

British Columbia's Agricultural Land Reserve: A Legal Review of the Question of "Community Need"

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Table of Contents

Report Summary	i
1. Introduction: The Context	1
1.1 Agricultural Land in British Columbia	1
1.2 The Agricultural Land Reserve	3
1.3 Effect of the Agricultural Land Reserve	5
2. History of the Farmland Protection Purpose of the Agricultural Land Reserve	7
2.1 The Agricultural Land Commission Act and Commission	7
2.2 Section 6: Purpose of Preserving Farmland	9
2.3 Judicial Comment	12
2.4 Commission's Comment	14
3. History of the Community Need Criteria	15
3.1 No Community Need Criteria Pre-2002	15
3.2 Recent Service Plans Consider Community Need Criteria	15
3.3 Decisions Based on Community Need Criteria	17
3.4 Legality of Community Need Criteria	18
4. Conclusion	21
Appendix A: Summary of References to Community Need	23
1. Annual Reports 2000-2005	23
2. Annual Service Plans	29
Appendix B: Summary of Recent Decisions Considering Community Need	35
Appendix C: Bibliography	38

Report Summary

The purpose of this report is to examine the Agricultural Land Commission's ("the Commission") recent attention to the concepts of "regional responsiveness" and "community need" in light of its mandate to preserve agricultural land as set out in the *Agricultural Land Commission Act* (the "Act").

In British Columbia less than 5% of the land base is suitable for growing a range of agricultural crops. Of this, much of the prime farmland (less than 1% of the land base) is largely concentrated in the most urbanized areas where population growth and pressure to convert farmland to urban uses is highest. This situation motivated the provincial government to establish an agricultural zone, the Agricultural Land Reserve ("ALR") in 1973.

The ALR program is based on a number of principles. It is in the *provincial interest*, and the provincial government is best able, to steward the long-term food system needs of the citizens of British Columbia. The ALR program and the Commission's role is for the *principle purpose* of preserving the non-renewable farmland base. The purpose is to preserve the ability of the land and the farm community in the ALR to produce food, not to balance competing land uses or to negotiate the use of farmland for non-farm uses. The ALR is a provincial *land use zone* that emphasizes agricultural uses. Designation of farmland in the ALR is based on the objective biophysical factors of *soil and climate suitability* for agriculture.

Given these principles, it is important to note that the Commission works with local governments to ensure that plans and bylaws are consistent with the zone, and that urban growth is directed away from the zone, in recognition that the ALR is not a land reserve for future urban uses. In the context of North American regional development, the ALR has protected farmland and contained urban areas more rigorously than provincial, state and local government efforts in most other jurisdictions. Since its inception, all provincial governments in B.C. have endorsed the ALR regime.

However, the Commission's consideration of community need is neither an express power nor an implied power authorized by the Act, and it is inconsistent with principles of administrative law. It is also inconsistent with the Commission's long-standing position and approach to decision-making for preserving agricultural land. The courts have affirmed the validity of the ALR regime, and have refused to adopt tests or criteria for Commission decision-making that do not derive from the purposes contained in section 6 of the Act, namely to preserve agricultural land.

The provincial government itself has exercised a balancing of community needs in the ALR regime in a number of ways. It recently introduced a broader range of allowable land uses in the ALR and expanded local government's role through regulation, and, in doing so, balanced community interests with farmland preservation. It has also exercised a balancing of community needs through section 13 of the Act where a

facilitator may consider social, economic, environmental and heritage factors when making a recommendation on an application to the Commission. No such authority has been accorded to the Commission in section 6 of the Act. The analysis in this report of the Act, judicial comment about the ALR regime, Commission decisions prior to 2002, and recent changes in regulation show that *the Commission's consideration of community needs is contrary to its legislated authority.*

In the 30 year history of the ALR, the current focus on community need is a recent occurrence that was first considered at the time of the Core Review process in 2002 and introduced through the Commission's Service Plan performance measures and targets in 2002. The Service Plans can be considered policy documents that provide general guidance but do not limit the Commission's decision-making authority. Contrary to section 6 of the Act, Service Plans contemplate that exclusions of suitable ALR will be compensated by a 'net benefit' to agriculture or by satisfying a community need through planning, and that minimizing the amount of land removed from the ALR for community need is not required. They also establish targets for the percentage of decisions where community need is a factor.

In conclusion, the incompatibility of preserving agricultural land and attending to community need leaves British Columbian's with two choices: (1) *reaffirm the provincial priority to preserve farmland by removing from the Service Plans statements about decisions based on community need;* or (2) *amend section 6 of the Act to expand the purposes of the Commission and ALR in recognition that there is no longer a provincial priority for preserving agricultural land.* The former choice will see the continuation of the province's effective farmland preservation program. The latter choice will transform the ALR to an urban reserve and see the gradual conversion of farmland to non-farm uses in many areas of the province. This choice will have fundamental implications for regional sustainability - economic, environmental and social - and in particular food security.

1. Introduction: The Context

1.1 Agricultural Land in British Columbia

In British Columbia less than 5% of the land base is suitable for growing a range of agricultural crops and less than 1% is prime farmland (classes one to three).¹ This small percentage of the land base and most productive agricultural land is concentrated in the most urbanized areas where population growth and pressure to convert farmland to urban uses is highest.² Prior to 1972 local governments approved the conversion of, on average, 5000 hectares of prime agricultural land to urban uses each year.³ This non-renewable land base also produces the most blueberries, cranberries and raspberries of any province in the country,⁴ generates over \$2.3 billion in farm gate receipts,⁵ and has a \$2.11 billion impact on the provincial gross domestic product.⁶

This scarcity of prime farmland coupled with expanding urban growth motivated the provincial government to establish the Agricultural Land Commission (the “Commission”) in 1973 and subsequently designate the Agricultural Land Reserve (the “ALR”) to preserve agricultural land.⁷ The provincial government took a long-term approach to provincial food security, recognizing that all populations require a secure agricultural land base to provide for local food needs. Local governments’ primary focus on meeting the immediate housing, recreation and industrial needs of a growing population (as reflected in what is now the *Local Government Act*), and lack of experience in taking a longer-term approach to sustainable development also threw into relief the concern that stewarding farmland and a farm economy is best addressed at the provincial level as a matter of provincial interest.⁸

¹ Select Standing Committee on Agriculture; Inventory of Agricultural Land Reserves in British Columbia, Phase 1 Research Report, 1978; Moura Quayle, *Stakes in the Ground: The Provincial Interest in Agricultural Land Commission Act* (Report to the Minister of Agriculture and Food, 1998) (hereafter “Quayle”); G. Gary Runka, B.C.’s Agricultural Land Reserve: Its Historical Roots (presentation to the Planning for Food Seminar, World Planners Congress, Vancouver, June 21, 2006)

http://www.al.gov.bc.ca/resmgmt/sf/plan_food/Presentations/2_a_Runka.pdf (hereafter “Runka”).

² Nearly 85 percent of British Columbians live in urban areas and 81 percent of those urbanites live in an area of less than three percent of the province (Thompson-Okanagan, Lower Mainland and southern Vancouver Island) where agriculture generates 81 percent of the provincial gross farm receipts. Barry Smith, *Planning for Agriculture* (Resource Materials p.I-5). The author originally used 1996 Statistics Canada data and updated the figures with 2001 Statistics Canada data. http://www.alc.gov.bc.ca/publications/planning/pfa_main.htm.

³ Agricultural Land Commission, *Ten Years of Agricultural Land Preservation* (December 1983, p.4).

⁴ Ministry of Agriculture and Lands, Agricultural Statistics, *BC’s Top 25 Agricultural Commodities and National Ranking 2003*, <http://www.agf.gov.bc.ca/stats/1d.htm>; Ministry of Agriculture and Lands, *Fast Stats: Agriculture and Food 2005*, <http://www.agf.gov.bc.ca/stats/>.

⁵ Ministry of Agriculture, Food and Fisheries, *Province of British Columbia: Agriculture in Brief – 1996-2001* <http://www.agf.gov.bc.ca/resmgmt/sf/agbriefs/BC.pdf>.

⁶ Ministry of Agriculture and Lands, *Fast Stats: Agriculture and Food 2005*, *supra* note 4.

⁷ The exact wording of the purpose of the Commission have changed several times since its inception. However, these changes have not been at odds with the Commission’s primary mandate of preserving agricultural land.

⁸ Local governments are tasked with developing a five year vision at a municipal or sub-regional scale, and a 20 year vision at a regional scale. See the focus on meeting housing needs for projected population growth when crafting Official Community Plans (section 877(1)(a) of the *Local Government Act*) and Regional Growth Strategies (section

The ALR regime has withstood the test of time and changing political interests. All successive provincial governments since 1973 have endorsed the ALR, the Commission and its goal of preserving agricultural land. This success is also reflected in the public's support for the program. A 1997 public opinion poll found 90 percent of British Columbians wanting governments to limit urban development to protect farmers and farmland, with 72 percent believing it should be difficult or very difficult to remove land from the ALR.⁹

Indeed, the public policy reasons that lead to the establishment of the ALR and Commission 33 years ago are even more acute today with land prices and population increasing drastically in the areas of the province with the most productive agricultural land. The province is also facing the uncertainty of climate change and depleted oil supplies that will necessitate more, rather than less, local agriculture in coming decades.

The impetus for this report is the shift in the Commission's approach to preserving farmland since 2002, and its impact on the security of the ALR. It has adopted into its farmland preservation mandate a far more acute focus on being "regionally responsive" to accommodate non-agricultural "community needs" on land in the ALR. The Commission has indicated that, if a local government makes a strong case to exclude land from the ALR based on a need for non-farm uses, the Commission is willing to supplant its provincial responsibility for preserving agricultural land.¹⁰ In effect, the Commission is now filtering its statutory provincial mandate through a lens of local non-farmland values.

Since 2002, the amount of land excluded from the ALR as a result of private landowner applications has increased¹¹ and the Commission has included community need criteria as a factor in its decision-making,¹² two facts that have generated pointed comment.¹³

The purpose of this report is to examine the Commission's recent attention to the concepts of "regional responsiveness" and "community need" in light of its mandate to preserve agricultural land as set out in the *Agricultural Land Commission Act* (the "Act").¹⁴ An analysis of the Act, judicial comment about the ALR regime, Commission decisions prior to 2002, and recent changes in regulation demonstrate that attending

850(2)(c) of the *Local Government Act*, R.S.B.C. 1996 c.323,

http://www.qp.gov.bc.ca/statreg/stat/L/96323_00.htm.

⁹ Ministry of Agriculture and Food and Agricultural Land Commission, *Agricultural Survey Poll by Viewpoints Research Ltd.* (Burnaby: Ministry of Agriculture and Food and Agricultural Land Commission, 1997), as referenced in Quayle, *supra* note 1.

¹⁰ The non-farm uses in several recent cases that involved local governments as applicants or supporting an application were for industrial land and parks for active recreation (ball fields).

