



**PROVINCIAL AGRICULTURAL LAND COMMISSION:
MESSAGE FROM THE CHAIR: AN UPDATE
October 4, 2013**

I. THE PURPOSE OF THIS MESSAGE

On August 23, 2012, I issued my first *Message from the Chair*, entitled *Changing the Way we do Business: An Update on the Transition of the Agricultural Land Commission*.¹ In that *Message*, I announced several changes the Agricultural Land Commission (ALC) would be making to our operations. These changes resulted from an in-depth review of all aspects of the ALC by both me and the Ministry of Agriculture over a two year period (2010 – 2011).² The purpose of these changes is to better achieve the mandate we have been given under the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (*ALCA*).

These changes are being implemented in the context of our legislative mandate in section 6 of the *ALCA*, which requires the ALC to exercise all of our planning, adjudicative and enforcement powers in accordance with the fundamental purposes set out in that section:

- 6** The following are the purposes of the commission:
- (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.

My August 23, 2012 *Message* emphasized that the time had come to reset the ALC's strategic planning and priorities. For too long, the ALC's limited resources have been dominated by the reactive function of responding to applications intended to remove land from or allow non-farm

¹ http://www.alc.gov.bc.ca/publications/Message_from_Chair-August_23-2012.pdf

² <http://www.alc.gov.bc.ca/publications/Final%20Report-Nov26.pdf>

uses in the Agricultural Land Reserve (ALR). As stated in that first message, the ALC's strategic planning requires that we devote greater focus to our proactive planning functions:

... 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 prominence given to applications relative to other functions.

The inability to devote proper resources to local government and first nations planning has had adverse downstream effects on many of the ALC's objectives, including promoting agriculture, preventing unnecessary urban/rural conflicts, discouraging speculative applications, and minimizing enforcement issues.

I am issuing this *Annual Update Message* with two purposes in mind. One is to advise interested readers about the ALC's progress in carrying out our renewed strategic vision. The other is to orient our strategic vision within a clear and focused discussion about the history and purpose of the ALR and the ALC.

Such clarity is particularly important today given the ongoing public interest in the future role of the ALC and the ALR, including the role agricultural land does and should play in the ongoing economic development of British Columbia. This issue is specifically identified in the Premier's June 10, 2013 *Mandate Letter* to the Minister of Agriculture, which states as follows at item 3: "Ensure the Agricultural Land Reserve is working for British Columbia and propose any changes necessary. These changes must successfully balance our desire to protect valuable farmland while allowing for responsible economic development opportunities".³

The *Mandate Letter* was issued in the context of an ongoing ALR/ALC transformation project, which began in earnest in July 2010 following directions from the Minister of Agriculture to the ALC Chair, and which included work undertaken to comply with audit recommendations from British Columbia's Auditor General.

³ http://www.gov.bc.ca/premier/cabinet_ministers/pat_pimm_mandate_letter.pdf

The following quotations will provide readers with a quick recap of the key points in the recent chronology giving rise to our strategic vision for the ALC. It would be appropriate to start this review with the Minister's July 30, 2010 direction that I review the ALC's operations, policy, regulations and legislation:

Letter from Honourable Steve Thomson, Minister of Agriculture to Richard Bullock, ALC Chair (July 30, 2010):

To ensure the operation and mandate of the Agricultural Land Commission supports farm families and enhance the sustainability of agriculture in BC, I am directing you as the new Chair of the Agricultural Land Commission (ALC) to immediately undertake a review of the Commission operations, policy, regulations and legislation. The purpose of this review is to verify that the ALC is meeting its mandate as spelled out in the Agricultural Land Commission Act (Section 6) while looking for ways to improve the decision making processes of the Commission.

Auditor General of British Columbia: Audit of the Agricultural Land Commission (September 2010):⁴

British Columbians are fortunate to have one of the most diverse landscapes in the world. We cherish this diversity and seek to protect it. One of the landscapes we seek to protect is our scarce agricultural lands – less than 5% of the province's land base is suitable agricultural land and much less is considered 'prime' agricultural land.

In 1973, legislators sought to protect this valuable land by passing the Agricultural Land Commission Act and creating the Agricultural Land Reserve and the Agricultural Land Commission (commission). The purpose of the commission is to preserve agricultural land and foster farming, as well as encourage local and provincial governments and First Nations to enable farming through their plans, bylaws and policies.

In 1994, my Office examined the commission's performance and found that there were a number of improvements needed if the commission's mandate was to be met. Sixteen years later and upon re-examination, I found that significant challenges continue.

