

TO: CITY MANAGER 2004 July 13
FROM: DIRECTOR PLANNING AND BUILDING Our File: 1400 20
SUBJECT: AGRICULTURAL LAND RESERVE AND TREATY NEGOTIATIONS
PURPOSE: To provide information on recent changes to the Agricultural Land Commission Act with reference to treaty negotiations.

RECOMMENDATION:

1. **THAT** a copy of this report be forwarded to the Lower Mainland Treaty Advisory Committee, 4th Floor, 4330 Kingsway, Burnaby, B.C. V5H 4G8; and to the Attorney General and Minister Responsible for Treaty Negotiations, P.O. Box 9044, Stn Prov Govt, Victoria, B.C. V8W 9E2.

REPORT

1.0 BACKGROUND

At its meeting of 2004 June 21, Council received a letter from the Chair of the Lower Mainland Treaty Advisory Committee (LMTAC) outlining recent changes to the Agricultural Land Commission Act with reference to treaty negotiations. The Province passed Bill 27 on 2004 May 05, which will permit a First Nation with an adopted Agreement in Principle (AIP) to apply directly to the Agricultural Land Commission (ALC) for exclusions. Given the importance of preserving remaining agricultural lands in the region, LMTAC prepared a briefing note on its First Principle #19, *Preserve Agricultural Lands*, to support the efforts of the LMTAC representatives assigned to the various active treaty tables throughout the region, and requested comment by member municipalities by 2004 July 30. Council requested a report on LMTAC's submission, and is hereby provided.

2.0 STATUS OF TREATY NEGOTIATIONS

There are six stages in the current British Columbia treaty negotiation process, ranging from an initial statement of intent which initiates the negotiation process to the actual implementation of a treaty. To date, no treaties have been concluded within this process, however, four First Nations throughout the province have reached Stage 5, with a signed Agreement in Principle. (AIP). The AIP is essentially the "blueprint" for the final treaty, within which technical and legal issues are resolved. It represents broad agreement on matters such as the land component, capital transfer, fish and wildlife provisions and governance authorities, establishing the foundation for Final Agreement negotiations. Stage 6 is the implementation of the treaty.

The Tsawwassen First Nation (TFN) is the first to reach Stage 5 in the Greater Vancouver Regional District. The AIP was signed by all parties on 2004 March 14, and the Provincial Government has indicated a desire to finalize the Tsawwassen treaty within the next two years.

3.0 CHANGES TO THE AGRICULTURAL LAND COMMISSION ACT, BILL 27

The ALC works with local government and others to ensure that their plans and bylaws are compatible with the ALR provincial designation. All local governments must ensure that its bylaws and plans are consistent with the regulations and orders of the ALC Act. Proposals for the exclusion of ALR for non-agricultural development must be approved by the ALC. In the case of ALR lands within a municipality, the local government must also concur.

Given the mandate of the ALC over lands included in the ALR, the Provincial Government is not in a position to negotiate the removal of the ALR designation as part of the treaty negotiations. The purpose of Bill 27 was to provide greater certainty with respect to lands offered as part of a treaty settlement package. In the case of Tsawwassen First Nation, of the 427 hectares of Provincial crown land included in the Agreement in Principle to be transferred to Tsawwassen (which is the majority of the land package), all of it is in the ALR.

Prior to Bill 27, a First Nation was required to seek authorization of a local government before taking an application to the ALC. Bill 27 now permits a First Nation with an adopted AIP to apply directly to the ALC for exclusions. In effect, Bill 27 provides AIP First Nations with the same authority given to local governments, prior to owning the lands. While the First Nation applicant would be required to hold a public hearing, there is no requirement for consultation with potentially affected parties, including adjacent municipalities.

While the First Nation may make application for exclusion, the decision of the ALC to exclude would not come into effect until such time as the lands are established as treaty settlement lands. Similarly, if the negotiations are suspended, the decision of the ALC would expire at that time.

4.0 LOCAL GOVERNMENT CONCERNS

LMTAC's First Principles were adopted by LMTAC after review and concurrence by its member municipalities and regional districts. The First Principles represent local government concerns and issues which LMTAC seeks to maintain in the treaty negotiation process. First Principle #19, *Preserve Agricultural Lands*, states that "Lands in the Agricultural Land Reserve (ALR) must remain in the ALR and under the jurisdiction of the Agricultural Land Commission (ALC)."

Of particular concern to local government is the apparent lack of provision for First Nation applications that parallels Section 879 of the Local Government Act, whereby a First Nation undertaking planning and bylaw development would be required to consult with parties it considers to be affected by the proposed changes in land use (in addition to the public hearing requirement). LMTAC has strongly and continually asserted the need for local government and First Nations to be treated equitably on matters that are considered “local government” in nature. First Nation governments should be subject to the same requirements as local governments under the ALC regulations, particularly those related to public notice, public hearings and consultation with the adjacent local government in cases involving ALR exclusions.

As the duty to consult for local governments is outlined in the *Local Government Act*, not the *Agricultural Land Commission Act*, it is anticipated that a similar provision will be included in the final treaty related to land management and use. Chapter Four of the Tsawwassen Agreement in Principle, *Land Management and Use*, specifies: “When Tsawwassen First Nation makes a planning and land use management law it will be on the basis of principles in respect of consultation and transparency similar to those of municipalities undertaking similar laws.” As this is the adopted basis for negotiating the terms of the final treaty, such requirements may address the concern regarding lack of required consultation. If the expected duty to consult with regard to land management and use is not realized in the final treaty, some other method of securing the requirement for consultation must be pursued.

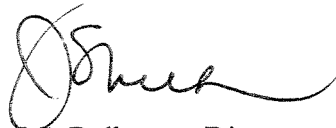
Similarly, applications for exclusions for the ALR are generally supported by a plan for the lands. It is entirely probable that a First Nation in the AIP stage has yet to develop a land use plan for the treaty settlement lands it is intended to govern, although First Nations do have that authority under the *First Nations Land Management Act*. Indeed, staff are aware that the ALC has indicated to Tsawwassen First Nation that some plan must be provided regarding the use of the lands requested for exclusion.

5.0 CONCLUSION

The Province passed Bill 27 on 2004 May 05, which will permit a First Nation with an adopted Agreement in Principle to apply directly to the Agricultural Land Commission for exclusions. Given the importance of preserving remaining agricultural lands in the region, LMTAC prepared a briefing note on its First Principle #19, *Preserve Agricultural Lands*, to support the efforts of the LMTAC representatives assigned to the various active treaty tables throughout the region, and requested comment by member municipalities by 2004 July 30.

Of particular concern to local government is the apparent lack of provision for First Nations to consult with parties it considers to be affected by the proposed changes in land use. LMTAC has strongly and continually asserted the need for local government and First Nations to be treated equitably on matters that are considered “local government” in nature,

and as such, First Nations should be subject to the same requirements involving public notice, public hearings and consultation with the adjacent local government in cases involving ALR exclusions to ensure that the local context is provided to the ALC. It is anticipated that the duty to consult with regard to land management and use will be realized in the final treaty, and if it does not, some other method of securing the requirement for consultation must be pursued.



J.S. Belhouse, Director
PLANNING AND BUILDING

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cc. City Solicitor