



AGRICULTURAL LAND COMMISSION FILE 66884

REASONS FOR DECISION OF THE AGRICULTURAL LAND COMMISSION

Inclusion Proposal Initiated Under s.17(1) of the *Agricultural Land Commission Act*

Properties:

Property 1:

Parcel Identifier: 014-120-321

Legal Description: South West Quarter, Section 34,
Township 7, New Westminster District

Civic: 19233 40 Ave, Surrey, BC

Area: 66.24 ha

Property 2:

Parcel Identifier: 014-119-129

Legal Description: North Half of the North West Quarter
of the North West Quarter, Section 27, Township 7, New
Westminster District

Civic: 3948 192 St, Surrey, BC

Area: 8.28 ha

Property 3:

Parcel Identifier: 014-120-178



Legal Description: South Half of the North West Quarter of the North West Quarter, Section 27, Township 7, New Westminster District

Civic: 3884 192 St, Surrey, BC

Area: 8.27 ha

Property 4:

Parcel Identifier: 014-120-224

Legal Description: South Half of the West Half of the North West Quarter, Section 27, Township 7, Except: South 33 Feet, New Westminster District

Civic: 19305 36 Ave, Surrey, BC

Area: 16.03 ha

Property 5:

Parcel Identifier: 014-120-291

Legal Description: North Three-Quarters of the East Half of the North West Quarter, Section 27, Township 7, New Westminster District

Civic: 19498 40 Ave, Surrey, BC

Area: 24.79 ha

Owner of Properties: Government of Canada



Commission: Jennifer Dyson, Chair
Andrew Adams
Erin Carlson
Joe Deuling
Jolleen Dick
Susan Gimse
Wayne Harris
Bob Haywood-Farmer
Karen McKean
Richard Mumford
Danna O'Donnell
Brenda Schoepp
Holger Schwichtenberg
Ione Smith
Janice Tapp
Jerry Thibeault
Gerry Zimmermann

OVERVIEW

- [1] In October 2022, the Agricultural Land Commission (the “Commission” or “ALC”) resolved to initiate a proposal under s. 17(1) of the Agricultural Land Commission Act (“ALCA”) to consider including 123.6 ha of land comprised of the 5 properties in the City of Surrey (the “Properties” or the “Lands”) into the Agricultural Land Reserve (“ALR”) (the “Proposal”).
- [2] The Properties are located in the Campbell Heights area of the City of Surrey, bounded by 192 St (west), 36 Ave (south), and the Township of Langley municipal boundary (east). The Lands border private ALR lands to the north, and the Campbell Heights business park to the south and west.
- [3] The Properties are owned by the Government of Canada and were historically held for federal communication/defence purposes. The Government of Canada has determined that the Properties are surplus to its needs and, in 2017, initiated a process to dispose of the Properties in accordance with federal disposition procedures. As of the date of this decision, that process is not complete.
- [4] The Properties were not designated as ALR land when the ALR was established in the early 1970s, though the Properties are currently zoned for agricultural use under City of Surrey Zoning Bylaw No. 12000. Portions of the Lands have been leased to local producers for agricultural use dating back to the 1970s, and approximately 89 ha of the subject Lands are currently cultivated with field vegetable crops.

- [5] The City of Surrey Official Community Plan (OCP) and Metro Vancouver Regional Growth Strategy contemplate future Mixed Employment uses on the Properties (i.e. Business or Technology Park), similar in nature to adjacent lands to the southwest in the Campbell Heights business park.
- [6] Community interest in preserving the Properties' agricultural use resulted in a July 2022 resolution from City of Surrey Council expressing support for redesignating the Properties as 'Agricultural' as part of the City's OCP review process scheduled to take place in 2023. As of the date of this decision, the 'Mixed Employment' OCP designation remains in place.
- [7] Recognizing the longstanding agricultural use of the Properties, and the potential for future changes in land use under current local land use policy if or when the Properties are transferred to another owner, the Commission resolved to initiate the Proposal to consider the inclusion of the Properties into the ALR.
- [8] Should the transfer of the Properties result in the Lands no longer being federal lands, their inclusion in the ALR would make them subject to the ALCA and its regulations, including restrictions on their use and subdivision, regardless of local bylaws.

