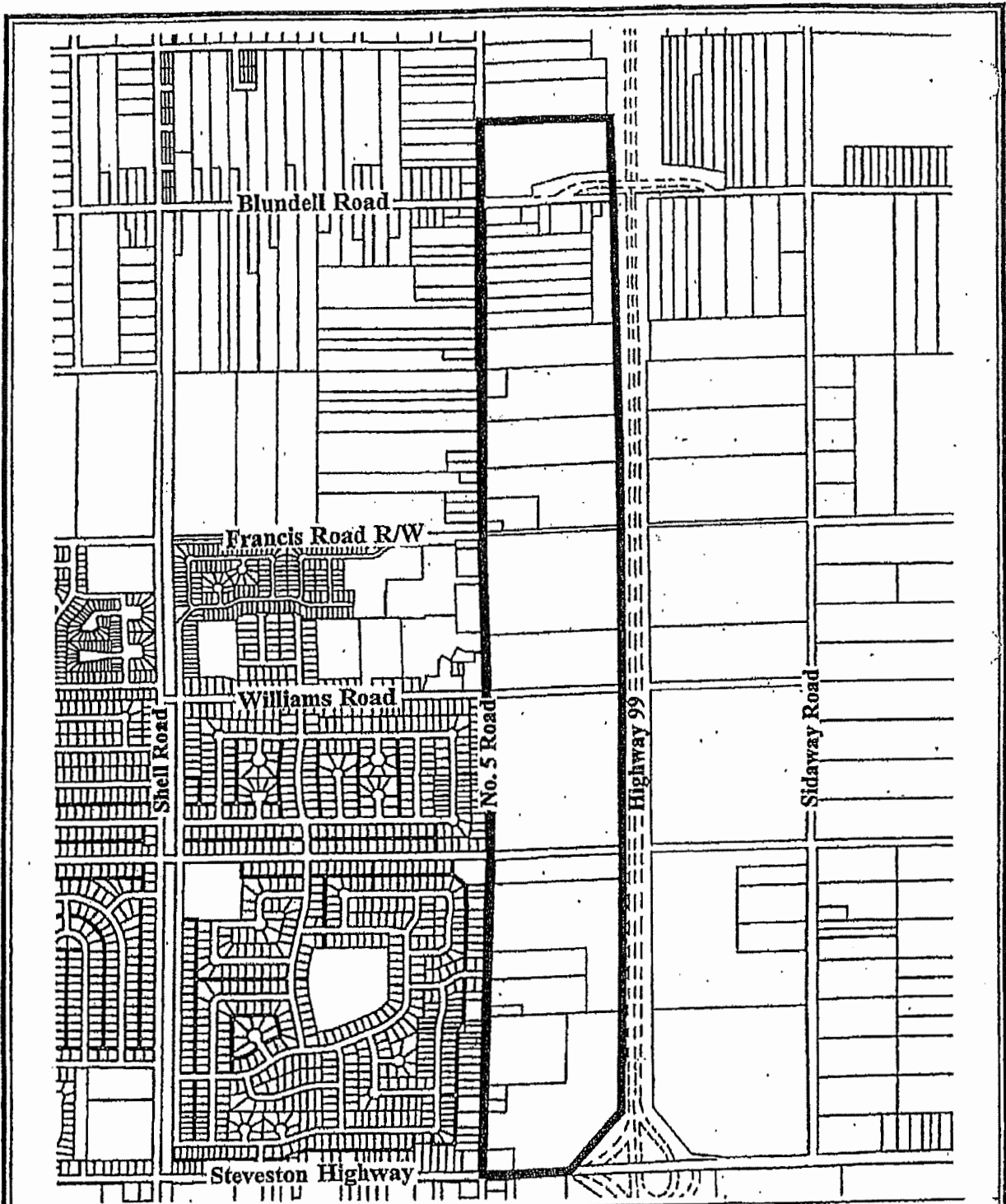
In addition, any farmer who combines farming activity outside the back lands area with farming activity within the back lands area, would be defined as undertaking "commercial scale agriculture".