¹¹ Smith, Barry, *Summary of Exclusion of Land From the Agricultural Land Reserve* (unpublished analysis using statistics from the Agricultural Land Commission, October 5, 2006, on file with author).

¹² See the discussion of the Barnston Island and Garden City Lands in Part 3.3 below.

¹³ See, for example, Campbell, Charles. *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21st Century* (Vancouver: David Suzuki Foundation, 2006)

<http://www.davidsuzuki.org/files/SWAG/DSF-ALR-final3.pdf>; and Green, Ryan. *Case Studies of Agricultural Land Commission Decisions: The Need for Inquiry and Reform* (Victoria: Environmental Law Clinic, on behalf of the Agricultural Land Reserve Protection and Enhancement Committee, 2006)

[http://www.elc.uvic.ca/documents/ALR%20Final%20Report%20\(FINAL-2\).pdf](http://www.elc.uvic.ca/documents/ALR%20Final%20Report%20(FINAL-2).pdf).

¹⁴ S.B.C. 2002, c.36.

to non-agricultural community needs is contrary to the provincial interest to preserve irreplaceable farmland. The Commission has been validly excluding land from the ALR for over thirty years using criteria that relates to the agricultural suitability of the land in question, namely land that was incorrectly classified as ALR when the ALR was established, and other lands that, for a variety of reasons (e.g. small parcels entirely surrounded by suburban development) are not suitable for producing a range of crops.

However, the case law shows that in carrying out its powers the Commission is not enabled to take into account community need because the provincial legislature has already created mechanisms by which community need may be considered in relation to agricultural land, and because it is contrary to its purposes under the Act of preserving agricultural land.

1.2 The Agricultural Land Reserve

In 1972 and 1973 the provincial government took several steps to create the ALR, including:¹⁵

- Prohibiting subdivision or change of use of lands two acres (0.81 hectares) or more assessed for taxation purposes as farmland, zoned agricultural by a local government or rated by the Canada Land Inventory as Class 1-4 agricultural capability;
- Enacting the *Land Commission Act* and regulations establishing the Commission to create and administer the provincial ALR zone, to preserve agricultural land for farm uses, and to encourage the establishment and maintenance of family farms;
- Mandating the Commission to work with the 28 regional districts to delineate ALR boundaries guided by the Canada Land Inventory mapping, and designate those boundaries with Cabinet approval between 1974 and 1976;
- Requiring Commission (or at times Cabinet) approval for the exclusion or inclusion of land, subdivision, and non-farm uses in the ALR, unless allowed under the Act, Regulations or Orders of the Commission; and
- Requiring local governments to ensure that land use bylaws (regional growth strategies, official community plans and zoning bylaws) are consistent with the legislation, regulations, and orders of the Commission.

The result of this early work is the provincial agricultural zone of some 4.7 million hectares, slightly less than five percent of the provincial land base.¹⁶

While there have been numerous changes in legislation, regulations, policies and procedures since 1973, the fundamental principles upon which the ALR is based have remained essentially the same:

¹⁵ For histories of the ALR and Commission see Agricultural Land Commission, *History of the ALR: Highlights from the First 25 Years of Preserving Foodlands* http://www.alc.gov.bc.ca/publications/Alr_history.htm; Runka, *supra* note 1; Campbell, *supra* note 13.

¹⁶ Ministry of Agriculture, Food and Fisheries, *Census of Agriculture 2001 and Historical Comparisons – BC Summary May 2002* <http://www.agf.gov.bc.ca/stats/2001census.pdf>.

Provincial Interest

It is of importance to the economic, social and environmental health of the province to maintain a working land base for agriculture. While all of the land in the ALR is important for agricultural industries, much of the high quality ALR and agricultural production is concentrated in municipalities and regional districts facing significant growth pressures where consideration of industry, housing, and recreation values is often more persuasive than agricultural values. The province has removed this debate from the local arena to ensure that provincial sustainability goals for food security, the agricultural industry, and future generations are met. Indeed, a new report from the Ministry of Agriculture and Lands highlights the growing need to safeguard the province's agricultural land base for food security reasons.¹⁷

Purpose

The purpose of the Commission has always been to preserve agricultural land (as discussed further in Part 2.2 below). The Commission's grant of authority from its legislation has not been to balance competing land uses or to negotiate the use of farmland for non-farm uses. The purpose is to preserve the ability of the land and the farm community in the ALR to produce food.

Based on Zoning

The ALR is a provincial zone. Just as local governments have authority under s.903 of the *Local Government Act* to create residential, commercial, industrial and mixed-use land use zones in which they can regulate and prohibit uses, the ALR is a provincial zone that is administered by a provincial Commission. The Commission has authority to regulate and prohibit uses within the ALR zone. The Commission also works with local governments to ensure that plans and bylaws are consistent with the zone, and that urban growth is directed away from the zone.

Suitability for Agriculture Based on Soil and Climate

Designation of land in the ALR is largely based on biophysical factors: the agricultural capability of the soil and climate to produce a range of crops, as classified in the Canada Land Inventory system, with Class 1 having the widest range of cropping options and Class 7 being unsuitable for agricultural use.¹⁸ The intention of this approach is to constrain debates about inclusions into and exclusions of land from the ALR to relevant considerations - whether or not the land has agricultural potential.

Given these values and principles, it is important to emphasize that the ALR was not conceived of as an urban reserve that could be tapped into over time for residential, commercial and industrial uses. During the ALR-designation process, local governments were allowed to claim a one time five year supply of land for urban purposes to assist them with the transition to planning development away from the ALR. In addition, in response to local government planning initiatives, the Commission has subsequently allowed exclusions from the ALR of lands that are

¹⁷ Ministry of Agriculture and Lands. B.C.'s Food Self-Reliance: Can B.C.'s Farmers Feed Our Growing Population? (Victoria: B.C. Ministry of Agriculture and Lands, 2007).

¹⁸ This approach has been approved by the courts. See, for example, Justice Ruttan's discussion of the land classification system in *Henson v. British Columbia (Agricultural Land Commission)* (1981), 31 B.C.L.R. 65 (B.C.S.C.) at para. 21.

considered not suitable for agricultural use.¹⁹ In other words, local governments have had 30 years to plan for land use and community development with the ALR regime in place, and the Commission's mandate has not changed under its enabling legislation. This solid foundation has resulted in a relatively successful provincial system for ensuring farmland is available for farm uses, now and in the future.

1.3 Effect of the Agricultural Land Reserve

In the past 30 years there has been no net loss of farmland in B.C. To the end of 2003 the ALR has realized a small net increase of about 43,300 hectares, or 0.92 percent.²⁰ However, the quality of farmland in the ALR has decreased, with 2.8 hectares of prime farmland being excluded for every hectare of prime farmland included.²¹ Likewise, the ALR has shifted to the northern part of the province, with 90 percent of inclusions occurring in the north and 72 percent of exclusions occurring in the south.²²

In the context of North American regional development, the ALR has been a success. It has protected farmland and contained urban areas more rigorously than the provincial, state and local government efforts in most other jurisdictions.

It is because of this success, and the original motivating factors of geography, economy, governance and sustainability, that all provincial governments since 1973 have elected to uphold the provincial interest in preserving farmland. There is continued recognition that local governments, with their legislated community development focus, are not able or willing to give the value of protection of farmland adequate weight when considering the variety of growth pressures confronting them. (This reality is captured in both the Munson Mountain and Abbotsford decisions described below in Part 3.3 and Appendix B.)

In summary:

- Less than 5% of the provincial land base is suitable for growing a range of crops that can support a significant farm economy;
- In the 1970's the provincial government created the ALR and Commission to preserve agricultural land for farm uses and to encourage the establishment and maintenance of family farms;

¹⁹ For example, between 1974 and 2006 a total of 136,151 hectares were excluded from the ALR. Where data is available (1974 - 2000) of all land excluded from the ALR during this period, nearly 87% had secondary agricultural capabilities <http://www.alc.gov.bc.ca/>.

²⁰ Agricultural Land Commission, Table of Area Included/Excluded from the ALR by Regional District 1974 to December 31, 2003 http://www.alc.gov.bc.ca/alr/stats/A1_incl-excl_allyears_d.htm; Statistics Canada, *Rural and Small Town Canada Analysis Bulletin Vol. 6 No. 1 (January 2005)*, <http://www.statcan.ca/english/freepub/21-006-XIE/21-006-XIE2005001.pdf>.

²¹ Barry Smith, Planner (formerly with the Agricultural Land Commission and the Ministry of Agriculture), *ALR Quality and Quantity* (unpublished manuscript, August 2005, on file with author). The statistics quoted in this report were derived from the statistics provided by the Agricultural Land Commission, <http://www.landcommission.gov.bc.ca/>.

²² Agricultural Land Commission, Table of Area Included/Excluded from the ALR by Year 1974 to December 31, 2003 http://www.alc.gov.bc.ca/alr/stats/A1_incl-excl_allyears_d.htm.

- Preserving agricultural land is in the provincial interest because of the importance of protecting a non-renewable resource that contributes to long-term food security, and because local governments have not displayed with any consistency the experience, desire or ability to uphold this mandate;
- The hallmarks of the regime include an ALR based on soil/climate capability for agriculture and the establishment of a provincial zone;
- The Commission works with local governments to ensure that plans and bylaws are consistent with the zone, and that urban growth is directed away from the zone, because the purpose of the ALR is not as a land reserve for future urban uses;
- Local governments have had 30 years to adopt land use and development patterns that do not rely on the ALR as an urban reserve;
- In the context of North American regional development, the ALR has protected farmland and contained urban areas more rigorously than the provincial, state and local government efforts in most other jurisdictions; and
- Since its inception, all provincial governments have endorsed the ALR regime.

2. History of the Farmland Protection Purpose of the Agricultural Land Reserve

2.1 The Agricultural Land Commission Act and Commission

The Act establishes the Commission, which is known as an administrative tribunal (an unelected decision-making body that obtains its authority from legislation). The Commission is also an expert tribunal where its members are appointed based on their particular knowledge of agriculture and/or land use issues.

The provincial legislature, through the Act, has granted the Commission almost exclusive jurisdiction over matters dealing with agricultural land. The Act takes precedent over all other legislation (except the *Environment and Land Use Act*, *Environmental Management Act* and *Interpretation Act*).²³ Even the provincial government must conduct itself according to the Act.²⁴

Section 18 of the Act demonstrates the scope of the Commission's mandate to regulate the use of ALR land: it states that other levels of government must not permit non-farm uses of ALR land unless permitted by the Act, regulations, or terms imposed by an order of the Commission. The comprehensive powers granted in the Act and its priority over other laws point to a legislative intention to grant to the Commission almost complete jurisdiction over uses of land in the ALR. This intent and purpose has been affirmed by the courts (see Part 2.3 below).

The Commission's jurisdiction includes the ability to pass resolutions and bylaws it considers necessary for the conduct of its affairs, exercise of its powers and performance of its duties and functions, unless limited by the Act or regulations.²⁵ This includes the ability to establish processes and procedures for applications to the Commission. Policies exist for a wide range of issues such as agritourism activities within the ALR, additional residences for farm use, and subdivision approval by approving officers.

