



PROVINCIAL AGRICULTURAL LAND COMMISSION

MESSAGE FROM THE CHAIR

August 23, 2012

CHANGING THE WAY WE DO BUSINESS: AN UPDATE ON THE TRANSITION OF THE AGRICULTURAL LAND COMMISSION

I. THE NEED FOR CHANGE

On November 26, 2010, in my role as Chair of the Agricultural Land Commission (ALC), I issued a report laying out a strategic vision for the ALC. That strategic vision was based on two fundamental propositions.

The first proposition is that the ALC's mandate – to preserve agricultural land, to encourage farming on such land in collaboration with other communities of interest and to encourage all governments to accommodate farming in their planning processes – is as important today as it was when the Agricultural Land Reserve (ALR) was created almost 40 years ago. As noted in my report, there continues to be overwhelming support for the ALR. That support reflects a consensus within society about the importance of preserving a stable and coherent agricultural land base in British Columbia.

It is widely understood that there are serious challenges to the preservation of British Columbia's limited agricultural land base. Those factors include urban sprawl, increasing populations, changing weather patterns, competing land uses and land speculation. People readily understand that, in addition to the critical importance of the \$10.5 billion agri-food sector to the provincial economy, food security is not something we can take for granted in British Columbia.

The second proposition on which my report was based is that if the *Agricultural Land Commission Act (ALCA)* is to truly achieve its purpose, the ALC itself must be effective. Like any other organization or business, the ALC must be willing to adapt to changing circumstances, and must be willing to re-examine previous ways of doing business. It is not good enough to operate a certain way because that is the way it has always been. It is not good enough to avoid change because some people do not support change, or because their vested interests are

affected. It is not good enough to allow the work demands related to one part of the ALC's mandate (for example, the consideration of non-farm use, subdivision and exclusion applications) to unduly take away from other important statutory responsibilities such as policy and planning, and compliance and enforcement. The ALC has to look for creative ways to become more efficient, and has to make hard decisions about how to triage and use its resources.

In September 2010, the Auditor General of British Columbia produced a report that examined the ALC and made 9 recommendations. These recommendations encouraged the ALC to be more proactive with local government planning processes, to have a sufficiently robust compliance and enforcement scheme, and to fully evaluate decisions with a view to reviewing our overall policy direction.

The 20 months since my report was submitted have only reinforced the need for the ALC to introduce changes to the way it does business. The ALC has had time to reflect on the Auditor General's report and my November 2010 report, and to consider the legislative changes passed in November 2011 to allow the ALC to better manage parts of our workload. I consider it appropriate now to publicly outline the changes we have decided to make in order to better achieve our mandate under the *ALCA*.

II. THE NOVEMBER 2010 CHAIR'S REPORT

My report set out a "Strategic Vision for Future Generations", with the following components:

- 1. *An ALR that has defensible boundaries.*** The boundaries of the ALR, and any decisions to change the boundaries, should be based upon a consistent method of evaluating scientific and technical information. The boundaries should be defensible in order to discourage speculation and the proliferation of non-farm uses and subdivisions that erode the agricultural land base and drive up agricultural land prices. Communities should be encouraged to adopt compact and efficient development patterns that minimize pressure on the ALR boundary.
- 2. *An ALR that places agriculture first.*** The use of lands for agriculture should take priority over all other uses within the ALR. Although the ALR permits many non-farm uses and may protect other public values that occur within it, it is first and foremost a working agricultural landscape. The ALC must have adequate resources to advocate for farmers, ranchers and the agricultural industry to encourage farming.

3. ***An ALC that places priority considerations on bona fide farmers and ranchers, and issues that may impact, positively or negatively, bona fide farmers and ranchers.*** (This requires) flexible, risk-based approach to reviewing and deciding upon proposals that are intended to support and enhance bona fide farms and ranches.
4. ***An ALC that builds strong alliances with farm and ranch groups and other organizations to identify and cooperatively address emerging issues that may impact, positively or negatively, bona fide farmers or ranchers.*** Through regular communication and consultation, the ALC will be better positioned to participate at an early stage in dialogue on issues of importance to farm and ranch communities.
5. ***An ALC that is able to respond to and enforce against improper use of ALR land.*** Ensuring that ALR lands are being used properly will maintain a high quality land base for farming and reduce the potential for lands to be degraded to the extent that they can no longer be used for agricultural production. The ALC must continue to strive to build partnerships with other government agencies and local governments to assist in compliance and enforcement related matters.
6. ***An ALC that moves away from being reactive and focused on applications towards becoming a proactive planning organization.*** This shift would allow the ALC to proactively seek opportunities to improve agricultural land preservation and utilization, encourage farming, and focus on emerging and strategic issues.
7. ***An ALC that has up-to-date technology.*** To use technology to integrate mapping (spatial) information with the ALC's database for research, planning, ALR boundary assessments and business reporting. To seek partnerships with other provincial ministries and agencies to share data to further enhance the ALC's technical capacity for research, planning, ALR boundary assessments and business reporting.

