

Persons who need to rely on the text of the Statutes for legal and other purposes may obtain the Queen's Printer official printed version of the 1996 Revised Statutes of British Columbia and the Table of Concordance and subsequent annual consolidations, individual consolidated Acts or Regulations from Crown Publications Inc., 521 Fort Street, Victoria, BC V8W 1E7. Telephone: (250) 386-4636.

Agricultural Land Commission Act
[S.B.C. 2002] CHAPTER 36

Table of Contents

Section

1. Definitions
2. Application of other Acts
3. Power under the Acts
4. Commission established
5. Commission members
- 5.1 Application of Administrative Tribunals Act
6. Purposes of the commission
7. Commission as an agent of the government
8. Staff of the commission
9. Operation of the commission
10. Executive committee
11. Panels
12. Financial and corporate matters
13. Dispute resolution on community issues
14. Completion of proceedings
15. Inclusion of land in agricultural land reserve by the commission
16. Agricultural land to remain in reserve unless excluded
17. Inclusion applications
18. Rules for use and subdivision of agricultural land reserve
19. Registration restrictions
20. Use of agricultural land reserve
21. Subdivision of agricultural land reserve
22. Covenants
23. Exceptions
24. Preservation of rights
25. Non-farm use and subdivision application by owner
26. Delegation of section 25 powers to local governments and other agencies
27. Chief executive Officer may approve some applications
28. Application of sections 18 to 21 limited to land in agricultural land reserve
29. Exclusion application by a local government or the commission
30. Exclusion application by owner
31. Effect of permission for non-farm use, subdivision or exclusion
32. Plan to be amended
33. Reconsideration of decisions
34. Application procedure

35. Application fees
36. Notice of applications
37. No compensation for reserve land
38. Agreements
39. Definition of “board” in sections 40 to 45
40. Reference of a matter to the board
41. Suspension of matters pending a decision under section 40
42. Effect of an order under section 40
43. Public hearing
44. Report and recommendations
45. Lieutenant Governor in Council’s decision
46. Conflict with bylaws
47. Consolidated revenue fund
48. Bonding or other security
49. Inspections
50. Stop work order
51. Power to rescind or vary orders
52. Determinations and remediation orders
53. Order for compliance
54. Penalties levied by chief executive officer
55. Appeal
 - 55.1 Exclusive jurisdiction of commission
 - 55.2 Immunity protection for commission, its members and officers
56. Application of enforcement powers by local governments and authorities
57. Offences
58. Power to make regulations
59. Powers cumulative
60. Certificates of title subject to this Act
61. Transitional
- 62-90 [Spent]
91. Commencement

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

Definitions

1 (1) In this Act:

"agreement in principle" means 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 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 provide to the first nation;

"agricultural land" means land designated as agricultural land under this Act and includes agricultural land under a former Act;

"agricultural land reserve" means agricultural land designated as an agricultural land reserve under this Act and includes an agricultural land reserve under a former Act;

"approving officer" means an approving officer as defined in the *Land Title Act*;

"chief executive officer" means the person appointed under section 8 (1);

"commission" means the Provincial Agricultural Land Commission established under section 4;

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

"farm use" means an occupation or use of land for farm purposes, including farming of land, plants and animals and any other similar activity designated as farm use by regulation, and includes a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*;

"fill" means any material brought on land in an agricultural land reserve other than materials exempted by regulation;

"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*;

"land reserve plan" means a plan, prepared under this Act, that sets out existing agricultural land reserves and the areas that may be designated by the commission or the Lieutenant Governor in Council as an agricultural land reserve and includes a land reserve plan under a former 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) in 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;

“local government” means

- (a) in relation to land within a municipality, the municipal council,
- (b) in relation to land within an electoral area but not within a local trust area, the board of the regional district, and
- (c) in relation to land within a local trust under the *Islands Trust Act*, the local trust committee or the executive committee acting as a local trust committee for that area;

“non-farm use” means a use of land other than farm use;

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

“official” means the chief executive officer and any employee of the commission or a person employed under the *Public Service Act* who is designated by name or title by the chief executive officer to be an official;

“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;

“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;

“soil” includes the entire mantle of unconsolidated material above bedrock other than minerals as defined in the *Mineral Tenure Act*;

“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.

(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.

Application of other Acts

2 (1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the *Interpretation Act*, the *Environment and Land Use Act*, and the *Environmental Management Act* and as provided in this Act.

(2) Despite section 14 (2) of the *Interpretation Act*, this Act binds the government.

Power under other Acts

3 A minister or an agent of the government must not exercise a power granted under another enactment except in accordance with this Act and the regulations.

Commission established

4 The Provincial Agricultural Land Commission is established as a corporation consisting of the members appointed under section 5.

Commission members

5 (1) The commission consists of at least 7 individuals appointed under this section who are knowledgeable in matters relating to agriculture, land use planning , local government or first nation government.

(2) The Lieutenant Governor in Council must

- (a) appoint one individual as a member and the chair of the commission after a merit based process, and
- (b) appoint one or more individuals as vice chairs of the commission after a merit based process and consultation with the chair.

(3) The minister may appoint the members of the commission other than the chair and vice chairs after a merit based process and consultation with the chair.

