



Agricultural Land Commission

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December 3, 2008

Reply to the attention of Tony Pellett

Ministry of Transportation and Infrastructure
Gateway Program
2400 - 4710 Kingsway
BURNABY BC V5H 4M2

Attention: Ron Lepage, Senior Project Manager – SFPR

Re: Application # O-38351 (South Fraser Perimeter Road)
Your File number: 42000-40/11905A

The Provincial Agricultural Land Commission (the "Commission") has completed its review of the above-noted application, received July 28, 2008 and of the binder of Supplementary Materials which you hand-delivered to the Commission September 30, 2008.

Attached are the minutes of Resolution #742/2008 detailing the Commission's decision as it relates specifically to the above noted application and generally to other Ministry of Transportation and Infrastructure projects and initiatives.

Also attached is a copy of the draft map entitled SFPR – Proposed Agricultural Enhancements, which formed part of the Supplementary Materials and which identifies some of the undertakings to which the minutes refer.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a white background.

Erik Karlsen, Chair

Enclosure: minutes and map

cc: Corporation of Delta

TP/



A meeting was held by the Provincial Agricultural Land Commission on November 18, 2008 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, BC.

PRESENT:	Erik Karlsen	ALC Chair
	Sylvia Pranger	Chair, South Coast Panel
	Michael Bose	Commissioner
	John Tomlinson	Commissioner
	Tony Pellett	Staff
	Ron Wallace	Staff

FOR CONSIDERATION

Application: #O-38351, received July 28, 2008

Applicant: Ministry of Transportation & Infrastructure (Gateway Program)

Proposal: To use approximately 90 ha of land within the Agricultural Land Reserve (ALR) for the construction of the South Fraser Perimeter Road (SFPR).
The proposed SFPR is a new 4-lane 40 kilometre long highway south of the Fraser River within the City of Surrey and the Corporation of Delta.
The portion of the proposed SFPR affecting the ALR is entirely in Delta.

Properties: The proposed alignment affects 30 properties in the ALR.

THE GATEWAY PROGRAM

In October 2005, the Government of Canada introduced the *Pacific Gateway Act* and announced that as part of the Pacific Gateway Strategy it would also contribute to the environmental assessment of the proposed South Fraser Perimeter Road. “While the federal government is not committing to fund the project at this time, it will support necessary environmental work and will continue working with the Province of British Columbia. Once this is complete, it could be a candidate for further funding.”

In January 2006, the Province of British Columbia launched the Gateway Transportation Program in conjunction with the Pacific Gateway Strategy, in response to the impact of growing regional congestion, and to improve the movement of people, goods and transit throughout Metro Vancouver. Gateway roads and bridge improvements are proposed to complement other regional road and transit improvements already planned or underway. These proposed improvements will help create a comprehensive, effective transportation network that supports improved movement of people and goods, facilitates economic growth, increases transportation choice and provides better connections to designated population growth areas.

The SFPR will extend from Deltaport Way in southwest Delta to 176th Street in Surrey, with connections to Highway 1, 15, 17, 91, 99 and to TransLink’s new Golden Ears Bridge connector, which is currently under construction.

According to Gateway the route will take a significant step toward completing Metro Vancouver's network of major roads which will benefit commuters, the trucking industry, and tourists accessing borders, the Tsawwassen ferry terminal and BC's interior. The SFPR will offer goods movers an efficient transportation corridor, while helping to reduce the volume of regional traffic and trucks on arterial and community streets, improving quality of life for residents and local businesses. In the meantime congestion in Delta and Surrey communities and highways is increasing every year, with growing impacts to residents, the environment and the economy.

Gateway believes the SFPR will provide significant regional and local benefits including:

- reduced truck traffic and noise in our communities
- improved movement of people and goods
- reduced east-west travel times
- improved connections to major trade gateways
- improved access for emergency vehicles and
- improved safety and reliability

MEETINGS

By letter dated September 4, 2008, the Commission contacted persons owning farmland affected by the proposed SFPR and invited them to a September 11, 2008 meeting to express their views regarding the proposal. Where their land was farmed by tenants or lessees, the owners were encouraged to invite those persons to the meeting. The Commission also asked the Delta Farmers' Institute (DFI) to alert the broader farming community to a second meeting to be held immediately after the first meeting.

The first meeting commenced at 5:10 p.m. in the Delta Town & Country Inn. Attending:

- Erik Karlsen, ALC Chair
- Sylvia Pranger, ALC Vice Chair and Chair of the South Coast Panel
- Mike Bose, ALC Commissioner
- John Tomlinson, ALC Commissioner
- Tony Pellett, ALC Staff
- Kip Gaudry, Planning Director – Corporation of Delta
- Approximately 30 farmers
- Members of the Gateway team were present as observers

The farmers attending represented approximately 20 of the affected farms. Thirteen farmers or their representatives addressed the meeting, expressing concerns regarding the loss of critical farm mass and the need for more communication with Gateway and Commission officials. Two farmers expressed hope that the new irrigation system proposed by Gateway would proceed in a way which would reduce salt intrusion.

The second meeting at 7:10 p.m. was attended by approximately 40 persons. Gateway and Corporation of Delta representatives were in attendance. DFI administrator Robert Butler and current DFI president John Savage each spoke, as did 6 members of the farming community. Concerns were expressed that alternative alignments had not been considered seriously enough. There was a consensus that the proposed irrigation system would provide a major benefit to most farmers, but that the valuable benefit provided should not be used as an excuse to avoid dealing fairly with the most directly affected farms.