My report candidly states that in order to achieve many of these objectives (particularly items 1, 5 and 7 above), sufficient funding and resources are necessary. In this regard, a very positive development was the November 2011 legislative amendments that created the possibility of a fee schedule to establish a "user pay" funding model to generate revenue to augment the ALC's base budget appropriation. The ALC awaits advice from Government regarding further developments with regard to this reform.

The ALC is committed to proceeding with our strategic vision, even if this means having to engage in a triage process where lower priority matters give way to allow higher priority matters to be properly addressed.

Part of the reason for this message is to explain to certain stakeholders – particularly those involved in the “application” side of our mandate – why their applications may in future be processed differently. On the positive side, we believe this realigning of priorities to be more consistent with our overall mandate and responsibilities, and will lead to a revitalized and proactive ALC.

III. RE-ESTABLISHING THE ALC’S PRIORITIES

A disproportionate amount of the ALC’s resources are consumed in dealing, on a reactive basis, with the numerous applications made by individuals each year to exclude, subdivide or authorize non-farm uses on ALR land. Dealing with the sheer volume of these applications – 500 to 700 new applications annually – consumes an enormous amount of ALC time and resources. Of these new applications we anticipate that approximately 25% will be the subject of a request for reconsideration (a follow up review of a denied application) which will consume even more ALC time and resources. Requests for reconsideration result in the annual application workload of the ALC increasing to 625 – 875 applications.

It is also a fact that a significant number of applications are nothing more than an attempt to gain a financial benefit from non-agricultural uses, or from removing land from the ALR. As stated in my report regarding land in the ALR “land speculation remains high after nearly 40 years”.

The time has come for the ALC to take control of our agenda and workload. To avoid remaining a largely reactive organization whose priorities are dictated by the volume of applications received, the ALC has had to seriously re-think the resource allocation given to applications relative to other functions.

The ALC has determined that we can no longer afford to be an organization that spends 80% of its time dealing with applications to the detriment of other important areas of our mandate. Within the scope of resources that can be devoted to applications, we need to look beyond a simplistic “first in time, first in line” approach to doing our work and examine other process models based on priority and triage. Finally, we need to do everything we can to ensure that when dealing with applications, our decision-making remains principled, professional, consistent and timely.

The ALC will in good faith continue to perform our duty to consider each application on its merits as appropriate, but it makes no apologies for undertaking and prioritizing work based on a considered assessment of resources and priorities.

IV. RE-ALLOCATING THE ALC'S RESOURCES

A. Planning

The *ALCA* states that a local government's bylaws (including a regional growth strategy, official community plan or zoning bylaw), and a first nations government's laws, must be consistent with the *ALCA*, the regulations and the orders of the ALC. If those laws or bylaws are inconsistent with the *ALCA*, the regulations and the ALC's orders, they are "to the extent of the inconsistency, of no force or effect": s. 46. The ALC has an important role to play in consulting with local governments to ensure that their bylaws are valid and do not contravene s. 46.

In addition, section 882(3) of the *Local Government Act* requires local governments to refer official community plan bylaws to the ALC for comment if the plan applies to land in the ALR. Section 879 of the *Local Government Act* also allows local government to consult with the ALC more generally regarding official community plans. All these powers are directly related to the ALC's mandate to encourage farming and to encourage local governments and first nations to enable and accommodate farm use of agricultural land. As part of the planning process, the ALC needs to encourage communities to adopt compact and efficient development patterns that minimize pressure on ALR boundaries.

The ALC has in the past devoted insufficient resources to these critical planning functions resulting in adverse downstream effects on many of the ALC's objectives, including promoting the use of ALR land for agriculture, preventing unnecessary urban/rural conflicts, discouraging speculative applications, and minimizing enforcement issues. The ALC has also faced significant challenges participating in provincial land use planning, resource management and major infrastructure development.

