

Report 5: September 2010

AUDIT OF THE AGRICULTURAL LAND COMMISSION

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The Honourable Bill Barisoff
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Dear Sir:

I have the honour to transmit herewith to the Legislative Assembly of British Columbia my 2010/2011 Report 5: Audit of the Agricultural Land Commission.

John Doyle, MBA, CA
Auditor General

Victoria, British Columbia
September 2010

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JOHN DOYLE, MBA, CA
Auditor General

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

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

Recently, the commission reported that 95% of respondents to a public survey supported the Agricultural Land Reserve and the policy of preserving agricultural land. Preservation of agricultural land is fundamental to securing food production for future generations, particularly given the uncertain effects of climate change on our food imports and our agricultural systems.

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

The commission has accepted my recommendations and I look forward to receiving updates on their plans and actions for implementation through our follow-up process.

Thank you to everyone involved in this audit for the cooperation and assistance they provided to my staff.

John Doyle, MBA, CA
September 2010

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EXECUTIVE SUMMARY

AGRICULTURAL LAND IS AN INDISPENSABLE

natural resource. One of the main reasons for preserving farmland — in British Columbia and elsewhere in the world — is to secure food production into an uncertain future. In this province, population growth is a serious threat to prime agricultural land. In the 1970s, concern over the loss of agricultural land to urban development led to the creation of the Agricultural Land Reserve (ALR). The ALR is made up of land located throughout the province, in all totalling approximately 4.7 million hectares.

Responsibility for administering the ALR lies with the Agricultural Land Commission (commission), an administrative tribunal that operates at arm's length from government. The commission makes decisions on applications to add or remove land as well as non-farm uses and subdivisions of land within the ALR. The commission is also responsible for working with local governments regarding land use planning and conducting compliance and enforcement activities.

We carried out this audit to determine whether the Agricultural Land Commission is:

- ♦ effectively preserving agricultural land and encouraging farming in British Columbia;
- ♦ adequately protecting the ALR from damage through its compliance and enforcement activities; and
- ♦ adequately evaluating and reporting on its effectiveness.

The commission is challenged to effectively preserve agricultural land and encourage farming in British Columbia, specifically:

- ♦ the commission has not determined that the boundaries of the ALR are accurate and include lands that are both capable of and suitable for agricultural use;
- ♦ the commission has identified limitations in its ability to preserve agricultural land and encourage farming through the application process;
- ♦ the commission is not sufficiently involved in proactive long-term land use planning with local governments to encourage farming on a broad basis; and
- ♦ oversight of the decisions made by its “delegated authorities” needs strengthening to ensure that agricultural land is being preserved and farming encouraged.

The commission has established policies to guide compliance and enforcement activities. However, the commission has determined that the current staffing resources and enforcement tools to support those policies are not sufficient to protect the ALR from damage caused by unlawful actions such as illegal dumping of construction material. In addition, while the commission is attempting to work with local and provincial governments to enhance compliance and enforcement activities, formal agreements are not yet in place.

The commission is not effectively evaluating the results and impacts of its decisions, in part, because it lacks the necessary information. In addition, while it is reporting on some aspects of its success, it is not clearly describing the extent to which it is achieving its mandate.

SUMMARY OF RECOMMENDATIONS

WE RECOMMEND THAT THE COMMISSION:

- 1** ensure that ALR boundaries are accurate and include land that is both capable of and suitable for agricultural use.
- 2** seek government's support to make changes that will allow it to more effectively preserve agricultural land and encourage farming through the application process.
- 3** engage in proactive long-term planning with local governments to encourage farming.
- 4** work with Fraser-Fort George Regional District to address concerns it has with the District's processes.
- 5** work with the Oil and Gas Commission to develop an action plan to implement the recommendations of the 2009 audit.
- 6** ensure that it has a sufficiently robust compliance and enforcement program.
- 7** prioritize completion of the new database and finalize conversion of the original paper ALR maps into digitalized format.
- 8** evaluate the collective impacts of its decisions on applications and its broader policy decisions.
- 9** report publicly on the cumulative impacts of its decisions.

THE AGRICULTURAL LAND COMMISSION

welcomes the opportunity to respond to the findings and recommendations of the audit conducted by the Office of the Auditor General between September 2009 and March 2010. It is appreciated that the purpose of the audit was to determine whether the commission is effectively preserving agricultural land and encouraging farming, adequately protecting the ALR from damage and adequately evaluating and reporting on its effectiveness. The audit findings are welcomed by the commission as they emphasize a number of the challenges it has identified in the ongoing efforts to administer the Agricultural Land Reserve (ALR) in the face of continued pressures to convert ALR lands for non-farm purposes.

While the commission believes it has preserved agricultural land and encouraged farming during its almost four decades of operation, it appreciates that the audit found that there is a need to devote more resources to more accurately identify lands that are suitable for farm use – this is particularly so in some regions of the province where technical soils and land use information is lacking. The audit also acknowledges that the commission has identified the limitations of the application process with respect to preserving agricultural land and encouraging farming. Furthermore, the commission appreciates that the audit found that there is opportunity for more proactive involvement in local and regional government land use planning to encourage agriculture and that there is a need to strengthen the oversight with respect to delegated decision making authority to ensure agricultural land is preserved and farming is encouraged.

The audit found that protection of the ALR from damage due to unlawful actions is being addressed by the commission through its compliance and enforcement activities and policies and that there have been attempts to collaborate with local and provincial governments. The commission appreciates that the audit recognizes the commission's concerns about not being positioned to significantly enhance its efforts without the necessary resources and tools.

With respect to evaluating the results of decisions and reporting effectively on successes, the audit found that the commission could be more effective in this regard by more clearly describing the extent

to which the mandate is being achieved. The commission notes this finding and will be examining ways to acquire the information it needs to evaluate its decisions more effectively and communicate more aspects of its success.

