



Special General Purposes Committee

Date: Monday, February 28, 2011

Place: Anderson Room
Richmond City Hall

Present: Mayor Malcolm D. Brodie, Chair
Councillor Linda Barnes
Councillor Derek Dang
Councillor Evelina Halsey-Brandt
Councillor Greg Halsey-Brandt
Councillor Sue Halsey-Brandt
Councillor Ken Johnston
Councillor Bill McNulty
Councillor Harold Steves

Call to Order: The Chair called the meeting to order at 5:11 p.m.

MINUTES

It was moved and seconded
That the minutes of the meeting of the General Purposes Committee held on Monday, February 21, 2011, be adopted as circulated.

CARRIED

PLANNING & DEVELOPMENT DEPARTMENT

1. **REFERRAL RESPONSE: PROPOSED 2041 REGIONAL GROWTH STRATEGY (RGS)**

(File Ref. No.:) (REDMS No. 3164630)

Joe Erceg, General Manager, Planning and Development, accompanied by Terry Crowe, Manager, Policy Planning, provided background information on the referral response and briefly reviewed the options outlined in the report for Committee consideration.

Special General Purposes Committee

Monday, February 28, 2011

A discussion took place about:

- what may happen (i) if the City does not accept the Regional Growth Strategy (RGS); and (ii) if the City requests that changes be made to the RGS after accepting it in its current form. It was noted that accepting the RGS and simultaneously requesting changes would be advantageous and would result in the most straight forward approval process;
- the consistency of population targets and designations in the RGS and the City's Official Community Plan (OCP). It was noted that Richmond would not need to make changes to its OCP, and that it was up to each municipality to ensure that its OCP fit in within the RGS;
- definitions of the RGS designations of "General Urban", "Agricultural", "Conservation and Recreation", and "Rural";
- concerns related to the City losing its autonomy and control to make designations;
- how the RGS would not restrict the City from reviewing the zoning and municipal designations in some specific areas such as the lots along No. 4 Road;
- concerns associated with option 3 in the staff report to accept the RGS prior to receiving a guarantee from Metro Vancouver that the City's requested changes will actually be made to the RGS. Staff noted that option 3 was the easiest method as it would not trigger any formal mediation. Staff further noted that Metro Vancouver staff had indicated a willingness to consider whatever changes City Council wishes to make. However, it was also confirmed that option 3 does carry the risk that the RGS may be adopted without knowing whether the requested changes would be made;
- if the City chose not to accept the proposed RGS (option 1) it would be required to provide its objections to Metro Vancouver and the matter would be resolved by a non binding or binding process or arbitration. If the City chose not to accept the proposed RGS and requested specific changes (option 2), again the matter would be resolved by a non binding or binding process or arbitration;
- the flexibility of the RGS would allow the City to set its own regulations related to small parcels lots;
- the current OCP and Liveable Regional Strategic Plan (LRSP) designations for the Garden City Lands (GLC), the Department of National Defence Lands (DND), and the Terra Nova Lands, as well as the RGS proposed designations for each as follows:

Special General Purposes Committee

Monday, February 28, 2011

- the GCL and the DND are designated as “Urban” in the LRSP, “Public & Open Space” in the OCP, and “General Urban” in the proposed RGS as this designation most closely corresponds with the current Urban designation in the LRSP and provides the most flexibility;
- the Terra Nova Lands are designated as “Urban” in the LRSP, “Agriculture and Open Space” in the OCP, and “General Urban” in the proposed RGS;
- once an area has been designated as Agricultural, it would be difficult to change the designation if the City finds that it does not fit the needs of the area;
- the General Urban designation in the proposed RGS provides the most flexibility; and
- the proposed RGS is not connected to the City’s previous rezoning bylaw, Bylaw No. 5300.

Jim Wright, 8300 Osgood Drive, spoke about pertinent details that he stated had been left out of the staff report, and made reference to the legal opinion of Andrew Gage, staff counsel, West Coast Environmental Law, with regard to the proposed RGS and Agricultural Land Reserve (ALR) Lands. Mr. Wright stated that Mr. Gage’s legal opinion and the communication from the Agricultural Land Commission (ALC) interpreted the law and essentially was the law in the matter.

Mr. Wright concluded by noting that Council had two options, either to respect the law or break the law, and stated that the citizens were counting on Council to respect the law. A detailed submission from Mr. Wright is attached as Schedule 1 and forms part of these minutes.

Carol Day, 11621 Seahurst Road, shared her belief that endorsing the proposed RGS as it currently stands would be illogical because the proposed designation of the GCL and the DND as General Urban was incorrect, and staff’s recommendation to endorse option 3 as outlined in the staff report would result in a deliberate legal error, making the City appear foolish and disrespectful of the law as well as the Agricultural Land Commission. A detailed submission from Ms. Day is attached as Schedule 2 and forms part of these minutes.

Special General Purposes Committee
Monday, February 28, 2011

Bruno Vernier, 6691 Francis Road, spoke to the staff report, Referral Response: Proposed 2041 Regional Growth Strategy (RGS) and made several points about details that he believed were mistakes. He stated that the designation of the GCL and the DND as "Urban" in the LRSP was incorrect as the only designation in the LRSP was for a "green zone"; the proposed RGS General Urban designation of the GCL and DND would not provide the most flexibility as both properties were in the ALR; the Agricultural designation in the proposed RGS was not as limiting as noted in the staff report. Mr. Vernier also spoke about the Conservation and Recreation designation and commented that the most suitable designation, for the GCL was Agricultural, and that the City of Richmond had everything to gain and nothing to lose by designating the GCL as Agricultural.

Nancy Trant, 10100 No. 3 Road, spoke to the proposed RGS stating that the GCL and Terra Nova Lands should be designated as Agricultural prior to accepting the proposed RGS, as the City should not trust Metro Vancouver to honour the City's request at a later time. She was of the belief that if the designation was not changed before the proposed RGS was accepted the matter would re-surface again.

Jim Lamond, Chair, Richmond Sport Council, spoke about the community's needs for playing fields, parks, and future upgrades to arenas and other facilities that are currently leased. He advised that Hugh Boyd and Minoru are the two most used parks, and urged Council to make the best decision for the people of Richmond when considering the designation for the GCL.

Roeland Hoegler, 6560 No. 4 Road, stated that the proposed RGS is a semantic method to deny sewers to properties deemed ALR. He further stated that changes to the Agricultural designation would require a 2/3 Board vote from Metro Vancouver's 38 Directors. He continued by stating that two of the Directors were from the City of Richmond, and 11 out of the 24 local governments did not have any ALR land. Mr. Hoegler concluded by stating the proposed RGS would turn the City of Richmond into a colony of Metro Vancouver and would eliminate autonomy.

Bob Sethi, 7988 McLennan Avenue, spoke about his concerns related to the proposed RGS and the switch from Zoning Bylaw No. 5300 to Bylaw No. 8500. He expressed his belief that height restrictions cited in Bylaw No. 8500 were still in place following Council's direction to put Bylaw No. 5300 back in place for small ALR parcels. Mr. Sethi stated that the proposed RGS defines ALR properties as "country estates" and "vacation homes" which is untrue of such properties located in Richmond as Richmond has many small and unique ALR lots.

In conclusion Mr. Sethi requested Council to reinstate Zoning Bylaw No. 5300, and designate Richmond's small ALR parcels as General Urban under the proposed RGS while leaving them in the ALR.

Special General Purposes Committee

Monday, February 28, 2011

Dale Badh, 7251 Ash Street, expressed his concerns related to the change from Zoning Bylaw 5300 to the current Zoning Bylaw 8500, stating that residents affected by the change were not given sufficient notice. He questioned why Richmond would be giving up control to Metro Vancouver, and remarked that he was not comfortable with "Richmond turning over the key to some other authority who will have greater say".

Mr. Badh continued by stating that Richmond currently has some of the best regulations related to setbacks, and that the City would lose its autonomy as Metro Vancouver would speak to the Province on its behalf in the future.

It was moved and seconded

That the Proposed 2041 Metro Vancouver Regional Growth Strategy Bylaw 1136 not be accepted and that the Metro Vancouver Board be advised that the City of Richmond will be requesting changes to designations through option 1.

DEFEATED

OPPOSED: Cllrs. Barnes
Dang
E. Halsey-Brandt
Johnston
McNulty
Steves
Mayor Brodie

Discussion ensued and several committee members expressed a preference for option 3 as outlined in the staff report, that is, to accept the RGS and then request specific designation changes following approval of the RGS.

It was moved and seconded

That the Proposed Metro Vancouver Regional Growth Strategy Bylaw 1136 be accepted.

