

Elk Valley



Vault Binder: 360.1

File: P 121 105

Term August 1, 2010 to August 1, 2012

THIS AGREEMENT is dated for reference the 1st day of August, 2010.

BETWEEN:

PROVINCIAL AGRICULTURAL LAND COMMISSION
133 – 4940 Canada way
Burnaby, BC, V5G 4K6
(the "Commission")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF EAST KOOTENAY,
a Regional District pursuant to the *Local Government Act*, RSBC 1996, Chapter 323 and incorporated pursuant to the laws of the Province of British Columbia with a place of business at 19 - 24th Avenue South, Cranbrook BC V1C 3H8.
(the "RDEK")

OF THE SECOND PART

WHEREAS:

- A. It is the mandate of the *Commission* as an independent agency to preserve and protect agricultural land to meet the current and future needs of British Columbians.
- B. It is also the purpose of the *Commission* to encourage local governments to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.
- C. With the co-operation of the *RDEK* Board, the *Commission* has been successful in meeting its mandate with the *RDEK*.
- D. The *RDEK* recognizes the importance of preserving farmland through regulations incorporated in the Elk Valley Zoning Bylaw No. 829, 1990 ("Bylaw 829") and policy contained in the Elk Valley Agricultural Land Reserve Review Project, August 2009.
- E. The *RDEK* has a strong desire to streamline and improve the development review and approval process and is striving to increase local autonomy and responsibility to meet the provincial objective of preserving valuable agricultural lands within the context of local priorities.
- F. The *Commission* has agreed to delegate, pursuant to Section 26 of the Agricultural Land Commission Act (the "Act"), to the *RDEK* Board certain of its powers under Sections 19, 20, 21, 25, 26 and 56 of the *Act*.

NOW THEREFORE in consideration of the premises and the mutual conditions, covenants and agreements and other good and valuable considerations, the parties hereto agree as follows:

The *Commission* hereby delegates to the *RDEK* Board the *Commission's* powers to issue orders under Section 19 of the *Act* and to exercise the powers of the *Commission* to decide applications made under Section 25 of the *Act* with respect to those portions of the *RDEK* covered by *Bylaw 829*, subject to the following terms and conditions:

1. PRINCIPLES

- 1.1 The *RDEK* acknowledges that pursuant to Section 26 of the *Act*, a decision of the *RDEK* Board is a decision of the *Commission* for the purposes of the *Act* and

agrees that decisions it makes under this Agreement must be in keeping with the objectives of the *Act* (and regulations thereunder) which, in part, are to:

- (a) preserve agricultural land; and
 - (b) encourage farming on agricultural land in collaboration with other communities of interest.
- 1.2 The *RDEK* Board will only make decisions under this Agreement that are consistent with:
- (a) the objectives of the *Act* and regulations thereunder; and
 - (b) the provisions of *Bylaw 829* current at the time of the coming into effect of this Agreement, as approved by the *Commission*.
- 1.3 This Agreement shall not apply to provisions resulting from amendments to *Bylaw 829* made after the effective date of this Agreement unless approved by the *Commission*. (See Section 3.1 (c)).
- 1.4 Where there is an inconsistency between the *Act* and *Bylaw 829*, the *Act* must take precedence.

2. AREAS OF APPLICATION

- 2.1 This Agreement applies to land within the Agricultural Land Reserve ("ALR") in Electoral Area A of the *RDEK*. ("Application Area").
- 2.2 The *RDEK* will forward to the *Commission* a copy of *Bylaw 829* in effect at the date of the coming into effect of the Agreement.

