



COUNCIL REPORT

To: Paul Gipps, CAO

Date: April 18, 2023

From: Cam Graham, Planner I

File No: A 21- 06

Subject: **A 21-06, Fill and Soil Use Application on ALR, 2402 Hayman Road**

RECOMMENDATION

THAT Council authorize and support the Notice of Intent for the placement of ~85,000 m³ of fill on ~34,000 m² of land in the ALR (File: A 21-06) for the property located at 2402 Hayman Road;

THAT Council authorize this application subject to the condition that a Soil Deposition Permit, including necessary stormwater management be issued by the City of West Kelowna;

THAT Council authorize this application subject to the applicant amending the covenant on title to allow for the alteration grade in no disturb area; and

THAT Council direct staff to forward the application to the Agricultural Land Commission for consideration.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity

BACKGROUND

The subject property is located in the Lakeview Heights neighbourhood adjacent to Rollingdale Winery. The subject property is zoned Agricultural (A1), is within the Agricultural Land Reserve and is surrounded almost entirely by vineyards and winery operations near the Westside Wine Trail.

Since 2021, the applicant has submitted two Notice of Intent (NOI) applications to the Agricultural Land Commission (ALC) for fill placement. An initial application was submitted that proposed ~150,000m³ of fill (application #62880) which was later revised with the intent of meeting the ALC's requirements for a delegated application. The ALC denied the revised application and directed the applicant to follow the original approval process that requires authorization from the City.

PROPERTY DETAILS

Address	2402 Hayman Road		
PID	010-346-635		
Folio	36413409.000		
Lot Size	13.223 acres		
Owner	Parneet & Manjinder Dhaliwal	Agent	
Current Zoning	A1- Agricultural Zone	Proposed Zoning	N/A
Current OCP	Ag - Agricultural	Proposed OCP	N/A
Current Use	Ag - Agricultural	Proposed Use	N/A
Development Permit Areas	Terrestrial, Hillside		

ADJACENT ZONING & LAND USES

North	^	A1 – Agricultural Zone
East	>	A1 – Agricultural Zone
West	<	A1 – Agricultural Zone
South	v	P1 – Parks and Open Space, R1 – Single Detached

NEIGHBOURHOOD MAP



PROPERTY MAP



DISCUSSION

Proposal

The applicant is proposing to deposit ~85,000 m³ of fill over a ~34,000 m² area of the subject property with a maximum depth of ~6.5m. The proposed duration of the project is anticipated to be one year and six months. The purpose of the fill is to raise the land to a uniform grade and reduce topographic limitations, including frost pockets and draws, to aid in grape-growing operations (Figure 1).



Figure 1: Topographic View of Property.

The applicant is proposing to cultivate ~4.85 Hectares with the remaining area planned for a single-family dwelling, wine shop, cellar, and processing facilities as future development (Figure 2 and Attachment 1). The fill will be transported by 13-yard dump trucks with access from Hayman Road (~8,500 truckloads). The topsoil will be retained on-site, and disturbed areas will be restored. Silt fencing and on-site mitigation measures are discussed in detail below.

