



## City of Richmond

## Report to Council

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<b>To:</b>	Richmond City Council	<b>Date:</b>	May 19 <sup>th</sup> , 2004
<b>From:</b>	Mayor Malcolm D. Brodie Chair, General Purposes Committee	<b>File:</b>	01-0035-20- ALCA1/Vol. 01
<b>Re:</b>	<b>Recommendations Regarding the Upcoming Regulations to Bill 27</b>		

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The General Purposes Committee, at its meeting held on Monday, May 17<sup>th</sup>, 2004, considered the attached report, and recommends as follows:

### Committee Recommendation

#### *That:*

- (1) the Honourable George Abbot, Minister, Sustainable Resource Management be requested to incorporate the following solutions into the regulations to implement Bill 27, "The 2004 Agricultural Land Commission Amendment Act":*  
*"That First Nations, for lands which they request to be excluded from the ALR, be required to:*
  - (a) Prepare Plans (e.g., site plans) which indicate how the following matters are to be managed both on and off site: land uses, the built urban form, social programs, economic development, services, traffic and the natural environment,*
  - (b) Consult with Adjacent Municipalities before finalizing their plans and requesting an exclusion from the ALR,*
  - (c) Consult With the Public before finalizing their plans and requesting an exclusion from the ALR".*
  - (d) Negotiate approval (in part or in full) at the appropriate First Nation Treaty table prior to final agreement.*
- (2) copies of the letter to the Hon George Abbot be sent to the Premier, Richmond MLAs, UBCM, the GVRD municipalities and the GVRD.*

Mayor Malcolm D. Brodie, Chair  
General Purposes Committee

Attach.

### VARIANCE

Please note that Committee added (d) in Part (1) above.

## **Staff Report**

### **Purpose**

The purpose of this report is to make recommendations to the Province regarding upcoming regulations which will assist in implementing Bill 27 “The 2004 Agricultural Land Commission Amendment Act” (see **Attachment 1**).

### **Origin**

On May 13, 2004, The BC Legislature gave Royal Assent to Bill 27, “The 2004 Agricultural Land Commission Amendment Act”.

### **Background**

The City of Richmond has concerns regarding Bill 27 and has previously advised the BC Provincial government of its concerns.

On May 15, 2004, the Richmond Mayor and several Councillors met with Richmond MLAs Geoff Plant and Greg Halsey Brandt to discuss Bill 27.

Those at the meeting agreed that the best way for Richmond to further address its concerns is to write the Hon. George Abbott, BC Minister of Sustainable Resource Management who is in charge of the Act and the upcoming Regulations and request that certain requirements be incorporated into the Regulations.

Richmond City Mayor and several Councillors have requested that this report be brought to the General Purposes Committee on Monday May 17, 2004.

### **Findings Of Fact**

In summary, Bill 27, “The 2004 Agricultural Land Commission Amendment Act” enables First Nations who have reached the Treaty Agreement-In-Principle (AIP) stage, to apply directly to the BC Agricultural Land Reserve Commission, to exclude any lands which may be in the Agricultural Land Reserve (ALR).

### **Issue**

In applying to the BC Land Commission to exclude ALR land, First Nations will not be required to consult with either:

- adjacent municipalities, or
- the public.

### **Richmond Concerns**

Richmond has several concerns with Bill 27, including that it will negatively affect:

1. Treaty negotiations, and
2. the ability of municipalities to properly plan, co-ordinate and manage their Corporate and community interests regarding:
  - land use,
  - the built urban form,

- social programs,
  - economic development,
  - services,
  - traffic and
  - the natural environment.
3. the ability of the public (e.g., adjacent property owners, citizens, service and utility providers, developers) to properly plan, and co-ordinate and manage their interests.

In this report, Richmond is concerned primarily with Bill 27's negative impact on the second and third above items: the ability to plan.

### ***Richmond Servicing Of First Nations Development***

It is assumed that, if First Nation require municipal services to develop their lands, a municipality cannot refuse services, but is able to negotiate acceptable terms to protect their interests.