CARRIED

OPPOSED: Cllrs. G. Halsey-Brandt
S. Halsey-Brandt

It was moved and seconded

That the Metro Vancouver Board be advised that the City of Richmond is hereby requesting the following changes in designations following approval:

- (1) *For the Terra Nova Land, from "General Urban" to "Conservation and Recreation";*
- (2) *For the Garden City Lands, from "General Urban" to "Conservation and Recreation"; and*

Special General Purposes Committee
Monday, February 28, 2011

(3) *For the Department of National Defence Lands, from "General Urban" to "Agricultural".*

The question on the motion was not called as requests were made to deal with each part separately.

The question on Part (1) of the motion was then called and it was **CARRIED**.

The question on Part (2) of the motion was then called and it was **CARRIED** with Cllrs. Dang, S. Halsey-Brandt, Steves opposed.

The question on Part (3) of the motion was then called and it was **DEFEATED** with Cllrs. Barnes, Dang, E. Halsey-Brandt, G. Halsey-Brandt, McNulty, and Mayor Brodie opposed.

It was moved and seconded

That the Metro Vancouver Board be advised that the City of Richmond is hereby requesting a change in designation following approval for the Department of National Defence Lands, from "General Urban" to "Conservation and Recreation".

CARRIED

ADJOURNMENT

It was moved and seconded

That the meeting adjourn (6:58 p.m.).

CARRIED

Certified a true and correct copy of the Minutes of the Special meeting of the General Purposes Committee of the Council of the City of Richmond held on Monday, February 28, 2011.

Mayor Malcolm D. Brodie
Chair

Shanan Dhaliwal
Executive Assistant
City Clerk's Office

From Jim Wright, 8300 Osgoode Drive, Richmond

Mayor Brodie and Councillors,

I hope to fill in some gaps in the staff referral report.

First, the report *leaves out* that it is **not** relevant whether the old Metro bylaw includes an Urban or General Urban designation. The legal opinion from lawyer Andrew Gage to the Garden City Lands Coalition Society is clear about that. [Holds up legal opinion.] Even if the **old** bylaw did violate the Agricultural Land Commission Act, that wouldn't permit the **new** bylaw to violate it.

But, just to be clear, the old bylaw **does not** violate the act. I've scoured the old bylaw, and there is **no** evidence of any faulty designation of the Garden City and DND Lands.

I'll add a note, though. The new "**General Urban**" means "**residential**" (including supporting uses), and "**residential**" is used in the old bylaw (along with "**commercial**" and "**industrial**" and, significantly, "**vacant urban land**") to describe land use. However, "**residential**" is not applied to the Garden City and DND Lands—and it's only a **small part** of the one-third of the GVRD that isn't Green Zone.

The pretence that "**General Urban**" comes from the old bylaw is a sure way to hurt our chances in the Musqueam Indian Band lawsuit. The pretense is legally irrelevant, but the Band can easily expose the untruth if they want to. (And defying the law in a doomed attempt at **self-enrichment** can only hurt our chances of **escaping** a payout of hundreds of millions of dollars.)

All of us who are Richmond owe thanks to Mr. Gage and West Coast Environmental Law for this treasure [holds up legal opinion]. It's a systematic analysis from a good lawyer with relevant expertise. I see no sign of further legal advice in the staff report. I don't even see the letters from the relevant tribunal, the Agricultural Land Commission.

You've all had the chance to benefit from Mr. Gage's legal analysis, so I'll just quote one bit in response to the disclaimer in the new bylaw. That excuse has no legal value, since the commission has firmly rejected it; however, Mr. Gage has explained it to help us non-lawyers to understand why the commission is right.

This is his final point:

. . . the idea that a general acknowledgment of the existence of a legal requirement . . . can give a person the ability to violate it at the specific level is a curious one. If correct, it would mean that Metro Vancouver could designate all ALR for future industrial development, relying on Section 6.1.12 [the acknowledgment] to rectify the clear illegality. The concept is analogous to a person prefacing threats to another person with the words: "I know that it's illegal to threaten you, so please disregard anything I'm about to say." These results are clearly absurd. [End of quote]

The gap in the staff report is filled by lawyer Andrew Gage's legal analysis, along with the clear communication from the Agricultural Land Commission, which interprets the law and essentially is the law in this matter.

You have two options:

1. **Respect the law.**
2. **Break the law.**

The citizens are counting on you to **respect the law.**

Thank you.



200 - 2006 West 10th Avenue
Vancouver, BC V6J 2B3
www.wcel.org

tel: 604.684.7378
fax: 604.684.1312
toll free: 1.800.330.WCEL (In BC)
email: admin@wcel.org

February 9, 2011

Garden City Lands Coalition Society
Attn. Jim Wright, President

*** BY EMAIL AT
GARDENCITYLANDS@SHAW.CA ***

Dear Sirs/Mesdames:

Re: Metro Vancouver Regional Growth Strategy and ALR Lands

You have asked us to provide an opinion further developing our view of Metro Vancouver's Regional Growth Strategy¹ (the RGS) in relation to the Garden City Lands and other ALR lands designated General Urban or Industrial. This opinion builds on the legal analysis provided in our Environmental Law Alert blog post: Metro Vancouver Growth Strategy on thin legal ice,² as well as responding to the response to that post received from Metro Vancouver.³

You have also instructed us to provide a copy of this legal opinion to Ms. Jessica Beverley, In-house Counsel to Metro Vancouver. She is cc'd on this opinion.

The Facts

The legal facts on which this opinion is based are as follows. A change in the information available could alter our legal conclusions.

For the most part the Regional Growth Strategy is very supportive of agricultural land and the vast majority of ALR lands are designated as being for agricultural use. This designation, according to the RGS, is (in part) "intended primarily for agricultural uses, facilities and supporting services with an emphasis on food production where appropriate."

There are a small number of exceptions. Significant amounts of ALR lands are included in Special Study Areas, which may be reviewed for possible development in the future. Since Special Study Areas do not in and of themselves allow a particular type of development the Agricultural Land Commission (ALC) has suggested, and we agree, that there is no legal inconsistency between this designation and the *Agricultural Land Commission Act* ("the Act").

However, there are also lands located in Richmond and Aldergrove which are ALR lands and which are specifically designated by the RGS for urban residential or (in the case of one area in Aldergrove) industrial use. The affected lands in Richmond include, of course, the Garden City Lands.

¹ *Regional Growth Strategy*, Bylaw No 1136, 2010.

² <http://wcel.org/resources/environmental-law-alert/metro-vancouver-growth-strategy-thin-legal-ice>.

³ Letter from C. De Marco to Andrew Gage dated January 27, 2011.

I have been advised by Metro Vancouver staff that these designations are based upon the designations found in the previous Regional Growth Strategy (known as the Livable Region Strategic Plan).⁴

I have also been advised by Metro Vancouver staff that they are based upon the designations that appear in the Official Community Plans (OCP) for the respective municipalities, although at least in the case of Richmond this appears not to be the case in at least some cases: the Garden City Lands are identified as Public and Open Space in Richmond's Official Community Plan (a designation in respect of which the Agricultural Land Commission passed an order, confirming it as an appropriate use within the ALR).

I am advised by Metro Vancouver staff that as a result of discussions with the ALC the draft RGS was modified to add a clause which explicitly recognized that nothing in the RGS could be inconsistent with the Agricultural Land Commission Act (s. 6.11.2 – discussed below).

However, this general clause apparently did not fully satisfy the ALC in relation to the Richmond and Aldergrove ALR Lands. In October 2010, after Metro Vancouver referred the RGS to the Agricultural Land Commission, Mr. Brian Underhill, Executive Director of the Commission, wrote to Metro Vancouver. While he expresses appreciation for wording changes in the RGS (presumably including s. 6.11.2), he clearly sets out his concerns about the Richmond and Aldergrove ALR lands designated by the RGS for urban residential or industrial use:

From the Commission's perspective, the most important outstanding issues are the two instances where the Urban Containment Boundary encroaches into the Agricultural Land Reserve. ... These designations are not consistent with the *Agricultural Land Commission Act*, with the ... Regulation or with any existing order of the Commission. Under section 46 of this Act a local government in respect of its bylaws [including a bylaw to adopt a regional growth strategy] must ensure consistency with this Act, the regulations and the orders of the commission. ... If the Regional Board decides to adopt a bylaw enacting a regional growth strategy without any modification, subsection 46(4) of the *Agricultural Land Commission Act* provides that to the extent of the inconsistency, the bylaw is of no force or effect.

When Metro Vancouver went ahead and gave second reading to the RGS without addressing the ALC's concerns, the Chair of the ALC, Mr. Richard Bullock, took the unusual step of writing to the regional district for a second time to further emphasize that the RGS violates the *Agricultural Land Commission Act*.

Reference is ... made to section 46 of the *Agricultural Land Commission Act* (the Act), which requires that a local government must ensure consistency with the Act, the regulations and the orders of the commission. ... This letter identifies lands with respect to which Bylaw 1136 as currently drafted is inconsistent with the Act, [the Regulations] ... or with any existing order of the commission.