(4) The chair, vice chairs and members are the board of directors of the commission.

(5) Repealed.

(6) Commission members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

Application of Administrative Tribunals Act

5.1 Sections 1 to 10 of the *Administrative Tribunals Act* apply to the commission..

Purposes of the commission

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Commission as agent of the government

7 The commission is an agent of the government.

Staff of the commission

8 (1) The Lieutenant Governor in Council may appoint, during pleasure, a chief executive officer of the commission, establish the terms of the appointment and set the remuneration of the chief executive officer.

(2) The commission may determine the functions and duties of the chief executive officer.

(3) The commission may appoint other officers and employees necessary for the purposes of the commission, determine their duties and set their remuneration.

(4) The *Public Service Act* and the *Public Service Labour Relations Act* apply to the commission and its officers and employees other than the chief executive officer, except that the references to the agency head and a deputy minister in section 22 of the *Public Service Act* are to be read as references to the chief executive officer.

(5) The chief executive officer may retain consultants considered advisable and may set their remuneration.

Operation of the commission

9 The commission may pass resolutions and bylaws it considers necessary or advisable for the management and conduct of its affairs, the exercise of its powers and the performance of its duties and functions.

Executive committee

10 (1) An executive committee of the commission is established, comprised of the chair of the commission and the vice chairs.

(2) The chair of the commission is the chair of the executive committee.

(3) The commission may delegate any of its functions to the executive committee and, when it performs those functions, the actions and decisions of the executive committee are the actions and decisions of the commission.

Panels

11 (1) In this section, "**panel**" means a panel established under subsection (2).

(2) The chair of the commission may establish up to 6 panels comprised of 2 or more members of the commission.

(3) The panels may be established according to geographic regions of British Columbia or according to any other criteria the commission may determine.

(4) The chair of the commission may designate a vice chair of the commission to chair a panel.

(5) A panel has all the powers, duties and functions of the commission in respect of an application or other matter before the commission, and a decision of a panel is for all purposes a decision of the commission.

Financial and corporate matters

12 (1) The financial year end of the commission is March 31 and the Minister of Finance is the fiscal agent of the commission.

(2) Not later than June 30 of each financial year, the commission must submit to the minister

- (a) a service plan in accordance with the Budget Transparency and Accountability Act,
- (b) a report of its operations during the preceding financial year, and
- (c) a financial statement showing its business for that financial year and the preceding financial year, prepared in accordance with generally accepted accounting principles and the accounting policies and practices established by the Treasury Board.

(3) Subject to subsection (4), the *Business Corporations Act* does not apply to the commission.

(4) The Lieutenant Governor in Council, by order, may declare that specified provisions of the *Business Corporations Act* apply to the commission.

Dispute resolution on community issues

13 (1) In this section, "community issue" means a matter concerning one or more of the following:

- (a) an application for a use of agricultural land for a school, hospital, publicly funded institution or public utility, or another purpose prescribed by regulation;
- (b) a regional growth strategy under the Local Government Act;
- (c) the form and content of the official community plan of a local government;
- (d) an agreement under section 26 (1);
- (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.

2) If a dispute arises on a community issue, the commission and the local government or the first nation government, as applicable, may agree to attempt to resolve the dispute by a method of facilitated dispute resolution.

(3) If an agreement is made under subsection (2), the commission and the local government or the first nation government, as applicable, may appoint a facilitator.

(4) In making a recommendation to resolve a dispute, a facilitator must give weight to the following values in descending order of priority:

- (a) agricultural values, including the preservation of agricultural land and the promotion of agriculture;
- (b) environmental, economic, social and heritage values, but only if
 - (i) those values cannot be replaced or relocated to land other than agricultural land, and
 - (ii) giving weight to those values results in no net loss to the agricultural capabilities of the area.

(5) Each party must pay its own costs under this section.

(6) The provisions of this section do not restrict or limit the provisions of sections 2, 3 or 46.

Completion of proceedings

14 (1) Subject to subsection (2), a member of the commission may take up and carry on to completion any proceeding commenced but not completed before the member's appointment.

(2) A member of the commission who was not present at a meeting to determine an application or other matter may vote on the application or matter only if a summary of the meeting is given to the member before the vote.

Inclusion of land in agricultural land reserve by the commission

15 For the purposes of section 6, the commission may designate as agricultural land, land, including Crown land, that is suitable for farm use, and on being designated the land is established as an agricultural land reserve.

Agricultural land to remain in reserve unless excluded

16 Land included in an agricultural land reserve remains agricultural land in the agricultural land reserve unless excluded under this Act.

Inclusion applications

17 (1) On the commission's own initiative in respect of land identified by the commission 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 lands, the commission may approve all or part of the identified land or the land described in the application for addition to a designated land reserve plan if the commission considers that the designation carries out the intent of this Act.

(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.

(3) On application by an owner of land, the commission may designate all or part of the land described in the application as part of an agricultural land reserve if the commission considers that the designation carries out the intent of this Act.

(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.