### ***The Problem***

The problem is that without adequate information regarding how excluded First Nations lands may be used, it is difficult to plan, and co-ordinate and manage the City's interests. It will also be difficult for others to do so.

### ***Provincial Regulations***

The BC government is intending to prepare Regulations to assist in implementing the Act. These Regulations are not yet drafted.

### ***The Opportunity***

To constructively advise the BC government and to proactively address Richmond concerns, it is best if Richmond forwards its recommendations regarding the upcoming provincial Regulations to implement Bill 27, to the BC government, as soon as possible.

Richmond's Recommendations Regarding the Upcoming Regulations To implement Bill 27.  
To address Richmond's concerns, it is recommended that following solutions be incorporated into the proposed provincial Regulations:

<b>Richmond's Recommendations Regarding The Upcoming Regulations To Implement Bill 27</b>	
The regulations to complement Bill 27, should include the following requirements, for First Nations:	
<b>RECOMMENDATION</b>	<b>RATIONALE</b>
<b>1. PLANNING</b>	
<b>Prepare Plans</b> (e.g., site plans): <ul style="list-style-type: none"> <li>- showing:               <ul style="list-style-type: none"> <li>- land use,</li> <li>- the built urban form,</li> <li>- services,</li> <li>- traffic, and</li> <li>- the natural environment, and</li> </ul> </li> <li>- indicating the on and offsite</li> </ul>	First Nations should be required to prepare plans before they apply to the ALR because the plans will: <ul style="list-style-type: none"> <li>(1) enable First Nations to:               <ul style="list-style-type: none"> <li>- indicate their vision for the lands to be excluded,</li> <li>- indicate what land uses are proposed,</li> <li>- indicate what services which are necessary to achieve the plan and their costs,</li> <li>- know who will provide the services (e.g., themselves or an adjacent municipality),</li> </ul> </li> </ul>

<b>Richmond's Recommendations Regarding The Upcoming Regulations To Implement Bill 27</b>	
The regulations to complement Bill 27, should include the following requirements, for First Nations:	
<b>RECOMMENDATION</b>	<b>RATIONALE</b>
implications of the proposed development (e.g., land use, social, economic, environmental, servicing, traffic) and how they may be managed, for the lands which they are asking the ALR Commission to exclude,	<ul style="list-style-type: none"> <li>- know, anticipate and address the social, economic, traffic and environmental impacts,</li> <li>- propose reasons for the ALR exclusion,</li> <li>(2) enable all parties and stakeholders (e.g., the federal, provincial regional and municipal governments; adjacent property owners; service and utility providers; developers; the general public) to understand the proposed ALR exclusion request and its implications.</li> </ul>
<b>2. MUNICIPAL CONSULTATION</b>	
Consult with adjacent municipalities, before they: <ul style="list-style-type: none"> <li>- finalize their plans, and</li> <li>- request an exclusion from the ALR.</li> </ul>	<p>First Nations should be required to consult with adjacent municipalities before they:</p> <ul style="list-style-type: none"> <li>- finalize their plans, and</li> <li>- request an exclusion from the ALR, because it will:</li> </ul> <ol style="list-style-type: none"> <li>(1) provide clarity and certainty,</li> <li>(2) promote the necessary inter-jurisdictional co-ordination of planning, servicing and environmental management,</li> <li>(3) enable municipalities to determine how they may be affected, including enabling municipalities to assess the servicing implications and any servicing costs.</li> <li>(4) enable municipalities to anticipate and address the implications,</li> <li>(5) enable proactive First Nations - municipal arrangements to develop and manage the excluded ALR lands.</li> </ol>
<b>3. PUBLIC CONSULTATION</b>	
Consult with the public, before they: <ul style="list-style-type: none"> <li>- finalize their plans, and</li> <li>- request an exclusion from the ALR</li> </ul>	<p>First Nations should be required to consult with the public (e.g., adjacent property owners; developers; stakeholders) before they:</p> <ul style="list-style-type: none"> <li>- finalize their plans, and</li> <li>- request an exclusion from the ALR, because it will:</li> </ul> <ol style="list-style-type: none"> <li>(1) provide clarity and certainty,</li> <li>(2) promote the necessary public and stakeholder co-ordination of planning, servicing and environmental management,</li> <li>(3) enable the public and stakeholders to assess how they may be affected,</li> <li>(4) enable the public and stakeholders to identify and suggest positive steps to accommodate the proposed development and to avoid problems and complaints..</li> </ol>