Proactive ALC participation with local governments and provincial ministries, agencies and Crown Corporations provides considerable help to these valued stakeholders who may not be well briefed on agricultural issues. Such proactive planning requires early and regular ALC communication with local government planners, provincial government representatives and

elected officials. This reflects the ALC's larger responsibility to communicate with and educate local communities and provincial ministries, agencies and Crown Corporations regarding the *ALCA* in particular and agriculture generally.

In the ALC's view, the time has come for our planning mandate to have greater prominence, with the following elements:

- Ensuring earlier and more extensive involvement in local government planning processes;
- Ensuring earlier and more extensive involvement with provincial ministries and agencies, and Crown Corporations in land use planning, resource management and major infrastructure planning and development;
- Encouraging local governments to develop and adopt more detailed, agriculturally-focused implementation plans and strategies, such as Agriculture Area Plans and Agricultural Strategies;
- Encouraging local governments to establish Agricultural Advisory Committees;
- Updating “off the shelf” services for local governments, including the ALC's *Planning for Agriculture* document;
- Identifying priority areas for ALR boundary reviews; and
- Expanding joint Ministry of Agriculture and ALC efforts regarding “strengthening farming” legislation: *Farm Practices Protection (Right to Farm) Act*.

B. Policy

The ALC's policy role is closely related to its planning mandate. At the present time, the ALC has policies that outline principles, guidelines, strategies, rules or positions on various interpretative, operational, and fill and soil removal issues. These policies seek to provide clarification of regulations and courses of action consistently taken or adopted, formally or informally. While policies do not have the same status as laws, they are nonetheless extremely important to assist the ALC in developing plans and encouraging farming.

ALC commissioners and staff have a wealth of knowledge and experience to bring to policy development, but that resource is not currently being harnessed owing to the reactive demands on the ALC. Proper policy work cannot be undertaken off the “side of the desk”, and it is not

assisted by having to be developed on an ad hoc basis in response to a pressing need. To be of greatest value, policies that encourage farming need to result from active engagement with stakeholders and the collection of proper data and research, including analysis. The time has come to devote more of the ALC's resources to our policy role.

C. ALR Boundary Reviews

Responsibility for revising the ALR's boundaries rests with the ALC. This role, which the ALC may exercise proactively by way of boundary reviews, is linked directly to the ALC's responsibility to preserve agricultural land.

The ALC initiated a number of boundary reviews throughout the 1980s, but the resources to undertake that work was eliminated by 1990. The ALC today recognizes that the most realistic approach to boundary reviews is to take a more modest and targeted approach based on the areas in greatest need of review.

Any boundary review process requires great care. A boundary review is a superior method for "fine-tuning" ALR boundaries than adjudicating hundreds of disparate applications. The ALR will have greater integrity, and fewer applications will be generated, where boundaries are proactively reviewed to assess whether land is, or is not, appropriately designated as ALR land. At the same time, the purpose of a boundary review must be clear. A boundary review process cannot be allowed to turn into a debate about whether there is a "higher or better use" for agricultural land, or about whether a particular farm is economically viable. As the Courts have recognized, the ALC's duty to preserve agricultural land requires us to take a longer term view, and to recognize that land not suitable for one agricultural purpose today may well be suitable for another agricultural purpose tomorrow.

ALR boundary reviews can generate a great deal of interest, and controversy. It is imperative that such reviews be conducted in an open and transparent manner by engaging local governments, agricultural organizations, other stakeholder groups and the general public. It goes without saying that even a modest boundary review will require the allocation of considerable resources.

D. Compliance and Enforcement

The ALR will retain its integrity only if individuals comply with the prohibition against using ALR land for non-farm uses.

The threat of prosecution is not enough to dissuade some people from breaching the *ALCA*. For that reason, in 2002 the ALC was given additional powers to ensure compliance, including the power to inspect land, to issue “stop work” and remediation orders, and to levy administrative penalties.

While the ALC has already established a partnership with the Ministry of Forest, Lands and Resource Operations and there are opportunities to partner with local governments and other provincial ministries, the ALC recognizes that we must have the ability to act when outside help is unavailable.

The ALC has determined that resource allocation to compliance and enforcement activities must be given higher priority than some types of applications. The ALC’s re-allocation of priorities will reflect this reality.

E. Applications

The *ALCA* currently allows several different types of applications to be made to the ALC. These include an application to authorize a non-farm use, and applications to subdivide or exclude land from the ALR.

The ALC application process has remained essentially unchanged since 1975, during which time we have considered almost 40,000 applications. As noted earlier, the ALC currently receives between 500 – 700 new applications per year plus requests for reconsideration.