We recommend that the commission:

- 1. Ensure that ALR boundaries are accurate and include land that is both capable of and suitable for agricultural use.*
- 2. Seek government's support to make changes that will allow it to more effectively preserve agricultural land and encourage farming through the application process.*
- 3. Engage in proactive long-term planning with local governments to encourage farming.*

⁴ <http://www.bcauditor.com/pubs/2010/report5/audit-agricultural-land-commission>

4. *Work with Fraser-Fort George Regional District to address concerns it has with the District's processes.*
5. *Work with the Oil and Gas Commission to develop an action plan to implement the recommendations of the 2009 audit.*
6. *Ensure that it has a sufficiently robust compliance and enforcement program.*
7. *Prioritize completion of the new database and finalize conversion of the original paper ALR maps into digitalized format.*
8. *Evaluate the collective impacts of its decisions on applications and its broader policy decisions.*
9. *Report publicly on the cumulative impacts of its decisions.*

Richard Bullock, ALC Chair (November 26, 2010): Review of the Agricultural Land Commission - Moving Forward: A Strategic Vision of the Agricultural Land Commission for Future Generations:⁵

In accordance with the direction provided by the Honourable Steve Thomson in his letter of July 30, 2010, over the course of a three month period I conducted a review of the Agricultural Land Commission (ALC) regarding operations, policy, regulations and legislation. The purpose of the review was to verify that the ALC is meeting its mandate while looking for ways to improve its decision making processes.

Following my review I can confirm that the ALC is extremely challenged to meet its mandate. In my opinion, the ALC has done an admirable job despite financial constraints. After nearly 40 years, I believe the ALR should be looked upon as a solid foundation for the business of agriculture in BC. Regrettably however the foundation has suffered erosion to the land base and loss of support from bona fide farmers and ranchers - but thankfully not to a point that it is irreparable. Continued government, support and adequate funding and resources, will allow the ALC to meet its challenges.

As such, I am recommending that serious consideration be given to several strategic shifts to set the ALC on course for the next 40 years. They are:

- *An ALR that has defensible boundaries;*
- *An ALR that places agriculture first;*
- *An ALC that evolves to a proactive planning organization and moves away from being reactive and focused on applications;*
- *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;*
- *An ALC that builds strong alliances with farm and ranch groups and*

⁵ <http://www.alc.gov.bc.ca/publications/Final%20Report-Nov26.pdf>

organizations to identify and cooperatively address emerging issues that may impact, positively or negatively, bona fide farmers and ranchers;

- *An ALC that is able to respond to and enforce against improper use of ALR land; and*
- *An ALC that has up to date technology to undertake its legislated duties.*

Honourable Don McRae, Minister of Agriculture - CFAX Interview (October 11, 2011):

The ALC chair, Richard Bullock, did a phenomenal job. He travelled around British Columbia last fall, talked to 60 organizations, hundreds of individuals, and he compiled a pretty comprehensive report. I'm looking forward in the next month or so to actually release that report, but not just release the report; actually have some mitigation factors that actually just reinforce the fact that this province and this government find the Agricultural Land Reserve and the Agricultural Land Commission a great entity that actually promotes farming, protects and preserves quality farmland in this province and [inaudible] several decades but will continue to do so into the future. But the reality is a report doesn't actually preserve farmland; actions do that. And I'm making sure when it comes out it's got a buffet of support to deal with it.

Honourable Don McRae, Minister of Agriculture: News Release, Ministry of Agriculture (November 14, 2011):

By improving the structure and sustainability of the ALC, we're improving the lives of 20,000 farming families in British Columbia and the \$9.6-billion agri-food sector our province supports," said McRae. "The changes and support the Province is providing the ALC is a commitment to ensure the ALC will be a proactive organization dedicated to preserving farms, and expanding opportunities for producers."

Honourable Don McRae, Minister of Agriculture: News Release, Ministry of Agriculture (November 25, 2011):

BC's agricultural land now has even greater protection after legislation strengthening the Agricultural Land Commission became law.

The changes will enhance the operation capacity of the ALC in order to expand opportunities for farmers and ranchers. British Columbians value local food, local farmers and local farms and the Province has supported those values with this action.

Honourable Norm Letnick, Minister of Agriculture: Ministry of Agriculture Fact Sheet – Opinion Editorial: Budget Supports BC’s Agriculture Sector (February 28, 2013):

One of the elements of the budget I find most rewarding is the additional \$4 million the B.C. government is providing to the Agricultural Land Commission over the next three years. The boost in funds results in the ALC receiving almost \$3 million in operating funding from the B.C. government this year, and re-emphasizes our government's commitment to help the Agricultural Land Commission become a stronger organization, and transition to a more self-supporting operating model.

Province of BC Budget and Fiscal Plan 2013/14 – 2015/16:

Budget 2013 provides an additional \$4 million over three years to support the Agricultural Land Commission in providing better oversight over the Agricultural Land Reserve, a provincial zone which recognizes agriculture as a priority use, encourages farming and controls non-agricultural use. This additional funding will be directed to addressing recommendations of the Auditor General in the September 2010 Audit of the Agricultural Land Commission, including providing more expedient application reviews, undertaking targeted Agricultural Land Reserve boundary reviews, and working with local government to encourage farming.

