



# REGIONAL DISTRICT OF EAST KOOTENAY

Vault Binder: \_\_\_\_\_  
File: P 121 401

Term: November 1, 2004 to October 31, 2006

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THIS AGREEMENT dated for reference the 1st day of October 2004.

**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 stated mandate of the Commission to promote local government bylaws, plans and policies, which support agriculture;
- C. With the co-operation of the Regional Board of the RDEK, the Commission has been successful in meeting its mandate with the RDEK;
- D. The RDEK recognizes the importance of protecting valuable farmland through policies incorporated in the Wasa – Ta Ta Creek – Skookumchuck – Sheep Creek Land Use Bylaw No. 1625;
- 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 Regional Board certain of its powers under sections 19, 20, 21, 25 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 Regional 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 the Wasa - Ta Ta Creek – Skookumchuck – Sheep Creek Land Use Bylaw No. 1625 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 Regional Board is a decision of the Commission for 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 and the use of the land in the ALR compatible with agricultural purposes.
- 1.2 The Regional Board will only make decisions under this agreement that are consistent with:
- (a) the objectives of the Act and regulations thereunder;
  - (b) the provisions of the Wasa – Ta Ta Creek – Skookumchuck – Sheep Creek Land Use Bylaw No. 1625 adopted after August 2, 2002 that have been deemed by the Commission to be consistent with the Act (“Approved Rural Land Use Bylaw”).
- 1.3 Where there is an inconsistency between the objects of the Act and the objects of the Approved Rural Land Use Bylaw, the object of the Act must take precedence.

## 2. AREAS OF APPLICATION

- 2.1 This agreement applies to those areas of land in the ALR that are within the plan area of the approved Wasa – Ta Ta Creek – Skookumchuck – Sheep Creek Land Use Bylaw No. 1625 (“Application Area”).
- 2.2 The RDEK will forward to the Commission a copy of amendments to the Approved Rural Land Use Bylaw following adoption by the Regional Board.

## 3. REGIONAL BOARD EXERCISE OF POWERS

- 3.1 The Regional 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;
  - (c) if the RDEK is of the opinion during the term of this agreement that other orders or policies would be reasonable for the Application Area, the RDEK may suggest such orders or proposals to the Commission for adoption and inclusion in Schedule A;
  - (d) if an application is inconsistent with the Approved Rural Land Use Bylaw and the Regional Board supports an amendment, the proposed amendment to the Approved Rural Land Use Bylaw must be approved by the Commission prior to the Regional Board approval of the application;
  - (e) the Regional 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;
  - (f) the Regional Board may elect to refer any application under this agreement to the Commission for a decision,
  - (g) the Regional Board shall refer to the Commission for a decision any application where the RDEK is the applicant or the agent for the applicant;
  - (h) The Regional Board shall not make any decision under Schedule A, Part 3.02(7) and shall refer any applications in terms of this provision of the Approved Rural Land Use Bylaw to the Commission for a decision.

#### **4. NOTIFICATION**

- 4.1 The RDEK must advise the Commission on a quarterly basis of all applications it received that are subject to and considered under this agreement, and the RDEK's decision on each application by way of a copy of the RDEK's resolution and a copy of correspondence to the applicant containing the Board's decision as well as a copy of the staff report with respect to each application.
- 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 a quarterly basis.

#### **6. RESTRICTIVE COVENANTS**

- 6.1 If a condition of decision by the Regional Board includes the requirement that a restrictive covenant be registered against a title, the restrictive covenant must be granted in favour 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 purposes of sections 49, 50 and 52 to 55 of the Act.
- 7.3 The RDEK must enforce the terms and conditions of decisions 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 Regional 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 powers to the Regional 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 Environmental Assessment Board 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 or the adoption of an approved official community plan by the Regional Board shall be completed by the Commission. Any application received at the offices of the RDEK or being processed by on or before the date of the termination of this agreement shall be completed by the RDEK.

12. TERM

12.1 The parties acknowledge that this agreement shall be for the term November 1, 2004 to October 31, 2006. To assist with the monitoring the parties commit to conducting an annual review and reporting of the activities associated with the agreement.

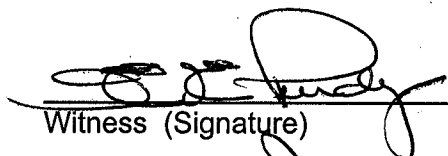
12.2 Within 90 days following a request by either party, the parties may choose to meet and discuss matters arising from the operation of the agreement or the annual report or any other matter related to the agreement.

12.3 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.

IN WITNESS WHEREOF the parties have executed this agreement and this agreement takes effect as of November 1, 2004.

PROVINCIAL AGRICULTURAL LAND COMMISSION

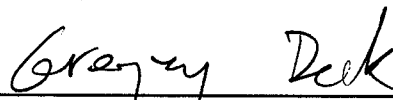
  
\_\_\_\_\_  
(Signature)


  
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Witness (Signature)

MONIKA MARSHALL COMMISSIONER  
(Name and Title) (VICE-CHAIR)

CARMEN C. FOLEY COMMISSIONER  
(Name and Title)

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

  
\_\_\_\_\_  
Gregory Deck, Chair )

  
\_\_\_\_\_  
Lee-Ann Crane, Chief Administrative Officer )

C/S

## **SCHEDULE A**

### **PART 1 INTERPRETATION**

To ensure consistency with Commission policy, the RDEK agrees to apply the following principles for the interpretation of Agricultural and ALR Policies contained in the Wasa – Ta Ta Creek – Skookumchuck – Sheep Creek Land Use Bylaw:

- 1.01 Decisions in terms of Section 3.02(6) shall be made in accordance with the Commission's Homesite Severance Policy #11.