### ***Benefits***

The above recommendations regarding the upcoming Regulations to implement Bill 27 will:

- enable the First Nations, senior governments, municipal governments, adjacent property owners, developers service and utility providers, to better anticipate, co-operate and manage the implications of First Nation exclusions from the ALR,
- provide more clarity and certainty for all parties,
- provide all parties with a better basis to assess the implications of ALR exclusions,
- assist in better co-ordinating efforts to address the implications of ALR exclusions,
- parallel the current municipal requirements,
- promote co-ordinated land use, urban form, and servicing, social, economic, traffic and environmental management.
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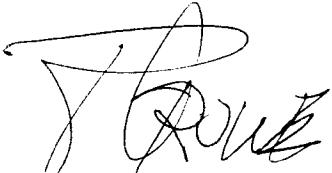
**Financial Impact**

None

**Conclusion**

The BC government has approved Bill 27.

It is in Richmond's interest to request the BC government incorporate recommendations into the upcoming Regulation which will implement Bill 27.



Terry Crowe, Manager,  
Policy Planning (4139)

TTC:cas

**BILL 27 -- 2004**  
**AGRICULTURAL LAND COMMISSION AMENDMENT ACT, 2004**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**1 Section 1 of the Agricultural Land Commission Act, S.B.C. 2002, c. 36, is amended**

**(a) by renumbering the section as section 1 (1),**

**(b) in subsection (1) by adding the following definitions:**

**"agreement in principle"** means a non-binding agreement, negotiated among a first nation government, the Province and Canada in accordance with a process developed under the *Treaty Commission Act*, that

- (a) has been approved by each party in accordance with the approval process provided in the agreement in principle, and
- (b) contemplates that legislative authority over all or part of the proposed treaty settlement lands described in the agreement in principle will, under a final agreement or a governance agreement and an enactment of the Province or Canada, be provided to the first nation;

**"enactment of the Province or Canada"** includes an enactment as defined in the *Interpretation Act* (Canada);

**"first nation government"** means,

- (a) in relation to treaty settlement lands, the governing body of the first nation that has legislative authority over the treaty settlement lands, and
- (b) in relation to proposed treaty settlement lands, an aboriginal governing body that
  - (i) the first nation, in relation to which an agreement in principle applying to those lands has been entered into, has organized and established within its traditional territory in British Columbia, and
  - (ii) has been mandated by the members of that first nation to enter into treaty negotiations on their behalf in accordance with a process developed under the *Treaty Commission Act*;

**"law"**, in relation to a first nation government described in paragraph (a) of the definition of "first nation government", means the result of the exercise by the first nation government of legislative authority provided to the first nation under

- (a) an enactment of the Province or Canada, or
- (b) a final agreement or a governance agreement, negotiated among the first nation government, the Province and Canada in accordance with a process developed under the *Treaty Commission Act*, and an enactment of the Province or Canada;

**"notice to suspend negotiations"** means a notice to suspend negotiations sent by one party to an agreement in principle to the other parties;

**"person"** includes a first nation government;

**"proposed treaty settlement lands"** means land described in an agreement in principle as the land that will become, in whole or in part, the first nation's treaty settlement lands under a final agreement or a governance agreement and an enactment of the Province or Canada;

**"treaty settlement lands"** means land, other than land located within a reserve as defined in the *Indian Act* (Canada), that is subject to the legislative authority of a first nation under