When the Metro Vancouver Board considered the RGS, staff summarized Mr. Bullock's letters as part of the public submissions as relating to "mapping inconsistencies" – clearly an inadequate description of the serious legal concerns raised in that letter.

⁴ I know that you have provided a detailed rebuttal of this claim on your Garden City Lands Blog: <http://gardencitylands.wordpress.com/2011/02/02/weak/>, last accessed February 9, 2011. I do not believe that it is necessary to resolve this dispute at this time; as discussed below, Metro Vancouver's claim on this point makes no difference to my conclusion.

Issues

1. Does the designation of the Richmond and Aldergrove lands in the RGS as General Urban and Industrial comply with the legal requirements of the Act?
2. If the answer to 1 is no, does the general clause in 6.11.2 of the RGS bring the RGS back into compliance with the Act?

Brief Answers

1. No. Section 46 of the Act clearly prohibits the enactment of bylaws, including bylaws enacting regional growth strategies, that provide for the development of ALR lands, even if further changes to zoning bylaws or Official Community Plans or other government approvals will also be required before ALR lands could in fact be developed.
2. No. The Act identifies very clearly when a bylaw will be considered inconsistent with the Act, or associated regulations and orders. A general condition such as s. 6.11.2, which simply reiterates the legal requirements of section 46, cannot save an otherwise illegal portion of the bylaw.

Analysis

Legality of designations of Richmond/Aldergrove Lands

Section 46 of the Agricultural Land Commission Act very clearly states that every local government must make sure that its bylaws (including bylaws enacting Regional Growth Strategies) are “consistent” with the Act and its regulations. Section 46 states, in part:

46 (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. ...

(4) A local government bylaw or a first nation government law that is inconsistent with this Act, the regulations or an order of the commission has, to the extent of the inconsistency, no force or effect.⁵

“Bylaws” is explicitly defined as including bylaws adopting a regional growth strategy.⁶

In general “consistency” is not a strong legal requirement. However, section 46(5) explicitly addresses this problem:

(5) Without limiting subsection (4), a local government bylaw or a first nation government law is **deemed to be inconsistent with this Act** if it

(a) **allows a use of land in an agricultural land reserve that is not permitted under this Act**, or

(b) **contemplates a use of land that would impair or impede the intent of this Act**, the regulations or an order of the commission, whether or not that use

⁵ *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (the “Act”), s. 46 (2) and (4)

⁶ Act, *ibid*, s. 46(1).

requires the adoption of any further bylaw or law, the giving of any consent or approval or the making of any order.⁷

This section goes out of its way to clarify that a bylaw that meets that requirement will be inconsistent if it merely “contemplates” non-farm uses of land in the ALR, even if further zoning bylaws or other approvals (including ALC orders) are required before the land can be converted to a non-farm purpose.

The remaining subsections of section 46 confirm the ability of local governments to restrict agricultural use on ALR lands, but do not alter the clear legal requirements of the subsections quoted above to ensure that bylaws, including regional growth strategies, do not allow, or even contemplate, non-farm uses on ALR lands.

On its face the RGS does purport to allow and/or contemplate the use of the Richmond and Aldergrove Lands for residential development and industrial uses: clearly uses of lands not allowed in the ALR under the Act or its regulations without the approval of the ALC.

Metro Vancouver staff have suggested that the fact that the designations in respect of these lands remain the same as in the previous RGS⁸ and/or that they may have been (in at least some cases) similarly designated in the Official Community Plans for some years in some way overcomes any problem of consistency.

With respect, it does not. The responsibility of local governments under s. 46(2) to ensure consistency is an ongoing one, and the legality of new bylaws must be considered at the time they are adopted, even if they are merely adopting previous terms.

In relation to the Richmond lands, Metro Vancouver staff have also suggested that the RGS designations of the Garden City Lands as General Urban are consistent with the Richmond Official Community Plan’s designation of those lands as Public and Open Space. They further note that the ALC has approved Richmond’s Public and Open Space designation.

The Garden City Lands are designated “Public and Open Space Use” in Richmond’s Official Community Plan and have been designated as such since the 1990s. We are aware that the status of the Garden City Lands has been the subject of ongoing dialogue within the community and with the Agricultural Land Commission. Richmond provided to us the attached letter from the Agricultural Land Commission in which the Commission consents to Richmond’s designation of the Garden City Lands as “Public and Open Space Use”.

The regional “General Urban” designation can contain a number of municipal designations, including “Public and Open Space Use” as it is reasonable to consider parks within a general urban context.⁹

Again, with respect, this argument is flawed. The Public and Open Space Use designation does not provide for urban development; despite that fact the City of Richmond still sought (and received) specific ALC approval for that designation.¹⁰

By contrast, the “General Urban” designation, while allowing for the use of land for urban parks, also explicitly allows those lands to be used for residential development (indeed, that is the main

⁷ Act, *ibid*, s. 46(5), emphasis added.

⁸ Again, I am aware of your objection to this assertion. Above, note 4.

⁹ Above, note 3.

¹⁰ You advise that this request for approval came after a refusal by the ALC to remove the Garden City Lands from the ALR and while a second request was still pending.

purpose of the designation). Unlike the Public and Open Space designation, it explicitly allows or contemplates a non-farm use. And, again unlike Richmond, Metro Vancouver has not sought the consent of the ALC in respect of those uses. Given the very strong wording of section 46, the General Urban designation is inconsistent with both the Act and with the consent given by the ALC to Richmond in respect of the Public and Open Space designation.

In my view the designations of these ALR lands for urban and industrial purposes is on its face inconsistent with the Act, regulations and orders of the ALC. The remaining question is whether this apparent inconsistency is saved by section 6.11.2 of the RGS.

The legal effect of s. 6.11.2

Metro Vancouver staff argue that even if the Richmond and Aldergrove ALR land designations are by themselves inconsistent with the ALC Act, section 6.11.2 of the RGS rectifies these inconsistencies by conceding that the ALC takes precedence. Section 6.11.2 reads:

In accordance with the *Agricultural Land Commission Act*, in the event that there is an inconsistency between the regional land use designations or policies set out in the Regional Growth Strategy and the requirements of the *Agricultural Land Commission Act* or regulations and orders made pursuant thereto, the Agricultural Land Commission requirements will prevail.¹¹

Metro Vancouver states its position as follows:

The intent of this section is to make it clear that Metro Vancouver recognises that the Agricultural Land Commission Act takes precedence over the Regional Growth Strategy and to address the Commission's concerns. It is Metro Vancouver's position that the Regional Growth Strategy is not inconsistent with the Agricultural Land Commission Act. However, to the extent there is any inconsistency, the Agricultural Land Commission Act resolves the issue by providing that the Regional Growth Strategy has, to the extent of the inconsistency, no force or effect.¹²

There are several problems with argument that section 6.11.2 makes everything good again.

Purely on a technical level, section 6.11.2 doesn't change the fact that the RGS "contemplates" residential and industrial development on ALR lands.

In addition, the interpretation also undermines what we take to be the intent of the *Agricultural Land Commission Act*. In our view the very strong requirements of section 46 contemplate two levels of protection for ALR lands.

- The ALC has a general mandate to ensure that no non-farm uses occur on ALR lands (or to regulate such use if it views it as appropriate); and
- Local governments are specifically charged (under section 46(2)) with ensuring that their bylaws also protect ALR lands against development for non-farm purposes.

This means that in general approval for the development of land for a non-farm purpose will require at least two levels of approval, from both the ALC and from relevant local governments, creating a high level of legal protection for ALR lands. This is consistent with the purposes of

¹¹ Above, note 1.

¹² Above, note 3.

From: Pellett, Tony ALC:EX [Tony.Pellett@gov.bc.ca]
Sent: Tuesday, November 23, 2010 11:58 AM
To: Public Hearing
Subject: Agricultural Land Commission submission to RGS public hearings
Attachments: 36732m4.pdf

On behalf of Provincial Agricultural Land Commission chair Richard Bullock I am asking that you please ensure that the attached document forms part of the record of the public hearing process on Bylaw No. 1136.

<<36732m4.pdf>>

K.A. Pellett

Tony Pellett, Registered Planner

Provincial Agricultural Land Commission

133 - 4940 Canada Way

BURNABY BC V5G 4K6

604 660-7019 FAX 660-7033



Agricultural Land Commission
133 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

23 November 2010

Metro Vancouver
4330 Kingsway
BURNABY BC V5H 4G8

Attention: Chair Lois Jackson and members of the Regional Board

Re: Metro Vancouver Regional Growth Strategy — our file #O-36732

This letter offers a formal response from the Provincial Agricultural Land Commission (the "commission") to the second reading edition of Metro Vancouver Bylaw No. 1136, 2010 *Metro Vancouver 2040—Shaping Our Future*. Prior to second reading, the Commission offered comments in 2009 and earlier in 2010 on previous drafts—which also included a presentation by Commission representatives to the Metro Vancouver Planning Committee.