Rules for use and subdivision of agricultural land reserve

18 Unless permitted by this Act, the regulations or the terms imposed in an order of the commission,

- (a) 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
 - (i) permit non-farm use of agricultural land or permit a building to be erected on the land except for farm use, or
 - (ii) approve more than one residence on a parcel of land unless the additional residences are necessary for farm use, and
- (b) an approving officer under the *Land Title Act*, the *Local Government Act* or the *Strata Property Act* or a person who exercises the powers of an approving officer under any other Act may not approve a subdivision of agricultural land.

Registration restrictions

19 Unless permitted by this Act, the regulations or the terms imposed in an order of the commission, a registrar of titles must not, under the *Land Title Act* or *Strata Property Act*, in respect of land, all or part of which consists of land in an agricultural land reserve,

- (a) accept an application for deposit of a subdivision plan, reference plan, explanatory plan or other plan showing subdivision of land, or a statutory right of way plan under section 114 of the *Land Title Act*, or
- (b) permit a new parcel of land by a metes and bounds description or an abbreviated description.

Use of agricultural land reserve

20 (1) A person must not use agricultural land for a non-farm use unless permitted by this Act, the regulations or an order of the commission.

(2) For the purposes of subsection (1), except as provided in the regulations, the removal of soil and the placement of fill are non-farm uses.

(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land:

- (a) the Mediation and Arbitration Board under the *Petroleum and Natural Gas Act*;
- (b) the Mediation and Arbitration Board under section 19 of the *Mineral Tenure Act* or under the *Mining Right of Way Act*;
- (c) any other authority under an enactment.

(4) A person who intends to use agricultural land for a prescribed use that involves soil removal or placement of fill must give notice of that intention to the commission in the prescribed form at least 60 days before engaging in the intended use.

(5) In response to a notice under subsection (4) or if a person engages in a use specified in subsection (4) without giving the required notice, the chief executive officer, by written order, may

- (a) if the owner of the land agrees to restrictions on the use, specify terms and conditions for the conduct of that use of the agricultural land, or
- (b) order that an application to the commission under subsection (3) is required for permission to engage in the use and may include as a term in the order that the person cease or not engage in the use until the application is determined.

(6) If the chief executive officer does not respond to a notice under subsection (4) within 30 days by making an order under subsection (5), the owner of the land may engage in the intended use.

Subdivision of agricultural land reserve

21 (1) A person must not subdivide agricultural land unless permitted by this Act, the regulations or an order of the commission.

(2) An owner of agricultural land may apply to the commission to subdivide agricultural land.

Covenants

22 (1) The commission may enter into a covenant under the *Land Title Act* with an owner of agricultural land.

(2) A covenant that prohibits the use of agricultural land for farm purposes has no effect until approved by the commission.

Exceptions

23 (1) Restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the *Land Registry Act*, R.S.B.C. 1960, c. 208, less than 2 acres in area.

(2) The restrictions on the use of agricultural land do not apply to land lawfully used for a non-farm use, established and carried on continuously for at least 6 months immediately before December 21, 1972, unless and until

(a) the use is changed, other than to farm use, without the permission of the commission,

(b) an enactment made after December 21, 1972, prohibits the use, or

(c) permission for the use granted under an enactment is withdrawn or expires.

(3) For greater certainty, the exception in subsection (2) applies only to the land that was actually being used for a non-farm use and not to the entire parcel on which that use was being carried on.

Preservation of rights

24 Despite sections 2 and 3, if Crown land continued as an agricultural land reserve under this Act has been leased by the government, or sold by agreement for sale by the government and not transferred to the purchaser before December 21, 1972, and on that date was being used for a non-farm use, and not in contravention of the terms of the lease or agreement, that use may continue until termination of the lease or issue of title to the purchaser under the agreement for sale.

Non-farm use and subdivision application by owner

25 (1) On an application for permission for non-farm use under section 20 (3) or for subdivision under section 21 (2), the commission may do one of the following:

(a) refuse permission;

(b) grant permission;

(c) grant permission for an alternative non-farm use or subdivision.

(2) If the commission makes a decision under subsection (1) (b) or (c), it may impose terms it considers advisable.

(3) An application referred to in subsection (1), except such an application from a first nation government, may not proceed unless authorized by a resolution of the local government if, on the date the application is made, the application

- (a) applies to land that is zoned by bylaw to permit agricultural or farm use, or
- (b) requires, in order to proceed, an amendment to an official settlement plan, an official community plan, an official development plan or a zoning bylaw.

(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.

(4) In deciding an application referred to in subsection (1), the commission may meet with the applicant or may make a decision on the basis of written representations only.

(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.

(5) The commission must deliver its written decision to the owner.

Delegation of section 25 powers to local governments and other authorities

26 (1) The commission may enter into an agreement with any of the following to enable a local government, a first nation government or an authority to exercise some or all of the commission's power to decide applications for non-farm use or subdivision with respect to lands within the jurisdiction of the local government, first nation government or authority:

- (a) a local government;
- (b) an agent of the government, a public body or a public officer prescribed by regulation;
- (c) a first nation government in respect of treaty settlement lands.

(2) An agreement under subsection (1) between the commission and an authority may exempt a non-farm use in a specified area within the jurisdiction of the authority from the requirement of an

application on the condition that the authority conducts audits and reports to the commission as required by the agreement.