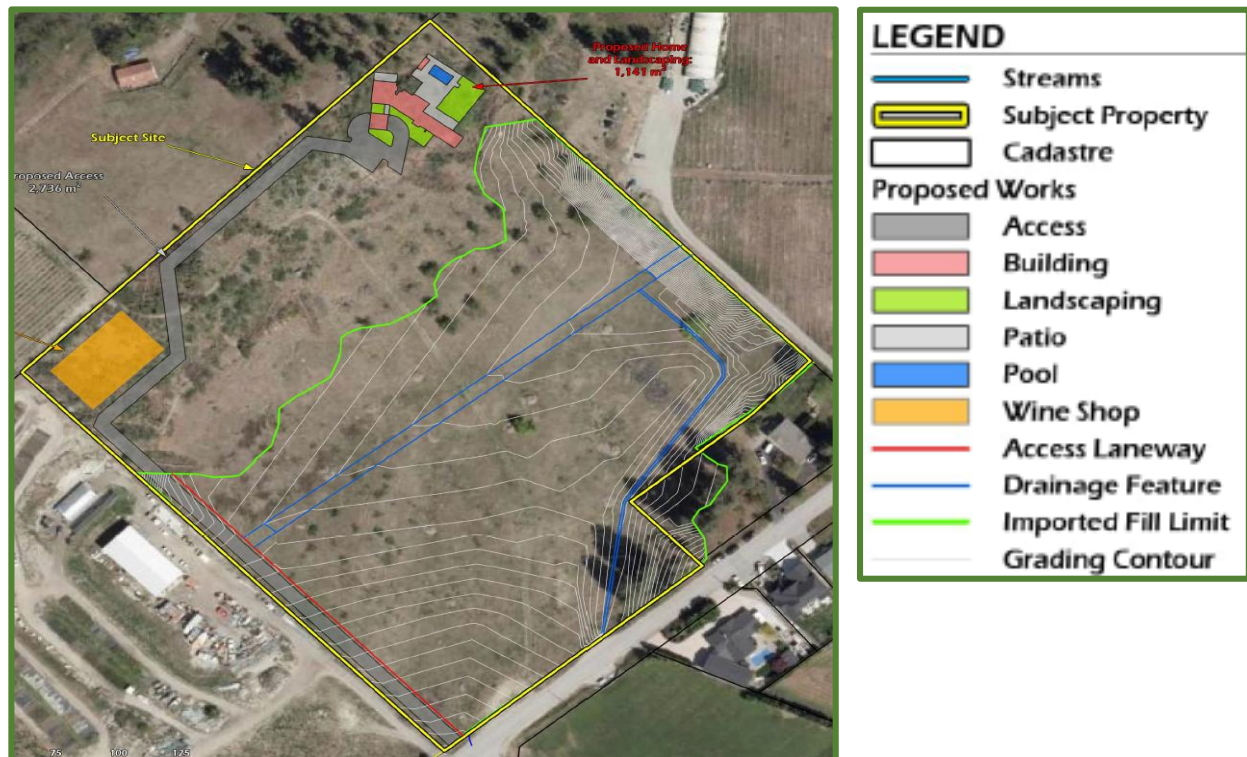


Figure 2: Site Plan

Policy and Bylaw Review

Official Community Plan No.0100

The proposal are consistent with the agricultural land use plan designation and objectives in the City's Official Community Plan. The proposed works are subject to the DPA – 4 Hillside Guidelines.

DPA – 4 Hillside Guidelines:

The purpose of this DPA is to ensure that development is safe from hazardous conditions and does not adversely affect the natural environment or surrounding people or property. Development should occur in cooperation with natural drainage patterns and associated vegetation where possible. Modifications must not cause adverse impacts on adjacent lands. The creation of manufactured slopes should occur only where necessary and in consideration of the following: Where manufactured slopes are adjacent to existing developments, mitigative measures may be required by the City to prevent potential impacts to adjacent properties as a result of site grading. These measures include increasing setbacks between parcels, installation of landscaping and the re-naturalization of slopes should occur as soon as possible to minimize the potential for erosion and/or slope failure.

Manufactured Slope along Rollingdale Winery Access:

The proposed works are adjacent to the main access to Rollingdale Winery and subject to the objectives noted above (Figure 2). During the application review, staff noted concerns with potential impacts to the neighboring property. The applicant has revised their plans based on feedback to include 3(H):1(V) slope over the width of 15 m from the parcel boundary toward the centre of the subject property. This has been displayed in both the site plan and the grading plans outlined in the updated Agricultural Assessment.

Zoning Bylaw No.0265

The subject property is zoned A1 – Agricultural. It is understood that the property will be used in grape growing operations and will include a future detached dwelling. General Agriculture and a single detached dwellings are permitted uses within an A1 zone.

Technical Review

An Agricultural Assessment was completed by Ecoscape on the property May 2022, and revised on March 28th, 2023. (Attachment 2). The assessment outlines the existing conditions and how to place the fill while minimizing negative impacts. Key sections have been discussed below:

Erosion and Sediment Control:

The Agricultural Assessment details the mitigations and recommendations on erosion and sediment control (ESC), including that silt fencing and other ESC measures must be

installed prior to the start of construction, that ESC-related recommendations must be implemented within 24 hours, and that road surfaces adjacent to project area must be kept clean and free of fine materials.

