

# Case Studies of Agricultural Land Commission Decisions: The Need for Inquiry and Reform



New road on Chilliwack ALR land.

Photo: D. Sands

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**On behalf of the Agricultural  
Land Reserve Protection and  
Enhancement Committee**

*“A high quality agricultural land base has long been the cornerstone of B.C.’s farm economy and is an important resource for the future. That is why B.C. has preserved five percent of our entire land base – our best agricultural lands – for food production within the Agricultural Land Reserve.”<sup>1</sup>*

**Pat Bell**  
**Minister of Agriculture and Lands**  
**February 15, 2006**

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<sup>1</sup> B.C. Ministry of Agriculture and Lands: Agricultural Land Commission, 2006/07- 2008/09 Service Plan.

## **Introduction**

British Columbia is a mountainous province with a limited supply of agricultural land and a rapidly growing population. Because agricultural land makes up less than five percent of British Columbia's land base, it is essential that this land be preserved.<sup>2</sup> Yet, in the years prior to 1973, British Columbia was losing nearly 6000 hectares of agricultural land annually.<sup>3</sup>

In 1973 the provincial government established the Agricultural Land Reserve (ALR).<sup>4</sup> The ALR is a provincial land use zone that applies to most of British Columbia's agricultural land. The Reserve is designed to protect the Province's agricultural land and ensure that it is available for agricultural use – this is accomplished by restricting non-farm uses and subdivisions of ALR land.

Since the ALR was established, its boundaries have been refined throughout the province.<sup>5</sup> The refining process, which involved land capability studies and on-site evaluations by government staff and specialists in soils, agrology and planning, was designed to ensure the ALR's boundaries reflected the Province's agricultural land base.<sup>6</sup>

By protecting most of the Province's agricultural land from development pressure, the ALR has contributed greatly to British Columbia's agricultural industry. Agriculture generates \$2.4 billion a year in farm cash receipts and provides for more than half of the Province's food requirements.<sup>7</sup> Without the ALR, this level of production would be unimaginable.

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<sup>2</sup> Deborah Curran, *Protecting the Working Landscape of Agriculture: A Smart Growth Direction for Municipalities in British Columbia*, (West Coast Environmental Law Research Foundation, 2005) at 5.

<sup>3</sup> B.C. Agricultural Land Commission, "How the ALR was Established," online: The Agricultural Land Reserve <[http://www.alc.gov.bc.ca/alr/Establishing\\_the\\_ALR.htm](http://www.alc.gov.bc.ca/alr/Establishing_the_ALR.htm)>

<sup>4</sup> Charles Campbell, *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century*, (David Suzuki Foundation, 2006) at 5.

<sup>5</sup> *Ibid.* at 14.

<sup>6</sup> Interview with Dave Sands, Professional Agrologist and former MAFF agrologist.

<sup>7</sup> B.C. Ministry of Agriculture and Lands, *Fast Stats: Agriculture and Food* (2005) at 3. Online: <<http://www.agf.gov.bc.ca/stats/faststats/brochure2005.pdf>>

B.C. Agricultural Land Commission, "Preserving Our Foodlands" (1993) online: Preserving Our Foodlands <<http://www.alc.gov.bc.ca/publications/preserve/preserve.htm>>

The decisions concerning exclusions, inclusions, subdivisions, and non-farm-uses of ALR land are made by the Agricultural Land Commission (ALC). Section 6 of the *Agricultural Land Commission Act* sets out the three purposes of the ALC:

- (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.<sup>8</sup>

During most of the ALR's history, the ALC's decisions were made by one provincial Commission that included representation from different regions in the province. However, in 2002, the Agricultural Land Commission was restructured by devolving decision making power to six Regional Panels. This restructuring was designed to increase interaction with applicants and stakeholders and to provide an opportunity for greater regional presence in ALC decisions.<sup>9</sup> Unfortunately, it appears that the Regional Panels are not adequately protecting British Columbia's scarce agricultural land.

This can be seen by examining the rate at which Regional Panels have approved exclusions (removals of land) from the Reserve. Between April 1, 2002 and March 31, 2005, the ALC approved the exclusion of 70.5 percent of the hectares of ALR land that were proposed for exclusion. The regions with the highest rates of ALR exclusions were Vancouver Island at 89.1 percent, the Kootenays at 83.6 percent, and the Okanagan at 82.5 percent.<sup>10</sup> The significant exclusion rates of southern Regional Panels is consistent with the general trend in the ALR's history in which the ALR's total land base has been

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<sup>8</sup> *Agricultural Land Commission Act*, S.B.C. 2002, c.3.

<sup>9</sup> B.C. Agricultural Land Commission, "Commission Panels," online: The Commission <[http://www.alc.gov.bc.ca/commission/commission\\_panels.htm](http://www.alc.gov.bc.ca/commission/commission_panels.htm)>

<sup>10</sup> B.C. Agricultural Land Commission, "'2001-2005 Summary Statistics,'" online: Agricultural Land Reserve <[http://www.alc.gov.bc.ca/alr/stats/2001-05Summary\\_main.htm](http://www.alc.gov.bc.ca/alr/stats/2001-05Summary_main.htm)>

kept fairly consistent by replacing excluded agricultural land in the southern British Columbia with relatively less productive land in northern British Columbia.<sup>11</sup>

Concerns about the decisions of Regional Panels motivated a group of concerned citizens and environmental groups to create the ALR-Protection and Enhancement Committee (ALR-PEC). In May 2005, ALR-PEC released *Protecting the Agricultural Land Reserve: Our Foodlands Under Threat* – a comprehensive critique of the current ALR regime.<sup>12</sup> Most significantly, this document called for a review and restructuring of the Regional Panel decision making system and asked for a moratorium on exclusions of prime agricultural land until the review and restructuring was complete.<sup>13</sup>

ALR-PEC argues that in the Agricultural Land Reserve's areas of high production, such as the Fraser Valley, Vancouver Island and the Okanagan, the appropriate boundaries for the Reserve have already been established through the process of refinement. ALR-PEC is concerned that the Agricultural Land Commission's Regional Panels continue to exclude significant amounts of ALR land in areas where appropriate boundaries have already been established.

ALR-PEC retained the Environmental Law Clinic at the University of Victoria to assist it in achieving a review of the current ALR regime. The Clinic has now prepared the following report for ALR-PEC. The report analyzes four recent decisions made by Regional Panels: the South Coast Regional Panel's decision to exclude 178.5 hectares of prime agricultural land in Abbotsford; the Kootenays Panel's decision to exclude 267 hectares of grazing land near Invermere; the Island Panel's decision to exclude 140 hectares of agricultural land in Courtenay in exchange for the inclusion 318 hectares of

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<sup>11</sup> Charles Campbell, *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century*, (David Suzuki Foundation, 2006) at 5.

Ninety percent of inclusions have occurred in the northern regions of the province, while seventy-two percent of exclusions have occurred in the southern regions. See Deborah Curran, *Protecting the Working Landscape of Agriculture: A Smart Growth Direction for Municipalities in British Columbia*, (West Coast Environmental Law Research Foundation, 2005) at 12. Curran cites Barry Smith *Agricultural Land in British Columbia*. (2005) Unpublished document.

<sup>12</sup> ALR-Protection and Enhancement Committee, *Protecting the Agricultural Land Reserve: Our Foodlands Under Threat* (May 2005).

<sup>13</sup> *Ibid.* at 6-7.

agricultural land in Comox; and the South Coast Panel's decision to allow 64 residential villas to be built at a golf course on ALR land in Sechelt.

The report's analysis of these decisions raise serious questions about whether the current Regional Panel system can adequately meet the ALC's legislated purpose of preserving agricultural land in British Columbia. Although only four decisions are examined in this report, these decisions raise the concern that other Regional Panel decisions may be similarly flawed.