RESPONSE TO SPECIFIC RECOMMENDATIONS

1. *We recommended that the commission ensure that ALR boundaries are accurate and include land that is both capable of and suitable for agricultural use.*

Response

The commission agrees that the accuracy of the ALR boundaries in some regions of the province should be examined to accurately reflect land that is suitable for farm use. Working with local governments to examine the ALR boundary in the context of regional and local land use planning exercises has been the primary approach taken by the commission during the past two decades. This approach has been ad hoc and reactive and not what the commission believes is comprehensive as was the case when it undertook and co-ordinated planned ALR boundary fine tuning exercises in the 1980s. The commission has carried out preliminary estimates of the resources and necessary funding to engage in fine tuning and will be examining the options for moving forward.

2. *We recommended that the commission seek government's support to make changes that will allow it to more effectively preserve agricultural land and encourage farming through the application process.*

Response

The commission believes it would be appropriate to examine additional measures to more effectively preserve agricultural land by reducing the pressures to convert lands with significant land capability to non-farm development as a result of an application process. The commission agrees that where applications result in conditional approvals, it should examine how to more effectively encourage farming through the setting of terms and conditions.

3. *We recommended that the commission engage in proactive long-term planning with local governments to encourage farming.*

Response

The commission agrees that proactive land use planning at a regional and community level is key to ensuring that local government plans and bylaws are more consistent with the commission's mandate to

RESPONSE FROM THE AGRICULTURAL LAND COMMISSION

preserve agricultural land and encourage farming. The commission has worked closely with local governments for almost four decades and provided policy and direction, but needs to maintain the working relationship. The commission believes that a shift towards less emphasis on a reactive and presently ad hoc application process will enable it to apply resources to engaging with local governments and others early and strategically in planning exercises.

4. We recommended that the commission work with Fraser-Fort George Regional District to address concerns it has with the District's processes.

Response

The commission believes that a collaborative governance approach to shared decision making can be effective and efficient and still maintain consistency with its mandate. The commission is satisfied that the agreements it has with regional governments to date have generally met the expected outcomes, but it needs to devote more resources to oversight including monitoring the results of delegated decisions and reviewing the terms of delegation to ensure agricultural land is preserved and farming is encouraged. During the past year, Fraser-Fort George Regional District has been implementing changes to its delegated application review process suggested by the commission, which will focus the board's attention on agricultural issues and factors pertinent to each application and the consideration of the impacts and benefits of the decisions it makes on the applications.

5. We recommended that the commission work with the Oil and Gas Commission to develop an action plan to implement the recommendations of the 2009 audit.

Response

The commission agrees that it should develop an action plan to implement the recommendations of the 2009 audit and seek the input of the Peace River Regional District. The commission has initiated discussions with the OGC during the past year to begin discussions on an implementation approach.

6. We recommended that the commission ensure that it has a sufficiently robust compliance and enforcement program.

Response

The commission believes that its compliance and enforcement efforts can be enhanced and given more credibility by increasing resources,

developing the ability to effectively use additional legislative tools and instruments and other cost effective measures, including but not limited to the development of strategic alliances with local government and provincial government officials.

7. We recommended that the commission prioritize the completion of the new database and finalize conversion of the original paper ALR maps into digitalized format.

Response

The commission agrees that one of its priorities is to complete the implementation and conversion of a re-designed (2006 – 2009) research and tracking data base. The ability of the commission to research and track changes to the ALR and land uses and subdivision within the ALR is key to evaluating the results of its decisions. A key component of future evaluation is the ability to acquire land use information it does not currently have and geographically examine and convey the effect of its decision. The complete implementation of the data base tracking and research program, which includes the spatial and geographic analysis tool, is required in order to fully report on the results of commission decisions.

8. We recommended that the commission evaluate the collective impacts of its decisions on applications and its broader policy decisions.

Response

The commission agrees that the provision of resources and information that provided technology and research capabilities to evaluate the collective impacts of its decisions, would assist it in understanding the impacts of its application, land use planning and broader policy decisions as well as better inform decision making.

9. We recommended that the commission report publicly on the cumulative impacts of its decisions.

Response

The Commission acknowledges that it has the ability to report and summarize the extent to which the ALR changes and to some limited extent, the change that has occurred within the reserve due to approved land use and subdivision. The Commission agrees that when it is in a position to deploy the technology and research resources necessary, it will examine the options and improve its measurement and reporting on the extent to which its mandate to preserve agricultural land and encourage farming has been achieved.

CONCLUSION

Many of the challenges facing the commission and identified in the audit have been recognized for some time and initiatives are underway, where resources permit, to address some of the issues. In addition, the newly appointed Chair of the Agricultural Land Commission is presently carrying out a review of all facets of the organization, including operations, policies and legislation, to ensure that it is appropriately positioned to continue the agricultural land preservation program well into the future. The purpose of the review is to determine if the Commission is capable of meeting its mandate as outlined in section 6 of the Agriculture Land Commission Act and to explore opportunities to more effectively and efficiently administer the Agricultural Land Reserve (ALR). The audit has provided several recommendations that will be helpful to the Chair in the review, particularly in the context of improving the commission's effectiveness in preserving agricultural land and encouraging farming, protecting the ALR and carrying out enhanced evaluation and reporting.

BACKGROUND

Protecting agricultural land in British Columbia

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

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

Establishment of the Agricultural Land Reserve

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

The ALR is a provincial zone in which agriculture is recognized as the priority use. Farming is encouraged and non-agricultural uses are controlled. Numerous parcels of land throughout the province make up the ALR (Exhibit 1). These include private and public lands: some that is farmed, some that is not, and some that is forested. ALR parcels range in size from thousands of hectares to small pockets of only a few hectares. The ALR is approximately 4.7 million hectares, representing less than 5% of British Columbia's total area.