- (a) an enactment of the Province or Canada, or
- (b) a final agreement or a governance agreement, negotiated among the first nation government, the Province and Canada in accordance with a process developed under the *Treaty Commission Act*, and an enactment of the Province or Canada. ,

**(c) in subsection (1) by repealing the definition of "'owner" or "owner of land" ' and substituting the following:**

**"owner"**, subject to subsection (2), means

- (a) in relation to land registered in the records of the land title office, the person registered in those records as the fee simple owner of the land,
- (b) in relation to treaty settlement lands,

- (i) if an agreement under this Act between a first nation government and the commission defines "owner" for the purposes of the application of this Act to the treaty settlement lands of the first nation, a person described by that definition, and
- (ii) otherwise, the first nation government,
- (c) in relation to land vested in a municipality under section 35 of the *Community Charter*, the municipality, and
- (d) in relation to Crown land, the government; , **and**
- (d) by adding the following subsections:**
  - (2) For the purposes of an application under section 17 (3), 20 (3), 21 (2) or 30 (1) in relation to proposed treaty settlement lands, the first nation government may apply as if it were the owner of those lands from the date that
    - (a) an agreement in principle in relation to those lands is approved by each party to it in accordance with the agreement in principle, or
    - (b) if a notice to suspend negotiations has earlier taken effect, an agreement among the parties to the agreement in principle to resume negotiations takes effect,
 until the earlier of the following dates:
    - (c) the date an enactment of the Province or Canada establishes all or part of the proposed treaty settlement lands as treaty settlement lands;
    - (d) the date that a notice to suspend negotiations takes effect.
  - (3) For the period that a first nation government is authorized to make an application in relation to proposed treaty settlement lands, the owner of that land may not make an application.

**2 Section 5 (1) is amended by striking out "or local government." and substituting ", local government or first nation government."**

**3 Section 13 is amended**

**(a) in subsection (1) by adding the following paragraph:**

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

**(b) in subsections (2) and (3) by adding "or the first nation government, as applicable," after "local government".**

**4 Section 17 is amended**

**(a) in subsection (1) by striking out "for land within the local government's jurisdiction," and substituting "in respect of land within the local government's jurisdiction or by a first nation government in respect of the first nation's treaty settlement lands,"**

**(b) by repealing subsection (2) and substituting the following:**

- (2) For a matter under subsection (1), a public hearing must be held in the manner, and after giving the notice, required by the regulations, by
  - (a) the commission, if the commission is acting on its own initiative,
  - (b) the local government before making an application, and
  - (c) the first nation government before making an application. , **and**

**(c) by adding the following subsections:**

- (4) A decision of the commission granting an application under subsection (3) in relation to proposed treaty settlement lands may not be made effective unless and until those lands are established, in whole or in part, as treaty settlement lands.
- (5) Unless a decision granting an application under subsection (3) first becomes effective under subsection (4), the decision expires on the earlier of the following dates:
  - (a) the date the decision expires according to its terms;
  - (b) the date that a notice to suspend negotiations takes effect.

**5 Section 18 (a) is amended by striking out everything before subparagraph (i) and substituting "a local government, a first nation government or an authority, or a board or other agency established by a local government, a first nation government or an authority, or a person or agency that enters into an agreement under the Local Services Act may not".**

**6 Section 25 is amended**

**(a) in subsection (3) by striking out "An application under this section" and substituting "An application referred to in subsection (1), except such an application from a first nation government,"**

**(b) by adding the following subsection:**

(3.1) An application referred to in subsection (1) in relation to treaty settlement lands may not proceed unless authorized by a law of the first nation government of the first nation that has legislative authority over the treaty settlement lands. ,

**(c) in subsection (4) by striking out "under this section," and substituting "referred to in subsection (1)," and**

**(d) by adding the following subsections:**

(4.1) A decision of the commission under subsection (1) (b) or (c) in relation to proposed treaty settlement lands may not be made effective unless and until

(a) those lands are established, in whole or in part, as treaty settlement lands, and

(b) the first nation government in relation to those treaty settlement lands enacts a law approving the commission's decision and provides a certified copy of the law to the commission.