II. NATURE AND PURPOSE OF THE ALR

Persons unfamiliar with the history and purpose of the ALR and the ALC sometimes hold the perception that the ALC’s function is simply to balance competing land uses at large, so that if it is believed that a higher or better economic use exists for particular agricultural land at a particular moment in time, such use should be allowed. This is a misperception, and it does not accurately reflect the purposes of the ALCA or the ALR. Rather, as stated in one of the ALC’s recent decisions:

The ALR exists precisely because British Columbia has long recognized that if agricultural land were to succumb every time anyone proposed a development on particular land that proponents and politicians viewed on an ad hoc basis as being more economically favourable than the current use of that land, expedient and even short-sighted decisions would often follow, to the long term detriment of the province’s agricultural land base. The Commission exists precisely to prevent the British Columbia public waking up one day and asking - “what happened to our agricultural land?”

This dynamic is precisely what an Act dealing with less than 5% of the provincial land base was intended to avoid, and is precisely why an independent Commission was created. Rather than basing decisions on the politically expedient, the crisis of the day or short term profit that sacrifice agricultural land forever, an independent Commission’s task is to

make its decisions in a principled fashion in a fair process that reflects coherent agricultural policy and planning and which reflects the purposes set out above in s. 6, one of which is to preserve agricultural land.

The Commission is not under any illusions that these decisions will always be easy. However, for as long as the Act exists, the decisions must reflect utmost fidelity to the purposes the legislature has assigned under the Act.⁶

As noted above, the Auditor General audited the ALC in 2010. The audit report emphasized that less than 5% of the province's land base is suitable agricultural land and much less is considered "prime" agricultural land. The Auditor General described the dynamics that led the ALR being established in the first place (p. 7):

In the 1970s, loss of agricultural land to development, coupled with evidence that local governments were unable or unwilling to halt development pressure, led to a political urgency to save farmland. The outcome was the creation of the Agricultural Land Reserve (ALR) in 1973.

In his recommendations to improve the operation of the ALC, the Auditor General reiterated the fundamental importance of the ALR (p. 7):

Agricultural land is an indispensable, natural resource. Once taken over for urban development, farmland is no longer available for food production. Protected farmland fosters local economic stability and provides environmental services and public benefits. One of the main reasons for any jurisdiction to preserve farmland, however, is to secure food production into the future, especially in light of the impending effects of climate change.

Like other jurisdictions, British Columbia relies on agriculture as an important sector of the provincial economy through the export of agricultural products and providing locally grown agricultural products to feed its citizens. However, the province's farmers today produce less than half of the food consumed here, the balance being imported. Given population growth predictions, production will need to increase to simply maintain this level of self-reliance.

The reality that agricultural land is indispensable does not prevent the ALC from altering the ALR boundaries by way of an individual application to exclude land, or by way of a more comprehensive boundary review process.⁷ One key factor in making those decisions is the agricultural capability of the land. In *Brentwood Pioneer Holdings Ltd. v. British Columbia*

⁶ http://www.alc.gov.bc.ca/application_status/Docs/53049d2a.pdf

⁷ In fact, as will be noted below, several boundary reviews are currently underway in British Columbia.

(*Provincial Agricultural Land Commission*), 2000 BCCA 320, the British Columbia Court of Appeal stated as follows (paras. 61-62):

The chambers judge also concluded that the word "preserve" in s. 7(1) indicates that agricultural land was more than land currently being farmed, and that the legislation explicitly recognized that not all land in the ALR would be "family farms" or available for "farm use". She held, at para. 35, that "a test which focuses on the present and potential future needs for agricultural land through capability more than economic viability is more in tune with the Act as a whole".

In my opinion, the foregoing conclusions accord with the object and purpose of the legislation.

As noted in our recent decision quoted above, decision-making that is true to the purposes set out in section 6 of the *ALCA* is not always easy. Difficult and contentious questions can arise about how our mandate to “preserve agricultural land” is properly understood and applied where applications may be made for non-farm use and exclusion. Questions can arise about how the objective of preserving agricultural land - together with our mandate to “encourage farming on agricultural land in collaboration with other communities of interest” and to encourage governments “to enable and accommodate farm use in their plans, bylaws and policies” - is best realized within the ALC’s policy or planning exercises with local governments. The ALC is also regularly required to address land use applications affecting agricultural land that fall within the “community issues” set out in s. 13 of the *ALCA*.⁸

As Chair, I know full well that our decisions on particular applications only rarely please everyone. That being the reality, I have viewed my mandate as being to ensure that the ALC is, as an organization, positioned to confront these difficult questions honestly, impartially, professionally and in a principled fashion. All of my energy as Chair, and the overarching purpose of the transformation initiative started in 2010, has been to allow the ALC to better achieve these purposes.