Approximately 1% of British Columbia is prime agricultural land and a small amount surrounds the urban areas of Vancouver/Fraser Valley/Victoria and of Thompson/Okanagan, which are home to 80% of the provincial population. While these areas contain only 20% of the ALR, the associated agricultural lands earn over 80% of the province's gross farm receipts. Continued rapid population growth in these regions thus poses a threat to British Columbia's prime agricultural resources.

The role of the Agricultural Land Commission

The Agricultural Land Commission is an administrative tribunal responsible for administering the ALR. The commission operates at arm's length from government. The purpose of the commission is to:

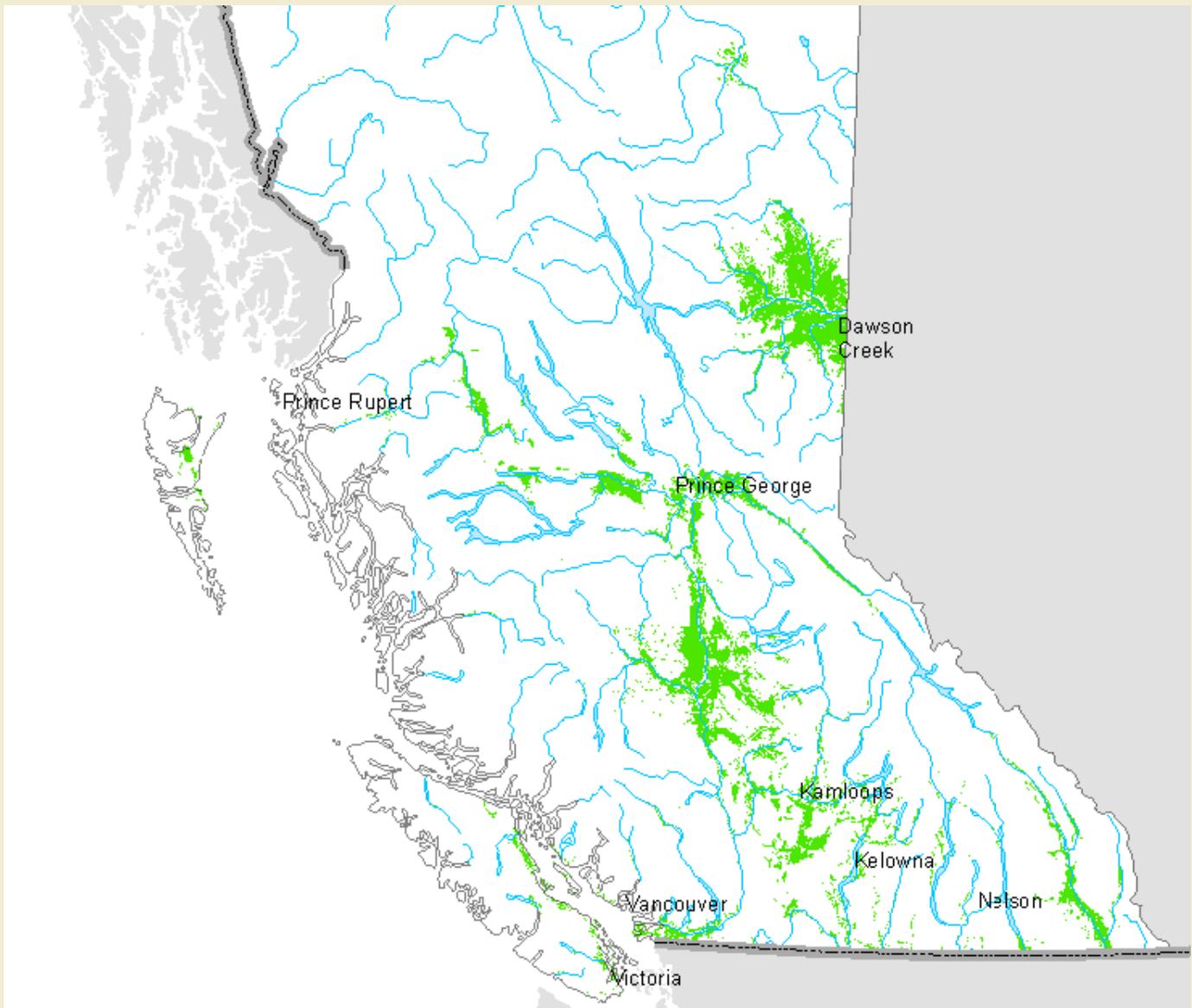
- ♦ preserve agricultural land;
- ♦ encourage farming on agricultural land in collaboration with other communities of interest; and
- ♦ encourage local governments, First Nations, and the provincial government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Since the establishment of the ALR almost four decades ago, it has undergone almost no change in total area. However, this is the case mainly because lands in the northern part of the province have been added to the reserve, while agricultural land in the south has been removed (Exhibit 2). The amount of prime agricultural land, or land that allows a range of crops, contained in the ALR has declined (Exhibit 3).

The Agricultural Land Commission Act sets out processes for land-use decision-making that involves adding or removing land from the ALR, as well as deciding on non-farm uses and subdivisions of land within the ALR. The Act is supported by the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, which details procedures for applications and defines permitted land uses and land subdivisions within the ALR.

In 2002, the Agricultural Land Commission implemented the regional panel structure for its 19 members. Three Commissioners were appointed to each of the organization's six administrative regions (replacing the previous three-panel structure operated with 11 commissioners). A part-time Chair/CEO is accountable for the effective management and operations of the commission.

Exhibit 1: Map of the ALR (shown in green)



Source: Agricultural Land Commission

The commission carries out its business through four functional areas, including:

1. land use planning and application processing;
2. strategic planning and corporate policy;
3. administration and information systems; and
4. compliance and enforcement.

