

AGRICULTURAL LAND RESERVE AND TREATY NEGOTIATIONS

BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #19: *Preserve Agricultural Lands**

This Briefing Note includes information on:

1. LMTAC's current related policy;
2. Background material on the Agricultural Land Commission; and
3. Other related LMTAC interests and concerns.

1. Agricultural Land Reserve – Existing LMTAC Policy

First Principle #19 - Preserve Agricultural Lands

Lands in the Agricultural Land Reserve (ALR) must remain in the ALR and under the jurisdiction of the Agricultural Land Commission (ALC).

2. BACKGROUND: Agricultural Land Commission (ALC) Legislative and Policy Framework

The Agricultural Land Commission (ALC) has three purposes:

1. To preserve agricultural land;
2. To encourage farming on agricultural land in collaboration with other communities of interest; and
3. To encourage local governments, first nations, the governments and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

The third purpose directs the Commission to work with local governments and others to ensure that their plans and bylaws are compatible with provincial Agricultural Land Reserve (ALR) zoning. The ALC encourages local governments to adopt plans and bylaw provisions that are supportive of farm activities and compatible uses in the ALR which recognize the wide range of agricultural values and the economic, social and environmental contributions of a healthy agricultural sector to communities and regions.

The ALC established guidelines to assist local governments in achieving consistency when preparing official plans (i.e. Official Community Plans; agricultural area plans, transportation plans; parks and open space plans) under the *Local Government Act* and bylaw provisions that involve regulating the use of and activities on lands in the ALR. All local governments must ensure that its bylaws and plans are consistent with the regulations and orders of the *ALC Act*. Where bylaws are deemed inconsistent, they are of no force or effect, to the extent of the inconsistency.

* This background briefing note was endorsed by the LMTAC Board, September 29, 2004.

Two process 'streams' exist for the ALC to review local government plans:

Plans That Follow Stream #1	Plans That Follow Stream #2
<ul style="list-style-type: none"> • plans comprising small or relatively small areas of ALR • plans that do not propose non-farm uses for lands in the ALR • plans that meet the guidelines for sufficiently large minimum parcel sizes in the ALR to permit a wide range of agricultural activities • plans for those communities which have an Agricultural Area Plan in place and endorsed by the ALC and referred to in the OCP. 	<ul style="list-style-type: none"> • plans with large areas of ALR or proportionately large ALR's • plans with areas of high agricultural significance • plans for communities with high growth rates and limited opportunity or options for densification or further growth outside of the ALR • plans proposing exclusion of ALR for non-farm development • plans of communities considering negotiations the transfer of decision-making powers through delegation of those powers from the ALC or plans for communities where a delegation agreement is already in place.
Suggested Process	Suggested Process
<p>ALC staff is contacted to determine whether stream #1 is appropriate, if agreed:</p> <ul style="list-style-type: none"> • Plans are referred to the ALC after first reading, as required under the <i>Local Government Act</i> • The local governments enclose a letter stating that the OCP (or amendment) is consistent with the guidelines • the ALC acknowledges receipt of the plan and letter • plans re filed in the ALC offices and are available for audit and review by the ALC at a later date. 	<ul style="list-style-type: none"> • ALC and MAFF staff are notified of a proposed plan or major plan amendments early in the planning process • early staff to staff consultation (local governments and agri-teams comprised of ALC and MAFF staff) • referral of early drafts to ALC for initial staff review and comment • meetings between the ALC panel and Board or Council as required • local governments forwards the proposed plan to the ALC, immediately following first reading • in consultation with MAFF staff, ALC comments on the plans as to its consistency with the <i>Act</i>, regulations and orders of the ALC • ALC comments may include both 'suggested' and 'required' changes, the latter being requirements to make the plan consistent with the <i>Act</i>.

Agricultural Land Commission Amendment Act, 2004 (Bill 27)

The Provincial Ministry of Sustainable Resource Management introduced Bill 27 on April 26, 2004, and the legislation passed third and final reading on May 5, 2004. The following is an outline of the new process for First Nations who have reached an Agreement-in-Principle to apply to the ALC for exclusions.

Step 1: First Nation must ratify an AIP

Step 2: The First Nation Band Council must mandate the application for exclusion

Step 3: Following a Band Council resolution, the First Nation can apply directly to the ALC.

Step 3: The ALC makes a tentative determination on application. However, lands remain in the ALR until a Final Agreement (treaty) is ratified.

Step 5: After ratification of the Final Agreement, the ALC decision takes effect only if the new First Nation government votes to proceed.

Prior to Bill 27, a First Nation needed to secure the authorization of a local government before taking an application to the ALC. The purpose of Bill 27 is to provide greater clarity and certainty with respect to lands offered as part of a treaty settlement package. By applying directly to the ALC at the AIP stage, a First Nation is provided with greater certainty on the land package prior to concluding a final treaty. Currently, the provincial Crown cannot negotiate the removal of the ALR designation as part of treaty negotiations. Bill 27 provides AIP First Nations will the same authority given to local governments, prior to owning the lands. However, there is no provision for First Nation applications that parallels section 879 of the Local Government Act, whereby a First

Nation undertaking planning and by-law development would also be required to consult with parties it considers will be affected by the proposed major changes in land use, in addition to the public hearing requirement.

3. Other Related LMTAC Interests and Concerns

Agricultural Land Reserve – Local Government Interests

The following list of local government interests have been compiled based upon the expressed views of LMTAC members during Executive and Board discussions and in consultation with LMTAC Table Representatives.

- Agricultural land is of great importance to many BC local governments and communities and must be preserved to the greatest extent possible.
- That treaties seek to preserve agricultural lands and the status of the ALR, meaning that any Provincial Crown lands subject to ALR designation at the time of transfer to a First Nation as part of a Treaty Settlement package, be transferred with the ALR designation in place.
- The ALC should retain jurisdiction as an independent agency, responsible for making any decisions regarding the removal of the ALR designation using its own policies and procedures.
- Land designated as ALR should be managed in the same way on and off Treaty Settlement Lands.
- That First Nation and municipal governments be treated equitably on matters that are considered “local government” in nature. In particular, First Nation governments should be subject to the same requirements as local governments under the ALC regulations pursuant to the *ALC Act*, particularly those related to public notice, public hearings and consultation with the adjacent local government in cases involving ALR exclusions.
- Where a First Nation is seeking exclusion of lands that are owned as conventional fee simple lands, the application process should be the same as for any other landowner.
- The process of identifying and dealing with existing agricultural and range leases and licenses needs to be dealt with in an equitable manner, meaning that no economic hardship should result for the holders of those interests.

Agricultural Land Reserve – Local Government Concerns

- The relative scarcity of good agricultural land in the Province has led to the establishment of the ALR. The dramatic urban growth in an area such as Greater Vancouver has placed increased pressures on such lands, illustrating the importance of the ALR in protecting the agricultural resource.
- Lands located within the ALR require protection for long term farm use. Land use conflicts between farm operations in the ALR and non-farm uses on lands adjoining or reasonably adjacent to the ALR may compromise the agricultural use of ALR lands.
- The ALR Amendment Act (Bill 27) may not require First Nation governments to comply with ALC regulations that currently apply to all local governments, whereby a local government that develops repeals or amends on Official Community Plan must consult with affected parties (in addition to the public hearing requirement).