In practice, the primary roles of the Commission are twofold. First, the Commission fulfils a quasi-judicial decision-making function by ruling on applications to the Commission.²⁶ The most common applications under the Act are for subdivision, non-farm use and exclusion of lands from the ALR. Since 2002 the provincial Commission is represented by six regional panels. These panels, which consist of two or more Commission members, have all the powers, duties and functions of the Commission

²³ *Supra* note 14 at s.2(1).

²⁴ *Supra* note 14 at s.2(2).

²⁵ *Supra* note 14 at s.9.

²⁶ Runka asserts that the Commission has dealt with approximately 35,000 applications since its inception. *Supra* note 1 at p. 5.

with respect to applications or other matters before them, and a decision of a panel is for all purposes a decision of the Commission.²⁷

The review of applications involves discretion on the part of the Commissioners. When discretion is involved, the Commission must adhere to the following principles of administrative law. The discretion must be exercised:

- by the person who possesses it. In this case, Commissioners must make the decision;
- on the merits of each case. Each application must be decided on its own merits, and the Commissioners must apply his or her mind to the specifics of each matter. The Commission cannot have a blanket response to types of applications and must consider on a case-by-case basis the specific information pertaining to an application;
- in good faith. Commission decisions must not be malicious, dishonest, fraudulent or for a purpose not contemplated by granting statute. In short, the decision must relate to the preservation of agricultural land.
- for the purpose for which it was given. In this case the decision must relate to preserving agricultural land, as set out in section 6 of the Act (see Part 2.2 below);
- in a non-discriminatory manner. Commission decisions cannot discriminate against a person or group;
- by the decision-maker evaluating all relevant considerations. Commissioners must consider all relevant and material evidence and not take into account irrelevant considerations;
- by the decision-maker complying with the conditions on and directions of the enabling legislation. Commissioners must act according to the Act; and
- by the decision-maker complying with natural justice and fairness. Natural justice and fairness may include a right to be heard (either in written or oral form) and a right to reasons.

The factors that Commissioners often taken into account when exercising their discretion include evaluating the land's capability for agriculture, classification of the lands under applications, assessing surrounding land uses and community plans, past commission decisions, local government input and considering past and current uses of the land.

The Commission's second role relates to its mandate to encourage farming and agriculture-related activities in the ALR. This objective may be assisted by Commission decisions on ALR applications and also includes ensuring that local and provincial government laws, policies and programs are in compliance with its section 6 agricultural preservation mandate and do not discourage agricultural use of lands within the ALR. The Commission reviews and makes recommendations on zoning bylaws and official community plans. It also works with local governments to fine-

²⁷ *Supra* note 14 at s.11(5).

tune their ALR boundaries and assists them in planning for the success of their agricultural communities.²⁸

The Commission has undertaken many reviews of the ALR in partnership with local governments. These reviews routinely allow exclusions from as well as inclusions into the ALR. Achieving an adjustment to the ALR boundary following a Commission review is normally achieved through a block application put forward by a local government. The intent of this process is to more accurately define the ALR by seeking the removal of lands that are unsuitable for farm purposes in the long-term and include land that can contribute to agricultural production.

2.2 Section 6: Purpose of Preserving Farmland

The Commission is, and always has been, primarily tasked with preserving agricultural land on a province-wide basis. Section 6 of the Act sets out the most current wording of the mandate of the Commission:²⁹

Purposes of the commission

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.

Land included in the ALR must be “suitable for farm use,” a phrase now contained in section 15 of the Act. The Commission has always maintained, and courts have affirmed, that the term “suitable for farm use” means land capable of being used for farm purposes. It is the soil/climate suitability of the land and not the present economic viability of farming the land that is the essence of the phrase.³⁰

The Act does not provide any additional criteria or direction as to the purposes of the Commission and the decision-making approach that the Commission should take on applications to it. The absence of any further guidance underscores the Commission’s single purpose mandate and the importance that the legislature has placed on the “preserve agricultural land” objective.

²⁸ See, for example, the Commission’s *Landscape Buffer Specifications* (1993), *Subdivision Near Agriculture - A Guide for Approving Officers* (1997), the comprehensive land use planning toolkit - *Planning for Agriculture* (1998), and *ALR and Community Planning Guidelines* (undated) http://www.alc.gov.bc.ca/publications/planning/pfa_main.htm. The Commission has also supported local governments through its involvement in the Ministry of Agriculture and Land’s Strengthening Farming Program.

²⁹ *Supra* note 14.

³⁰ This interpretation has been affirmed by the courts. See, for example, *Brentwood Pioneer Holdings Ltd. v. British Columbia (Agricultural Land Commission)*, [2000] B.C.J. No. 972; 2000 BCCA 320; (2000) 186 D.L.R. (4th) 385; (2000) 138 B.C.A.C. 80; (2000) 77 B.C.L.R. (3d) 79 (B.C.C.A), leave to appeal refused by 153 B.C.A.C. 320 (note), 267 N.R. 195 (note), 2001 CarswellBC 121, 2001 CarswellBC 122, 251 W.A.C. 320 (note), [2000] S.C.C.A. No. 331 (S.C.C. Jan 25, 2001) (hereafter “*Brentwood*”).

This is reinforced by the presence of section 13 of the Act where the legislature did consider the use of environmental, economic, social and heritage criteria for decision-making. Under section 13 the Commission and a local government or First Nation may agree to a facilitated dispute resolution process where the matter involves a community issue, defined as:³¹

- An application for the use of agricultural land for a school, hospital, publicly funded institution, public utility, or another purpose prescribed by regulation;
- A regional growth strategy;
- An official community plan;
- A delegation agreement (with a local government to decide subdivision and non farm use applications) under s.26(1); and
- A First Nation's plan that is akin to an official community plan.

The facilitator is given explicit direction as to what values to consider and what weight must be given to each value. The values include (in descending order of priority):

- Agricultural values, including the preservation of agricultural land and the promotion of agriculture;
- Environmental, economic, social and heritage values, but only if (i) those values cannot be replaced or relocated to land other than agricultural land, and (ii) using these values in making the decision results in no net loss to the agricultural capabilities of the area.

It is important to note that the legislature did not give similar decision-making authority to the Commission. In dealing with applications, the law does not accord

³¹ Section 13 reads in full (with some annotation by the author to clarify references to other sections of the Act):

(1) In this section, "community issue" means a matter concerning one or more of the following:

(a) an application for a use of agricultural land for a school, hospital, publicly funded institution or public utility, or another purpose prescribed by regulation;

(b) a regional growth strategy under the *Local Government Act*;

(c) the form and content of the official community plan of a local government;

(d) an agreement under section 26(1); [delegation agreement]

(e) the form and content of a first nation government's plan that has the same or similar purposes as an official community plan of a local government.

(2) If a dispute arises on a community issue, the commission and the local government or the first nation government, as applicable, may agree to attempt to resolve the dispute by a method of facilitated dispute resolution.

(3) If an agreement is made under subsection (2), the commission and the local government or the first nation government, as applicable, may appoint a facilitator.

(4) In making a recommendation to resolve a dispute, a facilitator must give weight to the following values in descending order of priority:

(a) agricultural values, including the preservation of agricultural land and the promotion of agriculture;

(b) environmental, economic, social and heritage values, but only if

(i) those values cannot be replaced or relocated to land other than agricultural land, and

(ii) giving weight to those values results in no net loss to the agricultural capabilities of the area.

(5) Each party must pay its own costs under this section.

(6) The provisions of this section do not restrict or limit the provisions of sections 2, 3 or 46 [2 –This Act and regulations are not subject to other Acts except the *Interpretation Act*, the *Environment and Land Use Act*, the *Environmental Management Act*, and as referenced in the Act; 3 – a Minister or agent of the government must not exercise a power granted under another reenactment except in accordance with this Act and regulations; 46 – local government bylaws and First Nations laws must be consistent with the Act, regulations and orders of the Commission].

the Commission a weighing of values that are not contained in section 6 of the Act. Applying the legal principle of *expressio unius est exclusio alterius*, by explicitly giving the facilitator direction as to what values to consider and what weight to give to each value in the matter of a community issue, the legislature has not granted this authority to the Commission.

The *expressio unius est exclusio alterius* principle is also applicable when considering the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* (the "Regulation") enacted in 2002. As part of the provincial government's New Era commitments to make the Commission more regionally responsive (see discussion under Part 3),³² the Regulation clarified and expanded the range of uses allowed on farmland. It also clarified the jurisdiction of local governments to regulate and prohibit various land uses in the ALR.

This expansion of permitted uses and the ability of local governments to be involved in their regulation is a valid exercise of the provincial government's authority to make regulations under the Act.³³ The Lieutenant Governor in Council (Cabinet), in turning its mind to the range of uses that should be allowed, prohibited or regulated on agricultural land, made the decision to have the ALR accommodate a wider range of uses to allow for diversity in economic character in different regions of the province.

In other words, in bringing in this Regulation the provincial government exercised a balancing of community interests with farmland preservation. They have done so pursuant to legislative authority, being section 58 of the Act. As the analysis in this section has demonstrated, no such authority has been accorded to the Commission.

Another area of conflict with the Commission's section 6 agricultural preservation mandate is in the application of the principles of administrative law, as outlined above in Part 2.1. The Commissioners must take into account only relevant considerations, and must exercise discretion for the purpose for which it was given. Applying these principles in light of section 6, community need is not a relevant consideration nor is attention to it "for the purpose" for which the discretion was given to the Commission.

Finally, administrative tribunals such as the Commission have express and implied powers. Express powers are set out in the legislation/regulations and interpreted in the context of the purpose of the entire statute. For example, if land is excluded from the ALR, the Commission must notify the appropriate local government or First Nation. Implied powers are an ability to do all that is necessary to carry out functions

³² B.C. Reg. 171/2004, including amendments up to B.C. Reg. 546/2004
http://www.qp.gov.bc.ca/statreg/reg/A/171_2002.htm.

³³ The province has authority for agricultural land pursuant to s.92(13) (property and civil rights) of the Canadian *Constitution Act*. Section 58(2) of the Act enables the Lieutenant Governor in Council (Cabinet) to make regulations (a) designating uses of land as farm uses, (b) prescribing permitted uses for agricultural land, and specifying permitted uses that may or may not be prohibited by a local government enactment or a law of a first nation government, and (h) specifying non-farm uses that a local government, a first nation government, an authority, a board or another agency may permit on agricultural land. *Supra* note 14.

flowing from express powers. Implied powers are context-specific, meaning they arise depending on the authority granted and the specific case.

Using the above example under section 22, in order to notify the appropriate local government of an exclusion of ALR land an implied power would be the ability to hire staff, purchase paper, and operate a computer system. The purpose of implied powers is to ensure that an agency is not frustrated in the performance of its statutory duties by a very technical interpretation of the law. Section 8 of the B.C. *Interpretation Act* echoes this principle.