(3) If an agreement is entered into under subsection (1), the local government, first nation government or authority must, with respect to an application covered by the agreement,

- (a) consider each application in the prescribed manner, and
- (b) advise the commission in the prescribed manner of each application received and of the decision made on each application.

(4) A decision made by a local government or authority under this section must be made by resolution of the local government or the governing body of the authority and a decision of a first nation government under this section must be made by a law of the first nation government.

(5) If the commission delegates its power to decide applications under section 25 to a local government, first nation government or an authority by an agreement entered into under this section, the decision of the local government, first nation government or authority is a decision of the commission for the purposes of this Act.

(6) If an authority has the power to decide an application under an agreement entered into under subsection (1), an application that would otherwise be required to be submitted to the local government or first nation government under section 34 (3) must be made directly to the authority.

(7) If a local government, first nation government or an authority has the power to decide an application under an agreement entered into under subsection (1),

- (a) the local government, first nation government or authority may retain the entire fee payable under section 34 with respect to the application, and
- (b) sections 39 to 45 apply to the application as if the application were before the commission.

(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).

Chief executive officer may approve some applications

27 (1) The commission, by resolution, may establish criteria under which the following may be approved by the chief executive officer:

- (a) specified types of applications for exclusion, subdivision or non-farm use;
- (b) applications with respect to specified regions of British Columbia.

(2) The commission must put the criteria established under subsection (1) in writing and make them available for inspection during ordinary business hours.

(3) An application that meets the criteria established under subsection (1) may be approved by the chief executive officer on the terms that the chief executive officer may impose.

(4) If the chief executive officer considers that the application does not meet the criteria specified under subsection (1) or for any other reason does not wish to approve the application under subsection (3), the application must be referred to the commission for a decision.

(5) An approval of an application by the chief executive officer under subsection (3) is a decision of the commission for the purposes of this Act.

(6) The chief executive officer may not exercise a power that has been delegated to a local government, first nation government or an authority by an agreement entered into under section 26.

Application of sections 18 to 21 limited to land in agricultural land reserve

28 If the boundary of an agricultural land reserve divides a parcel of land, sections 18 to 21 apply only to that portion of the parcel that is designated as an agricultural land reserve.

Exclusion application by a local government or the commission

29 (1) 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

- (a) exclude land from an agricultural land reserve on terms the commission considers advisable, or
- (b) without excluding the land from an agricultural land reserve, grant permission for a non-farm use or subdivision in respect of the land that is the subject of the application, on any terms the commission considers advisable.

(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.

Exclusion application by owner

30 (1) An owner of land may apply to the commission to have their land excluded from an agricultural land reserve.

(2) On an application under subsection (1), the commission may do one of the following:

- (a) refuse permission to have land excluded from an agricultural land reserve;

(b) grant permission to have land excluded from an agricultural land reserve;

(c) permit a non-farm use or subdivision on the land.

(3) If the commission makes a decision under subsection (2) (b) or (c), it may impose terms it considers advisable.

(4) An application under this section, except an application from a first nation government, may not proceed unless authorized by a resolution of the local government if, on the date the application is made, the application

(a) applies to land that is zoned by bylaw to permit agricultural or farm use, or

(b) requires, in order to proceed, an amendment to an official settlement plan, an official community plan, an official development plan or a zoning bylaw.

(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) At the request of the applicant, the commission may waive the required notice and the requirement to have a meeting with the commission with respect to the application.

(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.

(6) The commission must deliver its written decision to the owner.

Effect of permission for non-farm use, subdivision or exclusion

31 It is a condition of permission granted under section 25 (1) (b) or (c), 29 (1) or 30 (2) (b) or (c) that the owner or occupier must comply with the applicable Acts, regulations, bylaws of the local government, laws of the first nation government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

Plan to be amended

32 If land is excluded under this Act from a land reserve plan, the commission must amend the land reserve plan and notify the appropriate local government or first nation government and registrar of titles.

Reconsideration of decisions

33 (1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that

- (a) evidence not available at the time of the original decision has become available,
- (b) all or part of the original decision was based on evidence that was in error or was false, or
- (c) a recommendation by a facilitator under section 13 relating to a dispute warrants a reconsideration of the original decision.

(2) The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the reconsideration.

(3) If a local government, a first nation government or an authority makes a decision in a matter delegated to it under an agreement entered into under section 26 (1), subsections (1) and (2) of this section apply as if the local government, first nation government or authority were the commission.

Application procedure

34 (1) In this section and in sections 35 and 36, "**application**" means an application for inclusion under section 17, for exclusion under section 29 or 30, for a non-farm use under section 20 or for subdivision under section 21.

(2) A local government or a first nation government that makes an application to the commission under section 29 must pay the prescribed application fee.

(3) A person who makes an application referred to in subsection (1) must do so by submitting the application and, except in the case of an application for inclusion under section 17, by paying the prescribed fee,

- (a) to the municipality, if the land described in the application is in a municipality,
- (b) to the regional district, if the land described in the application is in a regional district but not in a municipality or a local trust area,
- (c) to the Islands Trust, if the land described in the application is within a local trust area under the *Islands Trust Act*, and

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

(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.