The following response is made in the context of the Commission's statutory mandate to preserve agricultural land, to encourage farming in collaboration with other communities of interest and to encourage local governments, among others, to enable and accommodate farm use of ALR lands. Reference is also made to section 46 of the *Agricultural Land Commission Act* (the "Act"), which requires that a local government in respect of its bylaws [including a bylaw to adopt a regional growth strategy] must ensure consistency with the Act, the regulations and the orders of the commission. It specifies that a bylaw is deemed to be inconsistent with the Act if it

- (a) allows a use of land in an agricultural land reserve that is not permitted by the Act, the regulations or an order of the commission, or
- (b) contemplates a use of land that would impair or impede the intent of the Act, the regulations or an order of the commission, whether or not that use requires the adoption of any further bylaw or law, the giving of any consent or approval or the making of any order.

This letter identifies lands with respect to which Bylaw 1136 as currently drafted is inconsistent with the Act, with the Agricultural Land Reserve Use, Subdivision and Procedure Regulation or with any existing order of the commission. This letter also discusses "Special Study Areas".

Inconsistencies

1. In the City of Richmond, two parcels of ALR land totaling 112 ha in area have been designated for General Urban development within the Urban Containment Boundary. Neither the regulations nor any order of the commission provides for general urban development of either parcel.
2. Adjacent to the Aldergrove municipal town centre, four discrete areas of ALR land totaling 160 ha and containing 19 parcels have been designated for General Urban development within the Urban Containment Boundary. Neither the regulations nor any order of the commission provides for general urban development of any of these parcels.
3. Immediately to the west of Aldergrove's urban area and to the north of its existing industrial area, five parcels of ALR land totaling 17 ha have been designated for Industrial development within the Urban Containment Boundary. Neither the regulations nor any order of the commission provides for industrial development of any of these parcels.

A regional growth strategy designation of ALR land for general urban or industrial development clearly contemplates uses of land that would impair or impede the intent of the Act. By definition these designations are inconsistent and must be altered to achieve the required consistency.

Special Study Areas

The Commission has noted that most of the Special Study Areas are depicted entirely within the ALR. Given that these depictions do not designate ALR land for a use other than agriculture, and given the wording of RGS section 6.10.2, these Special Study Areas are not inconsistent *per se*. The Commission therefore has no objection to the depiction of Special Study Areas through Bylaw No. 1136, 2010 *Metro Vancouver 2040—Shaping Our Future*.

Rural Areas

The Commission notes that the wording of RGS section 1.3.3 has been changed in response to earlier Commission comments. The Commission thanks the Regional Board for its attention to this and other matters in the formulation of its regional growth strategy.

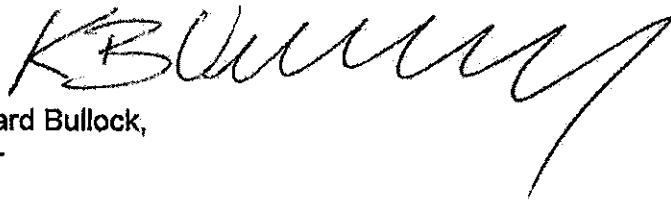
Summary

The Commission believes that by virtue of the proposed regional growth strategy's focus on maintaining a secure and productive resource base, it will play an important rôle in supporting preservation of the region's scarce farm land base. The Commission looks forward to engaging in future discussion with the region's member municipalities to ensure that regional context statements and official community plans are consistent with the provincial interest to preserve agricultural land.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:



Richard Bullock,
Chair

36732m4

This page left blank intentionally.



Agricultural Land Commission
133 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

20 October 2010

Metro Vancouver Policy and Planning Department
4330 Kingsway
BURNABY BC V5H 4G8

Attention: Christina DeMarco, Regional Development Division Manager

Re: Metro Vancouver Regional Growth Strategy — our file #O-36732

This letter is in response to the referral of the 03 September 2010 draft of the proposed Regional Growth Strategy *Metro Vancouver 2040—Shaping Our Future*.

The Commission appreciates that many of the modifications from the previous draft reflect a positive response to comments made by the Commission by letters dated 20 and 26 May 2009 and in the 2009 presentation to the Metro Vancouver Planning Committee by representatives of the Commission. The following comments therefore relate to outstanding issues of a broader scale than would normally be dealt with at the level of a municipal regional context statement.

From the Commission's perspective, the most important outstanding issues are the two instances where the Urban Containment Boundary encroaches into the Agricultural Land Reserve. At Aldergrove, the encroachment areas to the north and south of the existing urban area are proposed for a General Urban designation; the encroachment area to the north of the existing industrial area is proposed for an Industrial designation. In Richmond, the encroachment area bounded by Westminster Highway, Garden City Road, Alderbridge Way and Shell Road is proposed for a General Urban designation. These designations are not consistent with the *Agricultural Land Commission Act*, with the Agricultural Land Reserve Use, Subdivision and Procedure Regulation or with any existing order of the Commission. Under section 46 of this Act a local government in respect of its bylaws [including a bylaw to adopt a regional growth strategy] must ensure consistency with this Act, the regulations and the orders of the commission. If the Regional Board wishes to request that the Commission enact an order consenting to all or part of the otherwise inconsistent provisions, that request should reflect an understanding of the associated agricultural implications. If the Regional Board decides to adopt a bylaw enacting a regional growth strategy without any modification, subsection 46(4) of the *Agricultural Land Commission Act* provides that to the extent of the inconsistency, the bylaw is of no force or effect.

The Commission also notes that seven of the Special Study Areas are depicted entirely within the Agricultural Land Reserve. These depictions are not inconsistent *per se*, given that they do not designate agricultural land for a use other than agriculture. Provided the RGS procedures require that the Commission be consulted and offered an opportunity to participate in the special study, and that any regional growth strategy amendment resulting from a special study does not proceed unless the Commission has first consented to that amendment as it affects the ALR, the Commission has no objection to the depiction of these Special Study Areas.

Finally, although the Commission had earlier asked that the Rural designation in the ALR be reduced in area, the Commission accepts that the current draft shows substantially the same the boundary as in the previous draft. An earlier draft spelled out a strategy which specified very low densities and required regional context statements to "identify policies which... support agricultural uses on rural lands". The Commission is concerned that the current draft simply requires that Rural areas be protected from urban development and that regional context statements "identify policies which... support agricultural uses, where appropriate". The Commission would prefer wording which requires that regional context statements identify policies which support agriculture within the ALR and support agricultural uses outside the ALR, where appropriate. The Commission would also prefer that Type 2 amendments from the Rural land use designation be limited to lands which at the time of amendment are not within the ALR or which the Commission has approved or agreed in principle for exclusion from the ALR. In any event, the Commission intends to pay close attention to the wording of any regional context statement pertaining to a Rural area within which there are ALR lands, to ensure that agriculture is supported and protected and that subdivision of ALR land is not encouraged.

We look forward to an opportunity for further dialogue on the matters discussed above.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION



Brian Underhill,
Executive Director

36732m3

To General Purposes Committee Feb 28th, 2011

Re: Proposed 2041 Regional Growth Strategy (RGS)

After reading the staff referral report, I am here to state that endorsing the Regional Growth Strategy as recommended is illogical for two major reasons.

1 The designation of the Garden City Lands and DND Lands as General Urban is incorrect.

The definition in the RGS says that "General Urban areas are intended for residential neighborhoods and centres. . . ." However, these precious lands are in the ALR, and the ALC stated this in their October 20, 2010 letter:

"In Richmond, the encroachment area . . . is proposed for a General Urban designation. These designations are not consistent with the Agricultural Land Commission Act, with the [ALR Use] Regulation . . . or with any existing order of the commission.

Why would the staff recommend to council that they endorse the RGS after that? Why contradict the ruling of the ALC? If you sign the RGS, you break the law.

Mr. Crowe says that "Not accepting the RGS at this stage would be a dramatic departure from previous City positions." I say that two wrongs don't make a right. Better to correct the mistake than to continue what you know is wrong.

Staff has stated that the General Urban designation "most closely corresponds with the current urban designation in the LRSP. " But **there was no** urban zone or urban designation in the LRSP. The only zone was the Green Zone.

In any case, the legal opinion from Andrew Gage states (on page 4) that "the legality of new bylaws must be considered at the time they are adopted, even if they are merely adopting previous terms." In other words, copying an old error would not have legally excused the new error.

#2 Deliberately making legal errors in order to correct them later does not make sense.

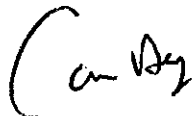
Staff suggest option 3 for making changes to land use designations: "Council would accept the RGS and would request that specific changes be made after its approval. . . . City staff believe MV is willing to consider changes to the RGS. . . ."