(4.2) Unless a decision under subsection (1) (b) or (c) first becomes effective under subsection

(4.1), the decision expires on the earlier of the following dates:

(a) the date the decision expires according to its terms;

(b) the date that a notice to suspend negotiations takes effect.

**7 Section 26 is amended**

**(a) in subsection (1) by striking out "or an authority" and substituting ", a first nation government or an authority" and by striking out "or authority:" and substituting ", first nation government or authority:"**

**(b) in subsection (1) by adding the following paragraph:**

(c) a first nation government in respect of treaty settlement lands. ,

**(c) in subsection (3) by striking out "or authority" and substituting ", first nation government or authority"**

**(d) in subsection (4) by adding "and a decision of a first nation government under this section must be made by a law of the first nation government" after "governing body of the authority",**

**(e) in subsection (5) by striking out "or an authority" and substituting ", a first nation government or an authority" and by striking out "or authority" and substituting ", first nation government or authority",**

**(f) in subsection (6) by adding "or first nation government" before "under section 34 (3)",**

**(g) in subsection (7) by striking out "or an authority" and substituting ", a first nation government or an authority",**

**(h) in subsection (7) (a) by striking out "or authority" and substituting ", first nation government or authority", and**

**(i) by adding the following subsection:**

(8) If the commission enters into an agreement under subsection (1) (c) with a first nation government in relation to treaty settlement lands, that agreement or another agreement under this Act must include a definition of "owner" for the purposes of paragraph (b) (i) of the definition of "owner" in section 1 (1).

**8 Section 27 (6) is amended by striking out "or an authority" and substituting ", a first nation government or an authority".**



**9 Section 29 is amended**

**(a) in subsection (1) by striking out everything before paragraph (a) and substituting the following** "On the commission's own initiative or on application by a local government in respect of land within the local government's jurisdiction or by a first nation government in respect of the first nation's treaty settlement land, the commission may", **and**

**(b) by repealing subsection (2) and substituting the following:**

- (2) For a matter under subsection (1), a public hearing must be held in the manner, and after giving the notice, required by the regulations, by
- (a) the commission, if the commission is acting on its own initiative,
  - (b) the local government before making an application, and
  - (c) the first nation government before making an application.

**10 Section 30 is amended**

**(a) in subsection (4) by striking out "An application under this section" and substituting "An application under this section, except an application from a first nation government,"** **and**

**(b) by adding the following subsections:**

- (4.1) An application under this section in relation to treaty settlement lands may not proceed unless authorized by a law of the first nation government of the first nation that has legislative authority over the treaty settlement lands.
- (5.1) A decision of the commission under subsection (2) (b) or (c) in relation to proposed treaty settlement lands may not be made effective unless and until
- (a) those lands are established, in whole or in part, as treaty settlement lands, and
  - (b) the first nation government in relation to those treaty settlement lands enacts a law approving the commission's decision and provides a certified copy of the law to the commission.
- (5.2) Unless a decision under subsection (2) (b) or (c) first becomes effective under subsection (5.1), the decision expires on the earlier of the following dates:
- (a) the date the decision expires according to its terms;
  - (b) the date a notice to suspend negotiations takes effect.

**11 Section 31 is amended by striking out "**bylaws of the local government," **and substituting "**bylaws of the local government, laws of the first nation government,".