The changing demands on the commission

In 2002/03, the Agricultural Land Commission's budget was \$2,930,000. Since that time, the budget has decreased. The commission's most recent detailed budget submission, in November 2008, estimated that with the 2008/09 budget of \$2,435,000 it was operating at approximately 20% (\$530,000) below its minimal requirements to maintain its core business. By 2010/11, the commission's budget was further reduced to \$2,088,000.

DETAILED REPORT

Exhibit 2: The ALR's overall size has changed little in three decades but agricultural land in the south has declined ¹

Region	Area when ALR created (ha)	Land inclusions (ha)	Land exclusions (ha)	Area as at March 31, 2009 (ha)	Change (%)
Interior	1,499,000	21,000	23,000	1,497,000	0%
Kootenay	399,000	1,000	18,000	382,000	-4%
North	2,254,000	145,000	19,000	2,380,000	6%
Okanagan	257,000	5,000	36,000	226,000	-12%
South Coast	177,000	2,000	17,000	162,000	-8%
Island	130,000	9,000	26,000	113,000	-13%
Total	4,716,000	183,000	139,000	4,760,000	1%

Source: Prepared by the Office of the Auditor General using Agricultural Land Commission information

Exhibit 3: The amount of prime land in the ALR has declined — total to 2008



Source: Prepared by the Office of the Auditor General using Agricultural Land Commission information

¹ These figures represent land that has been excluded and included through the commission's application process and through local government's boundary revisions. Not all land excluded was capable of or suitable for agricultural use.

In addition, over the last eight years, the number of commission staff decreased from 29 to 22, while the number of commissioners (as noted above) was increased from 11 to 19. The number of annual applications to the commission for this period has continued to range between 460 and 670. The commission's budget must also accommodate its land use planning and compliance and enforcement responsibilities.

AUDIT PURPOSE AND SCOPE

We carried out this audit to determine whether the Agricultural Land Commission is:

- ♦ effectively preserving agricultural land and encouraging farming in British Columbia;
- ♦ adequately protecting the ALR from damage through its compliance and enforcement activities; and
- ♦ adequately evaluating and reporting on its effectiveness.

We conducted this audit in accordance with section 11 (8) of the Auditor General Act and the standards for assurance engagements established by the Canadian Institute of Chartered Accountants. We focused our audit on activities during the period from June 2007 to January 2010. Subsequently, further discussion, analysis and assessment was conducted prior to completing the report.

AUDIT CONCLUSION

We concluded that the Agricultural Land Commission:

- ♦ is challenged to effectively preserve agricultural land and encourage farming in British Columbia;
- ♦ is not adequately protecting the ALR from damage through its compliance and enforcement activities; and
- ♦ is not adequately evaluating and reporting on its effectiveness.

FINDINGS AND RECOMMENDATIONS

The Agricultural Land Commission is challenged to effectively preserve agricultural land and encourage farming

The Agricultural Land Commission's mandate includes three broad purposes: to preserve agricultural land; to encourage farming; and to work with, amongst others, local government to accommodate farming. A significant responsibility under the Agricultural Land Commission Act is to respond to applications for changes to the ALR.

We therefore expected to find that the commission:

- ♦ has determined that the boundaries of the ALR are accurate;
- ♦ is making decisions that preserve agricultural land and encourage farming through the application process;
- ♦ has processes in place to make decisions in a transparent and independent manner;
- ♦ is providing clear guidance to, and working with, local governments to ensure that their decisions preserve agricultural land and encourage farming; and
- ♦ is working to ensure that the decisions made by its delegated authorities are preserving agriculture and encouraging farming.

The commission has not determined that the boundaries of the ALR are accurate

The ALR was established in the early 1970s through cooperative efforts with local governments. Because of the hurried development of ALR maps at that time, the accuracy of the land contained within the reserve's boundaries varies across the province. As a result, some land that is neither capable of nor suitable for farming — for example, a hillside or steep ravine — may have been included within the ALR while other land that is capable of and suitable for farming may not have been.

We expected that the commission would have made more progress in ensuring that the boundaries of the ALR were accurate and confirmed that the land is capable of and suitable for agricultural use.

The commission is aware that a review in certain areas of the province is required to confirm the accuracy of the reserve's boundaries. However, with the exception of a few refinements, a re-examination of boundaries on a province-wide basis has not occurred. Instead, the boundaries are refined mainly on an ad hoc basis by local governments as part of their community planning exercises.

Unfortunately, the commission is not always able to participate in this process to ensure that agricultural land is preserved. For example, the Regional District of East Kootenay requested a review of the ALR boundaries in 2007. The commission did not participate in the review, citing a lack of staff resources. The regional district has therefore gone ahead in carrying out the project and will later consult the commission with proposed areas for inclusion and exclusion. In order to ensure the preservation of agricultural land, the commission should provide greater oversight of ALR boundary reviews carried out by local governments.

Aerial view of farms within British Columbia's Agricultural Land Reserve



Courtesy: Agricultural Land Commission

Without a province-wide review, and the necessary adjustments, the commission cannot have confidence that the boundaries are accurate and that land capable of and suitable for agricultural use is included in the ALR.

RECOMMENDATION 1: *We recommend that the commission ensure that ALR boundaries are accurate and include land that is both capable of and suitable for agricultural use.*

The commission has limited ability to preserve agricultural land and encourage farming through the application process

Preserving agricultural land : Currently the commission is required to respond to all applications for change, even those that request the removal of capable agricultural land from the ALR. The commission has identified a number of potential changes to the Agricultural Land Commission Act that would help avoid these situations. One suggested change is restricting or prohibiting applications to remove ALR lands that have prime agricultural capability.

Despite acknowledging that legislative amendments may be desirable, the commission has not been invited by government over the last eight years to propose revisions to its legislation.

