

Ministry of Agriculture and Food
BRIEFING NOTE FOR MINISTER FOR INFORMATION FOR MEETING WITH MLA STURDY

Ref: 200398

Date: May 19, 2023

Title: Application of local government bylaws to agriculture

Issue: Follow-up on questions put forward by MLA Sturdy during Estimates regarding the application of local government bylaws to agriculture.

Background:

MLA Sturdy has requested a meeting with the Minister of Agriculture and Food to follow up on Estimate questions related to the application of local government bylaws to agriculture. The meeting is scheduled for May 24, 2023. Kim Grout, Chief Executive Officer (CEO) of the Agricultural Land Commission (ALC) will attend the meeting.

Specifically, MLA Sturdy would like to discuss the following items:

- Advocating for agriculture community/farmer with local governments,
- Jurisdiction of investigations of local authorities; and,
- Structure sizing approvals.

In British Columbia (B.C.), the Agricultural Land Reserve (ALR) protects approximately 4.6 million hectares of agriculturally suitable land where agriculture is recognized as a priority use. Farming on the ALR is encouraged and non-agricultural uses are restricted. The role of the ALC includes preserving the ALR, encouraging farming within the ALR and encouraging local governments to accommodate farm use in their plans, policies, and bylaws.

The Agricultural Land Reserve Use Regulation (ALRUR) outlines farm and non-farm uses within the ALR, and outlines whether the local government may or may not prohibit the use. Within the ALRUR, farm buildings such as one for dairy cattle, farm retail sales and the operation of a food and beverage service lounge are farm uses that may not be prohibited by a local government if parameters set by the ALRUR are met.

MLA Sturdy brought up a series of questions during Estimates. His concerns may be related to Hop Creek Farms (HCF) in Squamish. HCF would like to establish a food and beverage lounge that is connected to their brewery and is currently in the process of discussing their needs with the District of Squamish.

Discussion:

The following information relates to the theme of questions that MLA Sturdy raised in Estimates.

Advocating for Agriculture:

The Strengthening Farming Program within the Ministry of Agriculture and Food (the Ministry) liaises with local governments on behalf of agriculture to ensure that bylaws are consistent with the Minister's Bylaw Standards (MBS) and supportive of agriculture.

Further details on MLA Sturdy's concern will assist Ministry staff in determining if there is a role for the Ministry to intervene.

Jurisdiction of investigations for the local authorities:

There is no specific process for investigating local authorities such as local governments. Generally, Ministry staff learn about local government bylaw issues when they are brought to their attention. Potential issues also come to the Ministry's or ALC's attention when a local government sends a draft bylaw for review. The Ministry reviews the bylaw to ensure it is consistent with the MBS and that the bylaw supports agriculture. ALC would also review the bylaw to ensure it complies with legislation related to agriculture. There is no legislative requirement for local governments to forward bylaws to Ministry staff for comment, so the process is completely voluntary. Official Community Plans (OCP) and Regional Growth Strategies (RGS) would be reviewed from the same perspectives.

The ALC has a legislative mandate to review OCPs, but not zoning bylaws. Section 46(4) of the *Agricultural Land Commission Act* (ALCA) states that bylaws that are inconsistent with the ALCA are of no force and effect with regard to the inconsistency. Ministry and ALC staff do not proactively review bylaws to determine consistency but will comment when bylaws are brought to their attention.

Structure of sizing approvals:

MLA Sturdy expressed a series of concerns related to local government requests that increase farm building costs or reduce farm building scale. Specifics of these concerns are as follows:

- A local government requested road frontage upgrades that would cost two million dollars in relation to building a dairy building.
 - These costs may be outside of the Ministry's jurisdiction, depending on the section of the *Local Government Act* (LGA) that the local government is using to levy these costs.
 - Ministry staff would like to know the local government that this issue relates to so that staff can liaise with them and discuss further.
- A local government reduced the number of milking stalls that a farmer could implement, and the size reduction made the process uneconomical.
 - Based on the information provided, Ministry staff consider this to be restrictive for farming businesses and would like to discuss it with the local government.
- A local government has reduced the farm retail sales area from 300m² to 120 m² and the food and beverage service lounge from 125m² to 60 m².
 - On the ALR, 300m² is the maximum size for a farm retail sales area and 125 m² is the maximum size for a food and beverage service lounge.

- A local government may reduce the maximum size for several reasons including that the property size does not accommodate the maximum size and that there could be noise, setbacks requirements, servicing issues or other requirements that need to be met.

Local governments have zoning power as provided to them through the LGA. A property owner could apply to the local government to have the property zoning amended to accommodate their needs.

MLA Sturdy noted that some local governments may implement bylaws that are so restrictive that the bylaws could prohibit farm use that is permitted through the ALRUR. MLA Sturdy suggested using section 481 of the LGA to regulate a local government when a bylaw varies substantially from the MBS.

- In practice, a local government may place restrictions on a specific site for several valid reasons including public safety. These restrictions would not be considered a prohibition.
- Section 481 of the LGA has previously been used when a local government has a bylaw that may negatively affect more than one farm operation or may impact a farming industry or commodity as a whole. The section has not been used to support a single farm.

Suggested Response:

- Thank you for taking the time to meet and further discuss the questions that you raised about local government bylaws and their application to agriculture.
- In B.C., the priority use of the ALR is agriculture. In addition, the role of the ALC includes encouraging local governments to accommodate farm use in their bylaws.
- To respond to the questions that you raised during Estimates, the Ministry asks that the names of the local governments be provided so that Ministry staff can review the given bylaws and further discuss the details with the local relevant governments.