⁸ Section 13 recognizes that the ALC may approve applications for use of agricultural land for various listed community interests, including: “a use of agricultural land for a school, hospital, publicly funded institution or public utility, or another purpose prescribed by regulation”.

III. THE ALC'S ROLE: A NON-PARTISAN ALC

The ALC must exercise its statutory responsibilities with utmost fidelity to the *ALCA*. The rule of law requires that we interpret and apply the *ALCA* as the statute has been developed and written by our elected legislators, and not based on how we, or others, might wish it would read.

It has been recognized from the beginning that a specialized, independent and non-partisan ALC is essential to the proper administration of the *ALCA*. As an administrative tribunal, the ALC is expected to conduct itself in a fair and impartial manner, governed solely by the law and by a principled approach to decision-making.

Partisan political decision-making by the ALC would be illegal and would bring the entire regulatory scheme into disrepute. To prevent this, the *ALCA* contains several safeguards to assure ALC independence.

One set of safeguards lies in the legislature's 2004 decision to apply ss. 1-10 of the *Administrative Tribunals Act (ATA)* to the ALC, which provisions provide for merit-based appointments, fixed terms, dismissal for cause and identification of the Chair as being "responsible for the effective management and operation of the tribunal and the organization and allocation of work among its members": *ATA*, s. 9. Further, under section 5(1) of the *ALCA*, persons appointed to the ALC must have knowledge and expertise in matters relating to agriculture, land use planning, local government or first nation government.

A second set of safeguards is reflected in the ALC's structure. The ALC forms part of the fabric of provincial administrative tribunals which are designed to exercise their adjudicative functions in a way that is in fact and perception outside the sphere of politics.

A third set of safeguards is reflected in the special processes that are required to be followed – the Provincial interest provisions of the *ALCA* to be discussed below - before political action is permissible by the Cabinet with regard to a matter before the ALC.

A fourth set of safeguards is reflected in the ALC's July 5, 2013 *Policy Statement Concerning the Role of Elected Officials in Applications to the ALC*.⁹ That statement, which is focused on the ALC's adjudicative functions, reads in part as follows:

Our democratic system is predicated on the ability of the electorate to elect representatives who will in turn represent constituents and assist them in problem-solving involving government. Constituency work is a key part of that role.

However, the ability of elected officials to advocate for constituents has limits. Recent experience has shown for example that it is inappropriate for a Cabinet Minister, even with the most honourable of motives, to attempt to influence a court¹⁰ or administrative tribunal¹¹ with regard to a particular civil, criminal or regulatory decision. Even a telephone call to a judge asking when a decision would be released has resulted in a Ministerial resignation.¹² These examples show that any perception of attempted direct political influence over adjudicative decision-making undermines the confidence that parties and the public are entitled to have in the administration of justice delivered by courts and administrative tribunals.

The concern about improper influence is not limited to Cabinet Ministers. Whenever an elected person with political power – whether that person is a Cabinet Minister, an MLA, a Mayor or Councillor – attempts to influence the outcome of a court or tribunal decision, there is a reasonable perception (both for the public and the adjudicator) that the elected person has been brought in from the outside precisely to use their power to influence the outcome of a dispute that is supposed to be decided on the evidence and the judgment of the decision-maker. This creates a potential ethical difficulty for the elected person and a serious legal difficulty for the parties and the tribunal on the basis that the attempted influence has in fact or perception tainted the fairness and impartiality of the decision-making process.

IV. THE ROLE OF GOVERNMENT UNDER THE ALCA

While the *Policy Statement* just quoted is intended to assist elected officials with regard to their involvement in ongoing applications before the ALC, the same *Policy Statement* also makes it clear that our elected officials DO have a legitimate and proper role to play under the ALCA.

⁹ http://www.alc.gov.bc.ca/publications/Policy_Statement_Elected_Officials_1.pdf

¹⁰ <http://www.cbc.ca/news/canada/ottawa/story/2013/02/15/pol-aboriginal-affairs-john-duncan-resigns.html>

¹¹ <http://www.theglobeandmail.com/news/politics/ethics-commissioner-rules-against-flaherty-for-crtc-letter/article7509562/>

¹² http://www.venice.coe.int/WCCJ/Rio/Papers/CAN_Binnie_E.pdf at p. 2.

To put this discussion in context, I will begin by stating candidly that the proper role of the provincial Cabinet in the administration of an ALR administered by a non-partisan ALC has been the subject of controversy from the very inception of the *ALCA*. It has always been a question of finding the right balance.

When the *Act* was first enacted in the 1970s, it authorized persons adversely affected by ALC orders to appeal to Cabinet's "Environmental and Land Use Committee" (ELUC).