- [9] On November 9, 2022, the ALC advised the Government of Canada (as registered owner of the Properties) by registered mail that the Proposal had been initiated.
- [10] In December 2022 and January 2023, the ALC undertook various procedural requirements prescribed by the ALCA and ALR General Regulation, including advising affected local governments, posting signage and newspaper notices, and scheduling a public hearing for January 23, 2023. Additionally, a dedicated page containing the Proposal information was created on the ALC website to provide information to the public.

LEGISLATIVE CONTEXT

- [11] The Proposal was initiated and considered in the context of the Commission's purposes and priorities as 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.

[12] Section 15(1) of the ALCA states the following:

15 (1) For the purposes of section 6, the commission may designate land, including Crown land, as agricultural land if the commission is satisfied that the land is suitable for farm use.

[13] Additionally, s. 17(1) of the ALCA states:

17 (1) Subject to subsection (1.1), if the commission considers that an approval under this subsection carries out the intent of this Act, the commission may approve the inclusion in the agricultural land reserve

- (a) on the commission's own initiative, of any land,
- (b) on application of a local government, of land within the local government's jurisdiction, and
- (c) on application of a first nation government, of land within the first nation's settlement lands.

[14] In weighing the Proposal, the Commission must therefore consider first, whether the Properties are suitable for farm use, and second, whether inclusion of the Properties in the ALR would carry out the intent of the ALCA (or, in the language of s. 15(1), is for the purposes of s. 6 of the ALCA). The second consideration requires the application of the statutory purposes of the Commission as set out in s. 6 of the ALCA.

EVIDENTIARY RECORD

[15] On January 23, 2023, the ALC held a public hearing at Kwantlen Polytechnic University Auditorium in Langley (the “Public Hearing”) in accordance with s. 17(2) of the ALCA. Written submissions on the Proposal were accepted until the date of the Public Hearing. Following the event, the Commission adjourned the Public Hearing for the limited purpose of receiving submissions from the City of Surrey, affected First Nations, and the Government of Canada.

[16] A total of 395 submissions were received/heard, included 351 written submissions and 44 speakers at the Public Hearing itself.

[17] The Katzie First Nation, Kwantlen First Nation and Semiahmoo First Nation (together “KKS” or the “Nations”) assert Aboriginal title and rights with respect to the Properties. KKS stated in correspondence with the Commission that they have been engaged in a multi-year negotiation process with the Government of Canada with respect to the Properties. KKS

offered to share information about their proposed use of the Properties, the scope of work that had taken place in the negotiation process, and the current status of that process towards concluding an agreement, but sought a non-disclosure agreement with the Commission to protect the sensitive and confidential nature of the negotiation details.

[18] On April 3, 2023, the Commission issued a Confidentiality Order to address the issue of confidentiality. The Commission determined that it would or may be inappropriate to bind itself contractually, through a non-disclosure agreement, with respect to evidence on the record of the Proposal.

However, the Commission found that the proposed KKS information, and materials relating to a written summary of a meeting or meetings with KKS representatives, would be received on a confidential basis as part of the evidentiary record on the Proposal and would not be made available to the public. The Confidentiality Order is not itself confidential.

[19] The Commission subsequently received additional information from KKS, and members of the Commission met with representatives of the Nations on two separate occasions.

[20] The material prepared by ALC staff and posted on the ALC website, and all submissions received by the ALC, including those which are subject to the Confidentiality Order, are collectively referred to as the "Proposal Material".

