

## Agricultural Land Commission Appeal Decision, ALC File 57458

Appellants: Surjit Gill, Gurprem Rai and Gurjit Rai.

Appeal pursuant to section 55 of the *Agricultural Land Commission Act* of the September 22, 2017 Order issued by Kim Grout, Chief Executive Officer of the Agricultural Land Commission

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### Introduction

- [1] On September 22, 2017 Kim Grout, Chief Executive Officer (CEO) of the Agricultural Land Commission (ALC) issued an Order to Surjit Gill, Gurprem Rai, and Gurjit Rai to cease unauthorized filling and remediate filled areas located at 1913 Townline Road, Abbotsford, BC (the Order). The specific terms of the Order are set out later in this decision.
- [2] On November 20, 2017 the ALC received a Notice of Appeal from Spencer Schmidt, legal counsel on behalf of the Appellants, of the Order pursuant to section 55 of the *Agricultural Land Commission Act* (ALCA).
- [3] On December 13, 2017, the Appeal Panel provided direction regarding procedure related to the Appeal Hearing and applicable timelines (the December 13, 2017 Directions). The December 13, 2017 Directions included timelines for the submission of additional information and representations.
- [4] On January 8, 2018, further to the December 13, 2017 Directions, the Appeal Panel received an additional written representation from the Appellant (the January Appeal Submissions) outlining the rationale for the Appeal of the Order.

[5] The appeal process included an oral hearing heard by the Appeal Panel. The oral hearing occurred on February 8, 2018 at the ALC Offices located in Burnaby, BC (the Oral Hearing). The Appeal Panel consisted of Frank Leonard (ALC Chair) and ALC Vice Chairs Richard Mumford, Gerry Zimmermann, Linda Michaluk, Dave Zehnder, and Dave Merz.

## Background

[6] The Order relates to a property located at 1913 Townline Road, Abbotsford, BC (the Property). The legal description of the Property is:

Parcel Identifier: 001-298-909

Lot "N", Section 13, Township 13, New Westminster District Plan 21316

[7] The Property is 2 ha and is located within a designated agricultural land reserve (ALR) as defined in section 1 of the ALCA.

[8] The involvement of Compliance and Enforcement (C&E) staff of the ALC with the Property began in June 16, 2017 (the following are timeline highlights).

- On June 16, 2017 a complaint was received from a member of the public that topsoil was being stripped, the ground compacted and acres of gravel were being spread at 1895 Townline Road.
- An August 4, 2017 site inspection undertaken by ALC Compliance and Enforcement Officer David Assels revealed that soil removal and deposition of fill had taken place on both 1895 Townline Road and the adjoining 1913 Townline Road.
- Stop Work Orders were issued on August 8 and August 9, 2017. Additionally, owners of both properties were issued Notices of Contravention requesting the following information:
  - The total volume of soil removed from the property.
  - The total volume of material brought into the property.

- Any and all invoices/load slips related to the Fill Project.
- The contact information of all contractors/agents Qualified Professional involved in the Fill Project.
- Any reports completed by a qualified professional that related to the Fill Project.
- On August 15, 2017 the owners of 1913 Townline Road responded through Parminder Singh (Khalon Law Office). Mr Singh stated that the gravel was deposited for access to the Property and the storage of agricultural equipment to be used on another 16 ha parcel. Mr Singh denied that any soil was removed from the Property.
- An Abbotsford soil deposit form was provided indicating that 320 cubic meters of material was deposited over 0.8 ha of the 2 ha by ASARA Construction.
- On September 22, 2017 the CEO of the ALC issued the Order requiring the removal of the unauthorized fill and that the subsequent remediation of the Property must be overseen by a Qualified Environmental Professional (QEP).
- On November 20, 2017, the Appellants submitted a Notice of Appeal of the Order.
- On February 8, 2018 the Appeal Panel conducted the Oral Hearing.

## The Order

[9] Among the various materials the Appeal Panel had before it is a copy of the Order together with the documents referenced therein. These documents comprised the "ALC Documents Package" to which the Appellants were provided electronic access on December 13, 2017 as part of this Appeal.

[10] On September 22, 2017 the CEO issued the following Order:

*"For the aforementioned reasons, pursuant to Section 52(1) of the Act as Chief Executive Officer of the Commission I hereby Order Surjit Gill, Gurprem Rai and Gurjit Rai and their agents, representatives, employees and any other person acting on their behalf, to remove all fill, including, but not limited to any material brought on land in the Agricultural Land Reserve other than materials exempted by Regulation.*

*In addition the Property must be remediated to ensure that soil agricultural capability is similar to or better than before the fill was imported onto the Property:*

*The above requirements must be completed by December 15, 2017, unless prior to that time, I agree in writing to vary this remediation order.”*

### **Notice of Appeal**

[11] Section 55(1) of the ALCA permits an appeal from certain specified orders, including an order made under sections 50 and 52 of the ALCA. Section 55(1) states as follows:

*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.*

[12] On November 20, 2017 the ALC received a Notice of Appeal of the Order from the Appellants.