Encouraging farming : The commission also acknowledges that the Act does not provide adequate mechanisms to fulfill its mandate to encourage farming through the application process. To compensate on some application decisions that run contrary to its mandate, the commission has looked to setting conditions aimed at encouraging farming. For example, two recent decisions were contingent on the applicant fulfilling conditions that the commission believes will encourage or enhance farming:

- ◆ On South Fraser Perimeter Road, the commission approved the loss of approximately 90 hectares of prime agricultural land. The condition of that decision was the construction of an irrigation and drainage project to service the remaining agricultural land in Delta.

- ♦ On the Prince George Airport Industrial Lands, the commission approved the exclusion of 688 hectares of secondary agricultural land. The conditions of that decision were the inclusion of 880 hectares of Crown Land into the ALR and the establishment of a trust fund from the sale and development of the industrial lands estimated to generate \$8 million for agriculture in the region.

RECOMMENDATION 2: *We recommend that the commission seek government's support to make changes that will allow it to more effectively preserve agricultural land and encourage farming through the application process.*

The commission has adequate processes in place to ensure that decisions are made in a transparent and independent manner

Administrative justice principles require that any tribunal operate in a transparent manner, one that gives the public access to information so that they may understand the organization's decisions.

We found that the Agricultural Land Commission has the required processes in place to ensure that its decisions are made in a transparent manner. The commission provides applicants with guidance on the application process and shares the basis for its decisions with applicants. As well, decisions are available for public review. The majority of decisions, from 2006 onward, are available on the commission's website.

Furthermore, applications to exclude land from the ALR require public notification by the applicant and may involve a public meeting.

The integrity of the commission also depends on the manner in which Commissioners conduct themselves. We found that the commission has recently taken steps to ensure greater independence of Commissioners. For example, it amended its governance policy in March 2009 to enhance the standards of conduct of Commissioners. The amendment was intended to provide Commissioners with clearer direction about how to avoid being in, or appearing to be in, a position of bias or conflict of interest.

The commission provides clear guidance to local governments, but greater long-term planning is needed

Population growth in the province has increased the need for land to accommodate residential, recreational, commercial and industrial development. This in turn is putting significant pressure on ALR land. Under its mandate, the commission is required to encourage local governments to enable and accommodate farm use of agricultural land, and uses compatible with agriculture, in their plans, bylaws and policies. We therefore expected to find that the commission is providing clear guidance to, and working with, local governments to ensure that their decisions preserve agricultural land and encourage farming.

Clear guidance to local governments is being given, but the commission is not interacting with them as much as it used to

We found that the commission, through its legislation, guidance documents, and feedback, is providing clear guidance to local government about the preservation of agricultural land and the encouragement of farming. Section 46 of the Agricultural Land Commission Act requires that local government bylaws be consistent with the Act, the regulations and the orders of the commission.

The commission also developed the *ALR & Community Planning Guidelines* to help guide local government officials through the planning process. Local governments are responsible for notifying the commission of plan development and ensuring that their plans are consistent with the Act. The commission then reviews the plans for consistency with the Act and policies.

Nevertheless, we noted that commission interaction with local governments has decreased over the last several years. In the past, the commission worked with all 140 local governments that have land in the ALR. Now the commission is focussing its resources on land use planning issues pertaining to local governments that have large amounts of highly capable and suitable ALR land in proximity to significant urban/agricultural interfaces.

In carrying out this work with local governments, the commission also collaborates with the Ministry of Agriculture and Lands, joining as members of "agri-teams." Agri-teams work with local governments in building agricultural land-use inventories, developing agricultural area or official community plans, reviewing bylaws in farm and ranch areas, supporting agricultural advisory committees and addressing other day-to-day issues that might involve agriculture in communities throughout the province. The participation of commission staff on agri-teams varies by region and panel preferences.

Overall, participation on agri-teams has decreased over time due to competing demands experienced by both the commission and the ministry. As a result, the commission has less assurance that all local government decisions are in fact preserving agricultural land and encouraging farming.

Long-term planning with local government — key to reducing the impact of population growth on the ALR — is not occurring to the extent needed

Currently the commission deals with local government planning issues as they arise, but not as part of a proactive, long-range planning process. The commission believes that early discussions about community planning initiatives has positive results in promoting the use of agricultural land, encouraging farming, and ultimately reducing the impact of population growth pressures and development on the ALR.

The commission has stated that its current budget accommodates three regional planners to support the organization's six regional panels. However, the commission has determined that each regional panel should be supported by a regional planner and, as such, the current staffing does not enable the commission to implement its proactive planning initiative.

RECOMMENDATION 3: *We recommend that the commission engage in proactive long-term planning with local governments to encourage farming.*

The commission's oversight of decisions made by delegated authorities needs strengthening

The commission currently has three "delegation agreements" in place: two with regional districts and one with the BC Oil and Gas Commission. The agreements permit the authority to make decisions on subdivision and non-farm use applications. This ability to delegate to a local government and later to an agency, were added to the Agricultural Land Commission Act in 1994 and 2002 respectively as a method of increasing collaboration with local government and reducing the number of applications processed by the commission. Still, the commission must provide adequate oversight of the decisions made by the delegated authorities to ensure those decisions are preserving agricultural land and encouraging farming.

Local governments did not embrace the concept of delegation. Thus, today only two agreements exist with the regional districts of East Kootenay and Fraser-Fort George.

The commission is providing only informal oversight of the delegation agreement with the Regional District of East Kootenay

The commission and the Regional District of East Kootenay signed the delegated agreement in 2004 covering a small part of the district.

Since the agreement was signed, only six subdivision decisions have been made by the district. As well, the commission has provided only informal oversight and has not concluded whether the decisions made are preserving agricultural land and encouraging farming.

