

# AGRICULTURAL LAND COMMISSION/OIL AND GAS COMMISSION DELEGATION AGREEMENT

## BACKGROUND NOTE

January 2004

On January 21, 2004 the Agricultural Land Commission (ALC) and the Oil and Gas Commission (OGC) signed a delegation agreement under Section 26 of the *Agricultural Land Commission Act, 2002*. Section 26 of the Act allows the Agricultural Land Commission to exempt specified uses from requiring an application and delegates decision making authority for oil and gas non-farm uses on Agricultural Land Reserve lands to the Oil and Gas Commission. **The agreement does not come into effect until April 1, 2004.**

### A. CURRENT PROCESS

The Agricultural Land Commission (ALC) recognizes that oil and gas activities in the Agricultural Land Reserve (ALR) are temporary in nature and are an important part of the economic wellbeing of the province. Since 1976 the ALC has worked cooperatively with the oil and gas industry and ALR landowners, allowing oil and gas activities to proceed without an application, except in unique circumstances, provided the land is reclaimed to an equivalent agricultural capability. The current situation has three separate but related processes:

#### i. General Order:

Through the adoption of a specific policy document called a General Order, the Commission has allowed oil and gas development to proceed without an application if a number of conditions were satisfied. The General Order applies to Peace River Regional District and Fort Nelson-Liard (now Northern Rockies) Regional District.

The current General Order 293/95 sets out the following:

- Uses that are exempted from making an application to the ALC, including:
  - Geophysical exploration for oil and gas
  - Pipelines less than 5 kilometers in length
  - 2 wellsites per quarter section on new surface leases (and associated access roads) to a maximum area of 5 hectares
  - New well on an existing surface lease where the site has already been disturbed
- Conditions of the exemption including reporting requirements
- Reclamation standards

#### ii. Delegation to the CEO

The ALC continued to require applications for oil and gas non-farm uses beyond those identified in the General Order including:

- The 3rd or more wellsites
- Pipelines longer than 5 kilometers
- Combined oil and gas development beyond 5 hectares (12 acres) per quarter
- All battery, compressor, production or processing facilities
- Change in use of a surface lease
- All waste management facilities

However, since the majority of these were approved, in 1997 it was decided by the ALC that decisions on these applications should be delegated to the CEO. This streamlined the process and significantly reduced the time required for a decision.

### **iii. Decisions Made by the Agricultural Land Commission:**

All other uses not covered by the General Order and not delegated to the CEO were required to be submitted to the Commission for its consideration.

### **B. AMENDMENT TO AGRICULTURAL LAND COMMISSION ACT, 2002**

New legislation and regulation came into affect November 1, 2002. Section 26 of Act provides:

1. The ability for the ALC to delegate decision making powers to other authorities. Subsection (1) is changed to extend the ability of the Commission to delegate certain decision making to an 'authority'. 'Authority' is defined in the Act as "an agent of the government, a public body or public officer" with whom the Commission has an agreement.
2. Under subsection (2), the Commission would also have the power to use the delegation agreement with the 'authority' to exempt certain specified uses from the requirement of an application under the Act.

### **C. AGREEMENT WITH THE OIL AND GAS COMMISSION**

With the recent changes to ALC legislation along with governments general direction to streamline, deregulate and be more efficient, the ALC and the OGC negotiated an agreement under Section 26 of the Act. This agreement will replace the General Order and the delegation to the CEO. Additional exemptions have also been included in the agreement.

The OGC will make decisions under the *Agricultural Land Commission Act, 2002*. The OGC's decisions must be consistent with the purpose and intent of the *ALCA*. The authority given under this agreement is only for the oil and gas uses set out in the agreement and not for any other non-farm uses, subdivision, exclusion or inclusion of ALR lands.

The following outlines some of the main features of the agreement:

#### **i. Delegation of Oil and Gas Non-Farm Use Decisions**

Delegation of decision making authority for specific non-farm uses provides the authority to the OGC to make decisions based on an *ALCA* application for uses that include those that the ALC CEO is currently delegated to decide. These uses include:

- 4th stand alone well per quarter section
- Batteries, compressor stations, drilling & production waste handling, produced water & gas handling or processing facilities the combined area occupied by associated buildings & structures on the quarter section or equivalent area is less than 450 sq.m.
- Change in use of a surface lease to one of the above uses
- Electric powerline not adjacent to an access road.

#### **ii. Exemptions for Non-Farm Oil and Gas Uses**

OGC oversight of oil and gas uses exempted from the requirement to submit an application include:

- Geophysical exploration
- Pipelines and surface facilities directly related to operation of the pipeline (no length restriction as in General Order)
- Up to 3 stand alone wells per quarter section (1 more well per quarter than in current General Order as ALC allowed all 3<sup>rd</sup> wellsite applications in past)
- New well on an existing site
- Electric powerlines adjacent to an access road (this is new).

Both exempted uses and delegated decisions are conditional on a number of requirements including the consent of the surface landowner, a pre development site assessment and reclamation plan (Schedule A Report) by an individual with appropriate training and a post reclamation analysis (Schedule B Report) indicating the land has been reclaimed for agricultural use (immediate or future).

The OGC is also responsible for inspection, enforcement and compliance and will report annually to the ALC on all investigations and enforcement actions as well as a number of other items set out in the agreement.

An annual audit by an independent auditor will be conducted to ensure that the OGC carries out its responsibilities as set out in the delegation agreement and is making decisions while respecting the purpose and intent of the *Agricultural Land Commission Act*. The audit will be submitted to the ALC for use in reporting to the Minister responsible.

The agreement is for 2 years with a termination clause by either party with 3 months notice.

### **iii. Agricultural Land Commission Applications**

The ALC will continue to receive applications under Section 20(3) of the ALC Act for the following:

- 5th or greater stand alone well per quarter section
- Batteries, compressor stations, drilling & production waste handling, produced water & gas handling or processing facilities the combined area occupied by associated buildings & structures on the ¼ section or equivalent area is greater than 450 sq.m.
- Change in use of a surface lease for the above uses
- Commercial waste handling & disposal proposals (including deep well disposal projects)
- Other facilities not exclusively related to oil and gas production, including material and equipment storage.

These applications will be submitted following the regular process for all non-farm use applications via the local government.

### **D. BENEFITS OF THE AGREEMENT WITH THE OIL AND GAS COMMISSION**

- Audit
  - ALC ability to perform annual audits in the past very limited
  - Annual audit by independent auditor part of agreement & report provided to ALC
  - Audit used to monitor agreement and ensure terms are being met
- One stop shop
  - Reduce overlap; more efficient delivery of services
  - Reduce paperwork
  - Government goal to deregulate and streamline
- Better oversight by Oil and Gas Commission
  - ALC office and staff located in Burnaby
  - OGC office and staff located in Fort St. John; closer to major area of oil and gas development
  - OGC has regular program & staff designated for on site inspections & investigations
  - OGC has qualified professional staff that work on a regular basis with oil and gas industry, consultants, reclamation companies and landowners
  - Quicker response to enquiry's, concerns or requests as OGC office & staff closer to oil and gas development area and all information held in a single location
- Not substantially different than the current process
  - Same legislation and guidelines as ALC
  - Reclamation standards and reporting requirements generally the same
  - Application information the same