In light of:

- The questionable decisions of the Regional Panels documented in this report;
- The serious policy issues raised by Charles Campbell's report *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century* and by the ALR Protection and Enhancement Committee report, *Protecting the Agricultural Land Reserve: Our Foodlands Under Trust*; and
- Various allegations of possible impropriety and lack of diligent protection of farm land that have been raised in the media and the courts,

it would now be appropriate to conduct a Public Inquiry into the issue of protection of British Columbia's farm land -- and how the system can be changed to better implement the mandate of the Agricultural Land Commission.

Therefore, on behalf of ALR-PEC, the Environmental Law Clinic is requesting a provincial inquiry into the current ALR regime. It recommends that a Commission of Inquiry be established pursuant to section 8 of the Inquiry Act and be directed to do the following:

- Review all decisions made by the Regional Panels since they were established in 2002, in order to determine whether Panel Decisions throughout the Province are adequately protecting agricultural land;
- Examine whether the decision making structure of the Agricultural Land Commission should be altered to better protect British Columbia's agricultural land;

- Consider whether there should be a prohibition of removing prime farm land from the Reserve.
- Make recommendations for reforming the *Agricultural Land Commission Act* to better protect British Columbia's scarce farm land.

Until this Commission of Inquiry completes its work and government has had an opportunity to implement recommended reforms, there should be a moratorium on all present Agricultural Land Reserve application decisions involving prime agricultural land.

## **The Cases Analyzed**

## **The Abbotsford Exclusion**

The South Coast Panel's June 2005 exclusion of prime agricultural land from the ALR in Abbotsford is alarming. This decision best illustrates ALR-PEC's concern that the decisions of the ALC now place far too much weight on broadly defined "community needs" at the expense of the agricultural values that the Commission is mandated to protect.

### **Summary: The Application and Decision**

The Abbotsford exclusion came in response to the City of Abbotsford's application for the removal of 372 hectares of land from the ALR. Abbotsford claimed it could not meet its need for industrial land without this exclusion, and defended its proposal to exclude prime agricultural land by arguing that it was better to exclude prime land that bordered the City's non-ALR land rather than scatter industrial developments throughout the ALR.<sup>14</sup>

Abbotsford justified its application by arguing that the proposed exclusions would provide a net benefit to agriculture.<sup>15</sup> The City explained that it would charge landowners a fee of approximately \$20,000 per acre to have their land rezoned or excluded from the ALR. These fees would fund the City's Agricultural Trust which would be used to invest in gravel pit reclamation and other agricultural improvement projects. In a letter to the City of Abbotsford, the ALC noted that gravel pit reclamation was a "key point in the application."<sup>16</sup>

Abbotsford claimed that after its need for industrial land was met, it would only support the rarest of exclusions from the ALR. Consequently, the incentive to speculate on ALR land would be dramatically reduced, and all owners of ALR land would be encouraged to put their land to agricultural use.

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<sup>14</sup> City of Abbotsford, *City in the Country Plan: Enhancing Agriculture Preserving Community Sustainability* (May 2004), at 61.

<sup>15</sup> *Ibid.* at 54.

<sup>16</sup> Letter from Provincial Agricultural Land Commission per K.B. Miller, Chief Executive Officer to City of Abbotsford (April 15, 2005).

After reviewing Abbotsford's application, the South Coast Panel decided to exclude 178.5 hectares of land, refuse the exclusion of 121.5 hectares of land, and defer its decision on 72 hectares of land. The Panel claimed it had attempted to provide a balanced response. It justified the exclusion by stating, "[I]t was appropriate to meet some of the City's immediate land use needs by agreeing to portions of the less suitable lands in the application."<sup>17</sup>

### **The Value of Agricultural Land**

The Panel's justification of its decision obscures the quality of the excluded lands. In the City of Abbotsford's own *City in the Country Plan*, the lands proposed for exclusion are given the highest rating possible for agricultural capability.<sup>18</sup> In Abbotsford's submission to the ALC, the removed lands are rated as high as class one (capable of producing the widest range of crops) and include class three land (capable of producing a fairly wide range of crops under good management practices) and class four land (capable of a restricted range of crops).<sup>19</sup>

The quality of the excluded land is not at all surprising, as the Fraser Valley is rich in fertile agricultural land. Over half of British Columbia's gross farm receipts are produced in the Fraser Valley.<sup>20</sup> Farms in Abbotsford alone produce over \$450 million in gross farm receipts.<sup>21</sup> Because of the productivity of the Fraser Valley, British Columbia is the largest producer of raspberries, blueberries, and greenhouse peppers in

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<sup>17</sup> B.C. Agricultural Land Commission, News Release "Agricultural Land Commission Decision – City of Abbotsford Exclusion Application" (July 29, 2005).

<sup>18</sup> City of Abbotsford, *City in the Country Plan: Enhancing Agriculture Preserving Community Sustainability* (May 2004), at 56.

<sup>19</sup> Larry Pynn, "'Good farmland' sold 2 years ago: In July of this year the property was removed from the land reserve to meet demands for more industrial land" *Vancouver Sun* (29 November, 2005).

<sup>20</sup> The agricultural production for the Fraser Valley was calculated by adding the production of the Fraser Valley Regional District and the production of the Greater Vancouver Regional District. The calculation relies on the following:

B.C. Ministry of Agriculture and Lands, "Fraser Valley Regional District: Agriculture in Brief," online: <<http://www.al.gov.bc.ca/resmgmt/sf/agbriefs/FVRD.pdf>>;

B.C. Ministry of Agriculture and Lands, "Greater Vancouver Regional District: Agriculture in Brief," online: <<http://www.al.gov.bc.ca/resmgmt/sf/agbriefs/GVRD.pdf>>; and

B.C. Ministry of Agriculture and Lands, "British Columbia: Agriculture in Brief," online: <<http://www.al.gov.bc.ca/resmgmt/sf/agbriefs/BC.pdf>>

<sup>21</sup> B.C. Ministry of Agriculture and Lands, "City of Abbotsford: Agriculture in Brief," online: <<http://www.al.gov.bc.ca/resmgmt/sf/agbriefs/Abbotsford.pdf>>

Canada.<sup>22</sup> All British Columbians profit from the economic benefits and food security provided by the Fraser Valley.

Besides attesting to the quality of agricultural land in the Fraser Valley, the figures cited above suggest the scarcity of such lands in other parts of the Province. Only 1.1 percent of British Columbia's land base is considered prime agricultural land (Class 1, 2, and 3 agricultural lands) and only 0.06 percent of the land base is Class 1 agricultural land.<sup>23</sup>

The need to protect scarce agricultural land was the motivation for the creation of the ALC. Unfortunately, in assessing the City of Abbotsford's application, the Panel did not emphasize the need to protect prime agricultural land and placed too much weight on Abbotsford's "community need" for industrial land. While the Panel was prepared to inquire whether Abbotsford had enough industrial land to meet its needs, it did not address whether Abbotsford had enough agricultural land to meet its needs or those of British Columbia.<sup>24</sup>

The Ministry of Agriculture's study *Farmland Use in Abbotsford* states that Abbotsford is the most intensely farmed area in Canada, as 91.7 percent of land available for farming is actively farmed. While expansion is possible for poultry, hogs, greenhouse, and mushroom farms, "there is no unused farmland suitable for dairy production... and only 66 hectares of unused farmland for growth in raspberry production."<sup>25</sup> The tremendous demand for agricultural land in Abbotsford is an indicator of that land's high quality and productivity. Such high quality agricultural land should not be excluded from the ALR without the most compelling of reasons.

### **Preserving the Integrity of the Agricultural Land Reserve**

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<sup>22</sup> B.C. Ministry of Agriculture and Lands, *Fast Stats: Agriculture and Food* (2005) at 3. Online: <<http://www.agf.gov.bc.ca/stats/faststats/brochure2005.pdf>>

<sup>23</sup> Barry Smith, *Planning for Agriculture and Resource Materials* "A Challenging Geography" (Provincial Agricultural Land Commission, 1998).  
online: <[http://www.alc.gov.bc.ca/publications/planning/Planning\\_for\\_Agriculture/index.htm](http://www.alc.gov.bc.ca/publications/planning/Planning_for_Agriculture/index.htm)>

<sup>24</sup> Charles Campbell, *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century*, (David Suzuki Foundation, 2006), at 21.