The commission is providing oversight of the delegation agreement with the Fraser-Fort George Regional District, but has identified several concerns with the district's processes

The commission and the Fraser-Fort George Regional District signed a delegation agreement in 2001. The commission provides oversight of the agreement through the annual review of decision statistics and occasional in-depth reviews of actual decisions.

Between 2001 and 2008, the regional district made decisions on 56 subdivision applications and 18 non-farm-use applications, approving the majority of them.

The commission has stated that it is generally satisfied that the majority of the decisions made by Fraser-Fort George preserve agricultural land and encourage farming. However, the commission has identified some concerns with certain aspects of the delegated decision-making process that require attention.

RECOMMENDATION 4: *We recommend that the commission work with Fraser-Fort George Regional District to address concerns it has with the District's processes*

The commission is providing oversight of the delegation agreement with the BC Oil and Gas Commission, but is concerned about the cumulative impact of the oil and gas industry on agriculture

In 2004, the Agricultural Land Commission and the BC Oil and Gas Commission (OGC) signed a delegated agreement that enables the OGC to make decisions about certain applications for oil and gas activities on ALR lands in the Peace River Regional District and Northern Rockies Regional District. Approximately 32% of the ALR lies within these two districts.

Aerial view of an urban-rural border in British Columbia



Courtesy: Agricultural Land Commission

The agreement also allows the OGC to exempt specific oil and gas activities and pipelines on ALR lands from some usual application requirements under the Agricultural Land Commission Act. We therefore expected to find the commission to be providing oversight of this agreement to ensure that the decisions of the OGC are preserving agricultural land and encouraging farming.

We concluded that the commission is providing adequate oversight. For example, the OGC must report annually to the commission on decisions made and compliance actions taken. In addition, an annual audit (conducted by an independent auditor) is required to ensure that the OGC is meeting its responsibilities as set out in the delegated agreement. While we found that these audits are not carried out annually, two audits have been conducted since the agreement was signed. The most recent audit was done in 2009, and the one before that was done in 2006. The 2009 audit found that, with one exception, the planning and field activities approved or exempted from application conformed, in all significant respects, with the requirements of the delegated agreement. The exception was a finding of significant non-conformance related to the timeliness of confirmation of pipeline reclamation. The parties have not yet completed a strategy for implementing the recommendations of the 2009 audit.

The commission has also expressed concerns about the long-term cumulative impacts of oil and gas development on the ALR. In response to these concerns, the North Panel Commissioners held an initial meeting in November 2009 with the OGC, Ministry of Energy and Mines, Peace River Regional District, farmers, other landowners, and industry to determine an approach to managing the impact of gas activities on the ALR in the region.

The commission intends to have future discussions and follow-up with the stakeholders.

RECOMMENDATION 5: *We recommend that the commission work with the Oil and Gas Commission to develop an action plan to implement the recommendations of the 2009 audit.*

The Agricultural Land Commission's compliance and enforcement activities are not adequate

The Agricultural Land Commission has a legislative mandate to ensure that activities taking place in the ALR are consistent with the Act, regulations and orders of the commission. The proper use of

Example of the illegal disposal of fill on agricultural land in British Columbia



Courtesy: Agricultural Land Commission

ALR lands is meant to ensure a high-quality land base for farming. In support of this goal, many of the commission's application decisions have conditions attached that require monitoring and follow-up to ensure they are being met.

The commission created its compliance and enforcement program in September 2007. It was concerned that significant damage had occurred in the ALR and would continue to occur unless the commission took a more active role in protecting agricultural lands from unlawful activities such as the dumping of construction waste. Before the program was established, the commission dealt with compliance issues only when time permitted.

Though recognizing that the program is relatively new, we still expected to find that the Agricultural Land Commission:

- ◆ has established policies to guide compliance and enforcement activities;
- ◆ is providing adequate resources to compliance and enforcement activities;

- ◆ has adequate enforcement tools in place to enable staff to prevent the damage of agricultural land (for example, the ability to ticket offenders); and
- ◆ is working with other agencies to enhance its compliance and enforcement activities.

The commission has policies in place to guide compliance and enforcement activities

We found that the commission has established policies to guide compliance and enforcement activities, including the requirements laid out in the Agricultural Land Commission Act, regulations and various policies established for the permitted uses of land within the ALR. The commission has also drafted a strategy that lays out the guiding principles of the compliance and enforcement team.

The commission's objective is to ensure a high degree of compliance with commission decisions and the Act. As well, the commission has established compliance and enforcement roles and responsibilities.

The commission has determined that its compliance and enforcement resources are inadequate to protect the ALR

The commission has determined that its compliance and enforcement team is not adequately resourced. Originally, the team consisted of an acting coordinator and two officers. However, in early 2009 the commission reassigned the acting coordinator back to his previous position as a land use planner.

Currently, the compliance and enforcement team focuses the majority of its efforts on ALR lands in the Lower Mainland of the South Coast Panel region. The commission told us that it cannot address enforcement issues elsewhere on a regular basis without additional resources.

The commission also noted a limited travel budget further restricts the compliance and enforcement team's ability to monitor and respond to incidences throughout the province.

The commission has determined that available tools limit the effectiveness of its compliance and enforcement function

The commission most frequently uses informal tools to gain compliance. Examples include verbal communication, site inspections, advisory letters and warning letters. None of these methods imposes legal or financial penalties or is enforceable.

If informal tools are not effective in gaining compliance, the commission can choose to use formal tools — legal instruments such as stop-work orders, remediation orders, orders to comply and financial penalties.

Drawing on the formal tools listed above may result in challenges by the offending parties. When that occurs, the commission must defend its decisions through an appeals process or through the courts — both costly avenues. The commission advised that, because of budget constraints, it is not able to apply the formal tools as often as is required to protect the ALR.