The Commission's intent in specifying commercial scale agriculture is to encourage the assembly of larger parcels for farming and the installation of the necessary infrastructure (e.g., drainage, irrigation, access roads). However, the Commission does not rule out the possibility of smaller agricultural activities being approved for the back lands (e.g., community gardens).

² Acceptable forms of financial guarantees include:

- cash (acceptable but not preferred)
- letter of credit
- safekeeping agreement (whereby an acceptable security is deposited with a financial institution for safekeeping)

4. The Commission will not give final non-farm use approval to the proponent until the back land portion of the subject site is brought into active farm production in accordance with the farm plan.
5. The Commission will evaluate each proposal on its own merits, in order to determine what will constitute an acceptable farm plan and acceptable list of farm activities.



Area Proposed for Public
and Institutional Use 313

Date:
01/24/00

APPENDIX 4

**Land Commission requirements for approved non-farm
(Assembly District) uses along No. 5 Road**

January 31, 2000

**TABLE SHOWING LAND COMMISSION REQUIREMENTS FOR NON-FARM USE
(ASSEMBLY DISTRICT) APPROVAL FOR SITES LARGER THAN 0.8 ha (2 ac)**

APPLICANT	PROPERTY	REQUIREMENTS	COMPLIANCE
A. Sites approved for non-farm use and are developed and occupied			
Vedic Cultural Centre (AG 89-001)	8200 No. 5 Road	<ul style="list-style-type: none"> ▪ farm plan ▪ restrictive covenant ▪ access to back land ▪ water supply ▪ lease for farmers ▪ farming 	<ul style="list-style-type: none"> ▪ yes ▪ yes ▪ yes ▪ yes ▪ none apparent
India Cultural Centre (LCA 85-146 & LCA 85-192)	8600 No. 5 Road	<ul style="list-style-type: none"> ▪ no farm plan required ▪ no other requirements stipulated 	<ul style="list-style-type: none"> ▪ n/a ▪ n/a
<ul style="list-style-type: none"> ▪ Lutfur Rahman (Richmond Jewish Day School) ▪ (AG 96-147) 	8760 No. 5 Road	<ul style="list-style-type: none"> ▪ no farm plan required. ▪ garden and orchard along east boundary. ▪ participation in No. 5 Road back lands owners group 	<ul style="list-style-type: none"> ▪ n/a ▪ none apparent ▪ yes
<ul style="list-style-type: none"> ▪ Lingyen Mountain Temple ▪ (AG 93-210) 	10060 No. 5 Road	<ul style="list-style-type: none"> ▪ farm plan ▪ restrictive covenant ▪ soil re-conditioning program. ▪ water management program. ▪ farming 	<ul style="list-style-type: none"> ▪ yes ▪ yes ▪ yes ▪ not known ▪ yes (some limited activity)

APPLICANT	PROPERTY	REQUIREMENTS	COMPLIANCE
B. Sites approved for non-farm use and development has started			
<ul style="list-style-type: none"> ▪ Vancouver Christian Centre (now Shia Muslim) ▪ (AG 89-412) 	<ul style="list-style-type: none"> ▪ 8580 No. 5 Road 	<ul style="list-style-type: none"> ▪ farm plan ▪ restrictive covenant ▪ financial guarantee to farm ▪ copy of lease between applicant and tree nursery operator ▪ farming 	<ul style="list-style-type: none"> ▪ no ▪ no ▪ no ▪ no ▪ no (site being pre-loaded only)
C. Sites approved for non-farm use but development not yet started:			
<ul style="list-style-type: none"> ▪ Yao Yu Cheuh ▪ (AG 91-239) 	<ul style="list-style-type: none"> ▪ 8240 No. 5 Road 	<ul style="list-style-type: none"> ▪ farm plan ▪ restrictive covenant ▪ farming 	<ul style="list-style-type: none"> ▪ no ▪ no ▪ no (site not yet redeveloped)
<ul style="list-style-type: none"> ▪ 349678 BC Ltd. ▪ (AG 91-226) 	<ul style="list-style-type: none"> ▪ 8320, 8340, 8380 No. 5 Road 	<ul style="list-style-type: none"> ▪ consolidate 3 lots ▪ farm plan ▪ restrictive covenant ▪ farming 	<ul style="list-style-type: none"> ▪ no ▪ yes ▪ no ▪ no (site not yet redeveloped)
<ul style="list-style-type: none"> ▪ Limerick Enterprises (Catholic School) ▪ (AG 91-017) 	<ul style="list-style-type: none"> ▪ 9360 No. 5 Road 	<ul style="list-style-type: none"> ▪ farm plan ▪ fence between school and back land ▪ restrictive covenant ▪ farming 	<ul style="list-style-type: none"> ▪ no ▪ no ▪ no ▪ no (site not yet occupied or developed)