3. RDEK BOARD EXERCISE OF POWERS

- 3.1 The *RDEK* Board will exercise its delegated powers under this Agreement as follows:
 - (a) only with respect to lands within the *Application Area*;
 - (b) consistent and in compliance with the *Commission's* policies. In this connection the *Commission* considers the uses listed under Section 1 of Schedule A to be consistent with the *Act*;
 - (c) if an application is inconsistent with *Bylaw 829* and the *RDEK* Board supports an amendment to *Bylaw 829* to accommodate the development, the proposed amendment must be approved by the *Commission* prior to the *RDEK* Board considering the application;
 - (d) the *RDEK* Board in making orders or rendering decisions will consider providing buffers with building setbacks and fencing for developing areas next to agricultural areas and along the *ALR* boundary to effect a decrease of the impact on adjacent agricultural activities, if appropriate;
 - (e) applications shall only be approved by the *RDEK* Board if the conditions laid down in Schedule A have been fulfilled;
 - (f) the *RDEK* Board may elect to refer any application under this Agreement to the *Commission* for a decision; and
 - (g) the *RDEK* Board shall refer to the *Commission* for a decision on any application where the *RDEK* is the applicant or the agent for the applicant.

4. NOTIFICATION

- 4.1 The *RDEK* must advise the *Commission* on a quarterly basis of all applications received that are subject to and considered under this Agreement. The advice relating to the *RDEK*'s decision on each application shall include:
- (a) the *RDEK*'s minutes, resolution and rationale for the decision;
 - (b) a copy of correspondence to the applicant containing the Board's decision;
 - (c) a copy of the staff report with respect to each application;
 - (d) a sketch showing the proposal; and
 - (e) a map showing the location of the property.
- 4.2 In the case of an application with respect to a subdivision, the *RDEK* will provide a copy of the approved plan (or other description) to the *Commission*.

5. APPLICATION FEES

- 5.1 All application fees submitted to the *RDEK* which, absent the Agreement, would have been forwarded to the *Commission* may be retained by the *RDEK*.
- 5.2 To assist the *Commission* in maintaining accurate financial records, the *RDEK* will provide the *Commission* with an accounting of the fees collected pursuant to this Agreement on an annual basis, by March 31st of the following year.

6. RESTRICTIVE COVENANTS

- 6.1 If a condition of a decision by the *RDEK* Board includes the requirement that a restrictive covenant be registered against a title, the restrictive covenant must be granted in favor of the *RDEK*. On an annual basis or at other such times as agreed by the parties, the *Commission* and the *RDEK* will review the status of and compliance by the grantor under such covenants.

7. ENFORCEMENT

- 7.1 Both parties will work co-operatively to monitor and enforce the *Act* and the regulations thereunder and the *RDEK* will investigate possible infractions related to non-authorized land uses within the areas of the *ALR* subject to this Agreement. This investigation will be on a complaint basis in conformity with the *RDEK*'s usual bylaw enforcement procedures.
- 7.2 In addition to enforcement procedures noted in Section 7.1, as per Section 56 of the *Act*, the *RDEK* is authorized to act in place of the *Commission* for the purposes of Sections 49, 50 and 52 to 55 of the *Act*.
- 7.3 The *RDEK* has responsibility for enforcing the terms and conditions it makes under this Agreement.
- 7.4 The *Commission* will provide technical resources to the *RDEK*, if needed and may provide reasonable financial support for legal costs if sufficient funds are available to the *Commission*.

8. MONITORING AND INFORMATION SHARING

- 8.1 The *Commission* and *RDEK* will keep statistics and information on all applications dealt with under this Agreement and each party will monitor the results and effects of decisions made under this Agreement. Both parties will share their findings under their respective monitoring programs on an annual basis or as otherwise mutually agreed. Both parties will work towards establishing an electronic link to the *Commission*'s database system.

8.2 Regarding the processing of applications pursuant to this Agreement, RDEK staff may request that Commission staff provide related background information as appropriate.

9. TRAINING

9.1 The Commission will provide training to RDEK staff and Board members on an on-going and as required basis at a mutually agreeable time and place to familiarize them with the Commission's and the RDEK's legal responsibilities and all orders, policies and procedures relating to the delegation of powers to the RDEK Board. Commission staff will be available during regular business hours to advise RDEK staff as needed.

10. APPLICATION AND PROVINCIAL INTEREST

10.1 The RDEK acknowledges that those Sections of the Act, providing for a referral to the "board" as defined in Section 39 of the Act of matters considered by the Lieutenant in Council to be in the "provincial interest", apply to any application considered by the board under this Agreement.