Applying this express/implied powers analysis to section 6, there are a number of powers that the Commission may derive from section 6. These could include the ability to purchase ALR land, to assist organizations to support agriculture, and to work with other provincial government agencies to support farming in the ALR. It is difficult to interpret an implied power from section 6 that would allow the Commission to consider community need. The consideration of community need is not a power or authority of the Commission, but rather a lens or criteria through which decisions are made. As affirmed by the courts, Commission members must consider only relevant criteria in light of the purpose of the enabling statute.

2.3 Judicial Comment

There is no case that considers the issue of community need. However, when the courts consider the Commission's purpose they do so in light of section 6, and have said that considerations that compete with this agricultural preservation mandate are irrelevant.

It is a well-established principle of interpreting statutes that legislation must be construed "...with reasonable regard to its objects and purposes and to give it such interpretation as best ensures the attainment of such object and purpose."³⁴ The words of the statute are to be read using ordinary grammar, and in their entire context of the scheme and object of the legislation and the intention of the legislature.³⁵ Section 8 of the *Interpretation Act* of B.C. endorses this approach that a statute is to be read as remedial, and be given a fair, large and liberal interpretation to best attain its objectives.

Applying this approach, the courts have ruled that, "[i]t is abundantly clear from the legislation that one of the primary purposes of the *Land Commission Act* [is] the preservation of agricultural land as against further urban and industrial encroachments."³⁶ The wording in what is now section 6 has been referred to as the "objects and powers" of the Commission.³⁷

The courts have also commented on the Commission's approach to applying this farmland protection purpose in their decisions concerning applications to exclude land

³⁴ *Jodrey Estate v. Nova Scotia (Minister of Finance)*, [1980] 2 S.C.R. 774 (S.C.C.) at 807.

³⁵ See, for example, *Rizzo & Rizzo Shoes Ltd., Re.*, [1998] 1 S.C.R. 27 (S.C.C.) at para. 21.

³⁶ *Brentwood*, *supra* note 30 at para. 58.

³⁷ See, for example, *Brentwood*, *supra* note 30 at para. 16.

from the ALR. The Court of Appeal of B.C. and Supreme Court of Canada have refused to imply tests or criteria for Commission decisions that are not enabled by the *Act*. In doing so, the Court of Appeal has affirmed that all sections of the Act should be considered in light of section 6.³⁸ If the legislation must be interpreted this way, then, *a fortiori*, all orders, bylaws and policies of the Commission must be construed through the section 6 lens.

Finally, the judiciary concurs that that it is improper to use tests or criteria that are not derived from section 6 and the *Act* as a whole because such an approach would be contrary to the Commission's purpose. For example, reference to setting a precedent for further changes in land use should an exclusion be allowed was found to be an improper consideration by the Commission.³⁹ Likewise, as stated by Justice Rowles of the Court of Appeal of B.C.:⁴⁰

In this case, the respondent [Agricultural Land Commission] submits that it would undermine the purpose of the Act if the Commission were compelled to exclude land once an applicant had demonstrated that he was unable to farm the land commercially. I agree with that submission. As the chambers judge observed, accepting Brentwood's position would inevitably lead to the erosion of the ALR based on prevailing economic conditions and that would be directly contrary to the Commission's mandate to preserve agricultural land.

In other words, the courts have said that the focus for decision-making by the Commission is not on the economic viability of the land - nor the needs of the community (however defined) - but on the protection of agricultural land. 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".⁴¹

This legal test of present and future agricultural capability and the section 6 purpose of preserving agricultural land are in conflict with the Commission's current assumption of jurisdiction to rule on what is and is not a community need sufficient to override agricultural suitability. To exercise discretion on questions of community need the Commission will need to evaluate future local government need for a particular land use, the efficiency of existing non-farm land uses in the municipality or regional district (e.g. density of current uses compared to regional targets), and the community need provided by the land remaining in the ALR and realizing its potential for food production. It is clear from the case law that tests and considerations that stray from section 6 are irrelevant.

³⁸ *Brentwood*, *supra* note 30 at paras. 60-62. The Court of Appeal affirmed the Trial Judge's conclusion 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."

³⁹ *Brentwood*, *supra* note 30 at para. 71.

⁴⁰ *Brentwood*, *supra* note 30 at para. 65.

⁴¹ *Brentwood*, *supra* note 30 at para 61, Rowles J.A. affirming this statement by the Chambers Judge.

It is up to the provincial government to comment directly, as it has done explicitly through the Act and Regulation, on complex public policy issues that implicate land in the ALR.⁴²

2.4 Commission's Comment

When challenged on its decisions, the Commission has always backed up its position with a land capability for agriculture analysis of the land in question. When it denies an application, it often notes the land's agricultural potential and finds that allowing the application would be inconsistent with the Act and section 6. The following quote summarizes the Commission's position:⁴³

In the Commission's opinion the land is suitable for agricultural use and thus appropriately designated as agricultural land reserve consistent with the intent of the original designation. In the Commission's view, exclusion will lead to a permanent loss of the subject's property's agricultural potential...[s]uch events would not only be inconsistent with, but would undermine the objects and powers of the Commission, as set out in the *Agricultural Land Commission Act*.

Based on this and similar paragraphs in other letters of decision, the Commission's consideration of community need is inconsistent with its longstanding position and approach to decision-making and preserving agricultural land.

In summary:

- The primary purpose of the ALR and its governing legislation has always been to preserve agricultural land, which has always been defined as land with the biophysical (soil/climate) capability to be used for farming purposes;
- The Commission's consideration of community need is neither an expressed power nor an implied power authorized by the Act;
- The Commission's use of community need as a criteria for decision-making is contrary to principles of administrative law and inconsistent with its long-standing position and approach to decision-making and preserving agricultural land;
- The courts have affirmed the validity of the ALR regime;
- The courts have refused to adopt tests or criteria for Commission decision-making that do not derive from section 6;
- The provincial government has used its authority to introduce a broader range of allowable land uses in the ALR through the Regulation, and, in doing so, has exercised a balancing of community interests with regard to farmland preservation; and
- No such authority has been accorded to the Commission in section 6 of the Act.

⁴² *Farmfolk / Cityfolk Society v. British Columbia (Commissioner, Agricultural Land Commission Act)* 1998 WL 1720007 (B.C. S.C. [In Chambers]), 1998 CarswellBC 1266 at para. 47.

⁴³ *Brentwood*, supra note 30 quoting the Commission's decision sent to the applicant at paragraph 10.

3. History of the Community Need Criteria

3.1 No Community Need Criteria Pre-2002

Prior to the 2001-2002 annual report of the Commission, there was no focus on the need for the Commission to be responsive to community need and regional issues.

Prior to 2002, the Agricultural Land Commission and provincial government acknowledged that the ALR itself was vitally important to meeting community needs:⁴⁴

Having a secure home-grown source of both food and fibre is a cornerstone of any community's independence. The loss of BC's farmlands and forests, if allowed to occur, would force a growing reliance on sources outside the province for our needs. This prospect has clear risks - particularly with respect to ensuring high quality supplies at affordable prices.

3.2 Recent Service Plans Consider Community Need Criteria

The Commission and provincial government introduced the concept of community need in the 2002/2003 Strategic Plan.⁴⁵ (See Appendix A for a summary of references to community need in Commission Service Plans and Annual Reports.) Under the heading "Update on New Era Commitments," there was included an objective to "increase the regional responsiveness of the Commission to community needs," and a strategy to "work with local governments to address community needs through community planning processes." Performance measures and targets for the goal "protect the agricultural land base" were:

- Decide 80% of applications after a site visit.
- Compensate all exclusions of suitable agricultural land by a net benefit to agriculture or by satisfying a community need established through planning.
- Minimize the amount of land removed from the ALR for any reasons other than poor suitability or community need established through planning.

The Commission and provincial government introduced annual Service Plans in 2003 that established the goals, objectives and measurable outcomes for the Commission.⁴⁶ The first Service Plan highlighted the restructuring of the Commission to six regional panels and improving regional responsiveness. It also that "[t]he boundaries of the

⁴⁴ Province of British Columbia, Land Reserve Commission Annual Report 2000-2001 (Burnaby: Land Reserve Commission, 2001) at 30.

⁴⁵ Land Reserve Commission. *2001/02 Annual Report: A New Era Update* (Burnaby: Land Reserve Commission, 2002) at pp. 13 to 15.

⁴⁶ Land Reserve Commission, Service Plan 2002/2003 – 2004/2005 (Burnaby: Land Reserve Commission, 2002).

ALR are continually adjusted to reflect better information on the suitability of lands for agriculture, changes in land use and community needs."⁴⁷

While it is beyond the scope of this report to explore each of the subsequent Service Plans and Annual Reports in detail, following the approach first taken in 2002/2003, it is important to note the following two points.

Exclusions of Suitable Agricultural Land for Net Benefit or Community Need

Objectives flowing from the goals in the Service Plans included "exclusions of suitable ALR compensated by a 'net benefit' to agriculture or by satisfying a community need through planning," and "amount of land removed from the ALR (other than for poor suitability or community need) minimized."⁴⁸ These objectives point to minimizing land removed from the ALR in general, except when dealing with poor agricultural suitability or the new criteria of community need. This suggests that excluding land from the ALR for community need reasons need not be minimized.

Performance Targets for Exclusions

The Service Plans established targets for the percentage of decisions where community need is a factor. The *2003/2004 Annual Service Plan Report* targeted 15 percent,⁴⁹ while the actual was 14 percent.⁵⁰ The *2004/05 Annual Service Plan Report* lists the target as 16 percent whereas the actual number of decisions made where community need was a factor was 19 percent.⁵¹ The *2004/2005-2006/2007 Service Plan* set a target of 20% of Commission decisions being based, in part, on community need.⁵² In contrast, the *2005/06-2007/08 Service Plan* targets less than two percent of applications for subdivision or non-farm use as being based on community need.⁵³

The Commission itself admits that the increased emphasis on the community need criteria will have a negative impact on the ALR:⁵⁴

Some approvals granted on the basis that they meet a pressing community need may have an impact on suitability for agriculture. A significant increase in approvals based on community need indicates the increased likelihood that the overall suitability of land for agriculture is being compromised. (emphasis added)

⁴⁷ *Ibid*, at 11.

⁴⁸ See, for example, Objective 2.2 at p.21, Ministry of Sustainable Resource Management, Agricultural Land Commission. *2002/03 Annual Service Plan Report* (Burnaby: Agricultural Land Commission, 2003).

⁴⁹ Ministry of Sustainable Resource Management, Agricultural Land Commission. *2003/04 Annual Service Plan Report* (Burnaby: Agricultural Land Commission, 2004) at p.23.

⁵⁰ Agricultural Land Commission. *2004/05 Annual Service Plan Report* (Burnaby: Agricultural Land Commission, 2005) at 17-18.

⁵¹ *Ibid*.

⁵² Ministry of Sustainable Resource Management, Agricultural Land Commission, *Service Plan 2004/05-2006/07* (Burnaby: Agricultural Land Commission, 2004) at 15-16.