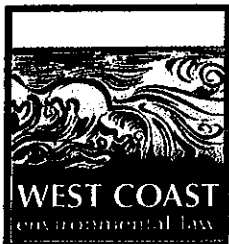
"CONSIDER CHANGES," they say! That is not good enough. Option 3 makes the City of Richmond appear foolish and disrespectful of the law and the Agricultural Land Commission, and it puts these critical lands at the mercy of Metro Vancouver. Better to slow down and get it right the first time. Risking the later change in designation of the lands from the illegal General Urban to the proper Agricultural one is not acceptable to the people of Richmond. The problem needs to be corrected now.

The staff opinion is not useful. The legal opinion of Andrew Gage says what council needs to know. Please make use of it in your decisions.

You have the ability tonight to slow down the crazy train and fix the obvious errors. You have the ability to insure that the designation of these lands is Agricultural. Don't agree to sign a document you know to be illegal and morally wrong.

Carol Day

A handwritten signature in black ink that reads "Carol Day". The signature is written in a cursive style with a large, sweeping initial "C".



200 - 2006 West 10th Avenue
Vancouver, BC V6J 2B3
www.wcel.org

tel: 604.684.7378
fax: 604.684.1312
toll free: 1.800.330.WCEL (in BC)
email: admin@wcel.org

February 9, 2011

Garden City Lands Coalition Society
Attn. **Jim Wright, President**

***** BY EMAIL AT
GARDENCITYLANDS@SHAW.CA *****

Dear Sirs/Mesdames:

Re: Metro Vancouver Regional Growth Strategy and ALR Lands

You have asked us to provide an opinion further developing our view of Metro Vancouver's Regional Growth Strategy¹ (the RGS) in relation to the Garden City Lands and other ALR lands designated General Urban or Industrial. This opinion builds on the legal analysis provided in our Environmental Law Alert blog post: Metro Vancouver Growth Strategy on thin legal ice,² as well as responding to the response to that post received from Metro Vancouver.³

You have also instructed us to provide a copy of this legal opinion to Ms. Jessica Beverley, In-house Counsel to Metro Vancouver. She is cc'd on this opinion.

The Facts

The legal facts on which this opinion is based are as follows. A change in the information available could alter our legal conclusions.

For the most part the Regional Growth Strategy is very supportive of agricultural land and the vast majority of ALR lands are designated as being for agricultural use. This designation, according to the RGS, is (in part) "intended primarily for agricultural uses, facilities and supporting services with an emphasis on food production where appropriate."

There are a small number of exceptions. Significant amounts of ALR lands are included in Special Study Areas, which may be reviewed for possible development in the future. Since Special Study Areas do not in and of themselves allow a particular type of development the Agricultural Land Commission (ALC) has suggested, and we agree, that there is no legal inconsistency between this designation and the *Agricultural Land Commission Act* ("the Act").

However, there are also lands located in Richmond and Aldergrove which are ALR lands and which are specifically designated by the RGS for urban residential or (in the case of one area in Aldergrove) industrial use. The affected lands in Richmond include, of course, the Garden City Lands.

¹ *Regional Growth Strategy*, Bylaw No 1136, 2010.

² <http://wcel.org/resources/environmental-law-alert/metro-vancouver-growth-strategy-thin-legal-ice>.

³ Letter from C. De Marco to Andrew Gage dated January 27, 2011.

I have been advised by Metro Vancouver staff that these designations are based upon the designations found in the previous Regional Growth Strategy (known as the Livable Region Strategic Plan).⁴

I have also been advised by Metro Vancouver staff that they are based upon the designations that appear in the Official Community Plans (OCP) for the respective municipalities, although at least in the case of Richmond this appears not to be the case in at least some cases: the Garden City Lands are identified as Public and Open Space in Richmond's Official Community Plan (a designation in respect of which the Agricultural Land Commission passed an order, confirming it as an appropriate use within the ALR).

I am advised by Metro Vancouver staff that as a result of discussions with the ALC the draft RGS was modified to add a clause which explicitly recognized that nothing in the RGS could be inconsistent with the Agricultural Land Commission Act (s. 6.11.2 – discussed below).

However, this general clause apparently did not fully satisfy the ALC in relation to the Richmond and Aldergrove ALR Lands. In October 2010, after Metro Vancouver referred the RGS to the Agricultural Land Commission, Mr. Brian Underhill, Executive Director of the Commission, wrote to Metro Vancouver. While he expresses appreciation for wording changes in the RGS (presumably including s. 6.11.2), he clearly sets out his concerns about the Richmond and Aldergrove ALR lands designated by the RGS for urban residential or industrial use:

From the Commission's perspective, the most important outstanding issues are the two instances where the Urban Containment Boundary encroaches into the Agricultural Land Reserve. ... These designations are not consistent with the *Agricultural Land Commission Act*, with the ... Regulation or with any existing order of the Commission. Under section 46 of this Act a local government in respect of its bylaws [including a bylaw to adopt a regional growth strategy] must ensure consistency with this Act, the regulations and the orders of the commission. ... If the Regional Board decides to adopt a bylaw enacting a regional growth strategy without any modification, subsection 46(4) of the *Agricultural Land Commission Act* provides that to the extent of the inconsistency, the bylaw is of no force or effect.

When Metro Vancouver went ahead and gave second reading to the RGS without addressing the ALC's concerns, the Chair of the ALC, Mr. Richard Bullock, took the unusual step of writing to the regional district for a second time to further emphasize that the RGS violates the *Agricultural Land Commission Act*.

Reference is ... made to section 46 of the *Agricultural Land Commission Act* (the Act), which requires that a local government must ensure consistency with the Act, the regulations and the orders of the commission. ... This letter identifies lands with respect to which Bylaw 1136 as currently drafted is inconsistent with the Act, [the Regulations] ... or with any existing order of the commission.

When the Metro Vancouver Board considered the RGS, staff summarized Mr. Bullock's letters as part of the public submissions as relating to "mapping inconsistencies" – clearly an inadequate description of the serious legal concerns raised in that letter.

⁴ I know that you have provided a detailed rebuttal of this claim on your Garden City Lands Blog: <http://gardencitylands.wordpress.com/2011/02/02/weak/>, last accessed February 9, 2011. I do not believe that it is necessary to resolve this dispute at this time; as discussed below, Metro Vancouver's claim on this point makes no difference to my conclusion.

Issues

1. Does the designation of the Richmond and Aldergrove lands in the RGS as General Urban and Industrial comply with the legal requirements of the Act?
2. If the answer to 1 is no, does the general clause in 6.11.2 of the RGS bring the RGS back into compliance with the Act?

Brief Answers

1. No. Section 46 of the Act clearly prohibits the enactment of bylaws, including bylaws enacting regional growth strategies, that provide for the development of ALR lands, even if further changes to zoning bylaws or Official Community Plans or other government approvals will also be required before ALR lands could in fact be developed.
2. No. The Act identifies very clearly when a bylaw will be considered inconsistent with the Act, or associated regulations and orders. A general condition such as s. 6.11.2, which simply reiterates the legal requirements of section 46, cannot save an otherwise illegal portion of the bylaw.

Analysis

Legality of designations of Richmond/Aldergrove Lands

Section 46 of the Agricultural Land Commission Act very clearly states that every local government must make sure that its bylaws (including bylaws enacting Regional Growth Strategies) are “consistent” with the Act and its regulations. Section 46 states, in part:

46 (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. ...

(4) A local government bylaw or a first nation government law that is inconsistent with this Act, the regulations or an order of the commission has, to the extent of the inconsistency, no force or effect.⁵

“Bylaws” is explicitly defined as including bylaws adopting a regional growth strategy.⁶

In general “consistency” is not a strong legal requirement. However, section 46(5) explicitly addresses this problem:

(5) Without limiting subsection (4), a local government bylaw or a first nation government law is **deemed to be inconsistent with this Act** if it

(a) allows a use of land in an agricultural land reserve that is not permitted under this Act, or

(b) contemplates a use of land that would impair or impede the intent of this Act, the regulations or an order of the commission, whether or not that use

⁵ *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (the “Act”), s. 46 (2) and (4)

⁶ Act, *ibid*, s. 46(1).

requires the adoption of any further bylaw or law, the giving of any consent or approval or the making of any order.⁷

This section goes out of its way to clarify that a bylaw that meets that requirement will be inconsistent if it merely “contemplates” non-farm uses of land in the ALR, even if further zoning bylaws or other approvals (including ALC orders) are required before the land can be converted to a non-farm purpose.

The remaining subsections of section 46 confirm the ability of local governments to restrict agricultural use on ALR lands, but do not alter the clear legal requirements of the subsections quoted above to ensure that bylaws, including regional growth strategies, do not allow, or even contemplate, non-farm uses on ALR lands.