A recommended condition for approval of this application is that a Soil Deposition Permit from the City will be required. The Soil Deposition Permit will regulate the placement of fill in accordance with Bylaw No.127 for the removal and deposition of the soil on the property. The Permit will include conditions related to ESC and stormwater management.

Fill Placement and Air Quality Control:

Dust will be monitored during fill placement by site operators. Site operators will be trained and required to take preventative action to avoid dust. These measures are outlined in the Agricultural Assessment.

Stormwater Management

As part of the referral process, it was identified that additional information regarding stormwater management would be required as there is currently an active drainage corridor through the property identified as project 10.2 in the Lakeview Heights Basin Plan (Master Drainage Plan). Due to the cost associated with the development of that plan and the uncertainty regarding the ALC approval, it has been recommended that Council require a stormwater management plan as part of the future Soil Deposition Permit.

To safely convey the major system 1:100-year storm event through the drainage corridor, the applicant would be required to complete a Drainage/Storm Water Management Plan with their Soils Deposition Permit Application. This will include the engineered design of either an overland swale route or underground system and would need to be completed in accordance with the City’s Works & Services Bylaw Schedule 5 and Storm Water Management Best Practices. The plan will also need to ensure that post-development flows aren’t greater than pre-development flows and do not negatively affect adjacent properties; and, that downstream detrimental impacts shall not be increased (as per the W&S Bylaw 5.2.3).

Agricultural Capability

The agricultural capability of the property was assessed in the agricultural assessment. The majority of the property was mapped with the agricultural capability of 6 with sections identified as class 5 (Attachment 2). With irrigation, fill placement in low-lying areas, removing stones/screening of material, and adding topsoil classes may be improved from classes 5 and 6 to classes 2 and 3 (Table 1). Existing topsoil will be retained where possible and will be replaced after the fill placement is completed. Ecoscape believes that

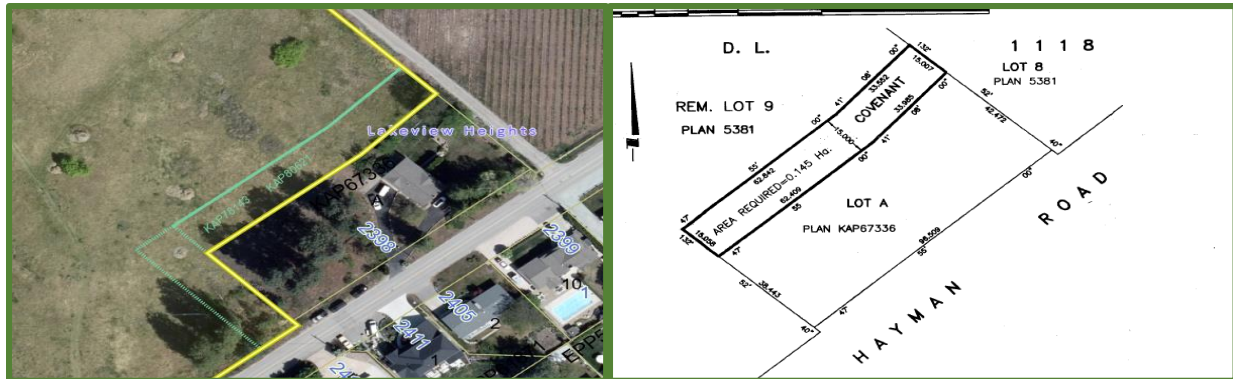
Polygon	Unimproved Class ¹	Subclass 1 ²	Subclass 2	Improved Class	Composition
Parkhill	6	A	-	3	100%
Trout Creek	5	A	-	2	80%
	6	A	-	3AP	20%
Gammil	6	A	-	3T	60%
	5	A	-	2AT	40%

Table 1: Agricultural Capability and Soil Locations

with these amendments the subject property could support a range of soil-bound horticultural crops, including grapes.

Covenant LA37464

A restrictive covenant is registered in favour of the neighbouring property (2398 Hayman Road) on the southeast portion of the subject lands (Figure 4 and 5). Section 2b states that the natural grade of the ground surface within the Covenant area will not be altered. As such, fill cannot be placed within the identified covenant area unless discharged or modified by the applicant and neighbouring property owner.