By 1993, however, Cabinet appeals from the ALC (and other tribunals) were abolished in the *Cabinet Appeals Abolition Act*, for reasons the Attorney General outlined in *Hansard*:

For years cabinet appeals have been subject to criticism from many quarters, including the Law Reform Commission of Canada and the Canadian Bar Association. Cabinet appeals rarely provide the full range of procedures required to ensure administrative fairness, and in the past they have been used to make backroom political decisions. This has had the effect of undermining the integrity of statutory decision-makers and of interfering in the rational development of guidelines and precedents. Some types of cabinet appeals have taken an inordinate amount of cabinet ministers' time, involving them in the adjudication of matters that raise no broad public policy issues. While abolishing cabinet appeals, we have recognized that the government has the responsibility to make decisions involving issues of major public policy and that it must make these decisions in a way that is open and accountable. This legislation strikes the balance between the need to ensure that decisions of statutory decision-makers are free from improper political interference and the need for government to make broad public policy decisions.¹³

The "Provincial interest" provisions of the *ALCA* (ss. 40-45) replaced Cabinet appeals. The Attorney General explained in *Hansard* how the new system was intended to work:

This legislation confirms the government's commitment to preserving and enhancing the role of the Agricultural Land Commission as the protector of farmland. In playing this important role, the commission is not required to consider a broad range of interests; their decisions must focus on agricultural considerations. There may be rare instances, however, where an application before the Land Commission has such a significant impact that it needs to be more comprehensively considered. In these extraordinary cases, cabinet will have the power to suspend the proceedings before the Agricultural Land Commission and refer the matter to an independent board for consideration of its environmental, economic, social, cultural, heritage and agricultural effects. The board will hold a public hearing and make a public report to cabinet. In these rare cases, cabinet will make the final decision. The board is defined in the legislation as either the

¹³ <http://www.leg.bc.ca/hansard/35th2nd/h0712pm.htm#8512>

*Environmental Assessment Board or, if that board has not been established, a commissioner or commissioners appointed under the Inquiry Act. In either case the board will be independent and will conduct an open and public review. We firmly believe that this process allows cabinet to exercise its responsibility to make significant land use decisions in an open and accountable manner.*¹⁴ [emphasis added]

While the Provincial interest provisions were fine-tuned in 1999 to add further transparency and clarity to the process for Cabinet involvement¹⁵, those provisions continue to reflect the appropriate role of Cabinet in decision-making under the *ALCA* with regard to applications before the ALC. This is of course in addition to Cabinet's considerable power to make regulations on a wide variety of matters, ranging from designating uses of land as farm use to specifying permissible non-farm uses.¹⁶

V. TRANSFORMATION INITIATIVES

The ALC's current strategic vision seeks to realize on a reform process that began in 2001 following a core services review process by Government, which determined that the ALR serves a compelling public interest to protect the land base for agricultural activities, and that has continued in earnest following a more recent review triggered by the Minister of Agriculture in 2010, described above.

My August 23, 2012 *Message* outlined the ALC's resource allocation targets and outlined its plan to deliver on its realigned priorities that flowed from the review processes summarized above. I emphasized that the ALC would in future focus more on proactive functions such as planning and boundary reviews, with less overall time spent on the reactive function of dealing with applications to remove land from the ALR and to authorize non-farm uses.

¹⁴ <http://www.leg.bc.ca/hansard/35th2nd/h0712pm.htm#8512>

¹⁵ The amendments were made following a report by the Dean of Agriculture at UBC: <http://www.agf.gov.bc.ca/polleg/quayle/stakes.htm>. Section 40(3) of the *ALCA* now provides that "In determining whether it is in the Provincial interest to refer a matter to the board under subsection (1), the Lieutenant Governor in Council must take into account (a) the preservation of agricultural land as a scarce and important asset, (b) the potential long term consequences of failing to preserve agricultural land, and (c) the province-wide context of the matter."

¹⁶ *ALCA*, s. 58, and see *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, B.C. Reg. 171/2002 (as amended)

VI. PROGRESS REPORT

This section of my *Message* provides readers with an update on the ALC's progress in achieving the objectives outlined in last year's *Message*.

A. Boundary Reviews

Under this heading, my August 23, 2012 *Message* stated:

The ALC initiated a number of boundary reviews up to the 1990s, but the resources to undertake that work have been severely limited since then. 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 exclusion 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 suitable for inclusion in the ALR. 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. As noted in my November 2010 Report (p. 60), 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"....

Progress Report

The ALC has been reviewing the ALR boundaries in the Elk Valley in the area generally described as Morrissey to Elkford. The purpose of the review is to refine the ALR boundaries so that they encompass land that is both capable and suitable for agricultural use. Land that is subject to review is based on the following set of criteria: agricultural capability, land use, parcel size, land characteristics (i.e. slope), previous ALC application decision history and local government Official Community Plan reviews and other land use planning studies.