**12 Section 32 is amended by striking out "local government" and substituting "local government or first nation government".**

**13 Section 33 (3) is amended by striking out "a local government or" and substituting "a local government, a first nation government or" and by striking out "the local government or" and by substituting "the local government, first nation government or".**

**14 Section 34 is amended**

**(a) in subsection (2) by striking out "A local government" and substituting "A local government or a first nation government",**

**(b) in subsection (3) by striking out "and" at the end of paragraph (b), by adding ", and" at the end of paragraph (c) and by adding the following paragraph:**

- (d) to the first nation government, if the land described in the application is in the treaty settlement lands of the first nation. ,

**(c) by adding the following subsection:**

- (3.1) Despite subsection (3), a first nation government that makes an application as the owner of proposed treaty settlement lands must do so by
- (a) submitting the application, and
  - (b) except in the case of an application under section 17 (3), paying the prescribed fee to the commission. ,

**(d) in subsection (4) by striking out "A local government" and substituting "A local government or a first nation government",**

**(e) in subsection (4) (b) by striking out "the local government's comments and recommendations concerning the application." and substituting "the comments and recommendations of the local government or the first nation government in respect of the application.",**

**(f) by repealing subsection (5) and substituting the following:**

(5) If section 25 (3) or (3.1) or 30 (4) or (4.1) applies in relation to an application or proposed application and the required resolution or law is refused, the requirement in subsection (4) (b) of this section does not apply. , **and**

**(g) in subsection (7) by striking out "local government" and substituting "local government or first nation government".**

**15 Section 35 is amended**

**(a) in subsection (1) by striking out "A local government" and substituting "A local government or first nation government",**

**(b) by repealing subsection (2) and substituting the following:**

(2) Despite subsection (1), if section 25 (3) or (3.1) or 30 (4) or (4.1) applies in relation to an application or proposed application and the required resolution or law is refused, the local government or first nation government, as applicable, must return to the applicant the portion of the application fee that would otherwise be remitted to the commission under subsection (1) (b) of this section. ,

**(c) in subsection (3) by striking out "local government officer" and substituting "local government officer or the official designated for this purpose by the first nation government", and**

**(d) in subsection (5) by striking out "local government" in both places and substituting "local government or first nation government".**

**16 Section 36 (1) is amended by striking out "under section 34" and substituting "referred to in section 34".**

**17 Section 38 is amended by striking out "a local government," and substituting "a local government, a first nation government,".**

**18 Section 40 (4) is amended by striking out "local government" and substituting "local government, a first nation government".**

**19 Section 46 is amended**

**(a) in subsection (1) by striking out "and" at the end of paragraph (a), by adding ", and" at the end of paragraph (b) and by adding the following paragraph:**

(c) a first nation government law respecting land use within the treaty settlement lands of the first nation government. ,

**(b) by repealing subsection (2) and substituting the following:**

(2) A local government in respect of its bylaws and a first nation government in respect of its laws must ensure consistency with this Act, the regulations and the orders of the commission. ,

**(c) in subsections (3), (4) and (6) by striking out "bylaw" and substituting "local government bylaw or a first nation government law",**

**(d) in subsection (5) by striking out "a bylaw" and substituting "a local government bylaw or a first nation government law" and by striking out "further bylaw," and substituting "further bylaw or law," and**

**(e) in subsection (7) by striking out "bylaws" and substituting "local government bylaws or first nation government laws".**

**20 Section 48 is amended by striking out "a local government" and substituting "a local government, a first nation government".**

**21 Section 56 is amended**

**(a) in subsection (1) by striking out "a local government" and substituting "a local government, a first nation government",**

**(b) in subsection (1) (a) and (b) by striking out "the local government" and substituting "the local government, first nation government", and**  
**(c) in subsection (2) by striking out "a local government" and substituting "a local government or a first nation government" and by striking out "the local government" and substituting "the local government or first nation government".**

**22 Section 58 (2) is amended**

**(a) in paragraph (b) by striking out "enactment;" and substituting "enactment or a law of a first nation government;"**

**(b) by repealing paragraph (g) and substituting the following:**

(g) respecting the manner of holding hearings and meetings, obtaining public comment and prescribing notice requirements for applications, hearing and other matters, which regulations may be different for different categories of persons; ,

**(c) in paragraph (h) by striking out "a local government," and substituting "a local government, a first nation government," and**

**(d) in paragraphs (m) and (o) by striking out "local government" and substituting "local government or first nation government".**

**Commencement**

**23** This Act comes into force by regulation of the Lieutenant Governor in Council.