



July 19, 2012

Agricultural Land Commission

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Burnaby, British Columbia V5G 4K6
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ALC File: #45630 (38697)

Mr. and Mrs. Murakami
191 Rainbow Road
Saltspring Island, BC, V8K 2M3

Personally Served to Richard & Rose Murakami

Dear Sir or Madame:

Re: Order of the Chief Executive Officer

PID: 001-478-079

Legal: LOT 1, SECTION 1, RANGE 3 EAST, NORTH SALT SPRING ISLAND, COWICHAN DISTRICT, PLAN 28814

PID: 003-910-725

**Legal: LOT 2, SECTION 1, RANGE 3 EAST, NORTH SALT SPRING ISLAND, COWICHAN DISTRICT, PLAN 17153
(the "Properties")**

I have reviewed the information relating to the matter of non-compliance at the above properties and provide the following information;

Information relating to the following unauthorized non-farm uses came to the attention of this office on June 10, 2009;

- The storage of vehicles, wrecks, or partially dismantled vehicles, including automotive parts, tires or other vehicular components
- The crushing, demolition or salvaging of materials from the vehicles
- The operation and use of the property for the purposes of conducting or allowing the operation of an automotive recycling and salvaging business

Commission Officials have confirmed the unauthorized activities noted above.

Based on the foregoing, I consider that the following registered owner of said lands and the occupier are contravening or are about to contravene the provisions of the Act and/or Regulations.

Registered Owners

RICHARD KATSUhide MURAKAMI,
TAKAKO ROSE MURAKAMI,
YORIHIDE BRUCE MURAKAMI,
ALICE TANAKA MURAKAMI

Therefore, as Chief Executive Officer I hereby pass an Order

- A. That you cease all activities in furtherance of the Automotive Salvaging and metal recycling
- B. That you cease operating, or permitting the operation of, all uses, namely
 - a. Storage of unlicensed vehicles on the properties not registered to any of the Registered Land Owners
 - b. Storage of wrecked vehicles, non-running vehicles, or partially dismantled vehicles
 - c. Storage, crushing, dismantling of all vehicles, vehicle parts
- C. Remove all the unlicensed, wrecked, partially dismantled vehicles, automotive parts, scrap tires and other related debris
- D. Provide to the Commission a report by a Qualified Professional Agrologist, with a background in soil sciences, confirming the current agricultural capability of the properties.

I have verified that the Commission has not authorized any of the previously mentioned registered land owners or the occupier permission to conduct these activities within the lands as outlined in red on the Attachment "A"

ACCORDINGLY, PURSUANT TO SECTION 50 OF THE ACT, I HEREBY ORDER THAT YOU AND YOUR AGENTS, REPRESENTATIVES, EMPLOYEES AND ANY OTHER PERSONS ACTING ON YOUR BEHALF TO IMMEDIATELY CEASE ALL ACTIVITIES ASSOCIATED WITH , ON THE PROPERTY;

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN A PENALTY OF UP TO \$100,000.

Section 37 of the Agricultural Land Commission Regulations state:

(1) A person who is the subject of a determination, decision or order under section 50, 52, or 54 (1) of the Act may appeal the determination, decision or order by delivering to the commission a written notice of appeal in a form acceptable to the commission.

(2) The notice of appeal under subsection (1) must include the grounds for the appeal and the relief requested and must be delivered to the commission not more than 60 days after the written determination, decision or order is personally served on the person.

Furthermore I have attached the relevant sections of the act and Regulations and the commissions

In conclusion, I draw your attention to section 55 of the *Agricultural Land Commission Act* which provides you with the ability to appeal this order. A notice of appeal must be delivered to the Commission not more than 60 calendar days after the written determination, decision, order or penalty is personally served. I have enclosed a copy of the Commission's *Practice Directives* regarding appeals. Please note that the 60 day appeal period does not relieve you of the responsibility to comply with the terms of this order.

Sincerely,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Richard Bullock', is written over the typed name below.