(4) A local government or a first nation government that receives an application under subsection (3) must

(a) review the application, and

(b) subject to subsection (5), forward to the commission the application together with the comments and recommendations of the local government or the first nation government in respect of the application.

(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.

(6) A person who applies for a specific type of use prescribed by regulation as an application that must be filed directly with the commission must submit the application and pay the prescribed fee directly to the commission.

(7) In respect of an application to the commission referred to in subsection (6), the commission may request comments and information from the local government or first nation government for the area in which the land described in the application is located.

Application fees

35 (1) A local government or first nation government that receives application fees under section 34

(a) may retain a prescribed portion of the application fees, and

(b) must remit the balance of the application fees to the commission at the prescribed times.

(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.

(3) Subject to the approval of the commission, if the designated local government officer or the official designated for this purpose by the first nation government considers that a case of hardship exists, the officer may waive the application fee payable under section 34 (3).

(4) If the commission considers that a case of hardship exists, it may waive the application fee payable under section 34 (3).

(5) If, under section 34 (7), the commission requests comments or information from a local government or first nation government, the commission may pay a prescribed portion of the application fee to the local government or first nation government.

(6) This section applies despite the *Financial Administration Act*.

Notice of applications

36 (1) A person who makes an application referred to in section 34 must, in the prescribed circumstances,

- (a) give notice of the application in accordance with the regulations before submitting the application, and
- (b) provide evidence, satisfactory to the commission, that the applicant has complied with the notice requirements of the regulations.

(2) A decision of the commission with respect to an application is not invalidated merely because the applicant fails to comply with the notice requirements of the regulations, if the applicant made reasonable efforts to comply with those requirements.

No compensation for reserve land

37 Land is deemed not to be taken or injuriously affected by its designation as an agricultural land reserve.

Agreements

38 For the purposes of this Act, the commission may enter into agreements with the government, a local government, a first nation government, Canada or an authority.

Definition of "board" in sections 40 to 45

39 In sections 40 to 45, "**board**" means a commissioner appointed under the *Inquiry Act* for the purpose of inquiring into a matter described in section 40.

Reference of a matter to the board

40 (1) If the Lieutenant Governor in Council considers it to be in the Provincial interest, the Lieutenant Governor in Council by order, may refer to the board, for the purpose of a public hearing described in section 43, any of the following matters before the commission at the time of the order:

- (a) an application for inclusion under section 17, or for exclusion under section 29 (1) (a) or 30 (1);
- (b) an application for non-farm use or for subdivision under section 29 (1) (b);
- (c) if land is being considered by the commission on its own initiative, the issues relating to
 - (i) approval and designation under section 17 (1),
 - (ii) the exclusion from a reserve under section 29 (1) (a), or
 - (iii) the granting of the permission for non-farm use or for subdivision under section 29 (1) (b);
- (d) a reconsideration under section 33 of a decision of the commission made in respect of a matter referred to in paragraph (a), (b) or (c) of this subsection.

(2) The Lieutenant Governor in Council must specify written terms of reference for the purpose of a public hearing by the board pertaining to a matter referred to the board under this section.

(3) In determining whether it is in the Provincial interest to refer a matter to the board under subsection (1), the Lieutenant Governor in Council must take into account

- (a) the preservation of agricultural land as a scarce and important asset,
- (b) the potential long term consequences of failing to preserve agricultural land, and
- (c) the province-wide context of the matter.

(4) The Lieutenant Governor in Council may make an order under subsection (1) on the Lieutenant Governor in Council's own initiative or at the request of a local government, a first nation government or the commission.

Suspension of matters pending a decision under section 40

41 (1) For the purpose of giving the Lieutenant Governor in Council time to consider whether an order under section 40 is warranted, the minister may order that the matter be suspended for a period, to be specified in the order, that is not longer than 90 days.

(2) An order of the minister under subsection (1) has effect and is binding on the commission, and on any parties to a proceeding relating to a matter that is the subject of the order, until the expiry of the period specified in the order.

Effect of an order under section 40

42 (1) On the date of an order under section 40 referring a matter to the board, the commission's powers, duties and functions under this Act in relation to the matter are transferred to the Lieutenant

Governor in Council to the extent necessary to enable the Lieutenant Governor in Council to act in accordance with section 45.

(2) An order under section 40 is final and binding.

(3) If the Lieutenant Governor in Council makes an order under section 40 referring a matter to the board, the commission must, within 14 days of the date of the order,

- (a) prepare a written report with respect to the matter, and
- (b) submit the report to the board for the purpose of assisting the board in conducting a public hearing under section 43 in respect of the matter.

Public hearing

43 (1) On receiving the written terms of reference specified in conjunction with an order under section 40, the board must

- (a) prepare a discussion paper with respect to the matter that is the subject of the order, and
- (b) make the paper available to the public before holding a public hearing under this section.

(2) The discussion paper prepared under subsection (1) (a) must include the written report that the commission submitted to the board under section 42 (3) (b).