APPLICANT	PROPERTY	REQUIREMENTS	COMPLIANCE
<ul style="list-style-type: none"> ▪ Richmond Christian School ▪ (AG 98-144171) 	<ul style="list-style-type: none"> ▪ 10260 No. 5 Road 	<ul style="list-style-type: none"> ▪ no farm plan required, ▪ restrictive covenant ▪ fence and landscape buffer ▪ notification of any changes to lease agreement between RCC and vendor. ▪ financial security ▪ withholding final rezoning until covenant and financial security arranged. ▪ farming 	<ul style="list-style-type: none"> ▪ n/a ▪ yes ▪ not known ▪ n/a yet ▪ yes (by ALC) ▪ yes ▪ yes (by previous owner)

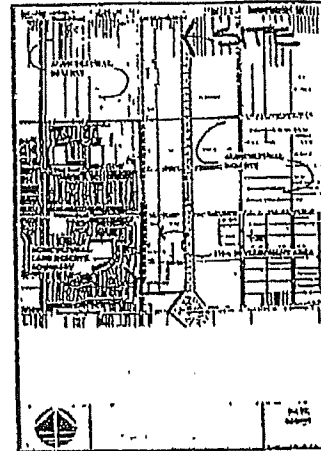
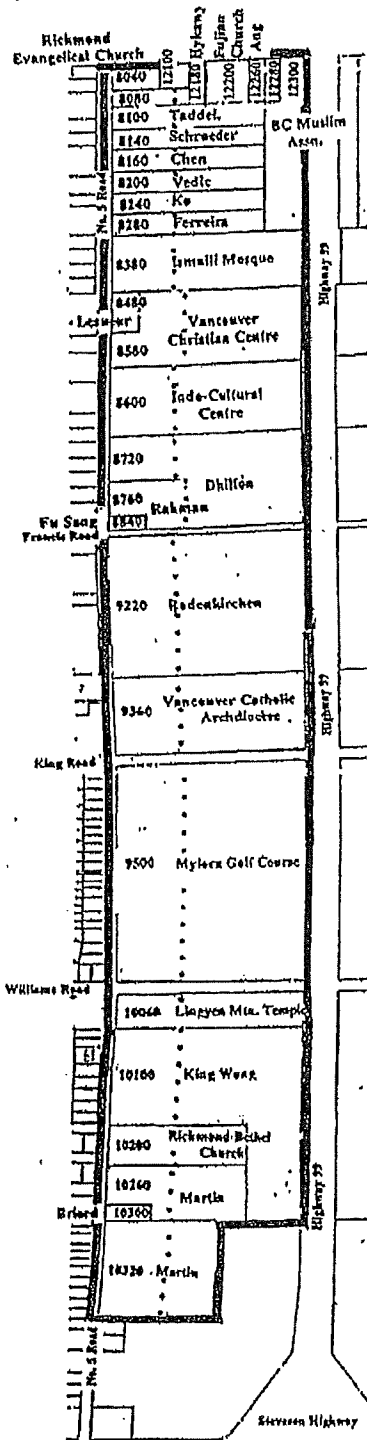


Figure 1-1
Property Addresses and
Property Owners in the
Study Area

LEGEND
 Study Area
 110 m Assembly Use Frontage

N
 Scale: 16 cm \approx 1,000 m