<sup>25</sup> *Ibid.* at 21. Campbell cites B.C. Ministry of Agriculture Food and Fisheries, *Farmland Use in Abbotsford* (2004).

The ALC's Service Plan only allows land to be excluded to meet community needs "in cases where no alternatives exist."<sup>26</sup> In considering the Abbotsford exclusion, it was especially important that the Panel adequately probe the existence of alternatives, and test the evidence Abbotsford advanced about the need for industrial land. Unlike its previous applications to exclude ALR land, the City of Abbotsford did not engage the ALC in the process of identifying the extent, location, or agricultural impact of land to be excluded.<sup>27</sup> Therefore, the Panel should have been especially rigorous in its examination of these matters.

The amount of industrial land that Abbotsford claimed it required to meet its community need is striking. The 372 hectares of land that Abbotsford requested for exclusion from the ALR represents more than half of all the land available for industrial purposes in the City of Vancouver.<sup>28</sup> Furthermore, the Application Summary prepared by ALC staff noted that Abbotsford's calculations for the amount of industrial land required are based on lower densities than in the GVRD core.<sup>29</sup> If Abbotsford's calculations had been based on densities in the GVRD core, the amount of industrial land it required would have been correspondingly reduced.

Abbotsford's claim that it can only meet its need for industrial land with a significant exclusion from the ALR is unconvincing. There are 8,207 hectares of non-ALR land in Abbotsford. In comparison, the total area of the City of Vancouver is 11,467 hectares.<sup>30</sup> The municipalities in the Lower Mainland that do not border the ALR have achieved urban development without relying on exclusions from the ALR. This suggests that Abbotsford could accomplish similar success through good urban planning rather than relying on the ALR as a land bank for industrial land.

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<sup>26</sup> B.C. Ministry of Agriculture and Lands: Agricultural Land Commission, *2006/07- 2008/09 Service Plan*.

<sup>27</sup> B.C. Agricultural Land Commission, "Application Summary, Application # MM – 35445 Applicant: City of Abbotsford" (June 13, 2005).

<sup>28</sup> GVRD Policy and Planning Department, *Industrial Lands Inventory for Greater Vancouver 2005: Final Draft Report*, (March 2006) online:

<<http://www.gvrd.bc.ca/growth/pdfs/IndustrialLandsInventoryforGreaterVancouver.pdf>>

<sup>29</sup> B.C. Agricultural Commission, "Application Summary, Application # MM – 35445 Applicant City of Abbotsford" (June 13, 2005).

<sup>30</sup> Charles Campbell, *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century*, (David Suzuki Foundation, 2006), at 19.

The long term viability of agriculture in the Province requires the protection of the prime agricultural soils of the Fraser Valley. The ALR must not be sacrificed to accommodate population increases in the Lower Mainland. It is distressing that Abbotsford claims that its proposed exclusion fulfills its need for industrial land over the next twenty years.<sup>31</sup> Does this mean that in twenty years Abbotsford may request another significant exclusion from the ALR? This possibility is unacceptable. As British Columbia's population grows and the cost of transporting food increases, the province will require more – not less – agricultural land. Therefore, it is essential that the ALC send a clear message to municipalities that the ALR's boundaries are set, and significant incursions into the ALR are no longer possible. In its Abbotsford decision, the South Coast Panel sent municipalities a very different message about the availability of ALR land for exclusion.

### **A Net Benefit to Agriculture?**

Despite the arguments of the City of Abbotsford, it appears unlikely that the exclusion of high quality farmland from the ALR will provide a net benefit to agriculture.

Abbotsford's argument that speculation on ALR land will be reduced by a clear rural urban boundary and by the City's reluctance to support exclusions in the future is not convincing. While it may be preferable for agricultural land to be separated from urban areas, agriculture is not benefited if this is achieved by excluding large areas of prime agricultural land. Agriculture is most benefited when prime agricultural land is protected wherever it exists.

By arguing that it can reduce speculation by refusing to support applications for exclusion, Abbotsford simply acknowledges that speculation is driven by the potential to exclude land from the ALR. Abbotsford's own logic acknowledges that speculation and the increased prices for farmland it causes could be curbed by the refusal of municipalities to support exclusions or by the refusal of the ALC to allow them.

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<sup>31</sup> B.C. Agricultural Land Commission "Application Summary, Application # MM – 35445 Applicant City of Abbotsford" (June 13, 2005).

Abbotsford's plan to reclaim gravel pits is also problematic. As pointed out, reclamation of the pits was a key point in the application. Yet, gravel pit reclamation is an expensive procedure. By the City's own estimates it costs between \$20,000 and \$50,000 per acre.<sup>32</sup> Abbotsford claims that the gravel pits can be reclaimed by offering partial funding to private landowners who pursue reclamation. It argues that by resolving that the gravel pits will not be excluded from the ALR, landowners in the area will conclude that an agricultural use offers the highest and best use of their land and will pursue reclamation. However, it appears that Abbotsford's plan was formulated without actually determining whether the owners of the gravel pits were even interested in reclaiming their land for agricultural use. In a letter to the City of Abbotsford, the ALC asked Abbotsford to clarify whether landowners had given permission to reclaim the gravel pits.<sup>33</sup> Abbotsford's response did not state whether permission had been secured but it did acknowledge the possibility that no landowner would pursue gravel pit reclamation.<sup>34</sup>

Agriculture would be better served if gravel pit reclamation was funded by other means than the exclusion of agricultural land. However, if the South Coast Panel believed that gravel pit reclamation would compensate for the exclusion of prime agricultural land, it should have first obtained strong evidence that the owners of gravel pits would pursue reclamation and that reclamation would be successful. Otherwise, how can a body charged with protecting agricultural land justify providing long-term ALR protection to gravel pits as part of the same package that excludes some of the province's very best farm land from protection?

## **Conclusion**

The head of the South Coast Panel, Peter Dhillon defended the Abbotsford exclusion by stating, "We did understand that they [Abbotsford] needed to grow. And we really didn't

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<sup>32</sup> Letter from Jay Teichroeb, Economic Development Manager for the City of Abbotsford to Gordon Bednard at the Agricultural Land Commission (May 16, 2005).

<sup>33</sup> Letter from Provincial Agricultural Land Commission per K.B. Miller, Chief Executive Officer to City of Abbotsford (April 15, 2005).

<sup>34</sup> Letter from Jay Teichroeb, Economic Development Manager for the City of Abbotsford to Gordon Bednard at the Agricultural Land Commission (May 16, 2005). The letter states, "If no property owner pursues this funding opportunity, investments into agricultural enhancements will be directed to other initiatives outlined in our plan."

want to step in the way of that.”<sup>35</sup> However, a primary purpose of the ALC is to defend the agricultural land in the ALR from growing municipalities. The Commission was set up to protect farm land – not just to step out of the way for urban growth.

In rare cases important community needs may justify removal of land from the reserve, but the protection of agriculture in British Columbia demands that the standard for justifying such exclusions be reasonably high. Abbotsford’s application did not meet such a standard. Because Abbotsford broke from previous practice by failing to engage the ALC in the process of identifying the land to be excluded, it was especially important that the Panel investigate the strength of Abbotsford’s need for industrial land and whether the community need could be met by alternate means.

It was incumbent on the Commission to test Abbotsford’s case. For example, the Panel should not have been satisfied with Abbotsford’s plan to reclaim gravel pits without real evidence that the necessary landowners would participate. It should have looked at the realistic probability of being able to compensate for lost prime farm land with rehabilitation of gravel pits.

### **The Grizzly Ridge Exclusion**

In 2005, the Kootenays Panel excluded 267 hectares of ALR land on the west side of Windermere Lake in the East Kootenays to allow the construction of the Grizzly Ridge

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<sup>35</sup> Larry Pynn, “‘Good farmland’ sold 2 years ago: In July of this year the property was removed from the land reserve to meet demands for more industrial land” *Vancouver Sun* (29 November, 2005).

residential and recreational development.<sup>36</sup> The Panel's decision illustrates several shortcomings of the current Regional Panel system. First, the Panel made its decision without adequately consulting representatives of the agricultural community. Second, the Regional Panel demonstrated low regard for the importance of secondary class agricultural land. Third, the Panel justified the decision with reasons that do not stand up to scrutiny.