(3) For the purpose of providing the report and recommendations required under section 44, the board must conduct a public hearing to evaluate the probable agricultural, environmental, heritage, economic, cultural and social effects of any of the following if it is a matter that was before the commission at the time the order under section 40 made the referral:

- (a) an approval and a designation under section 17 (1);
- (b) a designation under section 17 (3);
- (c) an exclusion from a reserve under section 29 (1) (a) or 30 (1);
- (d) the granting or refusal of the permission referred to in section 29 (1) (b);
- (e) a decision under section 33 to confirm, reverse or vary a decision referred to in paragraph (a), (b), (c) or (d) of this subsection.

(4) The public hearing held under subsection (3) must be conducted in accordance with the terms of reference specified in conjunction with the order made under section 40.

(5) The board must hold at least one public hearing with respect to the matter in each of the following regions:

- (a) Interior;
- (b) Island;

- (c) Kootenay;
- (d) North;
- (e) Okanagan;
- (f) South Coastal.

Report and recommendations

44 (1) On conclusion of the public hearing under section 43, the board must submit to the Lieutenant Governor in Council

- (a) a written report in accordance with the terms of reference specified in conjunction with the order made under section 40, and
- (b) a summary of the evidence received and submissions made in the course of any public hearing held in accordance with the terms of reference.

(2) The report referred to in subsection (1) must include the board's recommendations to the Lieutenant Governor in Council for action under section 45.

(3) In making the recommendations referred to in subsection (2), the board must give weight to the following values in descending order of priority:

- (a) agricultural values, including the preservation of agricultural land and the promotion of agricultural purposes;
- (b) environmental and heritage values, but only if
 - (i) those values cannot be replaced or relocated to land other than agricultural land, or
 - (ii) giving weight to those values results in no net loss to the agricultural capabilities of the area;
- (c) economic, cultural and social values.

(4) The board must provide a copy of its report to the commission at the same time that the report is submitted to the Lieutenant Governor in Council under subsection (1).

(5) The commission may submit to the Lieutenant Governor in Council written comments on the report, but it must do so within 30 days of receiving a copy of the report under subsection (4).

(6) Within 10 days after submitting its report under subsection (1), the board must publish the report in the prescribed manner.

Lieutenant Governor in Council's decision

45 (1) On receiving the board's report under section 44 (1) and the commission's comments, if any, under section 44 (5), the Lieutenant Governor in Council, by order, may decide the outcome of the matter that is the subject of the order under section 40 by

- (a) granting or refusing to grant the approval, designation, exclusion or permission applied for, in the case of a matter described in section 40 (1) (a) or (b),
- (b) making or deciding not to make the approval, designation, exclusion or permission that was under consideration by the commission on its own initiative, in the case of a matter described in section 40 (1) (c), or
- (c) confirming, reversing or varying a decision referred to in section 40 (1) (d).

(2) Section 44 (3) applies to a decision made under subsection (1) of this section.

(3) The Lieutenant Governor in Council may attach conditions to an order made under this section.

(4) An order made under this section is final and binding.

Conflict with bylaws

46 (1) In this section, "**bylaw**" means

- (a) a bylaw, made by a local government, that adopts a regional growth strategy, an official settlement plan, an official community plan, an official development plan or a zoning bylaw,
- (b) any other bylaw respecting land use in a local government's jurisdiction made by a local government under any other enactment, and
- (c) a first nation government law respecting land use within the treaty settlement lands of the first nation government.

(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.

(3) Subject to subsection (4), nothing in this Act affects or impairs the validity of a local government bylaw or a first nation government law relating to the use of agricultural land in an agricultural land reserve.

(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) 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 by this Act, the regulations or an order of the commission, 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 requires the adoption of any further bylaw or law, the giving of any consent or approval or the making of any order.

(6) A local government bylaw or a first nation government law that provides restrictions on farm use of agricultural land additional to those provided by this Act and the regulations is not, for that reason alone, inconsistent with this Act and the regulations.

(7) This section applies only to local government bylaws or a first nation government laws made after August 26, 1994.

Consolidated revenue fund

47 The commission must pay as soon as practicable all money received by it, other than money received under an appropriation under a *Supply Act*, into the consolidated revenue fund.

Bonding or other security

48 The Lieutenant Governor in Council, the commission, a local government, a first nation government or an authority may require that an applicant under this Act whose application has been approved on terms, in order to ensure compliance with the terms, post security in the form of insurance, a bond or another prescribed form of security.

Inspections

49 (1) For the purposes of administering this Act or of ensuring compliance with this Act, the regulations or an order of the commission, a member of the commission or an official may do one or more of the following:

- (a) enter any land, other than a dwelling house;
- (b) make any surveys, analyses, inspections, examinations or soil tests that are necessary to determine any of the following:
 - (i) the current use of the land;
 - (ii) the suitability of the land for farm use;
 - (iii) the potential impact of proposed changes to the use of the land on land in an agricultural land reserve;
- (c) remove soil samples for the purposes of conducting the analyses and tests referred to in paragraph (b);

(d) make any inspection of records, things or activities reasonably related to the purpose of the inspection;

(e) make copies of any records or documents reasonably related to the purpose of the inspection.

(2) A person who hinders, obstructs, impedes or otherwise interferes with a person exercising a power under subsection (1) commits an offence.