⁵³ Ministry of Sustainable Resource Management, Agricultural Land Commission, *2005/06-2007/08 Service Plan* (Burnaby: Agricultural Land Commission, 2005) at 10-11.

⁵⁴ *Ibid*, at 11, addressing non-farm use and subdivision applications.

It also admits to balancing “the provincial interest with community interests to preserve agricultural lands throughout BC,” an approach that is not authorized by the Act.⁵⁵

3.3 Decisions Based on Community Need Criteria

Recently the Commission has further defined what it means by community need in several decisions, notably Barnston Island (Application #O-35256) and the Garden City Lands in Richmond (Application #O-36435). (For a summary of decisions considering community need, see Appendix B.)

In both decisions the Commission asserted its jurisdiction to decide applications based on community need:⁵⁶

Through the application process, the Commission may exclude land from the ALR if it believes the land is not suitable for agriculture or is no longer suitable for agriculture. The Commission may also exclude suitable agricultural land from the ALR to meet community needs in cases where no reasonable alternative exists.

In the Garden City Lands decision the Commission set out its criteria for considering community need as follows:

However[,] community need arguments from local government are to be based on local and regional planning assessments and to be supported by rigorous technical analyses that clearly:

- identify the need for and expected community benefits or values to be achieved
- identify and assess the impacts or risks to the community if the proposal does not proceed or is delayed
- determine whether there are reasonable alternative means of achieving community need
- identify and assess the impacts of meeting community need on agriculture and non-agricultural uses of the lands, and the avoidance, mitigation or management of these impacts.

The Commission does not believe the City has conducted the necessary analyses or provided the level of detail that would warrant further

⁵⁵ Achieving this goal helps make land available for farming, related businesses such as agritourism and other land-based economic activities. In most cases community needs can be accommodated without diminishing opportunities for farming. The Commission is primarily responsible for achieving this goal; however it also relies on the cooperation and positive participation of its local government partners and the overall support of the public for its program... The Commission factored community needs into decision-making and it worked closely with those communities preparing plans and bylaws that involved agricultural land.

Ministry of Sustainable Resource Management, Agricultural Land Commission. *2003/04 Annual Service Plan Report* (Burnaby: Agricultural Land Commission, 2004) at 18.

⁵⁶ This wording was used in both the Barnston Island and Garden City Lands decisions at pages 5 and 3 respectively.

consideration of community need. In the absence of a substantive community need argument it would be inappropriate for the Commission to consider excluding land with prime agricultural capability from the ALR.

It is clear from this decision that the Commission expects a substantive analysis from a local government to support an application based on community need. It acknowledged in its decision letter that the land has prime agricultural capability, that it is suitable for agricultural use, that no convincing community need argument had been made that would justify excluding prime agricultural land, and that the proposal is inconsistent with the objectives of the Act. However, the Commission also clearly implies that had there been a substantive community need argument established that the Commission may have then found, on this basis, that it be appropriate to consider exclusion of this prime agricultural land from the ALR.

In light of the legal analysis undertaken in Part 2, this decision exemplifies the contradiction that community need as a decision-making lens poses for the Commission. The Commission has demonstrated that it is willing to exclude prime agricultural land in response to values not included in section 6 of the Act. This is outside its role, and not in the provincial interest that it is charged with upholding.

3.4 Legality of Community Need Criteria

While the Commission's jurisdiction includes the ability to pass resolutions and bylaws it considers necessary for the conduct of its affairs, exercise of its powers and performance of its duties and functions, the Service Plans are internal strategic documents that can be, at best, considered policy. Policy documents provide guidance and information. Generally, policies are interpreted broadly and are not intended to limit the decision making authority of the Commission. See, for example, the Commission's *Interim Governance Policy* and the statements in that document as to its effect on the Commission.⁵⁷ Therefore, while the Service Plans may give general direction to the Commission, particularly for their administrative functions, the authority for quasi-judicial decision-making on individual applications continues to rest in the scope of section 6 of the Act.

Indeed, B.C. courts have affirmed that "[t]he administrative policy and interpretation by the Commission are not determinative of the issue but are entitled to weight and can be an 'important factor' in case of doubt about the meaning of the legislation."⁵⁸ In these circumstances, there is no doubt about the meaning of the legislation. Section 6 clearly establishes the purposes of the Commission, and all decisions must reflect consideration of these purposes.

⁵⁷ http://www.alc.gov.bc.ca/Commission/Governance_Policy/governance_policy_2002.pdf

⁵⁸ *Bennett v. British Columbia (Ministry of Transportation and Highways), Ridley Dodds, and the Agricultural Land Commission*, 1996 WL 1779380 (B.C.S.C.), 1996 CarswellBC 275, [1996] B.C.W.L.D. 716, at paragraph 11. See also *Nowegijick v. R.*, [1983] 1 S.C.R. 29 at 37.

Several aspects of the legality of the Commission's role in using the community need values have already been discussed under Part 2 above. In summary,

- The Commission's consideration of community need is neither an expressed power nor an implied power authorized by the Act (pages 11-12 above);
- The Commission's use of community need as a criteria for decision-making is contrary to principles of administrative law and inconsistent with its long-standing position and approach to decision-making and preserving agricultural land (page 12 above);
- The courts have affirmed the validity of the ALR regime (pages 12-14 above); and
- The courts have refused to adopt tests or criteria for Commission decision-making that do not derive from section 6 of the Act (page 13 above).
- The provincial government has used its authority to introduce a broader range of allowable land uses in the ALR through the Regulation, and, in doing so, has exercised a balancing of community interests with regard to farmland preservation; and
- No such authority has been accorded to the Commission in section 6 of the Act.

One additional legal point warrants discussion. Applying administrative law principles, the Commission will fetter its legislative discretion when making quasi-judicial decisions if it aims to meet the performance targets in the Service Plans that require a percentage of decisions to be based on community need. The Commissioners must turn their minds to the facts of each case, not consider irrelevant factors, and make decisions according to the Act (to preserve agricultural land). Aiming to meet percentage targets places pressure on Commissioners to give value to community need arguments where it is not warranted.

Finally, it bears repeating that by expanding local government's role in regulating farming in the Regulation, and by providing a dispute resolution mechanism under the Act that authorized the facilitator to consider social, economic, environmental and heritage factors, the provincial government has already provided significant community need leverage into the ALR regime.

More appropriately when dealing with applications for exclusion of land from the ALR, the Commission will need to analyze how a region will feed its growing population sustainably with a decreasing amount of land suitable for farming.

In summary:

- In the 30 year history of the ALR, the concern about recognizing community need is a recent occurrence;
- The Act does not direct the Commission to consider community need;
- Service plans can be considered policy documents that provide general guidance but that do not limit the Commission's decision-making authority (all decisions of the Commissioners must be based on the purposes of the Commission as stated in section 6 of the Act);
- Service plans have established performance measures and targets for applications to the Commission;

- Service plans contemplate that exclusions of suitable ALR will be compensated by a 'net benefit' to agriculture or by satisfying a community need through planning, and that the amount of land removed from the ALR for community need need not be minimized;
- Service Plans establish targets for the percentage of decisions where community need is a factor;
- Applying administrative law principles, the Commission will fetter its legislative discretion when making quasi-judicial decisions if it aims to meet the performance targets in the Service Plans that require a percentage of decisions to be based on community need; and
- By expanding local government's role in regulating farming in the Regulation, and by providing a dispute resolution mechanism under section 13 of the Act that authorized the facilitator to consider social, economic, environmental and heritage factors, the provincial government has already provided significant community need leverage into the ALR regime.

4. Conclusion

The Agricultural Land Commission's mandate is to preserve farmland and to preserve the option to use that land for food production. The original and enduring starting point for the ALR program was to ensure that the provincial interest in preserving BC's scarce and irreplaceable agricultural land received priority over the development of these lands for non-farm purposes. This purpose has not substantially changed, in the legislation, since the inception of the Commission.

After more than thirty years of working with this mandate, the Commission has introduced community need for non-farm uses, outside of those permitted by regulation, as a factor in its decision-making. The courts have been clear that the jurisdiction of the Commission is derived from section 6 of the Act - to preserve agricultural land. The Commission has not received any additional grant of authority that would warrant consideration of community need in its decision-making.

The foregoing legal analysis emphasizes that it is not the mandate of the Commission to balance the myriad competing use demands that are placed upon the provincial farmland base. This is the responsibility of the provincial government and, to a limited extent, local governments, and those levels of government have exercised their jurisdiction in this field in a number of ways. The provincial government has never changed the primary purpose of the ALR and the Commission.

The concepts of farmland preservation and community need are fundamentally incompatible. Farmland preservation, itself, can be regarded as the cornerstone of community need and sustainability. It is non-renewable agricultural land (the ALR in B.C.) that ensures that there will be land available to provide for the most basic of community needs - a secure food supply - as communities continue to grow. This is a long-term objective. Community need typically responds to shorter-term land use deficiencies, often based on historical, often exceedingly inefficient, development patterns that do not accord with longer-term regional goals. True cases of community need, for example applications for exclusion of land from the ALR for regional or provincial infrastructure, are exceptions that warrant detailed regional review and debate.

In conclusion, the incompatibility of preserving agricultural land and attending to community needs leaves British Columbian's with two choices: (1) reaffirm the provincial priority to preserve farmland by removing from the Service Plan statements about decisions based on community need; or (2) amend section 6 of the Act to expand the purposes of the Commission and ALR in recognition that there is no longer a provincial priority for preserving agricultural land. The former choice will see the continuation of the province's effective farmland preservation program. The latter choice will convert the ALR to an urban reserve and farmland to non-farm uses in many local jurisdictions in the near future. This choice will have fundamental

implications for regional sustainability - economic, environmental and social - and in particular food security.

As Moura Quayle concluded in her landmark report that clarified the 'provincial interest' question in 1998,⁵⁹

Without the courage to hold firm, with stakes in the ground, there will be no incentive to better manage our land base in the face of competing uses. We must halt the slow but steady erosion of our agriculture and food resources, and support our varied agricultural industries. As a forward thinking society, we must dig in, take responsibility, and make sure that future generations have a vibrant agricultural land base.

⁵⁹ Quayle, *supra* note 1 at 23.

Appendix A: Summary of References to Community Need

Appendix A is a reproduction of references to community need and regional responsiveness found in the Commission's Annual Reports and Service Plans from 2000 to date.

1. Annual Reports 2000-2005

Province of British Columbia, Land Reserve Commission Annual Report 2000-2001 (Burnaby: Land Reserve Commission, 2001)

Our Ongoing Challenge (p.30)

Having a secure home-grown source of both food and fibre is a cornerstone of any community's independence. The loss of BC's farmlands and forests, if allowed to occur, would force a growing reliance on sources outside the province for our needs. This prospect has clear risks - particularly with respect to ensuring high quality supplies at affordable prices.