In order for a compliance program to be credible, enforcement tools must be in place and the prospect of their use must be real. In this regard, the commission has identified a number of additional, cost-effective tools that would enhance its compliance and enforcement activities. These include giving staff the ability to:

- ♦ obtain evidence directly (currently the commission may request evidence, but if refused the only recourse is through the courts);
- ♦ issue tickets and fines for unlawful use of ALR lands (the

commission believes that fines would act as a significant deterrent); and

- ♦ encumber a property title if a fine is unpaid or an order unfulfilled.

The addition of these compliance and enforcement tools require changes to the Agricultural Land Commission Act.

The commission is working with local and provincial government to leverage compliance and enforcement activity, but the arrangements are not formalized

With only two compliance and enforcement officers for the entire province the commission cannot effectively monitor the occurrence of unlawful activities. Therefore, the commission must work with both local and provincial government to create a province-wide compliance and enforcement network.

We found that the commission is attempting to leverage compliance and enforcement activity with other government authorities, especially in the South Coast Panel region. Formal agreements are not yet in place however, so there is the risk that the commission's compliance and enforcement issues may not be priority issues for local and provincial governments.

The commission also believes that if the Agricultural Land Commission Act gave local government employees the ability to use the commission's enforcement provisions — as the Act does for employees of the provincial government — it would help facilitate potential partnerships and improve compliance and enforcement effectiveness.

As well, the commission is in ongoing discussions with provincial government members of the Resource Management Coordination Project. This initiative seeks collaborative approaches to natural resource management and includes a province-wide compliance and enforcement strategy. Through the Resource Management Coordination Project, the commission anticipates that it will have the ability to draw on compliance and enforcement resources from the other participants, including the Ministry of Environment, Ministry of Forests and Range, and Ministry of Agriculture and Lands. It is unclear whether the commission will be able to rely on this approach.

RECOMMENDATION 6: *We recommend that the commission ensure that it has a sufficiently robust compliance and enforcement program.*

The Agricultural Land Commission is not adequately evaluating and reporting on its effectiveness

Appropriate information is necessary to evaluate the continued effectiveness of an organization and allow for informed decision-making. Reporting allows government and the Legislature to know if an organization is achieving its mandate and whether adjustments are required.

We had expected to find that the Agricultural Land Commission is:

- ♦ evaluating the results and impacts of its decisions; and
- ♦ reporting on its results in achieving its mandate.

The commission is not adequately evaluating the results of its decisions

We expected the commission to be gathering appropriate information to allow it to make decisions and then to evaluate the province-wide cumulative impact of those decisions.

The commission does not have the information it needs for effective decision-making

Because of a lack of resources, a new database to help the commission record, research and report on application-related information (called the Online Application Tracking System), was not completed as

planned during fiscal 2008/09. The commission anticipated that the new system would enable staff to report out more accurately on the complexities of commission decisions and link this data to a mapping component using geographic information systems (GIS). The commission is uncertain when the new tracking system will be fully functional. Meanwhile, the transition to the new system has resulted in difficulties accessing information.

The commission has not completed the transition from tracking ALR boundaries manually to tracking them using GIS data. The commission is still relying on the paper maps developed in the 1970s to track and archive decision information. These maps are in disrepair and are at risk of loss of historical information. As well, in some instances, the paper maps can no longer accommodate additional information. In the future, the commission hopes to generate ALR areas from GIS mapping data.

RECOMMENDATION 7: *We recommend that the commission prioritize completion of the new database and finalize conversion of the original paper ALR maps into digitalized format.*

The commission is not consistently evaluating the impacts of its decisions

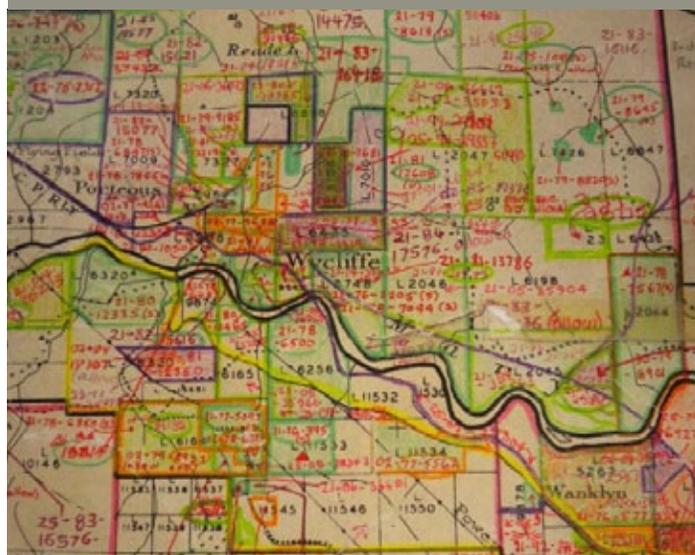
We found that the commission is not evaluating the collective impacts of exclusion, inclusion, non-farm use and subdivision application

Example of the state of the Agricultural Land Commission's maps



Courtesy: Agricultural Land Commission

Example of a paper map that cannot accommodate additional information



Courtesy: Agricultural Land Commission

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decisions. As well, the commission is not evaluating its broader policy decisions, such as allowing oil and gas activities and gravel extraction, on the ALR. Evaluations in these areas would provide the commission with the information needed to determine how effectively it is preserving agricultural land and encouraging farming. The commission advised that existing workloads and information and technology gaps do not allow for additional projects, assessments or reviews.

RECOMMENDATION 8: *We recommend that the commission evaluate the collective impacts of its decisions on applications and its broader policy decisions.*

The commission is reporting on some aspects of its effectiveness, but is not clearly describing the extent to which it is achieving its mandate

The commission reports publicly through an annual business plan and annual report.