ANALYSIS AND FINDINGS

Public Hearing Correspondence

[21] Of the 395 submissions received, the vast majority (386) were generally in support of the Proposal, while 5 submissions were opposed. An additional 4 submissions did not clearly support or oppose the Proposal. Most comments in support of the Proposal were submitted from the general public, while submissions were also received from agencies including the BC Agriculture Council, Vancouver Food Policy Council, Surrey Board of Trade, Fraser Health, and Metro Vancouver, among others.

- [22] Common or recurring themes and concerns raised among submissions in support of the Proposal include (in no particular order):
- Desire to preserve the Properties for agricultural use;
 - Opposition to potential redevelopment of the Properties for industrial or commercial use;
 - Limited supply of agricultural land and the potential for permanent loss of the Lands to redevelopment;
 - Benefits of local food production and potential impacts of redevelopment to local/national food supply and food security;
 - Longstanding agricultural use of the Properties by the Heppell family;
 - Current productivity of the Properties and their contribution to the food supply estimated at 30-50 million servings of vegetables annually;
 - Agricultural investments and improvements made to the Properties;

- Unique physical characteristics of the Properties (elevation, drainage, soil quality) that enable early/late season crop production;
- Climate resilience in light of sea-level rise, recent wildfires, drought, and November 2021 floods;
- Preservation of ecological values (habitat, ecosystem services, biodiversity conservation) and green space;
- Potential impacts of redevelopment on drainage capacity and the area's aquifer; and,
- Support of regional and provincial climate and food security policies.

[23] In a resolution dated February 13, 2023, the City of Surrey took the position that it supports the inclusion of the actively farmed portion of the Properties (~89 ha) into the ALR. The accompanying City staff report explains that the remaining 34 ha of forested land on the Properties is not recommended for inclusion due to its moderate to high ecological value.

[24] Submissions in opposition to the Proposal were received from KKS, the Government of Canada, the Greater Vancouver Board of Trade, and the Commercial Real Estate Development Association (NAIOP). Reasons for opposition or general concerns about the Proposal raised in submissions include:

- Shortage of industrial land in the region;
- Long-term economic development and land-use needs of the region;
- Need for a more robust public consultation process involving industry stakeholders;

- Interference with KKS's ongoing negotiations with the Government of Canada regarding disposition of the Properties;
- Impacts on KKS's inherent rights over the Lands;
- ALC's purported lack of jurisdiction to include federally owned land in the ALR; and,
- ALC's responsibility to consult and accommodate KKS.

[25] Some of these concerns raised in opposition to the Proposal are addressed in greater detail below.

Katzie, Kwantlen, and Semiahmoo First Nations Correspondence

[26] The ALC received a letter dated January 6, 2023, from KKS legal counsel expressing opposition to the Proposal. The letter alleges that the ALC lacks jurisdiction to include federal land into the ALR, and explains that the Nations collectively assert Aboriginal title and rights to the Properties and are in an ongoing consultation and accommodation process associated with the federal government's proposed disposition of the Properties. The letter asserts that the Proposal may have a significant impact on KKS's inherent right to benefit economically from their lands, and argues that while the provincial government holds ultimate responsibility for consultation, the ALC as representative and agent of the Crown owes KKS a duty to consult and accommodate them on the inclusion Proposal.

[27] As set out above, KKS representatives met with Commission members on two occasions on a confidential basis.

Government of Canada Correspondence

[28] The ALC received a letter dated February 13, 2023, from legal counsel representing the federal government departments responsible for ownership and management of the Lands: Public Services and Procurement Canada; and Innovation, Science and Economic Development Canada. The letter explains that a disposal process for the Lands has begun and consultations with the Katzie, Kwantlen, and Semiahmoo First Nations have been ongoing. The letter goes on to assert that: *“Federal real property is immune from the application of provincial laws that relate to the use of the property (s. 91(1A) of the Constitution Act, 1867). For this reason, the BC Agricultural Land Commission has no authority to include these lands in the ALR, and such an inclusion would have no effect on Canada’s future use of the lands.”*

Suitability for Farm Use

[29] In considering the Proposal Material, the Commission first assessed whether the Lands are suitable for agricultural use in accordance with s. 15 of the ALCA.