Land Reserve Commission. *2001/02 Annual Report: A New Era Update* (Burnaby: Land Reserve Commission, 2002)

Update on New Era Commitments: Service Plan (p.13)

Goal 1: Ensure that the Commission is responsive, efficient and accountable.

Objectives

To increase the regional responsiveness of the Commission to community needs.

Update on New Era Commitments: Service Plan (p.14)

Goal 1: Ensure that the Commission is responsive, efficient and accountable.

Strategies:

Re-organize the Commission with 6 panels based on regions.

Develop action plan specific to regions with Provincial, local government and stakeholder input.

Work with local governments to address community needs through community planning processes.

Update on New Era Commitments: Service Plan (p.15)

Goal 2: Protect the agricultural land base

Performance Measures and Targets:

- Decide 80% of applications after a site visit.
- Compensate all exclusions of suitable agricultural land by a net benefit to agriculture or by satisfying a community need established through planning.
- Minimize the amount of land removed from the ALR for any reasons other than poor suitability or community need established through planning.

Ministry of Sustainable Resource Management, Agricultural Land Commission. *2002/03 Annual Service Plan Report* (Burnaby: Agricultural Land Commission, 2003)

Honourable Stan Hagen, Minister of Sustainable Resource Management (p.V)

During the year, government re-focused the work of the Commission on preserving agricultural land through the provincial land reserve system – the Agricultural Land Reserve or ALR. It achieved its *New Era* commitment to make the Commission more regionally responsive to community needs by implementing a new regional panel structure for the Commission, and making decisions in the regions. The government also provided the Commission with new tools and results-based processes to manage the ALR more efficiently and effectively.

Year-At-A-Glance Highlights (p.3)

The *New Era* Commitment – to increase the regional responsiveness of the Commission to community needs – was achieved in 2002/03 through a number of changes and initiatives highlighted below. In particular, the new regional panel structure brought decision-making for the ALR closer to those affected; and opportunities for communication and coordination amongst the Commission, communities and individuals were improved across the province.

Commission Roles and Services: Update on New Era Commitments (p.10)

The *New Era* commitment for the Commission was “to increase the regional responsiveness of the Commission to community needs”. In May 2002 government changed the structure of the Commission and improved its regional representation by appointing eighteen Commissioners from six regions of the province, to regional panels of the Commission. This new structure enabled the Commission to better reflect local knowledge and to improve opportunities for local input into decision-making.

Commission Roles and Services: Key Program Areas and Services (p.11)

The Agricultural Land Commission administers the Agricultural Land Reserve, a provincial land use zone that encompasses 4.75 million hectares of agricultural land. The ALR was established during 1973-74 based on a review of agricultural capability (a combination of soil and climate ratings), existing land use and an extensive consultation process with local governments and others. The boundaries of the ALR are continually adjusted to reflect better information on the suitability of lands for agriculture, changes in land use and community needs. Boundary adjustments result from decisions made through the application process and through community plan reviews.

Performance Reporting: Commission Goals, Objectives, Key Strategies and Results (p.15)

The Commission’s three goals and eleven objectives relate to its vision, purpose and mission “to protect the agricultural land base necessary to provide a safe and secure food supply that meets the current and future needs of British Columbians”. Government and the Commission undertook a number of changes to make the Commission more regionally responsive to community needs, thus fulfilling government’s *New Era* commitment. Additional changes also brought the Commission’s work in line with government goals for “a strong and vibrant provincial economy” and “safe, healthy communities and a sustainable environment”.

Performance Reporting: Commission Goals, Objectives, Key Strategies and Results (p.16)

Goal 1: Ensure that the Commission is responsive, efficient and accountable

Objectives:

- 1.1 To increase the regional responsiveness of the Commission to community needs
- 1.2 To encourage collaborative governance of the ALR

Strategies			
<ul style="list-style-type: none"> • Re-organize Commission as 6 panels based in regions. • Develop action plans specific to regions with provincial, local government and stakeholder input. • Work with local governments to address community needs through community planning processes. • Reduce the application workload through voluntary delegation of non-farm and subdivision applications to local governments and other agencies and by expanding the range of permitted non-farm uses. • Develop appropriate dispute resolution mechanisms for resolving conflicts and balancing interests. • Participate in the Community Charter initiative. 			
Performance Measure	2002/03 Target	2002/03 Actual	Explanation of Variance
Commission responsiveness to the needs of local governments and stakeholders (Objective 1.1)	Increase (no target or baseline established)	<ul style="list-style-type: none"> • Responsiveness achieved through regional panel decision-making • Regional action plans adopted • Permitted uses expanded 	
Commission concurrence with local government recommendation (new measure)	% applications with concurrence	82% of applications have direct concurrence or general concurrence (latter includes 27% of applications without local government comment)	2002/03 will form baseline

Performance Reporting: Commission Goals, Objectives, Key Strategies and Results (p.21)
 Goal 2: Protect the Land Base

Performance Measure	2002/03 Target	2002/03 Actual	Explanation of Variance
Number of site visits increased (Objectives 1.4, 2.1)	80% of applications decided after site visit	74% of applications decided after site visit	<ul style="list-style-type: none"> • Overall increase in number of applications • Site visits were not necessary in some cases
Exclusions of suitable ALR compensated by a 'net benefit' to agriculture or by satisfying a community need through planning (Objective 2.2)	100% of exclusion applications of suitable land decided with 'net benefit' or for a community need	'Net benefit' decision reason not tracked	Revised performance measure underway for 2003/04
Amount of land removed from the ALR (other than for poor suitability or community need) minimized (Objective 2.2)	Amount of ALR land excluded minimized	<ul style="list-style-type: none"> • 1,922 ha. excluded compared to 1,364 ha. in 2001/02 • 973 ha. included for net reduction of 949 ha. 	<ul style="list-style-type: none"> • Overall increase in number of applications • Land excluded less than 1% (0.4) of Reserve area • Revised performance measure underway for 2003/04
Consistency between community plans and ALR guidelines (Objective 2.3)	80% of community plans are consistent with provincial ALR guidelines	96% (25 of 26) of community plans reviewed deemed consistent	

Ministry of Sustainable Resource Management, Agricultural Land Commission. 2003/04 Annual Service Plan Report (Burnaby: Agricultural Land Commission, 2004)

Commission Roles and Services: Commission Overview (p.10)

The boundaries of the ALR are continually adjusted to reflect better information on the suitability of lands for agriculture, changes in land use and community needs. Boundary adjustments result from Commission decisions made on applications for land use changes or as a consequence of community plan reviews.

Commission Operating Context: Ongoing Issues and Risks (p.14)

The Commission continues to work with First Nations, ministries and agencies involved in the treaty settlement process to achieve the object of the *Agricultural Land Commission Act*. To this end, the Commission is proposing legislative amendments that will provide First Nations with similar rights and obligations as local governments under the Act and enable the Commission and First Nations to work towards outcomes that recognize First Nations' community needs and protect the agricultural land base.

Update on New Era Commitments (p.16)

The Commission substantially achieved the *New Era* commitment "to increase regional responsiveness of the Commission to community needs" over the previous two years. This was accomplished by the new Commission structure of six panels making ALR decisions in six regions of the province and meeting with applicants, stakeholders and local governments on a regular basis. During the year the Commission improved its performance management system to specifically track the decisions it made that were based on 'community need'. This is reported in the following section.

Performance Reporting: Overview of Commission's Goals (p.17)

The Commission's goals and objectives in the *2003/04 - 2005/06 Service Plan* were revised from the previous plan. Goals 1 and 2 more closely reflect the Commission's purpose from its governing legislation. Goal 3, a new goal, reflects government's *New Era* commitment to make the Commission more regionally responsive to community needs. Goal 4, relating to how the Commission operates, has been modified to reflect ministry and government operating principles.

Goal 3: A provincial land reserve system that considers community interests (p.18)

The ALR is a land use zone that realizes the provincial interest in protecting agricultural land for farm and related uses. In its decision-making, the Commission balances the provincial interest with community interests to preserve agricultural lands throughout BC.

Achieving this goal helps make land available for farming, related businesses such as agritourism and other land-based economic activities. In most cases community needs can be accommodated without diminishing opportunities for farming. The Commission is primarily responsible for achieving this goal; however it also relies on the cooperation and positive participation of its local government partners and the overall support of the public for its program.

The Commission worked closely with communities and their elected representatives to understand community issues, to assess and address community needs and to balance those with the provincial interest in preserving lands for agriculture. The Commissioners met in their respective regions on a monthly basis so that ALR decision-makers would be familiar with local concerns and issues. These meetings with local government politicians, staff and applicants improved the flow of information and understanding of local issues. The Commission factored community needs into decision-making and it worked closely with those communities preparing plans and bylaws that involved agricultural land.

Report on Results: Goal 3 - A provincial land reserve system that considers community interests (p.23)

Objective 2: Community issues and needs factored into decision-making

Key Strategy: Consider community issues when making decisions.

Performance Measure and Results

The 'per cent of applications approved for which community need is a factor' is used to indicate the degree to which community needs are factored into decision-making by the Commission. The baseline is established for 2003/04.

Performance Measure	2003/04 Target	2003/04 Actual	Variance
Per cent of applications approved for which community need is a factor	Establish baseline	15% of approval reasons (baseline)	Baseline established

Agricultural Land Commission. *2004/05 Annual Service Plan Report* (Burnaby: Agricultural Land Commission, 2005)

Commission Roles and Services: New Era Commitments (p.11)

In 2001, the government made a number of commitments covering the whole spectrum of government business. One commitment applied specifically to the Agricultural Land Commission.

New Era Commitment	Progress
<p>Make the Agricultural Land Commission more regionally responsive to community needs.</p>	<p>Since the Commission received direction to implement this <i>New Era</i> Commitment in 2001, the following actions have been taken:</p> <ul style="list-style-type: none"> • 6 regional panels were established to make decisions and increase the Commission's regional presence; • The Commission published an information kit for local governments and promoted the delegation of Commission authority to decide subdivision and non-farm use applications; • A dispute resolution process was added to the <i>Agricultural Land Commission Act</i> to assist the Commission and local governments to resolve conflicts over community interests; • Amendments to the Act enable First Nation communities to apply directly to the Commission for permissions; • The Commission published Community Planning Guidelines to assist local governments in the preparation of land use plans; and • The Commission implemented a results-based process for the placement and removal of fill and resource extraction within the ALR.

Report on Performance: Report on Results (p.12)

Goal 1: Preservation of Agricultural Land

Objective 1: Lands suitable for agriculture are retained in the ALR

Achieving this objective is critical to the goal of preserving agricultural land by ensuring that lands with potential for agriculture remain protected by the Agricultural Land Reserve. Most lands excluded from ALR have limited potential for agriculture because of poor soil or because the land is compromised by existing non-agricultural development or land ownership patterns. Lands that are otherwise suitable for agriculture and merit retention may be considered for exclusion to satisfy a pressing community need that cannot be reasonably addressed any other way.

Report on Performance: Report on Results (pp.17-18)

Goal 3: A provincial agricultural land reserve systems that considers community interests.