On its face the RGS does purport to allow and/or contemplate the use of the Richmond and Aldergrove Lands for residential development and industrial uses: clearly uses of lands not allowed in the ALR under the Act or its regulations without the approval of the ALC.

Metro Vancouver staff have suggested that the fact that the designations in respect of these lands remain the same as in the previous RGS⁸ and/or that they may have been (in at least some cases) similarly designated in the Official Community Plans for some years in some way overcomes any problem of consistency.

With respect, it does not. The responsibility of local governments under s. 46(2) to ensure consistency is an ongoing one, and the legality of new bylaws must be considered at the time they are adopted, even if they are merely adopting previous terms.

In relation to the Richmond lands, Metro Vancouver staff have also suggested that the RGS designations of the Garden City Lands as General Urban are consistent with the Richmond Official Community Plan’s designation of those lands as Public and Open Space. They further note that the ALC has approved Richmond’s Public and Open Space designation.

The Garden City Lands are designated “Public and Open Space Use” in Richmond’s Official Community Plan and have been designated as such since the 1990s. We are aware that the status of the Garden City Lands has been the subject of ongoing dialogue within the community and with the Agricultural Land Commission. Richmond provided to us the attached letter from the Agricultural Land Commission in which the Commission consents to Richmond’s designation of the Garden City Lands as “Public and Open Space Use”.

The regional “General Urban” designation can contain a number of municipal designations, including “Public and Open Space Use” as it is reasonable to consider parks within a general urban context.⁹

Again, with respect, this argument is flawed. The Public and Open Space Use designation does not provide for urban development; despite that fact the City of Richmond still sought (and received) specific ALC approval for that designation.¹⁰

By contrast, the “General Urban” designation, while allowing for the use of land for urban parks, also explicitly allows those lands to be used for residential development (indeed, that is the main

⁷ Act, *ibid*, s. 46(5), emphasis added.

⁸ Again, I am aware of your objection to this assertion. Above, note 4.

⁹ Above, note 3.

¹⁰ You advise that this request for approval came after a refusal by the ALC to remove the Garden City Lands from the ALR and while a second request was still pending.

purpose of the designation). Unlike the Public and Open Space designation, it explicitly allows or contemplates a non-farm use. And, again unlike Richmond, Metro Vancouver has not sought the consent of the ALC in respect of those uses. Given the very strong wording of section 46, the General Urban designation is inconsistent with both the Act and with the consent given by the ALC to Richmond in respect of the Public and Open Space designation.

In my view the designations of these ALR lands for urban and industrial purposes is on its face inconsistent with the Act, regulations and orders of the ALC. The remaining question is whether this apparent inconsistency is saved by section 6.11.2 of the RGS.

The legal effect of s. 6.11.2

Metro Vancouver staff argue that even if the Richmond and Aldergrove ALR land designations are by themselves inconsistent with the ALC Act, section 6.11.2 of the RGS rectifies these inconsistencies by conceding that the ALC takes precedence. Section 6.11.2 reads:

*In accordance with the Agricultural Land Commission Act, in the event that there is an inconsistency between the regional land use designations or policies set out in the Regional Growth Strategy and the requirements of the Agricultural Land Commission Act or regulations and orders made pursuant thereto, the Agricultural Land Commission requirements will prevail.*¹¹

Metro Vancouver states its position as follows:

The intent of this section is to make it clear that Metro Vancouver recognises that the Agricultural Land Commission Act takes precedence over the Regional Growth Strategy and to address the Commission's concerns. It is Metro Vancouver's position that the Regional Growth Strategy is not inconsistent with the Agricultural Land Commission Act. However, to the extent there is any inconsistency, the Agricultural Land Commission Act resolves the issue by providing that the Regional Growth Strategy has, to the extent of the inconsistency, no force or effect.¹²

There are several problems with argument that section 6.11.2 makes everything good again.

Purely on a technical level, section 6.11.2 doesn't change the fact that the RGS "contemplates" residential and industrial development on ALR lands.

In addition, the interpretation also undermines what we take to be the intent of the *Agricultural Land Commission Act*. In our view the very strong requirements of section 46 contemplate two levels of protection for ALR lands.

- The ALC has a general mandate to ensure that no non-farm uses occur on ALR lands (or to regulate such use if it views it as appropriate); and
- Local governments are specifically charged (under section 46(2)) with ensuring that their bylaws also protect ALR lands against development for non-farm purposes.

This means that in general approval for the development of land for a non-farm purpose will require at least two levels of approval, from both the ALC and from relevant local governments, creating a high level of legal protection for ALR lands. This is consistent with the purposes of

¹¹ Above, note 1.

¹² Above, note 3.

the Act and the high level of protection for agricultural lands provided in other sections of the Act.

Metro Vancouver acknowledges that as a result of the designations in the RGS this level of protection no longer exists for the Richmond and Aldergrove Lands:

The practical effect of the Garden City Lands and the Aldergrove Lands having a regional "General Urban" or "Industrial" designation is that if, at some point in the future, the Agricultural Land Commission determines that these lands may be removed from the Agricultural Land Reserve, Richmond and the Township of Langley, respectively, will not need to apply to the Metro Vancouver Board for a change to the regional designation.¹³

In our view this "practical effect" is precisely what section 46 attempts to prevent.

We also note that the idea that a general acknowledgment of the existence of a legal requirement (and section 6.11.2 essentially just repeats the legal effect of section 46 of the Act) can give a person the ability to violate it at the specific level is a curious one. If correct it would mean that Metro Vancouver could designate all ALR lands for future industrial development, relying on section 6.11.2 to rectify the clear illegality. The concept is analogous to a person prefacing threats to another person with the words: "I know that it's illegal to threaten you, so please disregard everything I'm about to say." These results are clearly absurd.

For the above reasons, we do not believe that a general recognition that the Act has precedence over the RGS, such as that found in section 6.11.2, can save otherwise illegal specific cases of inconsistency between the RGS and the Act.

Conclusion

For the above reasons, we are of the view that the RGS, as currently drafted, is illegal in respect of the designations of the Richmond and Aldergrove lands for future urban and industrial development. We believe that the designation of these Lands in the RGS should be re-evaluated prior to adoption of the RGS.

Sincerely,



Andrew Gage,
Staff Counsel

cc. Jessica Beverley, Barrister and Solicitor (by email at Jessica.beverley@metrovancover.org)

¹³ Ibid.

Metro Vancouver Growth Strategy on thin legal ice

By Andrew

Created 2011-01-24 11:12

Monday, January 24, 2011

Metro Vancouver (MVT)
Shaping our Future



Metro Vancouver has given second reading to its new Regional Growth Strategy (RGS), and sent the plan to its member municipalities for approval [1]. But the plan is coming under attack from critics concerned about urban sprawl and the protection of agricultural lands [2].

Recommend 19

Metro Vancouver has given second reading to its new Regional Growth Strategy (RGS), and sent the plan to its member municipalities for approval [1]. But the plan is coming under attack from critics concerned about urban sprawl and the protection of agricultural lands [2].

Most of the critics of the RGS have focused on changes to the Urban Containment Boundary and the creation of Special Study Areas. These are both legitimate concerns:

- The Urban Containment Boundary is one of the primary tools for controlling urban sprawl. Municipalities are supposed to ensure that lands outside the UCB are zoned rural. Changes to this boundary open up new areas for development.
- Special Study Areas are areas where "a municipality has expressed an intention to alter the existing land use." In order to convince some municipalities to sign on to the RGS, Metro Vancouver has offered the carrot that municipal ambitions to develop these lands in the future will not be frustrated. While the RGS will still apply to these lands (unlike in some earlier drafts), it can be amended in these cases by a simple majority of the Metro Vancouver board, without public consultation (beyond any required by the municipality).

⁽¹⁾While West Coast shares these concerns, we do also recognize positive features in the RGS which we believe will help protect the environment and the agricultural land base, and prevent urban sprawl (see our February 2010 submissions on an earlier draft ⁽³⁾).

But one of the most serious problems with the RGS – one which is likely to actually cause legal problems for Metro Vancouver – has been largely unreported: the fact that the RGS purports to designate lands in the Agricultural Land Reserve (ALR) located in Richmond and Aldergrove (Township of Langley) for future development. So far as we can tell only the Garden City Lands ⁽⁴⁾

blog has attempted to address this legal problem with the RGS (and we thank them for drawing it to our attention). In my view, Metro Vancouver is on thin ice legally on this issue and should expect a legal challenge, either from the Agricultural Land Commission (ALC) or from members of the public. That being said, any legal challenge would probably only affect the Richmond and Aldergrove ALR lands, and will not by itself address the broader concerns around the potential loss of agricultural land identified by many of the plan's opponents.