The commission is reporting on threats to its effectiveness

In its 2009/10 business plan for the upcoming fiscal year, the commission clearly states that it expects its effectiveness will be reduced as it operates with fewer resources. Impacts on its operations identified by the commission include:

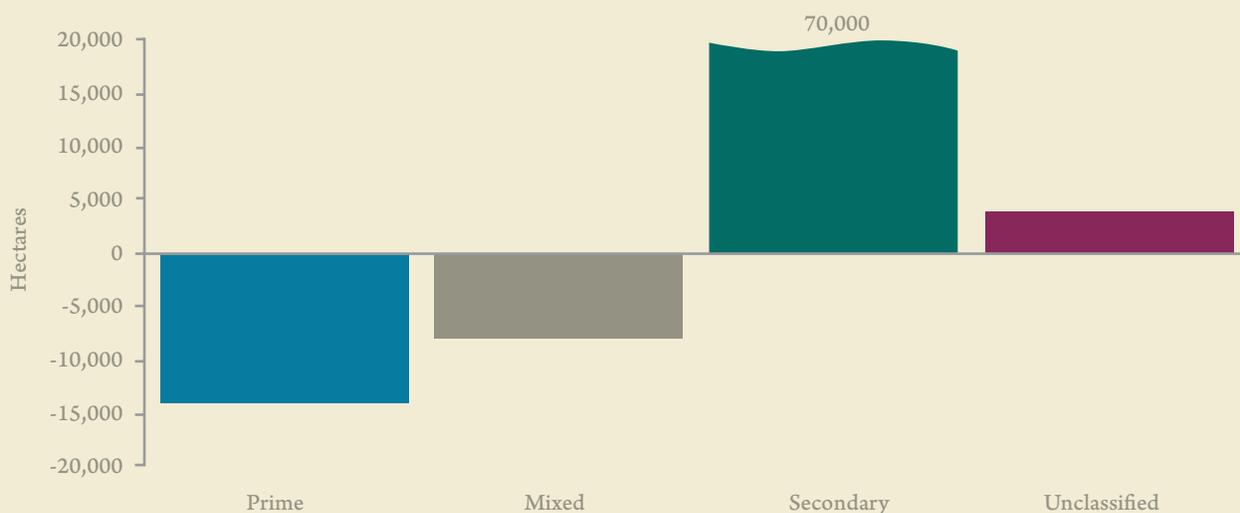
- ◆ not being able to fill two current staff vacancies;
- ◆ reducing commission panel operations;
- ◆ limiting involvement with local government planning;
- ◆ reducing the number of on-site visits to applicant properties; and
- ◆ requiring longer processing time for applications.

The commission's annual report provides extensive statistical information, but does not describe the extent to which the commission has achieved its mandate

The commission prepares an annual report that provides an overview of its organizational structure, regional panel operations, compliance and enforcement activities, planning and operational issues, and statistical summaries of decisions made on a regional and province-wide basis.

The commission is not reporting, however, externally on key measures of effectiveness, such as the cumulative results of exclusions and inclusions on agricultural capability or on the regions. We show two examples of charts we think the commission could use in part to measure the extent to which its mandate has been achieved (Exhibits 4 and 5).

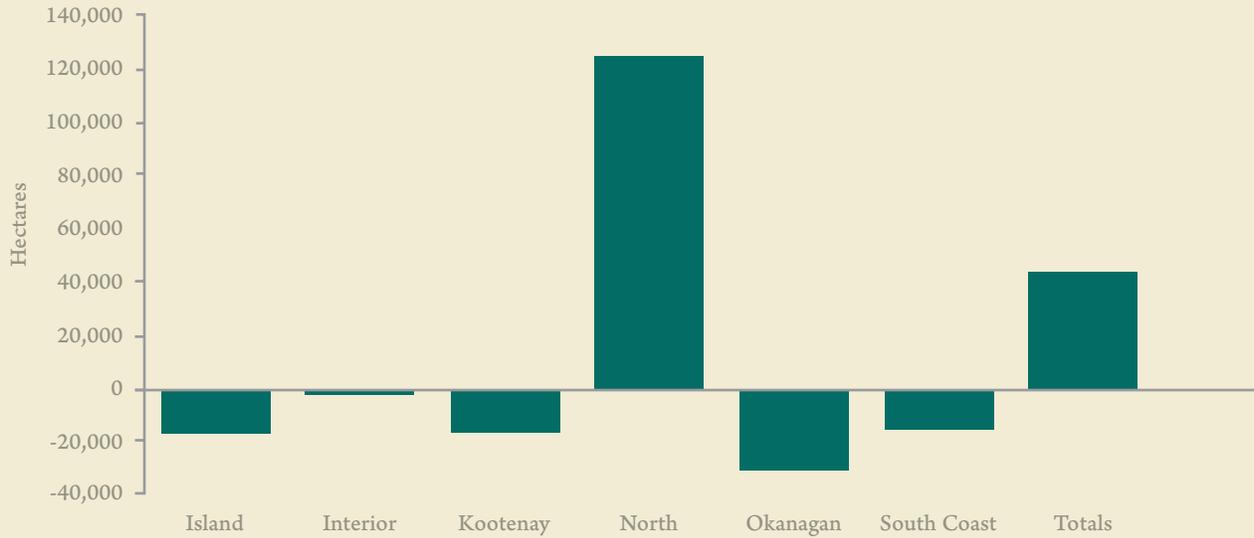
Exhibit 4: Sample chart: "The agricultural capability of the ALR has been reduced since 1974"



Source: Prepared by the Office of the Auditor General using Agricultural Land Commission information

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Exhibit 5: Sample chart: “ALR lands have decreased in size in all regions of British Columbia except those in the north — total to 2008”



Source: Prepared by the Office of the Auditor General using Agricultural Land Commission information

We are also concerned that the commission is not reporting on the cumulative impacts on the ALR of decisions made to allow subdivisions and non-farm-use of reserve lands.

RECOMMENDATION 9: *We recommend that the commission report publicly on the cumulative impacts of its decisions.*