Stop work order

50 If an official considers that a person is contravening or is about to contravene a provision of this Act or the regulations, the official, in accordance with the regulations, may order that

(a) the contravention cease,

(b) the contravention cease to the extent specified by the order, or

(c) the person not take any action that would result in a contravention.

Power to rescind or vary orders

51 The chief executive officer may rescind or vary any determination, decision or order made by the chief executive officer or an official under section 50, 52 or 54

(a) on new information being provided to the chief executive officer,

(b) if the chief executive officer determines that there were insufficient grounds for making the determination, decision or order, or

(c) if the chief executive officer considers that it would be in the best interests of the administration of this Act.

Determinations and remediation orders

52 (1) If the chief executive officer determines that a person has contravened this Act, the regulations or an order of the commission, the chief executive officer, in accordance with the regulations, may order the person to remedy the contravention by

(a) carrying out a requirement of this Act or the regulations that the person has failed to carry out, or

(b) repairing or mitigating damage caused to agricultural land by the contravention, including the removal of buildings or structures.

(2) If a person fails to comply with an order under subsection (1), the chief executive officer, in accordance with the regulations, may do one or more of the following:

- (a) in a written notice given to the person, restrict or prohibit the person from carrying out the work referred to in the order;
- (b) require the person to provide the security that the chief executive officer considers necessary and realize on that security;
- (c) carry out all necessary work.

(3) A person referred to in subsection (2) is liable to the commission for costs incurred by the commission under this section.

Order for compliance

53 (1) The commission may apply to the Supreme Court for an order under subsection (2) if the commission considers

- (a) that a person is not complying, or has not complied, with a determination, a decision or an order under section 50, 52 or 54 (1),
- (b) that a person is not complying with an order of the commission, or
- (c) that a present or future activity or use of agricultural land in an agricultural land reserve may contravene this Act, the regulations, an order of the commission or a determination, a decision or an order under section 50, 52 or 54 (1).

(2) On application by the commission under this section, the Supreme Court may make one or more of the following kinds of orders:

- (a) directing the person to comply with the determination, decision or order;
- (b) directing the person to cease violating the determination, decision or order;
- (c) restraining the person from violating the determination, decision or order;
- (d) if the person is a corporation, directing the directors and officers of the corporation to cause the corporation to comply with an order under this section.

Penalties levied by chief executive officer

54 (1) The chief executive officer, in accordance with the regulations, may levy a penalty up to the prescribed amount against a person who contravenes this Act, the regulations or the orders of the commission.

(2) The time limit for levying a penalty against a person under subsection (1) is 3 years after the facts on which the penalty is based first came to the knowledge of the chief executive officer.

Appeal

55 (1) A person who is the subject of a determination, a decision, an order or a penalty under section 50, 52 or 54 (1) may appeal the determination, decision, order or penalty to the commission by serving the commission with a notice of appeal.

(2) On an appeal under this section, the commission may

- (a) confirm or reverse the determination, decision, order or penalty, or
- (b) refer the matter, with or without directions, back to the person who made the initial determination, decision or order.

(3) The commission must give notice of an appeal to any person the commission considers is affected by the appeal.

(4) Repealed.

(5) For the purposes of an appeal under this section, sections 11 to 15, 17 to 21, 23 to 25, 31 (1) (a) to (e) and (g), (2) and (3), 32, 33, 35 to 37, 39, 40, 44, 48, 50 to 55, 57, 58, 60 (a) and (b) and 61 of the *Administrative Tribunals Act* apply to the commission.

Exclusive jurisdiction of commission

55.1 (1) The commission has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 55 and to make any order permitted to be made.

(2) Without limiting subsection (1), the commission has exclusive jurisdiction to hear and determine the following questions:

- (a) whether an official acted in accordance with the regulations in issuing an order under section 50;
- (b) whether the chief executive officer acted in accordance with the regulations in issuing a notice under section 52 (2) (a), issuing an order under section 52 (1), taking any action under section 52 (2) or levying a penalty under section 54 (1).

(3) A decision or order of the commission under this Act on a matter in respect of which the commission has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

Immunity protection for commission, its members and officers

55.2 (1) In this section, “decision maker” includes a commission member or other officer who makes a decision in relation to an appeal under section 55.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker or the commission because of anything done or omitted

(a) in the performance or intended performance of any duty under section 55, or

(b) in the exercise or intended exercise of any power under section 55.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Application of enforcement powers by local governments and authorities

56 (1) If, under an agreement under section 26, a local government, a first nation government or an authority acts in the place of the commission, sections 49 to 55 apply to

(c) the local government, first nation government or authority, and

(d) a person designated by the local government, first nation government or authority to exercise the powers under those sections.

(2) Despite section 43 of the *Provincial Court Act*, if a local government or a first nation government imposes a penalty under section 54 of this Act, the penalty is payable to and may be retained by the local government or first nation government.

Offences

57 (1) A person commits an offence and is liable on conviction to a fine not exceeding \$1 million or imprisonment for not more than 6 months, or to both, who contravenes the following:

(a) an order of the commission;

(b) section 20 (1);

(c) a covenant referred to in section 22;

(d) section 49 (2);

(e) a stop work order under section 50;

(f) a remediation order under section 52.