Figures 4 and 5: No Disturb Covenant Area

The applicant has gathered written consent from the neighboring property shown above. The two landowners have agreed to amend the covenant on the property to allow for fill placement in the No Disturb Covenant Area, with some fill being placed onto the Western portion of the neighbouring property of 2398 Hayman Road (Attachment 1). The applicant has stated he will go through the legal process of amending the covenant before fill placement.

Referral Responses

Agricultural Advisory Committee (AAC)

The application was brought to the AAC on March 29th, 2023. The AAC provided a motion in support for the file. The AAC did raise some concerns that were subsequently addressed by the applicant and their consultants. Highlights of the discussion and the subsequent responses include:

1. **Would there be issues with frost pockets? What are the potential impacts on neighboring properties from your fill placement?** The applicant states that he will have his pockets smoothed out and fill added with the corresponding slope, this will allow greater airflow through the property. Having depressions smoothed out should eliminate cold pockets that happen naturally when the sun sets on the North end of the hills. The applicant believes the neighbors to the North will have a net benefit from the placement of fill. Ecoscape states that they cannot comment on the impacts of frost pockets on neighbouring properties, as they have not conducted

assessments on those properties specifically. Ecoscape followed by saying that would involve an area-wide study which is not typically done within the scope of an agricultural assessment at the parcel scale.

2. **It would be beneficial to talk to surrounding neighbors as a courtesy. Let them know your plans.** The applicant has spoken to all the immediate neighbors of 2402 Hayman Road and let them know of the proposed work. The applicant plans on speaking to the rest of the neighborhood not adjacent to the property.
3. **Is it necessary to bring in the fill, could the property just be contoured?** The applicant's agent believes it crucial to elevate the existing frost pockets. Some contouring can take place.
4. **Do you know where the fill is coming from?** The applicant's agent has indicated that without an approved permit it is impossible to plan, there are some large projects planned in the area (Lakeview Residences) that could be applicable. All fill would be required to meet the standards of the ALC, Contaminated Sites Regulation, and the new provincial Soil Relocation Regulation. The detailed procedures for verifying that fill meets these standards are outlined in the Agricultural Assessment.

CONCLUSION

The Agricultural Assessment prepared by Ecoscapes states, "The property is well suited for agricultural development, specifically a vineyard and winery operation" and that "with due diligence and the appropriate mitigation measures in place, the risk for adverse impacts to the agricultural capability and the environment can be appropriately mitigated" (Attachment 2).

Staff recommend that Council support the proposed NOI application and forward it to the Agricultural Land Commission for consideration subject to the conditions noted above. The proposal is consistent with the Zoning Bylaw and the Official Community Plan. Temporary localized impacts are anticipated on the adjacent properties, and the proposed works will enhance the overall agricultural capabilities of the land.

Alternate Resolution:

1. **THAT** Council postpone consideration of (A 21-06).

Should Council postpone consideration of the proposed amendment bylaw, further direction to staff on how to proceed is requested.

2. **THAT** Council consider and resolve to direct staff to forward the Notice of Intent for the placement of ~84,000 m³ of fill on ~34,000 m² of land in the ALR (File: A 21-06) for the property located at 2402 Hayman Road to the Agricultural Land

Commission for formal consideration without resolution subject to the following conditions:

- that a Soils Deposition Permit including necessary stormwater management be issued by the City of West Kelowna; and
- The Covenant be amended to allow the alteration of land in the no-disturb area.

Should Council choose this motion, a local government report will be sent to the ALC advising that Council does not wish to support or deny the application. By forwarding the application, Council is deferring to the ALC for a formal decision.

3. **THAT** Council not support the Notice of Intent for the placement of ~85,000 m³ of fill on ~34,000 m² of land in the ALR (File: A 21-06) for the property located at 2402 Hayman Road; and

THAT Council direct staff to close the file.

Should Council choose this motion, the file will be closed and the ALC will be advised that the application did not receive a motion to proceed. The applicant would need to wait six months before submitting a revised application.

REVIEWED BY

Chris Oliver, Planning Supervisor

Brent Magnan, Director of Development Approvals

Corinne Boback, Legislative Services Manager / Corporate Officer

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes No

Attachments:

1. Site Plan
2. Agricultural Assessment