### **Summary: The Application and the Decision**

An Albertan real estate developer applied to the ALC to exclude land in order to build the Grizzly Ridge development of approximately 600 residential and recreational units in April 2005. The developer claimed that the land had "very limited agricultural potential, [does] not presently support agricultural uses, and the exclusion of [the land] will not materially adversely impact upon agriculture in the Invermere Valley."<sup>37</sup> The developer also argued that the Panel's previous decision to exclude adjacent land for the construction of the 800 unit Castle Rock Estates development supported the proposed exclusion.

The review of the application by ALC staff explained that the majority of the land had secondary agricultural ratings (Class 5 and 6). Staff also reported that "there is no history of significant agricultural activity on the subject land proposed for exclusion."<sup>38</sup>

The Kootenays Panel approved the exclusion on June 1, 2005. The Panel justified its decision on the grounds of the land's limited agricultural potential and the Panel's opinion that the proposed development would take pressure off other agricultural land in the area.

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<sup>36</sup> B.C. Agricultural Land Commission "Minutes of the Provincial Agricultural Land Commission" Resolution #678/2005 Application #L – 35965-1 (December 21, 2005).

<sup>37</sup> 1129759 Alberta Ltd., "Schedule A to an Application by 1120759 Alberta Ltd. for Exclusion of Lands from the Agricultural Land Reserve Pursuant to the Agricultural Land Commission Act" at 9 (attached to 1129759 Alberta Ltd.'s application to the ALC).

<sup>38</sup> B.C. Agricultural Land Commission "Staff Report Application # L – 35965-0 Applicant: 1129759 Alberta Ltd. Agent: Mark Himmelspach" (April 28, 2005).

Alarming, the ALC's conclusion that there was no history of significant agricultural activity on the land was incorrect. Two local family farming operations had grazed their cattle on the excluded land since the 1970's. On June 21, 2005, one of the farming operations, Zehnder Farms Ltd. (Zehnder Farms), sent a letter to the ALC outlining its concern that the Panel had agreed to the Grizzly Ridge exclusion based on an incomplete and inaccurate assessment of the land's agricultural significance. Zehnder Farms asked the ALC to reconsider its decision as allowed under section 33 of the *Agricultural Land Commission Act*.

In response to these concerns, the Kootenays Panel held a meeting with the developer and members of the Zehnder family on November 24, 2005. Following the meeting, the Panel requested written submissions from both the developer and Zehnder Farms about whether the Panel should reconsider its decision.

In its submissions, Zehnder Farms identified several flaws in the Panel's decision. The most serious flaws included:

- ALC Staff's suggestion that there was no history of significant agricultural activity on the property was incorrect, as two family farm operations grazed cattle on the land.<sup>39</sup>
- The Panel incorrectly understood that the Regional District of East Kootenay's Advisory Planning Committee approved the development. In fact, the Advisory Planning Committee had stated that "support for the exclusion from the ALR be delayed until a planning exercise such as a feasibility planning study has been provided to determine the best use of the land."<sup>40</sup>
- The Panel had not consulted the local representative of the agricultural interests of individuals, the Windermere District Farmers' Institute and Livestock Association, who opposed the exclusion.<sup>41</sup>
- The Panel did not pay sufficient attention to the need to protect secondary class agricultural land.<sup>42</sup>

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<sup>39</sup> Zehnder Farms Ltd. "Submission to the Agricultural Land Commission," at 5.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid. at 7.

- The Panel’s rationale that excluding the land would reduce development pressure on other agricultural land was belied by experience. In its prior Castle Rocks Estates decision, the Panel had suggested that excluding the Castle Rock lands would reduce development pressure. However, development pressure had increased following that decision – leading to the current application.<sup>43</sup>

On December 22, 2005, the Panel issued a decision stating that it had confirmed its original decision upon reconsideration. It explained that the new information confirmed its original assessment that the agricultural use of the property was limited. It also explained that the land had value for recreational and residential development because it is adjacent to Castle Rock Estates. The Panel expressed its sympathy that ranchers were experiencing difficulty in securing grazing rights in the area. However, it suggested that as the land in question was privately owned its availability for grazing “was dependent more upon the willingness of the owner to make it available for such use than it was on its location in the Agricultural Land Reserve.”<sup>44</sup>

### **The Failure to Consult the Agricultural Community**

One of the supposed benefits of the ALC’s regional panel structure is that the panels “increase interaction with representatives and stakeholders.”<sup>45</sup> However, interaction with local representatives is only beneficial if it helps the ALC to fulfill its mandate to protect agricultural values. The Grizzly Ridge exclusion suggests that this is not the case, as the Kootenays Panel seemed more concerned with interacting with representatives and stakeholders who represent development interests rather than agricultural interests.

Cheryle Huscroft, a former member of the Kootenays Panel who has since expressed regret for her support of the Grizzly Ridge exclusion, reports that while the Panel spent hours in discussions with the developer prior to its original decision, it made no effort to

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<sup>42</sup> Ibid. at 6.

<sup>43</sup> Ibid.

<sup>44</sup> Letter from Provincial Agricultural Land Commission per: Erik Karlsen, Chair to Mike Guthrie Articled Student at Woodward & Company (December 22, 2005).

<sup>45</sup> B.C. Agricultural Land Commission, “Commission Panels,” online: The Commission <[http://www.alc.gov.bc.ca/commission/commission\\_panels.htm](http://www.alc.gov.bc.ca/commission/commission_panels.htm)>

contact representatives of the local agricultural community.<sup>46</sup> It should have been clear to the Panel that the local agricultural community was an important stakeholder in the Grizzly Ridge decision. The exclusion of 267 hectares from the ALR land for a residential development was almost certain to fuel speculation on ALR land and increase the cost of agricultural land in the region.

The Panel's failure to consult representatives of the local agricultural community, such as the Windermere District Farmers' Institute and Livestock Association, prevented it from acquiring the information it needed to correctly make its decision. By sufficiently consulting the agricultural community, the Panel would have learned that local farmers opposed this exclusion. Consultation would have illuminated the Panel to the importance of secondary class agricultural land to the local ranching industry.

Furthermore, Procedural flaws in the decision making process worked against the Regional Panel making an agriculturally sound decision. Procedure allowed the Regional Panel to believe that the Regional District of East Kootenay's Advisory Planning Committee approved the development when the Advisory Planning Committee had actually suggested support for the exclusion be delayed until a planning exercise was completed.

### **The Protection of Secondary Class Agricultural Land**

Because most of the land excluded in the Grizzly Ridge decision was secondary class agricultural land, the Panel justified both its original decision and its reconsidered decision on the grounds that the land had limited agricultural potential. The Panel's assessment of the excluded land's value demonstrates that secondary class agricultural lands are not significantly protected from development pressure. This demonstrates an unacceptably low regard for secondary class agricultural land.

Agricultural lands of any classification are a relatively scarce resource in British Columbia, as agricultural land makes up less than five percent of the provincial land

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<sup>46</sup> Interview with Cheryle Huscroft.

base.<sup>47</sup> While not as productive as primary class agricultural land, secondary class agricultural land plays a key role in British Columbia's agricultural economy. Class 6 agricultural land, for example, is characterized as land that cannot be cultivated due to soil or climate restrictions, but that is "important in its natural state as grazing land."<sup>48</sup> Affordable grazing lands are relied upon by agricultural sectors such as the cattle industry.

Unfortunately, the Panel did not consider the fact that two ranching operations grazed their cattle on the land excluded in the Grizzly Ridge decision to be a sufficient reason to retain the land within the ALR. Instead, the Panel was persuaded by the developer's arguments that the land's value for development significantly exceeded its value as grazing land.<sup>49</sup>

The ALR is designed to reduce the amount that the values of agricultural lands are impacted by their potential for non-farm uses, such as the construction of residential developments. Consequently, it is hardly surprising that the excluded land had higher financial value as development land. Indeed, it was this value of agricultural land to developers that created the need for the ALR in the first place.