Following stakeholder consultation exercises, the ALC has initiated applications pursuant to sections 17(1) and 29(1) of the *ALCA* proposing to include land to and to exclude land from the ALR respectively. In accordance with the *ALCA* and procedural regulation, the ALC held a

public hearing to provide interested parties with an opportunity to express their views as they relate to the applications. The public hearing was held on Thursday, August 15, 2013 at the Best Western Plus Fernie Mountain Lodge in Fernie, BC.

All application information, including the transcript of the public hearing, can be viewed at the ALC's website at http://www.alc.gov.bc.ca/Application_Status/Elk_Valley_Review.htm .

The balance of the ALR review in the Regional District of East Kootenay will proceed as follows:

- Review Area 2: Electoral Area “B” – work compiling land use information is well underway;
- Review Area 3: Electoral Area “C” – work compiling land use information has begun;
- Review Area 4: Electoral Area “E” – Work has yet to commence in this area; and
- Review Area 5: Electoral Areas “F/G” – Work has yet to commence in these areas.

B. Applications

With regard to Applications, my August 23, 2012 *Message* stated:

As discussed in Parts I-III above, 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 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 of the applicant, the 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. 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. (emphasis added) 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 all relevant information is not provided, the application must be returned to the applicant until the required information is provided. 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 forwarded to the ALC. 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 panel decision-making process through ongoing training and organization of panels. The ALC believes that these changes, together with the new power to refuse to consider an application for non-farm use 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 limited resources that can be allocated to applications.

Progress Report

To date the ALC has implemented the following improvements:

- Early application “vetting” process – ALC staff review new applications within one week of receipt to identify any key documentation deficiencies to be addressed by either the applicant or local government. This process has increased applicant and local government feedback and will effectively transition to the online application system currently in development. Vetting the applications also allows triaging of agricultural or agriculturally-related applications ahead of other applications.
- Application scanning and online access – ALC staff now prepare a digital copy of the application file material that is provided to Commissioners electronically. Online access to the complete application file has improved Commission meeting effectiveness and application processing efficiency.
- Commission meetings – In an effort to continue processing applications and manage ongoing projects and policy and planning work, the ALC has utilized additional funding to increase the frequency of Commission meetings to enable decisions to be made. From January 1, 2012 until May 31, 2013 the Commission met nine times, or approximately once every two months, for a total of 28 days. These are actual meeting days and do not include Commissioners preparation/review time, site inspections or other meetings.

The ALC conducted a review of application processing times for all applications received from January 1, 2012 to May 31, 2013. The ALC made decisions on almost 400 applications received during that time period, not including requests for reconsideration. The ALC made decisions on 80% of these applications in an average of 83 days. The ALC has since met in July for 3 days during which 105 applications were reviewed and for another 3 days the first week of October when another 82 applications were reviewed.

The processing of applications continues to consume the majority of the ALC resources - the volume of new applications has not abated, and the foundation of work to allow the transition away from the application focus is not yet complete. The ongoing work being done on the transitional projects (described next) is critical to the ALC achieving its planned shift away from the allocation of substantial resources to processing applications at the expense of the other aspects of the ALC's mandate. The shift will need to await the technology and staffing matters discussed below.

F. Transitional Projects Supporting ALC Change

With regard to Transitional Projects, my August 23, 2012 *Message* stated:

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;*
- *Providing online access to public information such as applications currently under review by the Commission, status of current applications, and historical decision minutes. Online users will have the ability to research applications based on date of application, name, application status, region, and application type. Availability of*

online parcel and application information will be valuable to potential applicants, local governments, real estate agents, and any member of the public conducting research on the ALR;

- *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 provide 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;*
- *Scanning historical documents from the 25,000 applications to provide the ALC and its clients with greater access to information;*
- *Populating the ALC database with information from approximately 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.*

Progress Report

- ***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.***

STATUS: Final draft prepared

- ***Upgrading information technology and information management capabilities of the ALC's Online Application Tracking System (OATS).***

STATUS: A series of upgrades to the OATS database were completed March 14, 2012 and November 8, 2012. Currently, priority is being given to development of new OATS fields and functions that will collect, store, and report on data that is collected through the new Online Application Portal. Other OATS upgrades will continue

throughout 2013/2014 as a secondary priority until the Online Application Portal is completed.

- ***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.***

STATUS: In April 2013 a new self-service Online Application Portal (“Portal”) prototype was delivered from the contractor to the ALC. The portal is currently being edited by ALC staff and the contractor for content and function. Upon completion of the delivery phase, the portal will move to usability testing which will include consultation with anticipated portal users including potential applicants, agents, and local government staff to obtain feedback prior to release of the portal to the public. Usability testing is anticipated to be completed In December 2013. The online application portal is expected to be released early in 2014.