[30] Approximately 89 ha of the Lands is cleared and currently cultivated while the remaining ~34 ha along the north and east boundary is forested. The Lands are generally flat with the exception of steep slopes in the northeast corner where Anderson Creek bisects the Lands, and gentler slopes in the northwest. The northwestern corner of the Lands borders ALR lands to the

north, and if designated as ALR, would adjoin the large, contiguous ALR block within the City of Surrey.

[31] Based on the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system, approximately 91% of the Lands (112.8 ha) is within a polygon rated as improvable to Class 2A. Class 2 land is capable of producing a wide range of crops; minor soil restrictions may reduce capability but pose no major difficulties in management. The limiting subclass associated with this polygon is A (soil moisture deficiency).

[32] The remaining 10.7 ha comprising the northern extent of the Lands is primarily a combination of Classes 2, 3, and 4 land with various limiting subclasses including A (soil moisture deficiency), D (undesirable soil structure), F (low fertility), T (topographic limitations), and W (excess water). A small portion of the Lands' northeast corner is within a polygon rated as Class 7T generally following Anderson Creek, and is considered unimprovable due to topographic limitations.

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and or climate limitations are somewhat restrictive.

Class 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

Class 7 - land has no capability for soil bound agriculture.

[33] Portions of the Lands have been cultivated since the early 1970s by a large local potato producer who are the primary lessees of the Properties. The lessees have undertaken various improvements to the Lands since that time including installing irrigation and applying soil amendments.

[34] The Commission is aware that the Lands are widely recognized as among the most productive tracts of agricultural land in the province. This is supported in the Public Hearing submissions, which consistently suggested that the Lands' unique combination of elevation, soil characteristics, and excellent drainage make the Lands resistant to flooding/seasonal inundation, enabling early and late season crop production and resilience to weather and climate-related natural events. Submissions indicated that, due to the high productivity enabled by these characteristics, the Lands make a significant contribution to the province's food supply, producing a suggested 30 to 50 million servings of vegetables annually, including potatoes, carrots, parsnips, cabbage, and winter squash.

[35] The Commission finds that, based on the above factors including the Lands' BCLI ratings, unique physical characteristics highlighted in the Public Hearing submissions, and longstanding agricultural use, the Lands have prime agricultural capability and are suitable for a wide range of crops and

agricultural activities. The Commission finds that the Lands' ability to support early and late season crop production and offer resilience to climate and weather-related events, are unique assets that further enhance the Properties' value as agricultural land.

Whether the Proposal Would Carry Out the Intent of the ALCA

- [36] Having found that the Lands are suitable for farm use, the next question for the Commission's consideration is whether the Proposal carries out the intent of the ALCA (or, in the language of s. 15 of the ALCA, is "[f]or the purposes of section 6"). This requires the application of the statutory purposes of the Commission as set out in s. 6 of the ALCA.
- [37] As the Proposal was initiated by the Commission and not by an applicant, the Commission retains discretion in all the circumstances. This discretion is made clear by the use of the word "may" found in both s. 15(1) ("the commission may designate land, including Crown land, as agricultural land") and s. 17(1) and (1)(a) ("the commission may approve the inclusion in the agricultural land reserve.... of any land").
- [38] The Commission reviewed the Proposal Material and gave careful thought to the implications of the Commission's Proposal on all parties and perspectives involved. It is clear from correspondence received in response to the Proposal that there is substantial interest among the region's agricultural community and general public in preserving the Properties'

continued agricultural use and preventing the redevelopment of the Properties for commercial/industrial use.

[39] The Commission appreciates the interest the Proposal has generated in the community, and acknowledges the Lands' longstanding agricultural use, unique physical characteristics, and contribution to the regional food supply. The Proposal was initiated in recognition of such factors and for the purpose of considering whether applying the additional land use protection afforded by the ALR designation to the Properties would advance the purposes of the ALCA.