While the rocky soils and steep topography of the excluded land limited its value as agricultural land, these characteristics made it affordable grazing land. In its reconsideration decision, the Panel acknowledged grazing lands were becoming increasingly scarce in the area and recognized that ranchers were struggling to secure adequate grazing leases.<sup>50</sup> However, instead of responding to the loss of grazing land by denying the Grizzly Ridge application, the Panel chose only to make suggestions about

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<sup>47</sup> Deborah Curran, *Protecting the Working Landscape of Agriculture: A Smart Growth Direction for Municipalities in British Columbia*, (West Coast Environmental Law Research Foundation, 2005) at 5.

<sup>48</sup> B.C. Agricultural Land Commission, "Agricultural Capability," online: Agricultural Capability <[http://www.alc.gov.bc.ca/ALR/Ag\\_Capability.htm](http://www.alc.gov.bc.ca/ALR/Ag_Capability.htm)>

<sup>49</sup> Submission of Grizzly Ridge Properties Ltd. per Mark L. Himmelspach to the B.C. Agricultural Land Commission (December 12, 2005) at 13-14.

<sup>50</sup> Letter from Provincial Agricultural Land Commission per: Erik Karlsen, Chair to Mike Guthrie Articled Student at Woodward & Company (December 22, 2005).

how this issue could be dealt with by the Regional District of East Kootenay and the Ministry of Agriculture and Lands.

This response ignores the fact that it the ALC is the governmental body that is mandated to protect agricultural land. The Panel's suggestions to other governmental bodies may help alleviate some of the problems associated with the shortage of grazing land in the East Kootenays. However, as long as this shortage existed, the Panel should have reflected on its mandate and considered it particularly important to retain grazing lands, like the Grizzly Ridge land, in the ALR.

### **The Effect of an Exclusion on Development Pressure: Ignoring the Evidence**

The Panel also attempted to justify the Grizzly Ridge exclusion on the grounds that it would relieve development pressure. This argument blindly ignored evidence to the contrary – for the Panel had previously justified the exclusion of the adjacent Castle Rock Estates land on the same grounds. The very filing of the subsequent Grizzly Ridge application should have alerted the Panel that its logic in the Castle Rock Estates decision had been incorrect.

In the Grizzly Ridge application, the developer argued that its requested exclusion was supported by the precedent of the Castle Rock Estates decision. The developer suggested that Castle Rock Estates was a successful development which had required the exclusion of slightly better agricultural land from the ALR.<sup>51</sup> Clearly, the Castle Rock Estates exclusion had not reduced development pressure. Instead, it had encouraged developers to seek further exclusions from the ALR.

The suggestion that the exclusion would ease development pressure was dropped in the Panel's reconsideration decision, presumably because the suggestion was discredited in Zehnder Farms' submissions. However, the Panel did suggest that the land's proximity to Castle Rock Estates increased its value as development land. This justification

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<sup>51</sup> 1120759 Alberta Ltd. "Schedule A to an Application by 1120759 Alberta Ltd. for Exclusion of Lands from the Agricultural Land Reserve Pursuant to the Agricultural Land Commission Act" at 8.

similarly exposes the weakness of the logic for the Castle Rock Estates exclusion. Instead of relieving development pressure, the Castle Rock Estates exclusion provided the Panel with a justification for a further exclusion from the ALR.

### **Deferring Responsibility**

The final justification that the Panel offered for the exclusion is that the land's availability for grazing depended more on the willingness of the landowner to make it available than on its presence in the ALR.<sup>52</sup> The Panel noted that the shortage of grazing lands in the area had been exacerbated by the sale of a larger property, which had included the Grizzly Ridge land, to landowners who were less willing to make land available for grazing.<sup>53</sup>

The Panel's suggestions ignore the purpose of the ALR. Non-farm uses of ALR land are restricted to encourage ALR landowners to put land to agricultural use. Therefore, refusing the Grizzly Ridge application would have established that the land in question only had value as agricultural land. That fact would likely make the owner more willing to make the land available for agriculture. In addition, this would almost certainly reduce the property's taxable value, allowing the Panel to refute the developer's argument that the payments received for the agricultural use of the land did not cover the taxes on the property.<sup>54</sup>

The Panel's suggestion that the availability of grazing land is most affected by the will of private landowners is noteworthy because one of the Panel's commissioners, Carmen Purdy, is a director a significant landowner in the region, the Nature Trust.<sup>55</sup> In a letter to a concerned citizen, the Chair of the ALC acknowledged that the shortage of grazing land

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<sup>52</sup> Letter from Provincial Agricultural Land Commission per: Erik Karlsen, Chair to Mike Guthrie Articled Student at Woodward & Company (December 22, 2005).

<sup>53</sup> Ibid.

<sup>54</sup> Submission of Grizzly Ridge Properties Ltd. per Mark L. Himmelspach to the B.C. Agricultural Land Commission (December 12, 2005) at 10.

<sup>55</sup> Nature Trust of British Columbia, "Nature Trust of British Columbia," online: Board <<http://www.naturetrust.bc.ca/board.php>>

in the region had been contributed to by the fact that the Nature Trust “has imposed significant limitations on future grazing activity.”<sup>56</sup>

### **Conclusion**

ALC staff’s conclusion that there was no history of significant agricultural activity on the Grizzly Ridge Land was based either on incorrect information or on a lack of sensitivity to the importance of the land to the ranching operations that used it to graze their cattle. The Kootenays Panel’s lack of consultation with the agricultural community prevented it from learning that local farmers opposed the exclusion and from hearing about the importance of secondary class agricultural land to the local ranching community,

Of even greater concern, the Panel failed to reverse its decision when it was alerted to the land’s agricultural importance. The weakness of its justification for the exclusion illustrates the low regard of a Regional Panel for secondary class agricultural land. This attitude fails to appreciate the importance and relative scarcity of all classes of agricultural contributes and contributes to the shortage of grazing land in the East Kootenays.

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<sup>56</sup> Letter from Provincial Agricultural Land Commission per: Erik Karlsen, Chair to Emmanuel Prinnet (February 21, 2006).

### **The Courtenay Trade-off**

In January 2004, the Island Panel approved an application by Raven Forest Products (“Raven”) to exclude 140 hectares of ALR land in the City of Courtenay (“the Courtenay property”) for a residential development. In exchange for this exclusion, the Regional Panel also approved the inclusion of 318 hectares of land into the ALR at two sites in Comox – the 243 hectare Black Creek Property and the 75 hectare Endall Road property. The ALC’s Director of Regional Operations commented favourably on the decision by stating, “[The Commission] considered the inclusion of more than twice the amount of land excluded to be a positive development.”<sup>57</sup>

This justification overlooks serious flaws in the Regional Panel’s decision. Allowing developers to replace ALR land with non-ALR land encourages speculation on ALR land. Where a significant need for an exclusion exists, such a trade-off may be an appropriate way of protecting the ALR’s total land base. However, a trade-off can only be justified where the included land is of at least similar agricultural quality as the excluded land. Every public servant who examined the lands involved in the Courtenay trade-off concluded that the included land was generally less suitable for agriculture than the excluded land. Troublingly, the Regional Panel disregarded the advice of the public servants hired to protect agriculture in British Columbia and chose instead to rely on the opinion of the consulting firm hired by Raven Forest Products. As a result, the Panel’s decision accommodated the interests of the developer at the expense of the farm that borders the excluded land.

### **Summary: The Application and the Decision**

On August 27, 2003, an architectural firm sent a letter to the Regional District of Comox-Strathcona on behalf of Raven to discuss the possibility of including the Black Creek Property and the Endall Road property in the ALR.<sup>58</sup> The firm explained that the proposed inclusion was part of the larger application to the ALC that involved the

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<sup>57</sup> B.C. Agricultural Land Commission, News Release, “ALC Approves Raven Application” (January 12, 2004).