Richard Bullock, Chief Executive Officer

cc: Miles Drew, Islands Trust – Bylaw Enforcement Officer
Chris Lott, McKim & Lott 9830 Fourth Street, Sidney, BC

Enc: Practice Directives – Appeals

Attachment “A”



Practice Directive of the Agricultural Land Commission relating to appeals of compliance and enforcement orders issued under the *Agricultural Land Commission Act* [Jan. 27, 2005]

This practice directive is issued under Section 12 of the *Administrative Tribunals Act*. It sets out the usual time periods and procedural steps for filing an appeal under Section 55 of the *Agricultural Land Commission Act* (the Act) of an official's or the chief executive officer's determination, decision, order or penalty issued under Section 50, 52 or 54(1) of the Act. It also sets out the usual time period for release of the Commission's final decision on the appeal and its reasons.

1. Timeline for filing a notice of appeal

- 1.1 A notice of an appeal of a determination, decision, order or penalty made under Section 55 of the *Agricultural Land Commission Act* must be delivered to the Commission not more than 60 calendar days after the written determination, decision, order or penalty is personally served on the person.
- 1.2 It is the responsibility of the appellant to make sure that the notice of appeal is fully and properly completed, including the grounds for the appeal and the relief requested, by any filing deadline.

2. Acknowledging receipt of a notice of appeal

- 2.1 The Commission will acknowledge receipt of a notice of appeal by sending the appellant a written confirmation, within 10 business days after receiving the appeal and that confirmation will be sent by ordinary mail, fax or email to the location, number, or address set out in the appeal.
- 2.2 Confirmation of receipt of the notice of appeal does not mean that the notice has been filed within the specified time limit or that all the requirements of the appeal have been met.

3. Notifying other parties of receipt of a notice of appeal

- 3.1 The Commission will send a written confirmation of receipt and a copy of the notice of appeal to the other parties, including any persons the Commission considers are affected by the appeal, within 10 business days after receiving the notice of appeal.
- 3.2 Persons the Commission considers are affected by the appeal are intervenors to the appeal and may participate in the appeal hearing.
- 3.3 That confirmation and a copy of the notice of appeal will be sent by ordinary mail, fax or email to the other parties' and intervenors' location(s), number(s), or address(es).

4. Determining if all preliminary filing requirements have been met

The Commission will review the notice of appeal within 10 business days after receiving the appeal to determine if it appears to have been filed within the applicable time limit and if it appears to meet any other filing conditions or requirements.

Practice Directive of the Agricultural Land Commission relating to appeals of compliance and enforcement orders issued under the *Agricultural Land Commission Act* [Jan. 27, 2005]

5. Notice of defect in an appeal

- 5.1 If the notice of appeal appears to not be filed within the applicable time limit or to not meet any other filing condition or requirement, the Commission will send a written notice to the appellant within 10 business days of its review.
- 5.2 The notice will be sent by ordinary mail, fax or email to the location, number, or address set out in the notice of appeal and a copy of the notice will also be sent to any other parties to the appeal.
- 5.3 The notice may also set out any steps the appellant may be able or required to take to properly complete the appeal, and any time limit for that to be done.

6. Appellant and parties to submit summaries of the evidence and submissions, prior to the appeal hearing

Unless the Commission sets different requirements in an appeal, the appellant and all parties, including intervenors, are required to send to the Commission and to any other parties specified by the Commission:

- a brief written statement of what the appellant or the party intends to submit to the Commission about the appeal,
- a list of the names of any persons the appellant or the party may ask to give evidence to the Commission,
- a brief written summary of what they expect that person will have to say about the appeal,
- copies of any documents they may be referring to at the hearing, at least 15 business days before the appeal hearing.

7. Hearing to be scheduled

- 7.1 The Commission will make its best efforts to set a date for hearing the appeal within 20 business days of the notice of appeal being filed.
- 7.2 The Commission will decide if the hearing will be in person, by telephone or by other means acceptable to all the parties and will advise the appellant and each party of when, where and how they can participate in the hearing, at least 15 business days before the hearing.
- 7.3 Notice of the hearing will be sent to the appellant and each party by ordinary mail, fax or email to the location(s), number(s), or address(es) set out in the appeal or as the appellant or the parties may advise.

8. Final decision to be made and sent

- 8.1 The Commission will make its best effort to make its final decision within 20 business days after the hearing is completed and will give written reasons for the decision.
- 8.2 Written notice of the decision will be sent to the appellant and each party within 10 business days of the decision being made, by ordinary mail, fax or email to the location, number, or address set out in the appeal or as the appellant or the parties may advise.

