



Agricultural Land Commission
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October 22, 2018

ALC C&E File: 50456

SENT BY REGISTERED MAIL

City of Powell River
6910 Duncan Street
Powell River, BC V8A1V4

Attention: Mac Fraser - CAO

Dear Mr. Fraser,

REMEDIATION ORDER

As Chief Executive Officer for the Agricultural Land Commission (the "Commission"), I have reviewed information regarding the activities being carried out on the Property legally described as:

**Legal: Lot A, Plan BCP23887, District Lot 450, Group 1, New Westminster
Land District, Except Plan BCP42255
PID: 026-685-591
(the "Property")**

The *Agricultural Land Commission Act* (the "Act") provides that the purposes of the Commission are:

- 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 polices.

Both the *Act* and the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* (the "Regulation") are relevant to my review regarding the Property.

A Commission Official attended the Property on June 13, 2016. Based on the Official's observations on that date, my review of the Commission file, application decisions, and the correspondence between Commission staff and the Owner, I have determined the following:

1. The City of Powell River is the registered owner (the "Owner") of the Property.

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2. PRSC Land Developments LTD previously owned the Property from August 08, 2006 until June 23, 2017 at which time it was purchased by the City of Powell River.
2. The Property is designated agricultural land situated within the Agricultural Land Reserve (the "ALR") within the geographic area of the Island Panel Region, which is in Zone 1.
3. Section 1 of the Act defines "farm use" as *"an occupation or use of land for farm purposes, including farming of land, plants and animals and any other similar activity designated as farm use by regulation, and includes a farm operation as defined in the Farm, Practices Protection (Right to Farm) Act"*.
4. Section 20 of the Act provides that (1) *"a person must not use agricultural land for a non-farm use unless permitted under the Act"* and (2) *"for the purposes of subsection (1), excepted as provided in the regulations, the removal of soil and the placement of fill are non-farm uses"*.
5. Section 19 of the Act provides that *"Unless permitted under this Act, a registrar of titles must not, under the Land Title Act or Strata Property Act, in respect of land, all or part of which consists of land in an agricultural land reserve,*
 - a. *accept an application for deposit of a subdivision plan, reference plan, explanatory plan or other plan showing subdivision of land, or a statutory right of way plan under section 114 of the Land Title Act..."*
6. Except where permitted under the Act and Regulation, road construction and filling for the purposes of road construction are prohibited non-farm uses on ALR properties.
7. Section 6 of the Regulation provides that unless permitted under sections 2 and 3, a person must file an application with the Commission for "dedication of a right of way or construction of... a new or existing road or railway" and for "construction of a road within an existing right of way".
8. On April 13, 2011 Statutory Right of Way BB1318856 (Plan BCP47962) was registered on the Property title without prior Commission authorization. There was no prior application under section 6 of the Regulation for permission to dedicate a right of way for a new road on the Property.
9. The City of Powell River was and is the Registered Owner of Statutory Right of Way BB1318856.
10. On June 09, 2016 application #55021 was submitted to the ALC to partially exclude the Property from the ALR.
11. On June 13, 2016 a Commission Official conducted an inspection of the Property and observed that fill has been imported to construct a U-shaped asphalt road within the right of way described in Plan BCP47962.
12. On November 14, 2016 the Commissioners of the Island Regional Panel refused Application #55021.