<sup>58</sup> Letter from Davidson Yuen Simpson Architects and Planners to Regional District of Comox-Strathcona (August 27, 2003).

exclusion of the property in Courtenay from the ALR. Before it was considered by the Regional District, Raven's application was reviewed by both Jill Hatfield, an agrologist at the Ministry of Agriculture, Food and Fisheries and the Regional District's Agricultural Advisory Committee ("AAC"). Both the provincial agrologist and the AAC were critical of Raven's proposal.

Jill Hatfield explained that the ALR boundaries on the East Coast of Vancouver Island had been carefully reviewed by the Province during a fine tuning exercise that lasted from 1980 to 1984.<sup>59</sup> As a result of this review, the Endall Road property was excluded from the ALR and the Black Creek property was left out of the ALR, although lands adjacent to it were included. The review also concluded that the Courtenay property should remain in the ALR.

Ms. Hatfield supported the results of this previous review, as the Courtenay property was significantly better quality agricultural land than the two properties in Comox. Whereas most of the land on the Courtenay property was class 4 agricultural land that could be improved to class 3 agricultural land, the majority of the land at both the Black Creek and Endall Road properties was "class 5 agricultural land with little ability to improve beyond class 5".<sup>60</sup> Ms. Hatfield also expressed concern about soil moisture. While the Courtenay property was located above an aquifer, the Black Creek property appeared to rely mainly on stored surface water for irrigation.<sup>61</sup>

In its review of Raven's application, the Agricultural Advisory Committee raised concerns about the effect the proposal would have on the ALR. It explained that the

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<sup>59</sup> Letter from Jill Hatfield Regional Agrologist to Regional District Comox-Strathcona (September 19, 2003).

ALC Staff's report states that Ms. Hatfield withdrew her comments in this letter. [See B.C. Agricultural Land Commission, "Staff Summary Report – Planning Issue" (December 22, 2003).] However, every point that is cited in this report was also made in a later letter from Ms. Hatfield. [See Letter from Jill Hatfield Regional Agrologist to Regional District Comox-Strathcona (December 17, 2003).] The comments in this letter were not withdrawn.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

existence of the ALR rests on its acceptance by the people of British Columbia.<sup>62</sup> When land is included in the ALR its use for many other socially necessary purposes is prohibited. Consequently, the inclusion of land with little agricultural capability is likely to cause the public to question the benefits of the ALR. The AAC stated, “To permit agriculturally undesirable land to be included simply because it is offered would be to leave important land use decisions to the private land owner whose interests may be short term or not otherwise compatible with the public interest.”<sup>63</sup>

The AAC also explained that the inclusion of poor quality agricultural land ignores the strategic requirements of protecting the ALR’s integrity. The AAC noted that when communities need land for non-agricultural uses, they exert pressure to allow exclusions from the ALR. Therefore, public bodies should be cautious before adding land better suited to non-agricultural uses in the ALR, as depriving communities of such land can cause them to look to capable agricultural land to meet their needs.<sup>64</sup>

Despite the concerns of Ms. Hatfield and the AAC, Raven’s proposal won the support of the Regional District of Comox-Strathcona, and it was submitted to the ALC. Pottinger Gaherty Environmental Consultants Ltd. (“Pottinger Gaherty”), a firm hired by Raven, sent a letter to the commission to respond to the concerns raised about the proposal.

Pottinger Gaherty suggested that the 1980 to 1984 review of the properties reflected dated views of agricultural land assessment.<sup>65</sup> It also disputed Ms. Hatfield’s conclusion that the Black Creek and Endall Road properties had significantly lower agricultural capability than the Courtenay property. While conceding the existence of microclimate and soil variability, Pottinger Gaherty stated that “the Black Creek, Endall Road, and Courtenay sites all offer the same range of agricultural opportunities” (emphasis in the

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<sup>62</sup> Regional District of Comox-Strathcona Agricultural Advisory Committee, “Minutes” (September 22, 2003).

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Letter from Pottinger Gaherty Environmental Consultants Ltd. per: E.L. Pottinger to Provincial Agricultural Land Commission (December 22, 2003) at 3.

original).<sup>66</sup> Furthermore, it argued that the Black Creek and Endall Road properties offered more suitable agricultural opportunities due to their land value and surrounding land uses.

Pottinger Gaherty also stated that water resources did not appear to be a concern. While its investigation suggested that the aquifer underlying the Courtenay property did not appear to have been mapped as far as Black Creek or Endall Road, a comparison of logs from wells near the Black Creek and Endall Road properties with wells in the aquifers mapped boundaries suggested the aquifer underlay all three properties.<sup>67</sup>

In its review, ALC staff supported Raven's application for the proposed trade-off of land. However, staff's conclusions on the issues of land quality and water availability were more similar to those of Ms. Hatfield than those of Pottinger Gaherty. Staff reported that "in general terms the soils to be included are less suitable by one class than the ones proposed to be excluded."<sup>68</sup> Staff also explained that the availability of water at the Black Creek and Endall Road properties was unclear. While an aquifer may underlie the sites, this could be only be established by further studies.<sup>69</sup>

Staff went on to suggest additional requirements that the Regional Panel could impose on Raven to ensure that agricultural interests were sufficiently protected. The ALC's mandate required it to ensure the protection of the agricultural operations of the adjacent Beaver Meadow Farms. To ensure that Beaver Meadow Farms was adequately protected from stormwater, Staff recommended that approval of the proposal could be conditional on the City of Courtenay applying new stormwater management guidelines.<sup>70</sup> Staff suggested that these guidelines could be strengthened by removing their tolerance for a 10% increase in stormwater and by requiring the ALC to settle any disputes between the affected parties as to the current level of stormwater.<sup>71</sup>

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<sup>66</sup> Ibid. at 4.

<sup>67</sup> Ibid. at 5.

<sup>68</sup> B.C. Agricultural Land Commission, "Staff Summary Report – Planning Issue" (December 22, 2003).

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

Staff also suggested that the proposed ALR boundary of the Courtenay property could be adjusted to keep additional class 2 agricultural land in the ALR. It stated, “The more of the Class 2 land that is excluded the more the Commission will need to consider imposing more significant requirements with regard [to] the clearing of [the land proposed for inclusion] and bringing it into production.”<sup>72</sup>

On January 9, 2004, the Island Panel approved Raven’s proposal.<sup>73</sup> Despite the conflicting opinions from all of the public employees who reviewed the proposal, the Panel was persuaded by Pottinger Gaherty’s assessment of the agricultural capability of the Black Creek and Endall Road properties and the availability of water at these sites.<sup>74</sup> The Panel made its approval conditional on the City of Courtenay applying new stormwater management guidelines. However, it determined that it was unnecessary to follow its Staff’s recommendations to impose 0% tolerance for stormwater increases and for the Panel to settle a potential dispute over stormwater levels.<sup>75</sup>

Finally, the Panel did not endorse Staff’s suggestion that the proposed ALR boundary of the Courtenay property could be moved to retain highly capable agricultural land in the ALR. Instead, the Regional Panel required Raven to post \$200,000 letter of credit to ensure that at least 75% of the Endall Road property was developed to a minimum agricultural standard within three years.<sup>76</sup>

### **Ignoring the Advice of Public Servants: Was the Trade-off in the Public Interest?**

In the 1980s the provincial review of the area had identified the Courtenay property as worthy of ALR status, and the Endall Road and Black Creek properties as not deserving of ALR protection. When Raven proposed including the Endall and Black Creek properties in the ALR in exchange for the right to develop the Courtenay land, both the

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<sup>72</sup> Ibid.

<sup>73</sup> B.C. Agricultural Land Commission “Minutes of the Provincial Agricultural Land Commission” Resolutions #003/2004, #004/2004 Applications #34693, #35143 (January 8, 2004).