An agricultural land reserve system that considers community interests in addition to agricultural considerations has the potential to improve decisions by ensuring that the Commission has the information about community issues and needs necessary to tailor decisions to a community's circumstances.

Objective 2: Community issues and needs factored into decision-making.

Achieving this objective contributes to the goal of an agricultural land reserve system that considers community interests by ensuring that the community's needs and issues are acknowledged as part of the decision-making process and are accommodated to the extent that they do not unduly compromise the goal of preserving agricultural land.

Key Strategies

1. Work with local governments to identify and address community needs, particularly through community planning.
2. Develop and apply dispute resolution processes for unresolved conflicts between the Commission and local government.

Goal 3: Performance Measures and Results

Performance Measures	2000/01 Actual	2003/04 Actual	2004/05 Target	2004/05 Actual	Variance	Target Met?
Number of meetings with local governments and stakeholders	35	60	60	45	-15 ¹	△
Per cent applications decided after site visit	51 per cent	70 per cent (estimate)	80 per cent	90 per cent	+10 per cent	✓✓
Concurrence between local government recommendations and Commission decisions	No data available	54 per cent	58 per cent	64 per cent ²	+6 per cent	✓✓
Per cent applications approved for which community need is a factor	No data available	14 per cent	16 per cent	19 per cent	+3 per cent	✓✓
Number of delegation agreements with interested local governments	1	1	3 total	2 total	-1 ³	✗
Number of delegation agreements with public authorities	0	1	2 total	1	-1 ⁴	✗

2. Annual Service Plans

Land Reserve Commission, Service Plan 2002/2003 - 2004/2005 (Burnaby: Land Reserve Commission, 2002).

Core Business (p.3)

The boundaries of the ALR are continually adjusted to reflect better information on the suitability of lands for agriculture, changes in land use and community needs.

Goals, Objectives, Strategies and Performance Measures (pp.4-5)

Goal 1: Ensure that the Commission is responsive, efficient and accountable

Objectives:

- To increase the regional responsiveness of the Commission to community needs.

Strategies:

- Re-organize Commission as 6 panels based in regions.
- Develop action plans specific to regions with Provincial, local government and stakeholder input.
- Work with local governments to address community needs through community planning processes.

Consistency with Government Strategic Plan and Priorities:

- Increase the regional responsiveness of the Commission to community needs.

Goals, Objectives, Strategies and Performance Measures (pp.6)

Goal 2: Protect the agricultural land base

Performance Measures & Targets:

- 80% of applications decided after a site visit.
- All exclusions of suitable agricultural land compensated for by a net benefit to agriculture or by satisfying a community need established through planning.
- Amount of land removed from the ALR (for any reasons other than poor suitability or community need established through planning) minimized.

Ministry of Sustainable Resource Management, Agricultural Land Commission, Service Plan 2003/04-2005/06 (Burnaby: Agricultural Land Commission, 2003)

Honourable Stan Hagen, Minister of Sustainable Resource Management (p.V)

In the past year government has achieved its commitment to make the Commission more regionally responsive to community needs by implementing a new structure for the Commission based on six regional panels.

Goals (p.9)

The Commission expects to achieve its mission through the realization of its four complementary goals:

1. Preservation of agricultural land
2. The encouragement and enabling of farm businesses
3. A provincial land reserve system that considers community interests
4. Sound governance and organizational excellence

The Commission administers the Agricultural Land Reserve, which is a provincial land use zone that encompasses 4.7 million hectares of agricultural land. The ALR was established in 1973-74 based on a review of agricultural capability (a combination of soil and climate measures), existing land use and an extensive consultation process. The boundaries of the ALR are continually adjusted to reflect better information on the suitability of lands for agriculture, changes in land use and community needs.

Objectives, Strategies, Performance Measures and Targets (p.13)

Goal 3: A provincial land reserve system that considers community interests

Objective 3.2: Community issues and needs factored into decision-making		
Strategies	Performance measures	Targets
1. Consider community issues when making decisions	% of applications approved for which community need is a factor	Establish baseline 2003/04
2. Work with local governments to address community needs, particularly through community planning processes		
3. Develop processes for dispute resolution when conflicts are unresolved between Commission and a local government		

Consistency with Government Strategic Plan (p.15)

The Agricultural Land Commission's Service Plan responds to government's *New Era* commitments and to its Strategic Plan.

New Era Commitment achieved in 2002/03:

Increase the regional responsiveness of the Commission to community needs.

The Commission implemented its new structure on May 1, 2002. The *Agricultural Land Commission Act*, effective November 1, 2002, provided the Commission with new tools and streamlined processes, while maintaining its purpose to protect agricultural land. The Commission is now comprised of six panels based in six regions of the province: Interior, Island, South Coastal, North, Okanagan and Kootenay. The panels meet in their regions monthly and are responsible for decision-making, plan reviews and delegation agreements within their regions. 'Community issue' is defined in the new legislation and provision is made for voluntary dispute resolution where there is disagreement between a local government and the Commission over a community issue.

Ministry of Sustainable Resource Management, Agricultural Land Commission, Service Plan 2004/05-2006/07 (Burnaby: Agricultural Land Commission, 2004)

Commission Overview (p.7)

Strategic Priorities

The Commission has improved its methods of doing business in response to government priorities. Current strategic priorities include:

- Building certainty and stability for the Agricultural Land Reserve through continuing focus on protecting agricultural land;
- Maintaining the regional panel structure of the Commission so that decisions for the ALR are informed and regionally responsive;
- Continuing to assess and consider community needs, in balance with the provincial interest in preserving agricultural land; and
- Working with local governments, ministries and agencies, and First Nations when requested, to:
 - plan for agriculture;
 - encourage and enable successful farm businesses; and
 - increase economic opportunities in rural and urban fringe areas.

Goals, Objectives, Strategies and Results (p.10)

The strategies outlined below continue the work of the Commission and incorporate the strategic shifts directed by government. These shifts were designed to reform the management of the Commission to make it more effective, and to increase the regional responsiveness of the Commission to community needs. Key strategies and their corresponding measures are given to provide information about the more immediate outcomes of the Commission’s work and how it addresses government priorities.

Goals, Objectives, Strategies and Results (pp.15-16)

Goal 3: *A provincial agricultural land reserve system that considers community interests.*

This goal relates to the Commission’s purpose to work with others to preserve agricultural land, while at the same time, considering community interests. The support of local governments and the public for the ALR is essential to the success of the provincial program. Where significant community needs are demonstrated and documented, the Commission considers those needs when it makes decisions for change of use applications in the ALR.

Objective 2: *Community issues and needs factored into decision-making.*

Under this objective, the Commission considers community needs when making decisions but balances those needs with the provincial interest in preserving agricultural land. The Commission also works closely with local governments in community planning processes, where community needs can be identified and substantiated.

Performance Measure	2003/04 Actual/Base	2004/05 Target	2005/06 Target	2006/07 Target
Per cent applications approved for which community need is a factor.	14% (estimate)	16%	18%	20%

Strategies: 1. *Work with local governments to identify and address community needs, particularly through community planning.*

2. *Develop and apply dispute resolution processes for unresolved conflicts between the Commission and local government.*

Highlights of Strategic Shifts and Changes from Previous Service Plan (p.24)

The Commission achieved the strategic shifts directed by government in fiscal 2002/2003. During this period government implemented new legislation for the Commission – the *Agricultural Land Commission Act* – which re-affirmed the Commission’s purpose and provided it with some additional tools to preserve agricultural land and enforce compliance with the Act. Since May 2002, the Commission has operated with six panels, appointed from and making decisions in six regions of the province. Together with several other changes, this has made the Commission more regionally responsive to community needs and has improved operational efficiency and accountability.

Ministry of Sustainable Resource Management, Agricultural Land Commission, Service Plan 2005/06-2007/08 (Burnaby: Agricultural Land Commission, 2005)

Goals, Objectives, Strategies and Results (p.9)

Government Strategic Goals	Agricultural Land Commission Mission Preserve agricultural land and encourage and enable farm businesses throughout British Columbia.		
	ALC Goals	ALC Objectives	Performance Measures / Indicators
Safe, healthy communities and a sustainable environment.	1. Preservation of agricultural land.	1. Lands suitable for agriculture are retained in the ALR.	Net change in total land area in the ALR (ha).
		2. Commission decisions do not significantly diminish the suitability of land for agriculture.	Per cent of decisions for non-farm use and subdivision approved on the basis of community need.
A strong and vibrant provincial economy.	2. A land use framework that encourages and enables farming.	1. Plans, policies and activities of the Commission, local governments, ministries, agencies and First Nations encourage and enable farming.	Per cent of official community plans that encourage and enable farming.
			Number of local government agricultural area plans.

Goals, Objectives, Strategies and Results (pp.10-11)

Goal 1: *Preservation of agricultural land*

Objective 1: *Lands suitable for agriculture are retained in the ALR.*

Performance Measure:

The amount of land with capability for agriculture is finite and its location is fixed, although the suitability of agricultural land may change over time as a result of factors such as surrounding development and investment in agricultural infrastructure. The Commission, through the application process, includes or excludes land from the Reserve based on suitability for agriculture. The Commission also may exclude suitable agricultural land to meet community needs in cases where no reasonable alternatives exist.

Objective 2: *Commission decisions do not significantly diminish the suitability of land for agriculture.*

Performance Measure:

The Commission reviews non-farm use and subdivision applications on a case-by-case basis and considers the merits of each application. An assessment of the potential impact on agricultural suitability relies heavily on the experience and judgment of the Commission. Depending on the circumstances, the Commission may give different weights to considerations such as the compatibility of the proposed use with agriculture, soil capability of the land, location and whether the proposed use would meet a pressing community need. After balancing the relevant considerations, the Commission may approve an application that it determines would not diminish the suitability of land for agriculture.

Because the specific circumstance of each application is unique, it is difficult to evaluate the impact of Commission decisions on the 4.7 million hectare ALR land base. The Commission refuses most applications that would diminish the suitability of land for agriculture while approving those applications that do not diminish the lands suitability.

Some approvals granted on the basis that they meet a pressing community need may have an impact on suitability for agriculture. A significant increase in approvals based on community need indicates the increased likelihood that the overall suitability of land for agriculture is being compromised. Note that community need is a factor in some decisions where poor agricultural suitability is also a factor. The indicator will only include decisions where community need is the primary factor in the decision.

Indicator	2004/05 Target	2005/06 Target	2006/07 Target	2007/08 Target
Per cent of decisions for non-farm use and subdivision approved on the basis of community need.	Community need comprises < 2% of approvals (i.e., 98% of decisions do not diminish suitability of land for agriculture).	Community need comprises < 2 per cent of approvals.	Community need comprises < 2 per cent of approvals.	Community need comprises < 2per cent of approvals.

