



**OIL AND GAS DEVELOPMENT IN THE AGRICULTURAL LAND RESERVE (ALR):
THE NON-FARM USE OF AGRICULTURAL LAND**

**AN HISTORICAL OVERVIEW OF THE AGRICULTURAL LAND COMMISSION'S POSITION
REGARDING OIL AND GAS ACTIVITIES IN THE ALR**

Note to Reader: It is important to note that the *Agricultural Land Commission Act, SBC 2002, Chapter 36* and ALL prior iterations of the agricultural land preservation legislation provided that activities associated with oil and gas developments are non-farm uses requiring the approval of the ALC.

Approximately half of the land in the ALR is within the north region of BC with the majority of the ALR in the northeast. The Agricultural Land Commission (ALC) has long viewed the majority of oil and gas activities in the ALR as being “temporary” in nature and vitally important to the economic wellbeing of British Columbia. Since 1976 the ALC has worked collaboratively with industry to develop a process of allowing the non-farm use of land in the ALR for oil and gas activities without the need of an application.

How then, did the ALC reconcile this accommodation to the oil and gas industry when one of the purposes of the legislation is to preserve agricultural land? The fundamental answer to this question is that the ALC has, and continues to view the land use as temporary, albeit likely long term, and its accommodation was predicated on the commitment from industry to restore the land back to an agricultural standard equal to, or better than, that which existed prior to development.

1976 – 1982 (GENERAL ORDER #4473/76)

On August 19, 1976 the ALC passed its first “General Order” specific to oil and gas development in the ALR. A General Order was used by the ALC to accommodate certain land uses in the ALR and exempting the ALR application process. The General Order resulted in an accommodation, or benefit, to the oil and gas sector by relieving industry of the need to undertake the ALR application process. In essence, the ALC facilitated a streamlining of the overall complexity of the oil and gas development approval processes by removing its layer of approval.

General Order #4473/76 was specific to oil and gas well sites, gathering and flow lines. The order contained the following statement and resolution:

“AND WHEREAS THE Provincial Land Commission, while it is concerned with the preservation of agricultural land and the farming community, does not wish to unduly restrict exploration for, production of, or gathering into collector systems of oil and natural gas.”

“NOW THEREFORE I hereby certify that the Provincial Land Commission, BY Resolution #447376, dated the 19th day of August, 1976, made an Order of general application to all land within the designated Agricultural Land Reserve Plan of the Peace

River-Liard Regional District to the effect that oil and gas sites and ancillary buildings and equipment occupying an area less than 2 acres, exploratory sites and ancillary buildings and sump pumps, and required road and gathering and flow line rights-of-way be allowed, provided that the well site or exploratory site is rehabilitated to its original or better topographical and soil conditions when abandoned and any pipeline that is constructed for gathering purposes does not unduly restrict the agricultural use of the land and that during construction of the pipeline the topsoil is conserved and replaced on the surface of the trench when the pipeline is backfilled.”

General Order #4473/76 provided a benefit to the oil and gas industry by eliminating the ALR application process for:

- oil and gas sites and ancillary buildings and equipment occupying an area less than 2 acres;
- exploratory sites and ancillary buildings and sump pumps; and
- road and gathering and flow line rights-of-way.

1982 – 1995 (GENERAL ORDER #132/82)

The ALC created a new General Order in 1982 to reflect amended and new legislation administered by the ALC and additional guidelines prepared by the Ministry of Energy, Mines and Petroleum Resources regarding the construction and cleanup of roads, leases and service lines in petroleum exploration areas. Like General Order #4473/76 the new order (General Order #132/82) was based on the ALC’s view that the land use was temporary and on the requirement of the ALC and commitment from industry to restore the land back to an agricultural standard equal to or better than that which existed prior to development. Once again the ALC stated:

“AND WHEREAS THE Provincial Land Commission, while it is concerned with the preservation of agricultural land and the farming community, does not wish to unduly restrict exploration for, production of, or gathering into collector systems of oil and natural gas.”