[40] Additionally, the Commission acknowledges comments highlighting other implications of the Proposal, including potentially increasing pressures on the region's limited industrial land supply, which the Commission does not take lightly.

[41] The Public Hearing process also brought to light the important and unanticipated matter of KKS's ongoing negotiations with the federal government and the potential impacts of the Proposal on this process.

[42] At the time the Proposal was initiated, the Commission was unaware that the Lands were subject to ongoing negotiations between the federal government and KKS. Despite the Commission advising the Government of Canada of the Proposal on November 9, 2022, the matter of the ongoing

negotiations was not brought to the Commission's attention until KKS legal counsel contacted the Commission directly by letter dated January 6, 2023.

[43] The Government of Canada subsequently confirmed that consultations with KKS are ongoing, and that the Government of Canada opposes the inclusion of the Lands in the ALR on jurisdictional grounds. The Government of Canada and KKS assert that the Commission, as a provincial tribunal governed by a provincial statute, does not have jurisdiction to include the federally owned Lands in the ALR.

[44] The Commission appreciates that KKS was willing to subsequently engage with the Commission, providing an opportunity for both the Commission and KKS to develop a more fulsome understanding of each others' positions. This approach presented an opportunity for relationship-building and provided the Commission with a much clearer understanding of the Nations' interests and the Proposal's potential implications on their ongoing negotiations with the Government of Canada.

[45] The Commission understands that the subject Properties, known as k'w'eq'anəq to KKS, are the last large piece of federal Crown land available in KKS territory, and the Nations have been in discussions with the federal government about the Properties on and off over the last 30 years. In discussions with the Commission, KKS representatives emphasized the challenges faced in their respective communities and the significance of the opportunity the negotiations presented to the Nations.

[46] The Commission considers it is important to note the particular context of urban First Nations whose claimed traditional territory has been heavily developed and is substantially under private ownership. These First Nations face special challenges in negotiating with the federal or provincial Crown due to the limited federal or provincial Crown land available within their claimed traditional territories.

[47] The ALC's North Panel addressed First Nations rights and interests in the context of the ALCA and its statutory regime in a 2021 decision on ALC File 62774. While that decision related to an application to exclude land from the ALR rather than a Commission proposal to include land in the ALR, the following statements are helpful for the Commission's consideration of the Proposal:

[22] The various aspects of the ALC's statutory regime embed within it important procedural and substantive protections, and considerations relevant to First Nations rights and interests.

[23] Knowledge in matters relating to first nation government is among the criteria to be considered in the Commission's merit-based appointment process: ALCA, s. 5(1)(c).

[24] First nation governments are among the limited pool of applicants who can make applications to exclude land in certain circumstances under s. 29 of the ALCA. Certainly, First Nations or their members may also, where they

meet other qualifications in the ALCA, make other kinds of applications for which the ALCA provides. Further, while the Commission already has an extensive website including various policies and information bulletins, it is exploring further means of providing information about its processes to First Nations and other stakeholders. It is also considering means of better facilitating engagement by those who may wish to identify as Indigenous and may have greater comfort in relaying information to the Commission orally rather than in writing.

[25] Importantly, under s. 6(1)(c) of the ALCA, the purposes of the Commission include encouraging First Nations to enable and accommodate farm use of land within the ALR and uses compatible with agriculture in their plans, bylaws and policies. Section 6(1)(b) lists among the Commission's purposes the encouragement of farming of land in the ALR in collaboration with other communities of interest.

[26] What constitutes farming under the ALCA and the [Agricultural Land Reserve] Use Regulation, and the range of other permitted uses identified in the Use Regulation, overlap with activities that First Nations generally have identified as being important, including the gathering of certain kinds of plants and the protection and use of areas associated with heritage and wildlife values...