The ALC is also creating a new website. In June 2013, the ALC contacted a web design company to assist in developing a website strategic plan including layout for ease of use, visual re-design, analysis of user needs and stakeholder requirements through a website gap analysis, as well as to conduct website usability testing with stakeholders (public, potential applicants, local governments, etc). The new website is essential to ensure that information required by applicants to make an online application is available and accessible.

ALC staff is working with representatives at Corporate Services for the Natural Resource Sector and Government Communications and Public Engagement to finalize a contract for the web design. It is anticipated that website design and development will commence in the very near future and be completed in early 2014.

- *Scanning historical documents from the 25,000 applications to provide the ALC and its clients with greater access to information*
- *Populating the ALC database with information from approximately 25,000 applications to provide the ALC and its clients with greater access to information; and*
- *Digitizing and quality assurance review of historical mapping of the 25,000 applications.*

STATUS: Action was initiated in December 2011, with approximately 20,000 – 25,000 application files to be processed. Data entry is contingent on document scanning as it is more efficient to extract data from the scanned images than paper files. Consequently steps were taken to accelerate the document scanning portion of the project, so that data entry could continue without interruption. The ALC has concentrated on document scanning from December 2012 to today. Progress to August 2013:

- 5,888 files have been completed (documents scanned, data entered and GIS mapping verified);
- 20,458 files have been prepared for file document scanning (documents delivered for scanning; data entry and mapping verification needed);
- 20,401 files have historical documents scanned (data entry and GIS mapping verification underway and ongoing);
- 7,064 files have digital mapping of properties verified; and
- Number of paper files awaiting full digital conversion: 14,650 – 19,650.

The purpose of scanning the historical file information and entering the information into the database is to provide greater access to information and transparency for ALC staff, Commissioners and the public via digital documents to be made available online.

- *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.*

STATUS: Completed

- *Preparing a compliance and enforcement procedural handbook.*

STATUS: Draft prepared.

VII. STAFF RECRUITMENT: PLANNING, POLICY, COMPLIANCE & ENFORCEMENT

My August 23, 2012 *Message* stated as follows with regard to Planning, Policy and Compliance & Enforcement:

Planning

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.*
- *Encouraging the development and adoption of more detailed, agriculturally-focused implementation plans and strategies, such as Agriculture Area Plans, Agricultural Strategies and Agricultural Advisory Committees.*
- *Updating "off the shelf" services for local governments, including the ALC's Planning for Agriculture Document.*
- *Identifying high priority areas for ALR boundary reviews.*
- *Identifying local governments that may be suitable for delegation agreements and addressing in appropriate detail the issues which must be resolved before the ALC can have confidence that a delegation agreement is appropriate.*
- *Re-engaging joint Ministry of Agriculture and ALC efforts regarding "strengthening farming" legislation: Farm Practices Protection (Right to Farm) Act.*

Policy

As noted by the Auditor General, the time has come for the ALC to examine our decisions in light of existing policies to help us develop a clear policy vision for the future.

ALC staff members have a wealth of knowledge and experience to bring to policy development, but that resource is not currently being properly 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 of ALC decision-making. As with the ALC’s planning role, the time has come to devote more of the ALC’s resources to our policy role.

Compliance & Enforcement

The ALR will retain its integrity only if individuals comply with the prohibition against using ALR land for a non-farm use, or subdividing ALR land unless authorized by the ALC: ss. 20, 21.

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.

As noted in my November 2010 Report, the ALC does not currently have sufficient resources to ensure a proper number of staff dedicated to compliance and enforcement. While there are opportunities to partner with local governments, the ALC recognizes that we “must have the ability to act when outside help is unavailable.” (p. 65).

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.

These objectives have not yet been implemented as the ALC lost several key staff positions over the past 12 months.

Since late 2012 the ALC has worked with the Public Service Agency (PSA) to update and re-write job descriptions/profiles, write new job profiles and to undertake classification reviews for all ALC staff positions. Following this exercise the ALC requested approval from the Deputy Minister to the Premier to recruit staff to fill new, vacant and acting positions for the following business activities:

- Increase the ALC’s compliance and enforcement capacity by hiring a C & E Coordinator.

- Increase the ALC's access to professional advice by hiring 1 or 2 Professional Agrologists specializing in soil science, to assist with the review of applications, ALR boundary reviews and in compliance and enforcement matters such as illegal land filling.
- Move the ALC toward a more proactive planning role by restructuring and filling vacant planner positions, a new planning manager position, and a vacant policy positions. The proactive planning model will enable the ALC to strengthen ties to local government land use planning and to more readily deal with emerging issues that relate to land use agriculture. The added planners will also facilitate the commencement of concurrent ALR boundary reviews in northern and central British Columbia and allow more discussion with the oil & gas sector to look for new and creative opportunities to balance the preservation of agricultural land with oil and gas activities.
- Increase the ALC's ability for oversight of delegation agreements; and
- Increase the ALC's information management capacity (website, Freedom of Information (FOI) requests, statistics, annual reporting and client self-help) by recruiting an information coordinator.