General Order #132/82 established more specifics around site development and reclamation standards. The order also resulted in expanded benefits to the oil and gas sector by more than doubling the area of oil and gas sites and ancillary buildings and equipment from less than 2 acres (0.8 ha) to 2.0 ha.

1995 - 2004 (GENERAL ORDER #293/95)

The ALC created a new General Order in 1995 (General Order #293/95). With the adoption of this order the following processes were in place to deal with oil and gas activities in the ALR:

1. The Commission allowed oil and gas development to proceed without an application if a number of conditions were satisfied. The General Order applies to Peace River Regional District and Fort Nelson-Liard Regional District (now Northern Rockies District Municipality). General Order #293/95 set out the following:

- Uses that are exempted from making an application to the ALC, including:
 - Geophysical exploration for oil and gas;
 - Pipelines less than 5 kilometers in length;
 - 2 well sites per quarter section on new surface leases (and associated access roads) to a maximum area of 5 ha; and
 - A new well on an existing surface lease where the site has already been disturbed.
- Conditions of the exemption including reporting requirements; and
- Enhanced reclamation standards.

2. Delegation to the CEO

The ALC continued to require applications for oil and gas related non-farm uses not exempted by General Order #293/95. However, from 1995 to 1997 the majority of these non-farm use applications were approved by the ALC. As a result, in 1997 the ALC delegated its decision-making regarding these applications to its Chief Executive Officer (CEO). Delegation to the CEO streamlined the non-farm use application process and significantly reduced the application response time to oil and gas producers for the following:

- The 3rd or more well sites;
- Pipelines longer than 5 kilometers;
- Combined oil and gas development beyond 5 has per quarter section of land;
- All battery, compressor, production or processing facilities;
- Change in use of a surface lease; and
- All waste management facilities.

2002 (AMENDMENT TO AGRICULTURAL LAND COMMISSION ACT)

New legislation and regulation came into force on November 1, 2002. Section 26 of the *Agricultural Land Commission Act* was amended to provide the ALC with the ability to delegate decision making powers to an “authority”. An authority is defined as “*an agent of the government, a public body or public officer*” with whom the Commission has an agreement under sections 26(1)(b) or 38.”

Under subsection 26(2) the ALC was also provided with the ability, through a delegation agreement with an authority, to exempt certain non-farm use applications.

2004 – ALC ENTERS INTO A DELEGATION AGREEMENT WITH THE OIL AND GAS COMMISSION (OGC)

In 2003 the ALC and the OGC as an “authority”, entered into negotiations regarding a delegation agreement pursuant to section 26 of the *Agricultural Land Commission Act*. The delegation agreement was completed in 2004 at which time the agreement replaced both General Order 293/95 and the delegation of decision making to the CEO regarding

oil and gas development. The oil and gas industry benefitted as additional development exemptions were placed in the delegation agreement.

The following outlines the main parts of the agreement.

1. Delegation of Oil and Gas Non-Farm Use Decisions

Delegation of decision making authority for specific non-farm uses provides the authority to the OGC to make decisions based on an ALR application for uses that include those that the ALC CEO was previously delegated to decide. These uses include:

- 4th stand alone well site per quarter section of land;
- Batteries, compressor stations, drilling and production waste handling, produced water and gas handling or processing facilities the combined area occupied by associated buildings & structures on the quarter section or equivalent area is less than 450 m²;
- Change in use of a surface lease to one of the above uses; and
- Electrical power lines not adjacent to an access road.

2. Exemptions for Non-Farm Oil and Gas Uses

OGC oversight of oil and gas uses exempted from the requirement to submit an application are:

- Geophysical exploration;
- Pipelines and surface facilities directly related to the operation of a pipeline (no length restriction as was in the General Order 293/95);
- Up to 3 stand alone wells per quarter section of land (1 more well per quarter section of land than was provided in General Order #293/95 as the ALC allowed all 3rd well site applications);
- New well on an existing site; and
- Electrical power lines adjacent to an access road.