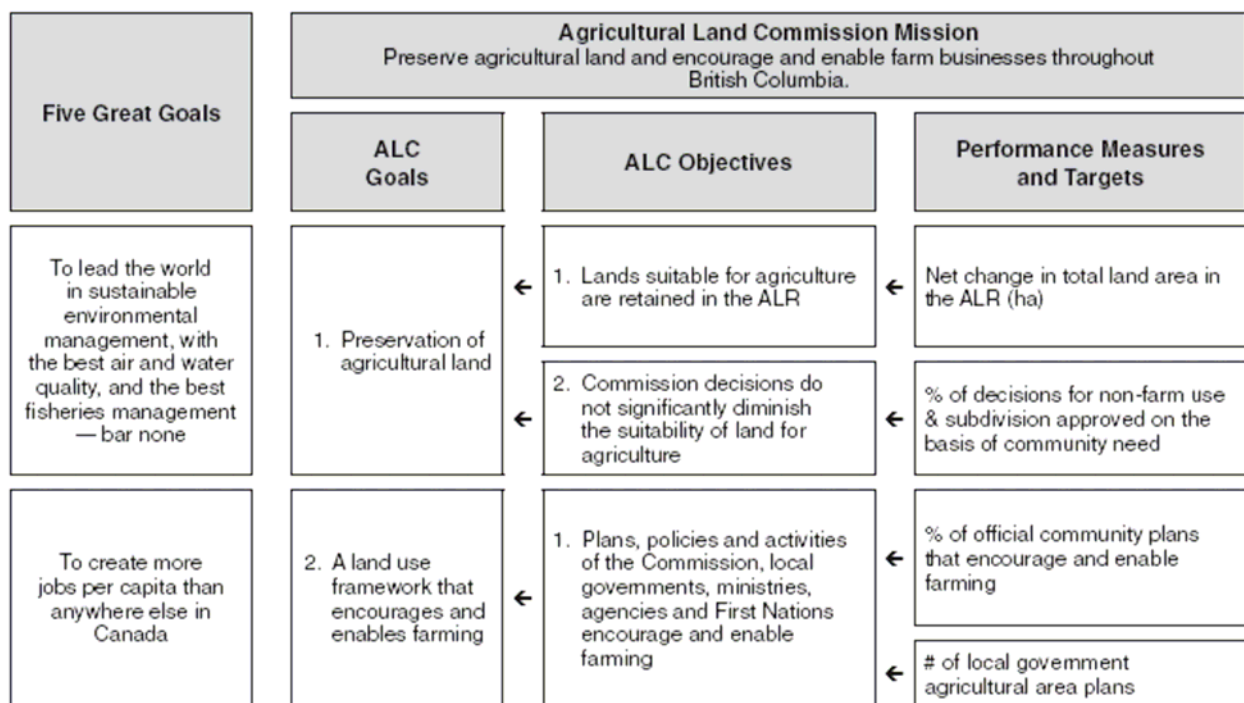
Ministry of Sustainable Resource Management, Agricultural Land Commission, 2005/06-2007/08 Service Plan Update (Burnaby: Agricultural Land Commission, September 2005)

Message from the Minister and Accountability Statement (p.3)

Its 19 members are entrusted by the government to preserve agricultural land, to encourage and enable farm businesses throughout British Columbia and to consider community interests.

The six-panel regional structure that our government established in 2002 is clearly balancing provincial interest with community needs in a regionally responsive manner.

Goals, Objectives, Strategies and Results (pp.9-11)



Goal 1: *Preservation of agricultural land.*

Objective 1: *Lands suitable for agriculture are retained in the ALR.*

Performance Measure:

The amount of land with capability for agriculture is finite and its location is fixed, although the suitability of agricultural land may change over time as a result of factors such as surrounding development and investment in agricultural infrastructure. The Commission, through the application process, includes or excludes land from the Reserve based on suitability for agriculture. The Commission also may exclude suitable agricultural land to meet community needs in cases where no alternatives exist.

Objective 2: *Commission decisions do not significantly diminish the suitability of land for agriculture.*

Performance Measure:

The Commission reviews non-farm use and subdivision applications on a case-by-case basis and considers the merits of each application. An assessment of the potential impact on agricultural suitability relies heavily on the experience and judgement of the Commission. Depending on the circumstances, the Commission may give different weights to considerations such as the compatibility of the proposed use with agriculture, soil capability of the land, location and whether the proposed use would meet a pressing community need. After balancing the relevant considerations, the Commission may approve an application that it determines would not diminish the suitability of land for agriculture.

Because the specific circumstance of each application is unique, it is difficult to evaluate the impact of Commission decisions on the 4.7 million hectare ALR land base. The Commission refuses most applications that would diminish the suitability of land for agriculture while approving those applications that do not diminish the lands suitability.

Some approvals granted on the basis that they meet a pressing community need may have an impact on suitability for agriculture. A significant increase in approvals based on community need indicates the increased likelihood that the overall suitability of land for agriculture is being compromised. Note that community need is a factor in some decisions where poor agricultural suitability is also a factor. The indicator will only include decisions where community need is the primary factor in the decision.

Indicator	2004/05 Target	2005/06 Target	2006/07 Target	2007/08 Target
% of decisions for non-farm use & subdivision approved on the basis of community need	Community need comprises < 2% of approvals (i.e., 98% of decisions do not diminish suitability of land for agriculture)	Community need comprises < 2% of approvals	Community need comprises < 2% of approvals	Community need comprises < 2% of approvals

Appendix B: Summary of Recent Decisions Considering Community Need

Application #MM-35445 (City of Abbotsford: July 29, 2005) "Abbotsford"

Area 5 - Clearbrook (pp.15-16)

The Commission noted that this 71.2 ha area is dominated by a till "knob" at Foy Street, with somewhat limited agricultural production on the till soils, above the break in slope. There are also several agricultural processing industries within this ALR area, as well as municipal and school board works yards. The Commission also noted the proximity of high density residential and industrial lands to the north and the opportunity to establish a clear containment boundary between the ALR and non-ALR in a north-south direction along Clearbrook Road. While the Commission was reluctant to consider the exclusion of high capability lands and lands given to agriculturally related industries in the south-east corner of the area, it considered that possible agreement to a portion of this area could represent a balanced response to the City's expressed needs given the locational factors pertaining to this area (eg. the proximity of this area to both the Trans Canada Highway and the airport).

Application #O-36435 (Canada Lands Company CLC Ltd.: September 8, 2006) "Garden City"

Context for Commission Consideration (p.3)

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the Agricultural Land Commission Act (the "Act"). They are:

2. to preserve agricultural land
3. to encourage farming on agricultural land in collaboration with other communities of interest, and
4. 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.

Through the application process, the Commission may exclude land from the ALR if it believes the land is not suitable for agriculture or is no longer suitable for agriculture. The Commission may also exclude suitable agricultural land from the ALR to meet community needs in cases where no reasonable alternative exists.

Assessment of Community Need (pp. 4-5)

The assessment of community need is particularly difficult in this instance given the three distinct interests involved. It had been expected that the city would advance the argument for community need for the entire proposal, not simply for the park/open space and trade and exhibition centre components.

The Commission respects the comments offered by Chief Campbell at the exclusion meeting and believes it has a clear understanding of the interests of Musqueam First Nation. The commission also appreciates that the mandate of Canada Lands Company CLC Limited is to optimize the financial and community value obtained from strategic properties deemed surplus to federal program purposes.

Normally it is the responsibility of local government to argue community need and to provide supporting evidence. In this instance the City expressed its desire to obtain access to additional parklands and explained how the community would benefit from the exclusion.

However [sic] community need arguments from local government are to be based on local and regional planning assessments and to be supported by rigorous technical analyses that clearly:

- identify the need for and expected community benefits or values to be achieved
- identify and assess the impacts or risks to the community if the proposal does not proceed or is delayed

- determine whether there are reasonable alternative means of achieving community need
- identify and assess the impacts of meeting community need on agriculture and non-agricultural uses of the lands, and the avoidance, mitigation or management of these impacts.

The Commission does not believe the City has conducted the necessary analyses or provided the level of detail that would warrant further consideration of community need. In the absence of a substantive community need argument it would be inappropriate for the Commission to consider excluding land with prime agricultural capability from the ALR.

Conclusions (p.5)

1. The land under application has agricultural capability and is appropriately designated as ALR.
2. The land under application is suitable for agricultural use.
3. A convincing community need argument has not been made that would justify the Commission considering the exclusion of prime agricultural land from the ALR.
4. The proposal is inconsistent with the objectives of the *Agricultural Land Commission Act* to preserve agricultural land.

Application #V-35569 (City of Penticton: December 17, 2004) "Munson Mountain"

p.1

The Commission carefully reviewed all file material, the presentations from the October 28, 2004 public information meeting, the City's "*Final Submission to the Agricultural Land Commission*" and the report prepared for the City by Professional Environmental Recreation Consultants Ltd. With regard to the latter report, the consultant concluded that the City of Penticton has fewer sports fields per 1,000 population than other Okanagan Valley communities. Based on this information the Commission accepted the City's position that additional sports fields are needed in the community. This being said, the Commission also concurred with members of the farm community regarding the potential negative impacts on the farm community if playing fields are developed in the ALR.

p.2

With regard to the concerns expressed at the public meeting about the precedent of introducing a non-farm use into the area, the Commission noted that the land will remain in the ALR and therefore subject to the provisions of the *Agricultural Land Commission Act*. The Commission is satisfied the application from the City of Penticton is for a demonstrable community need which in itself separates it from other potential applications. Furthermore, the Commission is satisfied that the ALR in the area is defensible and that a more modest development will not precipitate other non-farm use applications.

Application #O-35256 (Barnston Island Majority Landowners and Residents Committee: July 24, 2006) "Barnston Island"

Context for Commission Consideration (p.5)

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

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 government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws, and policies.

Through the application process, the Commission may exclude land from the ALR if it believes the land is not suitable for agriculture or is no longer suitable for agriculture. The Commission may also exclude suitable agricultural land from the ALR to meet community needs in cases where no reasonable alternative exists.

Discussion: Assessment of Community Need (p.6)

It has been argued by the applicants that there is a need within the Greater Vancouver area for more land to accommodate industrial development. The Commission acknowledges that the Greater Vancouver Regional District (the "GVRD") and the applicants have differing viewpoints in this regard.

A "community need" argument whether it be for residential, commercial, institutional, industrial purposes, etc. must originate from the local government - not individual property owners. Community need arguments from local governments are to be based on local and regional planning assessments and supported by rigorous technical analysis before being considered by the Commission.

In this case, the GVRD has not put forth a community need argument as it believes non-ALR lands are available for industrial development and that excluding the lands under application on Barnston Island for industrial purposes is unnecessary.

Conclusions (p.6)

3. The community need argument is not applicable.

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Henson v. British Columbia (Agricultural Land Commission) (1981), 31 B.C.L.R. 65 (B.C.S.C.)

⁶⁰ Please note that these public versions of provincial legislation and regulations may not be up to date. For current copies of legislation please visit <http://www.qplegaleze.ca/>. This service is available free of charge at computer stations at public and law libraries in B.C.

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