AGRICULTURAL LAND COMMISSION ACT

Definitions

1 (1) In this Act:

"official" means the chief executive officer and any employee of the commission or a person employed under the *Public Service Act* who is designated by name or title by the chief executive officer to be an official;

Inspections

- 49 (1) For the purposes of administering this Act or of ensuring compliance with this Act, the regulations or an order of the commission, a member of the commission or an official may do one or more of the following:
- (a) enter any land, other than a dwelling house;
 - (b) make any surveys, analyses, inspections, examinations or soil tests that are necessary to determine any of the following:
 - (i) the current use of the land;
 - (ii) the suitability of the land for farm use;
 - (iii) the potential impact of proposed changes to the use of the land on land in an agricultural land reserve;
 - (c) remove soil samples for the purposes of conducting the analyses and tests referred to in paragraph (b);
 - (d) make any inspection of records, things or activities reasonably related to the purpose of the inspection;
 - (e) make copies of any records or documents reasonably related to the purpose of the inspection.
- (2) A person who hinders, obstructs, impedes or otherwise interferes with a person exercising a power under subsection (1) commits an offence.

Stop work order

- 50 If an official considers that a person is contravening or is about to contravene a provision of this Act or the regulations, the official, in accordance with the regulations, may order that
- (a) the contravention cease,
 - (b) the contravention cease to the extent specified by the order, or
 - (c) the person not take any action that would result in a contravention.

Power to rescind or vary orders

- 51 The chief executive officer may rescind or vary any determination, decision or order made by the chief executive officer or an official under section 50, 52 or 54
- (a) on new information being provided to the chief executive officer,
 - (b) if the chief executive officer determines that there were insufficient grounds for making the determination, decision or order, or
 - (c) if the chief executive officer considers that it would be in the best interests of the administration of this Act.

AGRICULTURAL LAND COMMISSION ACT

Determinations and remediation orders

- 52 (1) If the chief executive officer determines that a person has contravened this Act, the regulations or an order of the commission, the chief executive officer, in accordance with the regulations, may order the person to remedy the contravention by
- (a) carrying out a requirement of this Act or the regulations that the person has failed to carry out, or
 - (b) repairing or mitigating damage caused to agricultural land by the contravention, including the removal of buildings or structures.
- (2) If a person fails to comply with an order under subsection (1), the chief executive officer, in accordance with the regulations, may do one or more of the following:
- (a) in a written notice given to the person, restrict or prohibit the person from carrying out the work referred to in the order;
 - (b) require the person to provide the security that the chief executive officer considers necessary and realize on that security;
 - (c) carry out all necessary work.
- (3) A person referred to in subsection (2) is liable to the commission for costs incurred by the commission under this section.

Order for compliance

- 53 (1) The commission may apply to the Supreme Court for an order under subsection (2) if the commission considers
- (a) that a person is not complying, or has not complied, with a determination, a decision or an order under section 50, 52 or 54 (1),
 - (b) that a person is not complying with an order of the commission, or
 - (c) that a present or future activity or use of agricultural land in an agricultural land reserve may contravene this Act, the regulations, an order of the commission or a determination, a decision or an order under section 50, 52 or 54 (1).
- (2) On application by the commission under this section, the Supreme Court may make one or more of the following kinds of orders:
- (a) directing the person to comply with the determination, decision or order;
 - (b) directing the person to cease violating the determination, decision or order;
 - (c) restraining the person from violating the determination, decision or order;
 - (d) if the person is a corporation, directing the directors and officers of the corporation to cause the corporation to comply with an order under this section.

Penalties levied by chief executive officer

- 54 (1) The chief executive officer, in accordance with the regulations, may levy a penalty up to the prescribed amount against a person who contravenes this Act, the regulations or the orders of the commission.
- (2) The time limit for levying a penalty against a person under subsection (1) is 3 years after the facts on which the penalty is based first came to the knowledge of the chief executive officer.