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

provincial agrologist and the Regional District's Agricultural Advisory Committee raised strong arguments for denying Raven's proposal. Unfortunately, ALC staff chose to support the proposal without sufficiently responding to these arguments. Most troubling, ALC staff failed to grapple with the argument that including poor quality agricultural land in the ALR could undermine the integrity of the ALR.

Staff avoided this argument by minimizing the importance of a key fact – the fact that the Black Creek and Endall Road properties had lower agricultural capability than the Courtenay property. As noted above, Staff conceded that the Black Creek and Endall Road properties were generally less suitable for agriculture by one class than the Courtenay property. However, Staff diminished the importance of this by suggesting, “Farm productivity on Vancouver Island can be as much a reflection of hard work and expertise of the farmer as it is a reflection of the original soil conditions.”<sup>77</sup> This statement ignores Ms. Hatfield's point that “the soils on both the Endall Road and Black Creek parcels are predominantly (more than 50%) class 5 with little ability to improve beyond class 5.”<sup>78</sup> This evidence suggested that no matter how hard farmers worked to improve the Black Creek or Endall Road properties, their agricultural capability is unlikely to improve significantly from their original conditions.

The Regional Panel's decision is even more alarming than the review by ALC Staff. Most significantly, the Regional Panel relied on Pottinger Gaherty's assessments of the agricultural capability and the availability of water when these assessments conflicted with the reviews of the proposal by a provincial agrologist whose assessment on these issues was generally supported by ALC staff. ALC staff conceded that the agricultural capability of the Courtenay property was better than the included properties and that further studies were required to determine if an aquifer underlay the included properties. It also stated, “As the Commission is aware the land to be excluded... has less of a water supply problem.”<sup>79</sup>

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<sup>77</sup> B.C. Agricultural Land Commission, “Staff Summary Report – Planning Issue” (December 22, 2003).

<sup>78</sup> Letter from Jill Hatfield Regional Agrologist to Regional District Comox-Strathcona (December 17, 2003).

<sup>79</sup> B.C. Agricultural Land Commission, “Staff Summary Report – Planning Issue” (December 22, 2003).

That a Regional Panel would prefer the evidence of a firm hired by a developer over that of the public servants responsible for preserving agriculture in the province suggests the Panel may not be sufficiently concerned with its overriding mandate to preserve British Columbia's agricultural land. In its review of Raven's proposal, the Agricultural Advisory Committee warned of the danger of allowing private interests to make agricultural land use decisions that may be contrary to the public interest. This warning was not heeded by the Regional Panel.

In fact, Pottinger Gaherty was the only participant who paid attention to the AAC's warning. In response to the AAC's concern, Pottinger Gaherty attempted to justify Raven's proposal on the grounds that 87% of the land that was included in the ALR between 1974 and 2000 was class 4 to 7 agricultural land, and 98% of the land included between April 1999 and March 2001 was class 4 to 7 agricultural land.<sup>80</sup>

The ALC has been rightly criticized for maintaining the ALR's total land base by replacing more capable agricultural land with less capable land.<sup>81</sup> This unfortunate fact is a cause for concern – not a justification for further decisions that undermine agriculture in British Columbia.

### **The Developer's Interests Were Served – But What About the Farmers' Interests?**

Besides overlooking the evidence provided by a public servant and the Agricultural Advisory Committee, the Regional Panel also failed to adopt many of its own Staff's recommendations for limiting the agricultural impact of the proposed development. The Panel reasoned that the protection of Beaver Meadows Farms did not necessitate the adoption of a 0% tolerance for stormwater increases or for the ALC to settle disputes about the current stormwater level. It also determined that the need to balance the viability of the proposed development with the retention of as much prime agricultural

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<sup>80</sup> Letter from Pottinger Gaherty Environmental Consultants Ltd. per: E.L. Pottinger to Provincial Agricultural Land Commission (December 22, 2003) at 10

<sup>81</sup> For example, see Charles Campbell, *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century*, (David Suzuki Foundation, 2006), at 5.

land as possible did not support moving the proposed ALR boundary of the Courtenay property to reduce the loss of class 2 agricultural land as had been suggested by Staff.<sup>82</sup>

The Panel's requirement that Raven provide a \$200,000 letter of credit to ensure the Endall Road property was developed for agriculture is insignificant. The Panel decided that the requirement to develop the Endall Road property for agriculture would be dropped and the letter of credit returned, if the property was sold to an adjacent or nearby farmer.<sup>83</sup> This eventuality was expected by the ALC, as Raven provided letters from two landowners who were interested in purchasing the property.<sup>84</sup> In the ALC's press release announcing the Regional Panel's decision, the ALC's Director of Regional Operations stated that the Commission "viewed favourably the expressed interest in the Endall Road property by two adjacent agriculture operations."<sup>85</sup>

The Regional Panel's focus on the Endall Road property is surprising because this property is little more than half the size of the Courtenay property. The Black Creek property made up 243 hectares of the 318 hectares of land that the Regional Panel included in the ALR. Consequently, the potential for Raven's proposal to benefit agriculture clearly turned on the development of the Black Creek property for agriculture. The successful agricultural development of the Endall Road property could not replace the lost agricultural capability of the excluded Courtenay property.

The Panel's enthusiasm for a potential sale of the Endall Road property must also be kept in perspective. An owner of Beaver Meadow Farms, Edgar Smith, states that Raven had previously refused an offer from Beaver Meadow Farms to purchase the larger Courtenay

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<sup>82</sup> B.C. Agricultural Land Commission "Minutes of the Provincial Agricultural Land Commission" Resolutions #003/2004, #004/2004 Applications #34693, #35143 (January 8, 2004).

<sup>83</sup> B.C. Agricultural Land Commission "Minutes of the Provincial Agricultural Land Commission" Resolutions #003/2004, #004/2004 Applications #34693, #35143 (January 8, 2004).

<sup>84</sup> Letter from D. Machin to Provincial Agricultural Land Commission (December 22, 2003) and letter from Rob Estabrook to Provincial Agricultural Land Commission (December 16, 2003).

<sup>85</sup> B.C. Agricultural Land Commission, News Release, "ALC Approves Raven Application" (January 12, 2004).

property.<sup>86</sup> As a result of the Regional Panel's decision to approve Raven's development proposal, Beaver Meadows Farms is now incapable of expansion.<sup>87</sup>

### **Trade-offs and the Incentive to Speculate**

While a trade-off in which excluded ALR land is replaced with similar or better quality agricultural land is preferable to an exclusion where no similar quality land is added to the ALR as compensation, all trade-offs create an incentive to speculate. Trade-offs suggest to developers that they may be able to remove capable agricultural land from the ALR. This possibility can drive up the price of ALR land, particularly ALR land near urban areas.

In arguing in favour of Raven's proposal, Pottinger Gaherty suggested that the Black Creek and Endall Road properties were more suitable for agriculture than the Courtenay property because of their lower land values and their greater distance from urban areas.<sup>88</sup> However, the ALR is most important in areas where the demand to use agricultural land for non-agricultural purposes is greatest – often urban areas. The limitations on non-farm uses of land in the ALR are designed to curb the value of this land so that it remains affordable to agricultural operation like Beaver Meadows Farms.

Approving exclusions of ALR land, such as the Courtenay property, undermines the purpose of the ALR. When it appears that ALR land can be excluded, it becomes much less likely that the land will be valued based on its agricultural capabilities. If it had been clear to Raven that the Courtenay property would never be excluded from the ALR, Raven would have been strongly encouraged to put the property to agricultural use or to sell the property to someone who intended to do so. Because the possibility of building a residential development on the property existed, Raven had no incentive to sell the Courtenay property.

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<sup>86</sup> Interview with Edgar Smith

<sup>87</sup> Ibid.

<sup>88</sup> Letter from Pottinger Gaherty Environmental Consultants Ltd. per: E.L. Pottinger to Provincial Agricultural Land Commission (December 22, 2003) at 4.