11. TRANSITION

11.1 An application received at the offices of the Commission or being processed by the Commission on or before the date of this Agreement shall be completed by the Commission. Any application received at the offices of the RDEK or being processed by the RDEK on or before the date of the termination of this Agreement shall be completed by the RDEK.

12. TERM

12.1 The term of this Agreement shall be two years commencing on the date first above written. The parties shall review the Agreement not later than 18 months from the date of this Agreement with a view to making adjustments as necessary and converting the Agreement into one that is open-ended with no fixed term.

12.2 Either party may terminate the Agreement on giving 90 days notice to the other party. Following the submission of the termination notice, the parties may choose to meet to discuss the matter. Further, with the mutual agreement of the parties, the matter may be referred to a dispute resolution facilitation process as per Section 13 of the Act.

Signed by the PROVINCIAL AGRICULTURAL LAND COMMISSION in the presence of:

Witness Signature

Robert Veeg
Witness Name

AUTHORIZED SIGNATORY

Name and Title

VICE CHAIR
KOOTENAY PANEL

The Corporate Seal of REGIONAL DISTRICT OF EAST KOOTENAY was hereunto affixed in the presence of:

Scott Manjak, Chair

Michael Sosnowski, Director – Electoral Area A

Lee-Ann Crane, CAO

C/S

SCHEDULE A

1. USES CONSIDERED BY THE COMMISSION TO BE CONSISTENT WITH THE ACT

1.1 The following uses as defined and permitted in *Bylaw 829*:

- (a) secondary suite within detached garages;
- (b) two family dwelling;
- (c) sawmills, shake mills and planer mills;
- (d) home occupation;
- (e) accessory uses as permitted in the Parks and Recreation Zone PG-2;
- (f) storage of fill authorized by a Temporary Commercial and Industrial Permit issued under Section 921 of the *Local Government Act*, subject to measures being taken to protect the soils on the property;
- (g) public utility use, limited to projects undertaken by the *RDEK*; and
- (h) telecommunications equipment, buildings and installations, as permitted in terms of BC Regulation 171/2002 provided that the defined area occupied by the equipment, buildings and installations does not exceed 185 m² for each parcel.

2. CRITERIA TO WHICH SUBDIVISION APPLICATIONS AND DECISIONS MUST COMPLY

2.1 All applications for subdivision within the RR-4, RR-8 and RR-60 zones shall include a report by a professional agrologist. Only those applications that are supported by such a report shall be approved. In addition, in Cokato, subdivision of properties divided by a road shall only be permitted if in compliance with the Fernie Area Land Use Strategy Policies 3.3.3. d) i and ii. Decisions relating to subdivisions for a relative in terms of Section 946 of the *Local Government Act* shall only be permitted where the following conditions have been met:

- (a) there is no negative impact on the agricultural potential of the parent parcel;
- (b) the subdivision for a relative is kept as small as possible having regard to health requirements and is located in an area which has the least impact on agriculture;
- (c) the subdivision complies with the requirements of *Bylaw 829*, other than with respect to the provisions relating to minimum lot sizes;
- (d) a statutory declaration has been provided prior to the issuance of an order that confirms the parcel is for a relative and that the parcel will not be sold or transferred for a period of 5 years unless required as part of an estate settlement or as required by a lending institution; or
- (e) the subdivision is in compliance with the *Commission's* Homesite Severance Policy.

3. REQUIREMENTS RELATING TO APPROVALS OF EXTRACTION OF SAND AND GRAVEL USES, AS PERMITTED IN TERMS OF *BYLAW 829*

3.1 Approvals of applications for sand and gravel extraction shall include appropriate conditions that:

- (a) ensure that top soil is stripped and stored;

- (b) provide for the reclamation of the soils to a level of capability and agricultural suitability that is not less than that existing before the extraction took place; and
- (c) require a Letter of Credit of sufficient value to cover the cost of reclamation.

4. USES EXCLUDED FROM THE DELEGATION AGREEMENT

4.1 The following uses are excluded from the delegation agreement, as defined in *Bylaw 829*:

- (a) rural retreat; and
- (b) sanitary landfill site.