Metro Vancouver 2040
Shaping our Future



Correspondence from the Agricultural Land Commission

Metro Vancouver can't say it wasn't warned. In October 2010, after Metro Vancouver referred the RGS to the ALC Mr. Brian Underhill, Executive Director of the Commission, wrote to express concern ⁽⁵⁾ about (among other issues) ALR lands being designated for future development:

From the Commission's perspective, the most important outstanding issues are the two instances where the Urban Containment Boundary encroaches into the Agricultural Land Reserve. ... These designations are not consistent with the Agricultural Land

Commission Act, with the ... Regulation or with any existing order of the Commission. Under section 46 of this Act a local government in respect of its bylaws [including a bylaw to adopt a regional growth strategy] must ensure consistency with this Act, the regulations and the orders of the commission. ... If the Regional Board decides to adopt a bylaw enacting a regional growth strategy without any modification, subsection 46(4) of the Agricultural Land Commission Act provides that to the extent of the inconsistency, the bylaw is of no force or effect.

Mr. Underhill also notes that any amendments to the RGS in the future in respect of the Special Study Areas which contemplate non-agricultural use of ALR lands would raise similar issues.

When Metro Vancouver went ahead and gave second reading to the RGS without addressing the designation of the ALR lands, the Chair of the ALC, Mr. Richard Bullock, took the unusual step of writing to the regional district for a second time ⁽⁶⁾ to further emphasize that the RGS violates the Agricultural Land Commission Act.

The ALC's legal analysis is entirely correct. Section 46 of the Agricultural Land Commission Act ⁽⁷⁾ very clearly states that every local government must make sure that its bylaws (including bylaws enacting Regional Growth Strategies) are "consistent" with the Act and its regulations. In general "consistency" is not a strong legal requirement. However, section 46 explicitly addresses this problem ⁽⁷⁾, defining inconsistency to include any bylaw that:

... contemplates a use of land that would impair or impede the intent of this Act, the regulations or an order of the commission, whether or not that use requires the adoption of any further bylaw or law, the giving of any consent or approval or the making of any order.

The previous regional growth strategy also designated at least some of these same ALR lands for development. So Metro Vancouver might take the view that the new RGS does nothing new. But that would just mean that the old regional growth strategy was illegal too. It does nothing to resolve the existing legal

problem.

Section 46 is often confusing to local governments. We've seen other cases in which local governments believe, incorrectly, that section 46 means that municipalities can't regulate agriculture at all on ALR lands. (Exactly what they can and can't legally do is a more complicated question – one for another blog post). But the Metro Vancouver RGS is clearly trying to do something that section 46 does not allow – which is to designate ALR lands for future development not consistent with agricultural purposes.

And it does so after the ALC warned Metro Vancouver, not once but twice and in very clear language, that those sections of the RGS related to these ALR lands are illegal. The decision to ignore the Agricultural Land Commission is all the more baffling given that:

- Section 6.11.2 of the RGS explicitly recognizes that the Agricultural Land Commission Act “prevails” over the RGS in the event of an inconsistency – essentially adopting language similar to s. 46 of the ALC Act; so why include in the RGS something that you know is inconsistent.
- The RGS explicitly states the protection of agriculture as a major goal; and
- the Metro Vancouver Board has publicly called on the province to provide the ALC with the resources to protect agriculture (8).

It's tempting to believe that the Metro Vancouver Board did not appreciate the significance of the ALC's letters, buried in among the hundreds of referrals and public submissions received. And indeed, Directors may have been swayed by a summary of submissions prepared by Metro Vancouver staff that characterized Mr. Bullock's letter to the Board as amounting merely to “Mapping inconsistencies.” On the other hand, the Georgia Straight reports (without fully explaining the significance of the ALC's objections) that Director Harold Steves of Richmond specifically drew the Directors' attention to ALC President Bullock's letter (9):

Before the vote, Steves also called the attention of his fellow directors to some objections raised by the Agricultural Land Commission.

These were contained in a November 23, 2010, letter from the ALC to Metro Vancouver, which noted “inconsistencies” with the Agricultural Land Commission Act.

We asked Metro Vancouver staff to comment on the apparent failure to address the ALC's concerns about the Richmond and Aldergrove ALR Lands. In an email received just before we posted this story Glen Bohn, Communications Specialist for Metro Vancouver, emphasized the many ways that the RGS does support agriculture:

Overall, the Regional Growth Strategy supports the protection of agricultural lands. In fact, this has been acknowledged by the Agricultural Land Commission in correspondence.

In Strategy 2.3 of the document, Metro Vancouver and member municipalities commit to: “Protect the supply of agricultural land and promote agricultural viability with an emphasis on food production.”

Strategy 2.3.4 is key, because it identifies the regional district's commitment to working with the ALC and maintaining sites as agricultural and/or rural while they remain in the Agricultural Land Reserve. That section of the regional plan describes Metro Vancouver's role this way: “In collaboration with the province and the Agricultural Land Commission, identify and pursue strategies and actions to increase actively farmed agricultural land, emphasize food production, reduce barriers to the economic viability of agricultural activities, ensure the management of farmlands is in concert with groundwater resources, and minimize conflicts among agricultural, recreation and conservation, and urban activities.”

We agree that there are many ways in which the RGS does support agricultural land. However, Mr. Bohn's response misses the point: specific ALR lands have been identified in the RGS as being open for development. Whether the RGS “overall” supports the protection of agricultural lands is irrelevant to the

question of the legality of the RGS in relation to these specific properties.

It is disturbing when a local government, for no apparent reason, enacts bylaws that they know, or should know, are illegal. It forces public bodies like the ALC into an unseemly public confrontation with local government, or, if the ALC does not act, leaves community groups to raise the funds for expensive court challenges. Metro Vancouver, as the largest and arguably the most sophisticated local government in the province, has no excuse.

By Andrew Gage, Staff Lawyer



[Bullock23Nov10.pdf](#) [6]

[Agricultural Land Commission](#) [Aldergrove](#) [green communities](#) [Metro Vancouver Regional Growth Strategy](#) [Richmond](#) [Shaping Our Future](#)

- [Environmental Legal Aid](#)
- [Contact Us](#)
- [Privacy Policy](#)
- [Terms of Use](#)

- [Resources](#)
- [Support Us](#)
- [About Us](#)
- [Media Centre](#)

[Site by Brad Hornick Communications](#)

Source URL (retrieved on 2011-02-27 19:16): <http://wcel.org/resources/environmental-law-alert/metro-vancouver-growth-strategy-thin-legal-ice>

Links:

- [1] <http://public.metrovancouver.org/planning/development/strategy/RGSDocs/RGSJan-14-2011SubmittedtoAffectedLocalGovernments.pdf>
- [2] <http://www.vancouversun.com/news/11th+hour+meeting+rally+citizens+against+urban+sprawl/4102051/story.html>
- [3] <http://wcel.org/resources/publication/comments-west-coast-environmental-law-metro-vancouver-2040-shaping-our-future>
- [4] <http://gardencitylands.wordpress.com/>
- [5] <http://www.metrovancouver.org/planning/development/strategy/CommentsDraftRGSSept10/AgriculturalLandCommissionComments.pdf>
- [6] <http://wcel.org/sites/default/files/file-downloads/Bullock23Nov10.pdf>
- [7] http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02036_01#section46
- [8] <http://www.delta-optimist.com/news/Resources+protect+famland+lacking/3996842/story.html>
- [9] <http://www.straight.com/article-368607/vancouver/richmond-councilor-says-metro-vancouver-regional-growth-strategy-threatens-famland>
- [10] <http://wcel.org/category/keywords/agricultural-land-commission>
- [11] <http://wcel.org/category/keywords/aldergrove>
- [12] <http://wcel.org/category/news/green-communities>
- [13] <http://wcel.org/category/keywords/metro-vancouver-regional-growth-strategy>
- [14] <http://wcel.org/category/keywords/richmond>
- [15] <http://wcel.org/category/keywords/shaping-our-future>



Agricultural Land Commission
133 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

20 October 2010

Metro Vancouver Policy and Planning Department
4330 Kingsway
BURNABY BC V5H 4G8

Attention: Christina DeMarco, Regional Development Division Manager

Re: Metro Vancouver Regional Growth Strategy — our file #O-36732

This letter is in response to the referral of the 03 September 2010 draft of the proposed Regional Growth Strategy *Metro Vancouver 2040—Shaping Our Future*.

The Commission appreciates that many of the modifications from the previous draft reflect a positive response to comments made by the Commission by letters dated 20 and 26 May 2009 and in the 2009 presentation to the Metro Vancouver Planning Committee by representatives of the Commission. The following comments therefore relate to outstanding issues of a broader scale than would normally be dealt with at the level of a municipal regional context statement.