## **Conclusion**

In approving the Courtenay trade-off, the Island Panel does not appear to have sufficiently considered the ALC's mandate to preserve agricultural land in British Columbia. The Panel preferred the evidence of the firm hired by the developer to that of the provincial agrologist on the issues of the agricultural capability and water availability, despite ALC staff's determinations that the included properties were generally less suitable for agriculture by one class than the Courtenay property and that water availability was less of a concern at the Courtenay property. Also, the Panel also chose not to impose several of ALC staff's suggestions designed to limit the agricultural impact of approving the proposal.

In its review of the proposal for the Courtenay trade-off, the Agricultural Advisory Committee for the Regional District of Comox-Strathcona warned that the interests of private landowners may not coincide with the public interest. Unfortunately, the Regional Panel did not heed this warning. As a result of the replacement of 140 hectares of ALR land with less agriculturally capable land, Beaver Meadow Farms is now incapable of expanding and the integrity of the ALR has been undermined.

## **The Sechelt Decision**

In each of the decisions discussed above, a Regional Panel allowed the exclusion of a large amount of land from the ALR. However, Regional Panels make decisions on a wide variety of applications, and the majority of their decisions affect smaller amounts of land. The preservation of agriculture can be undermined as much by a series of smaller decisions as it can by one significant exclusion. Therefore, the protection of agriculture in British Columbia requires the ALC to consider its mandate to preserve agricultural land in every decision.

Unfortunately, the Regional Panels have not sufficiently considered the ALC's mandate in many of their decisions. The Panels' failure to protect agriculture, illustrated in the significant exclusions discussed above, is also reflected in their decisions affecting smaller amounts of land. The South Coast Panel's December 2005 decision to allow the construction of residential villas on ALR land in Sechelt is a particularly egregious example.

### **Summary: The Application and Decision**

Because the Sechelt Golf & Country Club was built on ALR land, the ALC must approve non-farm uses of the land. In October 2005, the ALC received an application to allow the Sechelt Golf & Country Club to expand its clubhouse and to build 64 residential villas in a two story complex.<sup>89</sup> The proposed development covered one hectare of secondary class agricultural land.<sup>90</sup>

The Club argued that this development would make its facility more attractive to potential members, and it would secure the Club's long term financial viability.<sup>91</sup> The Club claimed that, because the villas would be modular pre-manufactured concrete structures, they would not negatively affect the land.<sup>92</sup>

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<sup>89</sup> Sechelt Golf and Country Club, "Application by Land Owner" (Received by ALC on October 17, 2005).

<sup>90</sup> B.C. Agricultural Land Commission, "Staff Report Application # Z – 36316 Applicant: Sechelt Golf and Country Club Agent: Bob Heaslip" (November 23, 2005).

<sup>91</sup> Submission by Bob Heaslip "Proposed Sechelt Golf and Country Club Villas" (October 3, 2005).

<sup>92</sup> Ibid.

ALC staff expressed concern at the prospect of building housing units on a golf course in the ALR.<sup>93</sup> Staff pointed out that the allowance of golf courses in the ALR was always prefaced on the concept that the course could be readily rehabilitated for agriculture. Despite the fact that modular construction would allow the villas to be removed more easily than conventional construction, their existence would make a possible rehabilitation of the golf course for agricultural use “much less likely.”<sup>94</sup>

ALC staff was also concerned about the financial viability of the golf course. It noted, “The course has already faced one bankruptcy and if it happens again, there could be pressure to allow for greater non-agricultural use of the land to assist financially.”<sup>95</sup> It suggested that if the Panel approved the application, it should consider requiring a security to ensure the villas were removed if the course failed.

ALC staff explained that because the golf course is on secondary class land, the proposed development could be considered to have minimal impact on agriculture. However, it recommended that the ALC consider the long term impact of the proposal on the ALR.<sup>96</sup>

The South Coast Panel approved the Club’s application despite the ALC staff’s concerns. In reaching its decision, the Panel observed that the villas’ modular construction would allow them to be removed with relative ease. Therefore, the villas “would not negatively impact on the future agricultural potential of the property.”<sup>97</sup>

### **The Signals Sent by a Decision: A Decision’s Long Term Impact**

In its decision, the Regional Panel failed to sufficiently consider the ALC’s mandate to protect agricultural land. The Panel’s suggestion that the agricultural impact of the villas is lessened by their modular construction is unconvincing. As noted by ALC staff, the existence of dwellings on a golf course significantly reduces the likelihood that the land

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<sup>93</sup> B.C. Agricultural Land Commission, “Staff Report Application # Z – 36316 Applicant: Sechelt Golf and Country Club Agent: Bob Heaslip” (November 23, 2005).

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> B.C. Agricultural Land Commission “Minutes of the Provincial Agricultural Land Commission” Resolution #649/2005 Application #Z - 36316 (December 7, 2005).

will ever be reclaimed for agriculture. Despite the suggestion of ALC staff, the Panel chose not even to require a security to ensure the villas could be removed.

The Panel also failed to heed the suggestion of ALC staff that it consider the long term impact of allowing dwellings to be built on golf courses in the ALR. By approving the Club's application, the Panel sent a signal to developers that the ALC may allow buildings to be constructed on ALR golf courses. This will almost certainly encourage developers to apply to the ALC for permission to build on ALR golf courses, which will increase the pressure on Regional Panels to allow such applications. Because of the signals sent by the decision, its impact is likely to be felt far beyond the one hectare of land on which development occurs.

### **Conclusion**

The first unforeseen consequence of the Panel's approval occurred in May 2006, when the Club applied to the ALC to amend the approval by allowing the construction of 36 additional villas.<sup>98</sup> The Club argued that the additional units were required because the approved 64 unit complex was not economically viable. It claimed the newly proposed units would not further impact agriculture, as expansion would be achieved by adding two additional floors to the approved buildings.<sup>99</sup> As difficult as it is to imagine a two story complex being removed from agricultural land, the potential removal of a four story complex stretches credibility to its limits.

Given the ALC staff's concerns about the Club's finances, it is alarming that the Panel approved a development that is supposedly not economically viable. Furthermore, whether or not increasing the size of the complex would increase its impact on agriculture, the fact that the request was made illustrates how an ALC approval can encourage developers to request further concessions from the ALC.

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<sup>98</sup> Letter from Brian K. Hall, CEO Sechelt Golf & Country Club to Agricultural Land Commission (May 25, 2006)

<sup>99</sup> Ibid.



## **Conclusion**

For over thirty years, the ALR has made an enormous contribution to the province's agricultural industry. By protecting agricultural land from development, the ALR has preserved the land for agricultural use and has reduced upward pressure on the land's value. Unfortunately, recent decisions suggest that the ALR is less protected by Regional Panels.

Evidence is mounting that the new Regional Panel system is not providing adequate guardianship for the province's scarce agricultural land. Charles Campbell's report *Forever Farmland: Reshaping the Agricultural Land Reserve for the 21<sup>st</sup> Century*, the ALR Protection and Enhancement Committee's report, *Protecting the Agricultural Land Reserve: Our Foodlands Under Threat*, and various allegations of possible impropriety and lack of diligent protection of farm land that have been raised in the media and the courts, have all shown the flaws in the current system.

The four decisions analyzed in this report vividly illustrate the weakness of the Regional Panels protection of British Columbia's agricultural land. In each of these decisions a

Regional Panel allowed an exclusion or non-farm use of ALR land with questionable justification. Under the circumstances, it is appropriate for the provincial government to now call an inquiry into the current ALR regime.

This inquiry should review all the decisions made by the Regional Panels since they were established, in order to determine whether there is a widespread problem in decision making throughout the province. This review of decisions should be part of a broader examination of whether an alternate ALC decision making structure would better protect British Columbia's scarce agricultural land.

As the future of agriculture in British Columbia depends on a strong ALR, it is imperative that the ALC's decision making structure encourage agriculturally sound decisions. A provincial inquiry could provide valuable suggestions and recommendations for reforming the ALC into the best possible decision making structure.

The value of agricultural lands to present and future generations of British Columbians demands that we have an Agricultural Land Commission that can effectively carry out its statutory mandate to preserve British Columbia's farm lands. At this point, only a public inquiry can ensure that this takes place.

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