[48] After briefly summarizing factors particular to the application before it, the North Panel went on to state the following:

[28] The procedural and substantive considerations that are to be taken into account under the ALCA align with fundamental reconciliation objectives as well as resonating with various provisions of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”). The examples below are not intended to be exhaustive, but UNDRIP includes important references to Indigenous peoples’ rights to be secure in the enjoyment of their own means of subsistence and development (Article 20), to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (Article 29), and to aspects of Indigenous knowledge and cultural traditions including with respect to the environment, traditional medicines, seeds, flora and more generally (Articles 11, 20, 24, 31). UNDRIP more generally refers to engagement by various means in legal and administrative proceedings, among others.

[29] While the Legislative Assembly has not amended the ALCA pursuant to s. 3 of the *Declaration on the Rights of Indigenous Peoples Act* (which provides that “[i]n consultation and cooperation with the Indigenous peoples in British Columbia the government must take all measures necessary to ensure the laws of British Columbia are consistent with [UNDRIP]”), the Commission’s existing statutory purposes and the framework that the ALCA provides allow it to draw on considerations such as those outlined in the paragraphs above.

[49] As set out earlier in this decision, the Lands under consideration have substantial value as agricultural land and there is clear community support

for preserving their agricultural use. If these were the only relevant factors, the Commission would be inclined to include the Lands in the ALR. However, it is significant that the Proposal is opposed by the Government of Canada and KKS, and that negotiations with respect to the Properties have been ongoing between these parties for many years. It is also significant that the Lands are rare federal Crown lands within the claimed traditional territory of urban First Nations. These are important factors in the Commission's exercise of its discretion on this Proposal.

[50] While the Commission recognizes that disposition of the Lands to KKS is not a foregone conclusion, the Commission does not wish to impede or interfere with the negotiation process or with the broader goal of reconciliation. Inclusion of the Lands in the ALR at this time could complicate those negotiations and risk damaging the ALC's relationship with KKS in a way that undermines the purposes of the Commission set out at s. 6(1)(b) and (c) of the ALCA.

[51] The Commission finds that, in the context of the current ongoing negotiations, it would be inappropriate to include the Lands in the ALR at this time. Should the Government of Canada transfer the Lands to a non-Government of Canada entity other than KKS, the Commission could potentially consider inclusion of the Lands in the ALR in the future.

[52] In light of the Commission's exercise of its discretion, it is not necessary to address the Government of Canada's argument regarding the Commission's jurisdiction.

SUMMARY

[53] The Commission finds that the Lands are suitable for farm use. With the exception of a small portion of the Lands in the northeast corner, the Lands have predominantly prime agricultural capability, and a history of improvements and intensive vegetable production.

[54] However, the Commission finds that inclusion of the Lands in the ALR at this time would not carry out the intent of the ALCA. The purposes of the Commission include encouraging First Nations to enable and accommodate farm use of land within the ALR and uses compatible with agriculture in their plans, bylaws and policies. They also include the encouragement of farming of land in the ALR in collaboration with other communities of interest. These statutory purposes are aligned with reconciliation and with relevant UNDRIP provisions.

[55] In the circumstances of the ongoing negotiations between KKS and the Government of Canada, including in particular the length of those negotiations and the scarcity of federal Crown land in the claimed traditional territory of KKS, inclusion of the Lands in the ALR would not carry out the intent of the ALCA. Should the Lands be transferred to a non-federal

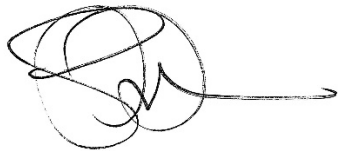
government entity other than KKS, the Commission could potentially consider inclusion of the Lands in the ALR in the future.

DECISION

[56] For the reasons given above, the Commission resolves not to include the Properties in the ALR at this time.

[57] These are the unanimous reasons of the Commission.

[58] Resolution #395/2024
Released on June 20, 2024

A handwritten signature in black ink, appearing to be 'JD', with a long horizontal line extending to the right.

Jennifer Dyson, Chair

On behalf of the Agricultural Land Commission.