### **Written Evidence and Written Submissions**

[13] The submissions included with the Notice of Appeal received November 20, 2017, and the January Appeal Submissions (together, the Appeal Submissions) submitted by Spencer Schmidt, the Appellants' counsel, included the following:

1. The Appellants purchased the property in February 2016 and understood that the property to be subject to an application for exclusion by the City of Abbotsford.
2. In anticipation of the exclusion the Appellants began to deposit gravel on the property. However, the Appellants did not remove any topsoil from the property. It is the understanding of the Appellants that the previous landowner may have cultivated turf on the property which may account for the current state of the topsoil.

3. The Appellants were unaware that the City of Abbotsford exclusion application did not include their property in its final iteration. Evidence was provided in the form of media articles from the CBC and Abbotsford News which shows the Property was originally under consideration for exclusion.
4. Since the issuance of the Stop Work Order on August 8, 2017, no further fill has been deposited on the property.
5. The Appellants are in the process of applying for permission to deposit soil on the Property from both the ALC and the City of Abbotsford.
6. The Appellants have been confused throughout the process and are seeking professional assistance and advice. They are seeking the rescission of the Stop Work Order and Remediation Order, or alternately that the date for compliance be extended until the Appellant's application for a Placement of Fill Permit and non-farm use have been determined by the City and/or the ALC.

### **Oral Hearing**

[14] The appeal process included the Oral Hearing which was held on February 8, 2018 at the ALC Offices at #133, 4940 Canada Way Burnaby, BC.

[15] The individuals attending the Oral Hearing included Spencer Schmidt, and Surjit Singh Gill and Gurjit Singh Rai.

[16] During the Oral Hearing, oral submissions were made by Spencer Schmidt pursuant to the Appeal Submissions of November 20, 2017 and January 8, 2018 (noted above).

### **Relief Requested on Appeal**

[17] Section 55(2) of the ALCA states:

*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.*

[18] The requests of the Appellant are as follows, as set out in the Appeal Submissions dated November 20, 2017:

*“The Appellant’s request that the Remediation Order and the Stop Work Order be rescinded for the above stated reasons. In the alternative, the Appellants request that the remediation date of December 15, 2017 be extended until the Appellants’ applications for the Placement of Fill Permit and for non-farm use have been determined. The Appellants reiterate that they will move such applications forward without delay and with professional assistance. “*

### **Appeal Panel’s Findings:**

[19] The Appeal Panel made the following observations and findings as to the claims and statements of the Appellant:

- 1) The Appellants’ lack of knowledge of the status of the Abbotsford Block Exclusion application is not a suitable excuse for depositing fill without a permit. It is the responsibility of the landowners to understand all of the existing and potential land use regulations that affect their property and to act accordingly.
- 2) The Property is not included in the Abbotsford Block Exclusion application and as such does not have a clouded, or uncertain future with respect to City planning or bylaws.
- 3) The Appellants are free to make any application they wish on the Property. That said, the Appeal Panel does not believe that it can anticipate or predict with certainty whether an application for non-farm use or fill will be forwarded by the City of Abbotsford for the ALC’s review, or whether South Coast Panel of the ALC will approve an application or applications.
- 4) The Appeal Panel noted that the land has soil capability ratings indicating that a very wide range of crops could be grown on the Property.
- 5) The Appeal Panel believes the presence of fill on the Property represents a significant erosion of agricultural potential for soil based agriculture.
- 6) The Appeal Panel finds that the Order to be suitable and appropriate given the soil capability ratings and existing and surrounding lands uses.

## Conclusion

[20] Having received and considered the information submitted as part of the appeal, the Appeal Panel is satisfied that the September 22, 2017 Order is appropriate.

[21] The Appeal Panel confirms the Order under s. 55(2)(a) of the ALCA except for the fact that, as a practical matter, the date in the Order has passed. In the Appellant's November 20, 2017 letter an argument was made to extend the remediation date in the Order pending the decision on appeal. Given all the circumstances in this case, the Appeal Panel is satisfied that the Appellant should be given time to comply at this point. It therefore refers the Order back to the CEO with the direction that she consider and set a new deadline for the steps set out in the Order, with a view to what would be a reasonable time for compliance in the present circumstances and taking into account of the possibility that the Appellant may wish to file a non-farm use application.

Appeal Panel:



Frank Leonard, Chair



Richard Mumford



Gerry Zimmermann



Dave Merz



Linda Michaluk



Dave Zehnder

Appeal Decision Date: February 21, 2018