AGRICULTURAL LAND COMMISSION ACT

Appeal

- 55 (1) A person who is the subject of a determination, a decision, an order or a penalty under section 50, 52 or 54 (1) may appeal the determination, decision, order or penalty to the commission by serving the commission with a notice of appeal.
- (2) On an appeal under this section, the commission may
- (a) confirm or reverse the determination, decision, order or penalty, or
 - (b) refer the matter, with or without directions, back to the person who made the initial determination, decision or order.
- (3) The commission must give notice of an appeal to any person the commission considers is affected by the appeal.
- (4) [Repealed 2004-45-65.]
- (5) For the purposes of an appeal under this section, sections 11 to 15, 17 to 21, 23 to 25, 31 (1) (a) to (e) and (g), (2) and (3), 32, 33, 35 to 37, 39, 40, 44, 48, 50 to 55, 57, 58, 60 (a) and (b) and 61 of the *Administrative Tribunals Act* apply to the commission.

Offences

- 57 (1) A person commits an offence and is liable on conviction to a fine not exceeding \$1 million or imprisonment for not more than 6 months, or to both, who contravenes the following:
- (a) an order of the commission;
 - (b) section 20 (1);
 - (c) a covenant referred to in section 22;
 - (d) section 49 (2);
 - (e) a stop work order under section 50;
 - (f) a remediation order under section 52.
- (2) The maximum fine under subsection (1) to which a person is liable on a second or subsequent conviction is double the amount set out in that section.
- (3) A proceeding, conviction or penalty under this section does not relieve a person from a penalty under another section or from any other liability.
- (4) A person commits an offence who
- (a) without lawful excuse intentionally interferes with,
 - (b) without lawful excuse intentionally fails to comply with a lawful requirement of, or
 - (c) intentionally makes a false statement or misleads or attempts to mislead, the chief executive officer, a member of the commission, an official or an employee or a consultant of the commission appointed under section 8.
- (5) If a corporation contravenes this Act or the regulations, a director or officer of it who authorized, permitted or acquiesced in the contravention also commits the contravention.
- (6) Section 5 of the *Offence Act* does not apply to this Act.

AGRICULTURAL LAND RESERVE USE, SUBDIVISION AND PROCEDURE REGULATION

Penalties

- 35 (1) Before the chief executive officer levies a penalty under section 54 of the Act, the chief executive officer must consider all of the following:
- (a) any contravention of a similar nature by the person;
 - (b) the gravity and magnitude of the contravention;
 - (c) whether the contravention was deliberate, repeated or continuous;
 - (d) whether there was an economic benefit derived by the person from the contravention;
 - (e) the person's cooperativeness and efforts to correct the contravention;
 - (f) the degree to which the contravention detrimentally affected or impaired the agricultural capability of the land or its suitability for farming.
- (2) The penalty which the chief executive officer may levy is in the complete discretion of the chief executive officer, but must not exceed \$100 000 for any single contravention.
- (3) The maximum penalty which the chief executive officer may levy for a second or subsequent contravention is double the amount of the penalty levied for the first contravention.
- (4) If the chief executive officer levies a penalty under section 54 of the Act against an owner of agricultural land, the chief executive officer must give the owner a notice setting out all of the following:
- (a) the nature of the contravention;
 - (b) the amount of the penalty;
 - (c) the date by which the penalty must be paid;
 - (d) a description of the owner's right to appeal the penalty.

Delivery of order under section 50, 52 or 54 of the Act

- 36 If the commission, chief executive officer or an official issues an order under section 50, 52 or 54 of the Act, the order must be delivered by registered mail or personal service.

Administrative appeals

- 37 (1) A person who is the subject of a determination, decision or order under section 50, 52, or 54(1) of the Act may appeal the determination, decision or order by delivering to the commission a written notice of appeal in a form acceptable to the commission.
- (2) The notice of appeal under subsection (1) must include the grounds for the appeal and the relief requested and must be delivered to the commission not more than 60 days after the written determination, decision or order is personally served on the person.

AGRICULTURAL LAND RESERVE USE, SUBDIVISION AND PROCEDURE REGULATION

- (3) The commission may establish procedures for the conduct of appeals including rules for the eligibility of intervenors, the admission of evidence and the form and content of written submissions.
- (4) The commission must hold a hearing to consider the appeal.
- (5) The commission must make a decision promptly after the hearing and serve copies of the written decision on the parties and any intervenors.

Powers of commission, chief executive officer and designated official

38 Under this regulation, if the commission, chief executive officer or a designated official is empowered to establish a condition or requirement, the commission, chief executive officer or designated official is also empowered to establish the manner and timing for carrying out the condition or requirement.