From the Commission's perspective, the most important outstanding issues are the two instances where the Urban Containment Boundary encroaches into the Agricultural Land Reserve. At Aldergrove, the encroachment areas to the north and south of the existing urban area are proposed for a General Urban designation; the encroachment area to the north of the existing industrial area is proposed for an Industrial designation. In Richmond, the encroachment area bounded by Westminster Highway, Garden City Road, Alderbridge Way and Shell Road is proposed for a General Urban designation. These designations are not consistent with the *Agricultural Land Commission Act*, with the Agricultural Land Reserve Use, Subdivision and Procedure Regulation or with any existing order of the Commission. Under section 46 of this Act a local government in respect of its bylaws [including a bylaw to adopt a regional growth strategy] must ensure consistency with this Act, the regulations and the orders of the commission. If the Regional Board wishes to request that the Commission enact an order consenting to all or part of the otherwise inconsistent provisions, that request should reflect an understanding of the associated agricultural implications. If the Regional Board decides to adopt a bylaw enacting a regional growth strategy without any modification, subsection 46(4) of the *Agricultural Land Commission Act* provides that to the extent of the inconsistency, the bylaw is of no force or effect.

The Commission also notes that seven of the Special Study Areas are depicted entirely within the Agricultural Land Reserve. These depictions are not inconsistent *per se*, given that they do not designate agricultural land for a use other than agriculture. Provided the RGS procedures require that the Commission be consulted and offered an opportunity to participate in the special study, and that any regional growth strategy amendment resulting from a special study does not proceed unless the Commission has first consented to that amendment as it affects the ALR, the Commission has no objection to the depiction of these Special Study Areas.

The Livable Region Strategic Plan

In 1990, the Greater Vancouver Regional District Board adopted the *Creating Our Future* vision:

"Greater Vancouver can become the first urban region in the world to combine in one place the things to which humanity aspires on a global basis: a place where human activities enhance rather than degrade the natural environment, where the quality of the built environment approaches that of the natural setting, where the diversity of origins and religions is a source of social strength rather than strife, where people control the destiny of their community, and where the basics of food, clothing, shelter, security and useful activity are accessible to all."

The purpose of the Livable Region Strategic Plan is to help realize this vision through Greater Vancouver's land use and transportation development.

The Livable Region Strategic Plan is the result of a four-year public and intergovernmental consultation process. Early in the process, the public rejected a business-as-usual approach to regional growth that would spread population throughout the Fraser Valley. They rejected it because it would put development pressure on farmland, increase the distance between jobs and housing, cost too much for public services and utilities, and result in worsening air pollution from increased automobile use. The Strategic Plan provides a clear alternative that is more in keeping with the values of *Creating Our Future*.

The Strategic Plan, incorporating policies, targets and maps, is based upon four fundamental strategies:

PROTECT THE GREEN ZONE

The Green Zone is intended to protect Greater Vancouver's natural assets, including major parks, watersheds, ecologically important areas and farmland. By doing so, the Green Zone also establishes a long-term boundary for urban growth. Municipalities nominated lands to be placed in the Green Zone. In total the municipal submissions comprise two-thirds of the GVRD's total land base, including half the region's developable lowlands.

BUILD COMPLETE COMMUNITIES

The Strategic Plan is intended to support the public's strong desire for communities with a wider range of opportunities for day-to-day life. These communities would be focused on town centres throughout the region. More complete communities would result in a better balance in the distribution of jobs and housing, a wider choice of affordable housing types, a better distribution of public services, and more effective transportation service.



Policy Directions

The Livable Region Strategic Plan's approach to growth management rests on four fundamental strategies:

- > Protect the Green Zone
- > Build Complete Communities
- > Achieve a Compact Metropolitan Region
- > Increase Transportation Choice

Within each of these strategies the Strategic Plan establishes clear objectives and identifies the partnerships needed to achieve them. The strategies are also closely inter-related. For instance, it would be difficult to protect the Green Zone if growth is not concentrated within the available urban area. Communities would not be very complete if they did not have a diversity of housing and jobs, and if everyone needed a car to get to work or shop in some distant location. Transportation choice would be hard to provide without sufficient population densities to support expanded transit service. It is this inter-dependency and consistency between the strategies which binds them together as a growth management framework.

DID YOU KNOW?

- > The GVRD's land area is made up of:

Green Zone and other non-urban uses: 72%

Urban uses (residential, commercial and industrial): 20%

Vacant urban land: 8%

—Source: GVRD

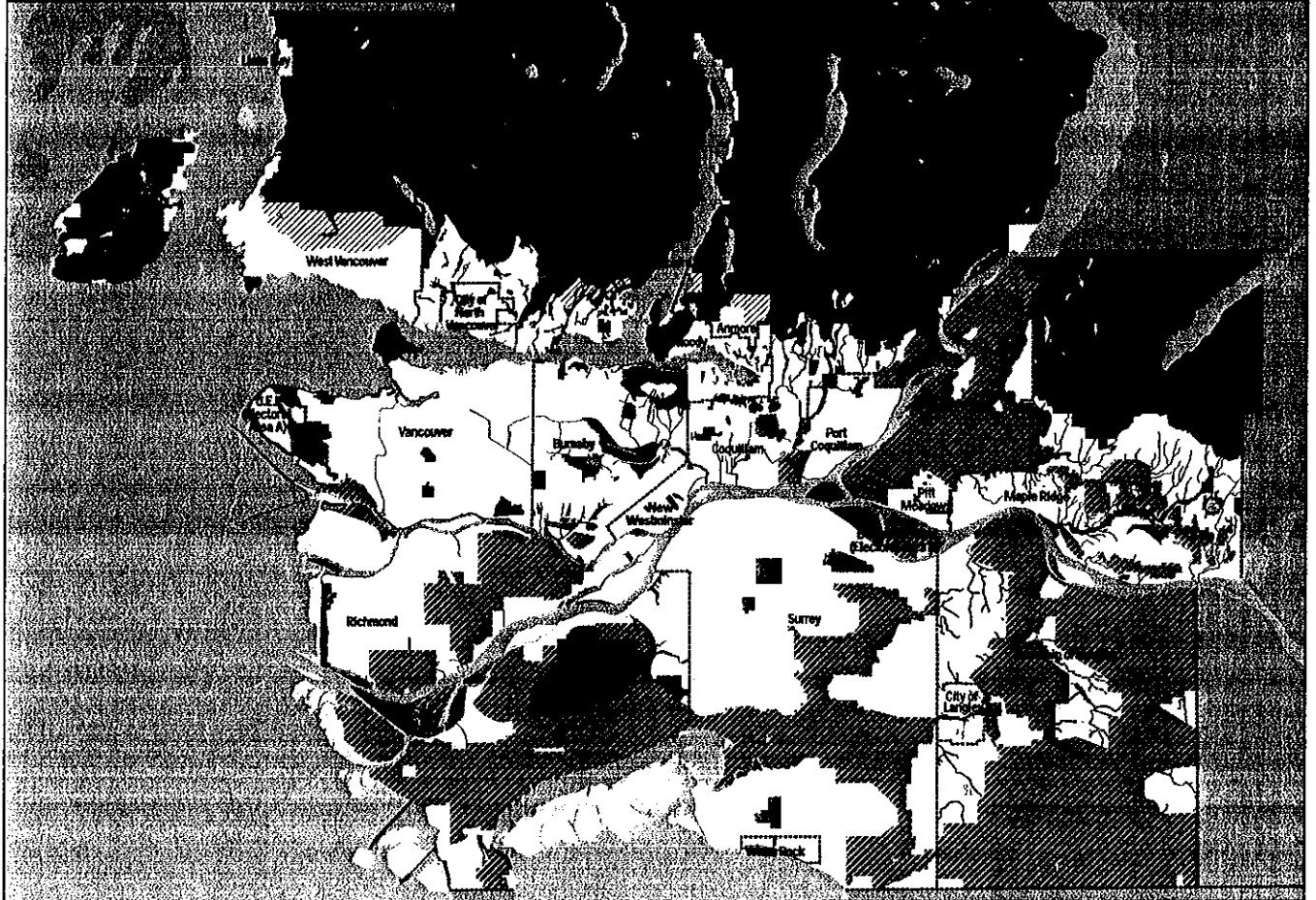
- > 90% of GVRD homeowners agree that collectively, individuals can make a significant difference towards keeping the costs of providing regional services and utilities down by changing what they do on a daily basis.

—1998 Angus Reid Survey
commissioned by the GVRD

- > About 60% of Greater Vancouver's occupied private dwellings are self-owned, and 40% are rented. The proportion of owner-occupied dwellings generally increases with distance from the metropolitan core.

—Source: GVRD, 1998

Green Zone



- Green Zone Areas
- Agricultural Lands in the Green Zone
- Areas under municipal consideration
- Municipal boundaries
- Wetland areas
- Tidal flats