As discussed earlier, the reality is that the ALC will no longer allow the purely reactive role of dealing with applications to drive our allocation of priorities. This means three things.

Firstly, applications as a class will in future receive a lower relative share of the ALC’s overall resources. Instead of application work accounting for 80% of the ALC’s budget, the ALC is initially targeting to have that work account for 30% of our budget.

Second, applications will not be addressed according to a simple “first in time” rule, but rather according to the priority of the application, after a screening process that takes into account the nature and purpose of the application and the application’s potential to encourage farming and the larger purposes of the *ALCA*.

Finally, within the targeted 30% budget allocated to application work, the ALC must find creative ways to increase our efficiency by streamlining the processing of applications.

To achieve the streamlining objective, several initiatives are being given active consideration; some are underway. One involves creating an application process – in due course, a fully electronic one - that places the onus to provide all relevant information on the person making the application. The days of the ALC helping to “perfect” an application cannot continue. As with all other federal and provincial regulatory processes in which persons seek an approval or a benefit, the onus must be on the person applying to provide all required information. If an application is materially incomplete it will not be processed until the required information is provided by the applicant. While it may in the past have been seen as a helpful public service for ALC staff members to “shore up” deficient applications made by landowners, this is no longer economically feasible.

Other initiatives will also be taken. One will involve an effort to educate local governments regarding applications that are and are not properly prepared. Others will involve changes within the ALC process, including eliminating the ALC staff report to the extent that it merely duplicates information in the file, improving the ALC’s information management systems (as funds are available), applying the ALC’s reconsideration power according to the language and intent of the reconsideration power in the *ALCA*, and improving the decision-making process through ongoing training of commissioners and organization of panels. The ALC believes that these changes, together with the new power to refuse repeat applications for non-farm use, subdivision or exclusion made within 5 years of a previous application (s. 30.1), will go a long way towards allowing us to make the best use of the resources that can be allocated to applications.

V. **TRANSITIONAL PROJECTS SUPPORTING THE ALC'S RE-ESTABLISHED PRIORITIES**

In support of re-establishing the ALC's priorities we have embarked on a number of significant projects using the transitional funding provided by Government which is available to the ALC until March 31, 2013. The ALC has the following transitional projects underway:

- Updating ALR boundary review procedural manual to provide clear and concise guidance regarding the methodology to be employed for reviews and to ensure boundary reviews are conducted in an open and transparent manner;
- Upgrading information technology and information management capabilities of the ALC's Online Application Tracking System (OATS);
- Designing and building a web-based application portal and client self-help kiosk to provide enhanced web services to clients and greater access to information. Establishing the ability to file applications electronically will further reduce the amount of ALC resources devoted to processing applications as the person(s) wishing to file an application will not be able to do so until all information is completed in the form and content acceptable to the ALC. The onus of completing a thorough and well documented application will be placed on the person(s) making the application;
- Populating the ALC database with information from approximately 25,000 applications to provide the ALC and its clients with greater access to information;
- Scanning historical documents from the 25,000 applications to provide the ALC and its clients with greater access to information;
- Digitizing and quality assurance review of historical mapping of the 25,000 applications;
- Digitizing agricultural capability mapping to provide the ALC and its clients with greater access to information. This mapping will also form the technical foundation for ALR boundary reviews; and
- Preparing a compliance and enforcement procedural handbook.

VI. CONCLUDING COMMENTS

It is admittedly unusual for an administrative tribunal to provide this kind of public statement to explain the reasons for changing the way it does business. However, the ALC recognizes that we are an important regulatory institution within British Columbia, and that if the changes we have set in motion are to be understood, they must be explained.

This message seeks to reflect our respect for the Auditor General's constructive recommendations, for the stakeholders whose views contributed to my November 2010 report (and whose views continue to assist the ALC), for the Minister and Government which considered my report and passed the November 2011 amendments to the *ALCA*, and for the public that the ALC ultimately serves.

We will, as part of our ongoing annual reporting, continue to report on our progress in carrying out the changes announced in this message and the status of the transitional projects, the details of which will be announced as and when appropriate.

As well, when the ALC is provided more certainty from Government regarding the funding model to augment provincial funding, more changes and additional projects will be undertaken to sustain the momentum now underway to enhance the ALC's ability to preserve British Columbia's agricultural land and encourage farming.

Finally, the changes and transitional projects form part of a new and exciting chapter in the history of the ALC; they are just the beginning.



Richard Bullock, Chair
Provincial Agricultural Land Commission