(2) The maximum fine under subsection (1) to which a person is liable on a second or subsequent conviction is double the amount set out in that section.

(3) A proceeding, conviction or penalty under this section does not relieve a person from a penalty under another section or from any other liability.

(4) A person commits an offence who

- (a) without lawful excuse intentionally interferes with,
- (b) without lawful excuse intentionally fails to comply with a lawful requirement of, or
- (c) intentionally makes a false statement or misleads or attempts to mislead,
- (a) the chief executive officer, a member of the commission, an official or an employee or a consultant of the commission appointed under section 8.

(5) If a corporation contravenes this Act or the regulations, a director or officer of it who authorized, permitted or acquiesced in the contravention also commits the contravention.

(6) Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

58 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) designating uses of land as farm use;
- (b) prescribing permitted uses and permitted types of subdivision for agricultural land, and specifying permitted uses that may or may not be prohibited by a local government enactment or a law of a first nation government;
- (c) exempting materials from the definition of "fill";
- (d) establishing different application fees for different types of applications and applications in different circumstances;
- (e) exempting classes of persons from payment of a prescribed application fee;
- (f) prescribing additional purposes for paragraph (a) of the definition of "community issue" in section 13 (1);
- (g) respecting the manner of holding hearings and meetings, obtaining public comment and prescribing notice requirements for applications, hearings and other matters, which regulations may be different for different categories of persons;
- (h) specifying non-farm uses that a local government, a first nation government, an authority, a board or another agency may permit on agricultural land for the purposes of section 18 (a);
- (i) prescribing exceptions to the prohibitions under section 19 respecting subdivision of land;
- (j) specifying non-farm uses for the purposes of section 20 and specifying circumstances in which removal of soil and the placement of fill are not to be considered non-farm uses;
- (k) respecting the terms of an agreement entered into under section 26;

- (l) prescribing who is an authority for the purposes of section 26 (1) and specifying the persons constituting a governing body of an authority for the purposes of section 26 (4);
 - (m) respecting the manner in which a local government or first nation government is required for the purposes of section 34 (4) to
 - (i) consider an application, and
 - (ii) advise the commission of an application received and a decision made on an application;
 - (n) prescribing a specific type of use for the purposes of section 34 (6);
 - (o) prescribing the portion of the application fee to be retained for the purposes of section 35 (1) (a), specifying the prescribed times for the purposes of section 35 (1) (b) or prescribing the portion to be paid to the local government or first nation government for the purposes of section 35 (5);
 - (p) prescribing circumstances in which notice of an application is required to be given under section 36;
 - (q) respecting the notice requirements for the purposes of section 36, including prescribing a form of notice and prescribing different notice requirements for different types of applications or different areas of British Columbia.
- (3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the publication of reports for the purposes of section 44 (6);
 - (b) respecting other forms of security for the purposes of section 48;
 - (c) respecting orders under sections 50 and 52;
 - (d) respecting penalties levied under section 54 (1);
 - (e) prescribing penalties for a contravention of this Act, the regulations or an order of the commission;
 - (f) establishing policies and procedures to be followed by the commission in conducting its affairs, performing its
 - (a) duties and functions and exercising its powers;
 - (g) prescribing procedures to facilitate dispute resolution under the Act;
 - (h) specifying the number of members that constitute a quorum of the commission or a panel;
 - (i) respecting the setting of boundaries of agricultural land reserves and the form, content, maintenance and correction of records of those boundaries.

Powers cumulative

59 The powers in this Act and the regulations enabling the commission, the chief executive officer and an official to make an order, to impose a fine or penalty, or to commence a proceeding may be exercised separately, concurrently or cumulatively and do not affect the powers of the government under this or any enactment.

Certificates of title subject to this Act

60 (1) In addition to the limitations set out in section 23 (2) of the *Land Title Act*, a certificate of title issued before June 29, 1973 for agricultural land is subject, by implication and without endorsement on the certificate of title, to this Act and the regulations governing the agricultural land reserve and farm use of the land.

(2) The registrar of titles must endorse on every indefeasible title to agricultural land issued after June 29, 1973 that the title may be affected by this Act.

Transitional

61 (1) In this section:

"former Act" means the *Land Reserve Commission Act*, S.B.C. 1999, c. 14, or the *Agricultural Land Reserve Act*, R.S.B.C. 1996, c. 10;

"Land Reserve Commission" means the Land Reserve Commission established under section 2 of the *Land Reserve Commission Act* as it read immediately before the coming into force of this section.

(2) All of the rights, property and assets and all of the debts, liabilities and obligations of the Land Reserve Commission are transferred to and vested in the Provincial Agricultural Land Commission.

(3) An application or a matter commenced under the former Act is continued as an application or matter under this Act.

(4) An application under section 3 of the *Soil Conservation Act*, R.S.B.C. 1996, c. 434, as it read immediately before the coming into force of this section is continued as an application for permission for non-farm use under this Act.

(5) The Provincial Agricultural Land Commission may take up and carry on to completion all proceedings or other matters commenced under any enactment that were, immediately before the coming into force of this section, before the Land Reserve Commission.

Sections Spent

62 to 90 [Consequential amendments and repeals. Spent. 2002-36-62 to 90.]

Commencement

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