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13. On April 19, 2017 the Owners were sent a Notice of Contravention requesting the submission of a compliance proposal by May 19, 2017.
14. On May 04, 2017 the Commission received a response from City of Powell River Chief Administrative Officer Mac Fraser advising that the deadline would not be met but a detailed response was forthcoming.
15. On June 23, 2017 the City of Powell River purchased the Property.
16. On August 09, 2017 the Commission received a response from City of Powell River Acting Chief Administrative Officer Chris Jackson acknowledging that the registration of the right of way and construction of the road were contrary to the *Act* and Regulation. Further to the acknowledgment, Jackson advised that a compliance proposal would be submitted by August 18, 2017.
17. On September 27, 2017 the Commission received the compliance proposal from City of Powell River Director of Planning Services Thomas Knight. The proposal advised that the Owner would be making an application under Section 6 of the Regulation to bring the Property into compliance with the *Act* and Regulation.
18. On October 17, 2017 Application #56916 was submitted to the Commission to bring existing right of way (BB1318856) and the constructed road within into compliance.
19. On March 01, 2018 Application #56916 was refused by the Island Regional Panel. The Panel found that the Property has agricultural capability despite some limitations, and that the right of way occupies approximately 0.2 ha of the Property and alienates an additional approximately 0.2 ha. The Panel was not in favour of utilizing and alienating ALR land in order to accommodate residential development outside of the ALR and expressed concerns that the intrusion of the road into the ALR could give rise to trespass issues on adjacent agricultural land. It also found that the Owner's proposal for buffering of the right of way would not mitigate its negative impact on the Property's agricultural utility as it would further reduce the Property's farmable area.
20. On June 05, 2018 the Chief Administrative Officer of the Owner sent an email to me acknowledging that the City of Powell River's approval of the road intrusion into the ALR had been inappropriate.
21. Based on the Commission Official's June 13, 2016 inspection and the findings of the Island Regional Panel in its Decision on Application #56916, it is clear that the unauthorized construction of an asphalt road on the Property has caused damage to agricultural land. The asphalt road cannot be utilized for agriculture, and the asphalt road also alienates further land so that it cannot be used for agriculture, or can only be used with extraordinary difficulty. I also conclude that the construction of the asphalt road must have involved the unauthorized importation of fill onto the Property.

Based on the foregoing, I conclude that the City of Powell River has contravened and is continuing to contravene section 20 of the *Act*.

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Accordingly and in the circumstances, pursuant to section 52(1) of the Act, as Chief Executive Officer of the Commission, I hereby order the City of Powell River; and their agents, representatives, employees and any other person acting on their behalf, to:

- 1. Remove the road and all fill, including, but not limited to any material brought on land in the Agricultural Land Reserve in conjunction with the construction of the road within Statutory Right of Way BB1318856;**
- 2. Remediate the Property in and around Statutory Right of Way BB1318856 to ensure that the soil agriculture capability is similar to or better than before the fill associated with road construction was imported onto the Property; and**
- 3. Make an application to the Registrar of Titles, to have Statutory Right of Way BB1318856 removed from the title of the Property.**

The removal of the unauthorized fill and subsequent remediation must be overseen by a Qualified Environmental Professional ("QEP") or an alternate qualified professional with experience in such activities. Further, a final report is to be completed by the QEP and must be submitted to the Commission upon completion of the soil removal project but no later than February 28, 2019.

The above requirements must be completed by August 31, 2019 unless prior to that time, I agree in writing to vary this Remediation Order.

FAILURE TO COMPLY WITH THIS REMEDIATION ORDER MAY RESULT IN A PENALTY OF UP TO \$100,000, AN APPLICATION TO COURT FOR A COMPLIANCE ORDER UNDER SECTION 53 OF THE ACT AND/OR OTHER ENFORCEMENT MEASURES.

If you wish to dispute the terms of this Remediation Order, you may appeal pursuant to section 55 of the Act. Please note that notice of an appeal must be delivered to the Commission within 60 days from the date of this letter. The commencement of an appeal does not operate to suspend this Remediation Order. The ALC Practice Directive (PD-01) - Appeals under Section 55 of the ALGA, provides further guidance and can be viewed at the following link:

<http://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc - policy pd-01 practice directive re appeals under section 55.pdf>

The Act and Regulation can be found at the following links respectively:

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1. http://www.bclaws.ca/civix/document/id/lc/statreg/02036_01
2. http://www.bclaws.ca/civix/document/id/complete/statreg/171_2002

If you have any questions, please contact David Assels at (604) 819-1947.

Sincerely,



Kim Grout
Chief Executive Officer
PROVINCIAL AGRICULTURAL LAND COMMISSION