Contact: Sandra Cavallin, Senior Policy Analyst, 778 698 9869

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Memorandum

Deputy Minister
Ministry of Indigenous Relations and
Reconciliation

Date May 8, 2023

Ref. 57840

To: Peter Pokorny
Deputy Minister
Ministry of Agriculture and Food

Re: Confirmation of Crown Land Selections statusing for the Te'mexw Treaty
Association Treaty Negotiations

The Te'mexw Treaty Association (Malahat, Sc'ianew, Snaw-naw-as, Songhees, T'Sou-ke) are in advanced Stage 5 treaty negotiations and have been identified by British Columbia and Canada as one of the three treaty tables working to conclude negotiations by the end of 2023. The Te'mexw Treaty Association (TTA) Agreement in Principle was signed in 2015. The majority of the Provincial Crown lands that will comprise the treaty land package have already been negotiated and approved by line agencies under a Cabinet mandate. Stage 5 land and cash offers were made to Malahat, Snaw-naw-as and T'Sou-ke in 2017. Negotiators for British Columbia and Canada are preparing land and cash offers to Sc'ianew and Songhees for Spring 2023.

In Fall of 2022, the Ministry of Indigenous Relations and Reconciliation (MIRR) provided interest reports and maps of Additional Treaty Lands to your staff and their feedback was incorporated in the attached Land Analysis Table. These lands include key provincial lands for the Songhees land and cash offer, as well as lands in support of finalizing the treaty land packages for Malahat and T'Sou-ke. It is our understanding that all of the issues of concern have been addressed by staff or a process to deal with any outstanding matters has been agreed upon. In advance of our request for Cabinet approval and to proceed with land and cash offers to Sc'ianew and Songhees, I am seeking your confirmation of this understanding.

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1. Additional Treaty Lands

The parcels identified in the Additional Treaty Lands Land Analysis Table are as follows:

Songhees Nation (68.4 hectares):

Additional lands adding to existing lands package consist of:

- 0.9 hectares of new provincial Crown lands – *Q Lot*;
- 67.5 hectares of new Provincial Park – *Discovery Island Marine Provincial Park*

Malahat Nation (6.9 hectares):

Additional lands within existing land package consist of:

- 6.7 hectares of BC Hydro corridor through North Shawnigan Parcels
048-051 – *North Shawnigan Transmission Corridor*
- 0.2 hectares of unbuilt road between North Shawnigan 50-51 – *North Shawnigan Transportation Corridor*

T'Sou-ke Nation (446.4 hectares):

Additional lands to existing land package consist of:

- 446.4 hectares of new Provincial Park – *Sooke Mountain Provincial Park*

A 2010 LAT provided line agency off for the entire Malahat parcel known as North Shawnigan 48-51. Only a small portion of the parcels are being reviewed this time, in particular the BC Hydro Transmission Corridor and the Transportation corridor, previously requested for exclusion.

Line agency staff reviewed and provided comments on the additional lands to be included as treaty offer lands.

2. Pre-Approved Additions to Treaty Settlement Lands

Pre-approved Additions to Treaty Settlement Lands are lands that the Parties agree will be added to Treaty Settlement Lands (TSL) after the effective date of the Treaty, if the lands are acquired by the Nation. The agreement to add these lands to TSL is reflected in the Treaty, through Appendix maps and Treaty language. Pre-approved additions to TSL can include provincial Crown land, federal Crown land and private property. Private lands would need to be acquired by the Nations on a willing seller/willing buyer basis. Provincial Crown lands could be acquired through purchases or grants at such time as the Province declares a parcel surplus to provincial requirements.

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For your information, the two Land Analysis Tables, in addition to overview maps of the proposed treaty lands and pre-approved additions are attached.

Please signify your confirmation that all issues and concerns related to these parcels of lands have been satisfactorily addressed by signing below and returning this letter to my attention. I would appreciate receiving your reply by May 26, 2023. Your support will assist the Province in accomplishing this key government priority.

Please contact me or Alexandra Banford, A/Assistant Deputy Minister, Ministry of Indigenous Relations and Reconciliation, if you wish to discuss this request. Alexandra Banford can be reached by telephone at 778-974-2140.

Thank you for your attention to this matter.

A handwritten signature in blue ink, appearing to be 'Tom McCarthy', with a stylized, flowing script.

Tom McCarthy
Deputy Minister
Ministry of Indigenous Relations and Reconciliation

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The Ministry of Agriculture and Food agrees that the land statusing has identified all relevant issues and those issues have been satisfactorily addressed, or actions are being taken to address the issues.



Peter Pokorny
Deputy Minister
Ministry of Agriculture and Food

Attachments: Land Analysis Tables
 Maps – Additional Treaty Lands
 Maps – Pre-Approved Additions

CC: Alexandra Banford, A/Assistant Deputy Minister
 Ministry of Indigenous Relations and Reconciliation

Ashlyn Schwaiger, Executive Director, Land Strategies and Services Branch
Ministry of Indigenous Relations and Reconciliation

Christie Harvie, Regional Executive Director
Ministry of Indigenous Relations and Reconciliation

Mark Lofthouse, Chief Negotiator
Ministry of Indigenous Relations and Reconciliation

Stephen Winn, Negotiator
Ministry of Indigenous Relations and Reconciliation

Page 08 of 63

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Page 09 of 63

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Page 10 of 63

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Page 11 of 63

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Page 13 of 63

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