As of August 2013, the ALC has received approval from the Deputy Minister to the Premier to recruit the required positions. Recruitment is underway and it is anticipated most, if not all, positions will be filled by January 2014.

VIII. OIL AND GAS ISSUES

Approximately half of the land in the ALR lies within the northern region of British Columbia, with one-third of the provincial ALR lying in the northeast. It is sometimes assumed that because this ALR land is in the "north" this equates to the land being of lesser agricultural capability and suitability. In fact, this region of the province contains some of the best quality agricultural land in the province. As is well known, this is also a region of the province in which there is considerable potential for oil and gas exploration and development.

The ALC has long recognized that oil and gas activities in the ALR are generally temporary in nature and are vitally important to the economic wellbeing of British Columbia. Since 1976 the ALC has worked collaboratively with industry to develop a streamlined process of allowing the non-farm use of land in the ALR for oil and gas activities without the need of an application based on agreed to conditions.

Oil and gas activities are one of the “non-farm uses” the ALC may authorize under the *ALCA*. In recognition of the special features attending this particular type of non-farm use (need for speedy approvals, usually temporary works, need to ensure proper remediation and reclamation), the ALC first passed a “General Order” specific to oil and gas development in the ALR in 1976 that facilitated a streamlining of the approval process by removing the requirement for an application for specified oil and gas uses in the ALR. New legislation and regulation that came into force on November 1, 2002 provided the ALC with the ability, through a delegation agreement with an authority, to exempt certain non-farm use applications. In 2004 the ALC entered into a delegation agreement with the Oil and Gas Commission (OGC) as authorized by s. 26 of the *ALCA*. These agreements - which recognize the specialized nature of the OGC and the ALC’s confidence in its ability to administer the delegation agreement - allow the OGC to exercise the ALC’s power to decide applications for non-farm use, and may exempt a non-farm use in a specified area within the jurisdiction of the authority from the requirement of an application on the condition that the authority conducts audits and reports to the ALC as required by the agreement.

In June 2013, an updated delegation agreement was entered into between the ALC and the OGC, entitled *Delegation Agreement for Oil and Gas Uses in the Agricultural Land Reserve Peace River Regional District and Northern Rockies Regional Municipality*.¹⁷ As stated in the recitals to that agreement, a key purpose of the delegation agreement is to “further the one window regulation of the oil and gas sector in British Columbia and seek ways to streamline and improve the review and approval processes for oil and gas activities and ancillary activities on agricultural reserve lands while preserving agricultural lands and encouraging the farming of agricultural

¹⁷ <http://www.bcogc.ca/content/ogc-alc-delegation-agreement>

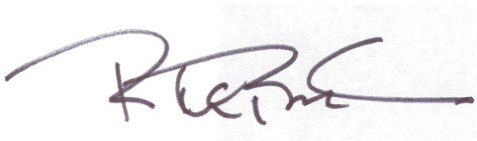
lands”. The key terms of that delegation agreement, and the accompanying safeguards, terms and conditions attached, can be found in the full agreement.¹⁸

From 1976 to today, the ALC has consistently recognized that the significant economic contributions of the oil and gas industry are vitally important to the economic wellbeing of British Columbia while remaining focused on its mandate to preserve agricultural land and encourage farming. The various iterations of the General Orders and the current ALC/OGC Delegation Agreement attempts to balance the competing goals of the oil and gas industry and agricultural land preservation.

IX. ACKNOWLEDGMENT

In preparing this year’s message, I have taken pause to reflect on the tremendous amount of effort I have asked of my staff to maintain the momentum of change at the ALC. Despite being few in numbers, staff has embraced the ALC’s new direction and dedicated themselves to assisting me and my Commission colleagues to achieve our goals. The phenomenal amount of work to initiate the ALR boundary review in the East Kootenays, to manage all the transitional projects and to undertake staff recruitment, has all been done in addition to the other duties associated with the day to day work of the ALC - planning, policy development, processing applications, compliance & enforcement and liaising with the Ministry. The result has been truly amazing. I cannot express enough to staff how proud I am of their absolute commitment to the ALC.

I am also thankful for the commitment and support of my Commissioner colleagues. I can say without hesitation that the ALC now functions as a cohesive team (Commissioners and staff) that is open to debate, respectful of opinions, welcoming of creativity and most importantly; a team that is committed to the mandate of preserving British Columbia’s precious agricultural land base. Thank you all.



Richard Bullock, Chair
Provincial Agricultural Land Commission

¹⁸ The full agreement is available at: <http://www.alc.gov.bc.ca/Delegation/ALC-OGC/ogc-alc-delegation-agreement-updated-june-132013%5B1%5D.pdf>