2013 –UPDATED DELEGATION AGREEMENT WITH THE OIL AND GAS COMMISSION (OGC)

- In 2013 the ALC and the OGC signed an updated version of the delegation agreement.
- The updated agreement has the same components and processes as the previous agreement.
- A pre-development site assessment is required to help ensure soil conservation and effective reclamation potential.
- Industry must plan the location of activities to have minimum impact on agricultural use of the land; e.g. avoiding higher quality lands and siting facilities and works on non cultivated lands.

- Oil and gas Activity applications, where required are streamed as Exempt from ALC Act decision or requiring an application & decision under ALC Act by the OGC.
- Industry must provide a reclamation report to confirm sites are reclaimed

CUMMULATIVE BENEFITS OF GENERAL ORDERS AND THE ALC/OGC DELEGATION AGREEMENT ON THE OIL AND GAS INDUSTRY

From 1976 to today, the ALC has consistently recognized that the significant economic contributions of the oil and gas industry are vitally important to economic wellbeing of British Columbia. The various iterations of its General Orders and the current ALC/OGC delegation agreement are proof of the ALC's acknowledgement of the importance of the oil and gas industry. Beginning in 1976, the ALC weighed the importance of the oil and gas sector to the provincial economy with the provincial policy of agricultural land preservation and attempted to strike a balance. Based on the belief that most land uses associated with oil and gas developments are temporary and that once completed, the land can be restored to an agricultural standard, the ALC successively and cumulatively granted industry relief from the restrictions on land use contained in the legislation. The cumulative benefits to the oil and gas industry from the ALC's accommodations on oil and gas activities in the ALR have been substantial.

CUMMULATIVE IMPACTS OF OIL AND GAS ACTIVITIES ON THE ALR

It is important to note that oil and gas activities collectively represent the largest non-farm use of land in the ALR. Also, these non-farm uses are generally established in accordance with the requisite needs of the oil and gas producers; the agricultural quality of the land has not, until recently, been a factor heavily relied on when choosing development sites.

The importance of the oil and gas sector in British Columbia was recognized by the ALC in the early 1970s. While the agricultural land base has generally remained stable over the last 40 years, the growth of the oil and gas sector has experience significant growth and technological advancement. With a generally static ALR, the substantial growth of the oil and gas sector has significantly increased its non-farm footprint on agricultural land. While the ALC has consistently viewed the non-farm use of land by the oil and gas sector as temporary, but long term, it is quite likely that facilities developed in 1976 are still in place. The combination of the long term nature of oil and gas activities, expanding domestic, national and international markets and new technology have resulted in an increased demand for access to agricultural land. It is not anticipated that this demand will abate; it is more likely that continued growth will be the norm.

CONCEPT OF DELEGATION

It is important to be crystal clear about delegation. Delegation of authority means the transferring of powers and authority vested in one body to another. Delegation involves entrusting some other decision maker or decision making body to do things which by statute are the responsibility of another body. The decision of the delegated decision

maker is treated as if it is the decision of the original decision maker. This is confirmed in the *Agricultural Land Commission Act* where s. 26(5) provides that the decision of the local government, first nation government or an authority is a decision of the ALC for the purposes of the *Agricultural Land Commission Act*.

Once the ALC delegates its powers, the delegate becomes the decision-maker, and the ALC cannot legally interfere in particular decisions unless the delegation agreement allows it to. However, because the ALC is the body that made the delegation, it will remain politically and morally accountable for the decisions of the delegate, and the delegation agreement generally.

Given that it is the ALC that is charged with the statutory mandate, a delegation “agreement” should not be viewed as an agreement between equals. It remains a mechanism for achieving the purposes of the *Agricultural Land Commission Act* and not a means to circumvent those purposes which are:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

In light of these purposes, the ALC will continue to work collaboratively with the OGC and industry to ensure the interests of agriculture are addressed. The ALC will also look to strengthen its oversight regarding the administration of the Delegation Agreement.

END

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