On October 1, 2008, the Commission held a meeting in Burnaby with Gateway officials to discuss the application. DFI administrator Robert Butler accepted the Commission's invitation to attend. Gateway officials explained the background to the current application, including the alternative routings which had been explored and the harmonized environmental assessment process which led to moving the alignment farther west than would have been necessary if preservation of the integrity of Burns Bog had not been afforded such a high priority by federal and provincial policy commitments.

In response to ongoing concerns about the agricultural impacts of the alignment on the west side of Crescent Slough, the Commission sought additional information regarding the environmental interests that resulted in Gateway choosing this alignment (discussed later in this decision).

ACKNOWLEDGING THE PROVINCIAL TRANSPORTATION INITIATIVE

The Commission acknowledged the Province's broader-based transportation initiative and referred to past decisions for guidance.

Inland Island Highway – Vancouver Island

This major infrastructure project involved the construction of a multi-lane expressway on the east side of Vancouver Island from the Greater Victoria area extending to Campbell River. Construction of this significant transportation corridor began in the early 1990s and continued for most of the decade.

Given that the majority of the ALR on Vancouver Island is situated on the east side, construction of the highway impacted farmlands. While the Commission of the day could have compelled the location of the road to be confined to non-ALR lands, it chose to entertain the use of some agricultural lands in deference to the provincial benefits of improved transportation on the Island. In this case the Commission opted to work with the Ministry of Transportation (Inland Island Highway Project Team) to minimize the use of ALR lands and to mitigate impacts where ALR land was used.

Border Infrastructure Program

The Border Infrastructure Fund was designed to channel federal funds into transportation infrastructure associated with key traffic movements to and from the United States border, including interconnections between Lower Mainland crossings.

The following projects that involved substantial amounts of ALR land included:

- widening Highway 10 in Surrey (Scott Road to Cloverdale)
- widening Highway 15 in Surrey (32nd Avenue to Highway 1)

Unlike the Inland Island Highway project which proposed for the most part an entirely new transportation corridor, the Border Infrastructure Program proposed to widen and upgrade existing corridors.

In a manner similar to the consideration of the Inland Island Highway project the Commission recognized and accepted the provincial and federal objectives associated with the projects and once again sought to minimize the use of ALR lands and to mitigate impacts where ALR land was used.

The project was initiated in 2004 and is ongoing.

The Commission acknowledged that these are just two of many such projects considered throughout the province over the years. Nonetheless they are indicative of the Commission's objective consideration of provincial/federal initiatives intended to provide provincial and regional benefits to the citizens of British Columbia. This is not to be construed as abdicating the Commission's responsibility but rather recognizing that on occasion there are significant non-agricultural values that must be considered and weighed against its mandate.

DISCUSSION

The Commission reviewed the earlier response to a 2006 submission from Gateway showing optional alignments south of Ladner Trunk Road and asking whether the Commission could identify potential major obstacles to subsequent approvals. Both options continued north from Ladner Trunk Road in close proximity to the 72nd Street right of way alignment west of Burns Bog.

On March 15, 2006 the Commission passed Resolution #107/2006 that included the following excerpt:

THAT the Gateway Program and the Environmental Assessment Office be advised that, based on the current proposal and the advice that refinements are being examined with a view to reducing agricultural problems, the Commission has not identified any specific features which would prevent conditional approval of an application provided that

- 1) adequate mitigation is provided in response to farm development or operational problems arising from the construction or operation of the SFPR through the farm area, and*
- 2) the proposed alienation of significant areas of prime farmland is mitigated by a substantial enhancement to agriculture in the region of the SFPR.*

On July 25, 2008 the Commission was advised that the Ministry of Transportation and Infrastructure had received an environmental assessment certificate (EA) for the SFPR project. In addition to the EA, the project also triggered an environmental assessment as a screening under the Canadian Environmental Assessment Act. The British Columbia Environmental Assessment Office (EAO) and federal agencies undertook a harmonized environmental assessment process in accordance with the Canada/British Columbia Agreement for Environmental Assessment Cooperation. The EAO concluded that effects from the project will be within acceptable levels, subject to implementation of mitigation measures. The mitigation measure identified by the EAO that is inconsistent with Commission Resolution #107/2006 and has significant agricultural implications is:

Ensure the design, construction and operation of the project complement long-term management objectives of the Burns Bog Ecological Conservation Area.

In exploring this matter further, the Commission found detailed reasons in the 93 page Technical Appendix, Environment Canada Comments on South Fraser Perimeter Road Environmental Assessment, 19 November 2007 for protecting the Burns Bog southwest lagg zone from highway development and operation. This report is summarized in a letter with the same date, which conveys the report to the Director, Pacific and Yukon Region, Canadian Environmental Assessment Agency and the A/Director, Highways and Borders Surface Infrastructure Programs, Programs Group, Department of Transportation (in Ottawa). In this letter the A/Pacific and Yukon Director, Environmental Protection Operations closed with the following sentence:

Environment Canada concludes that the management objectives for restoration of Burns Bog, to which the Province of BC, GVRD and Corporation of Delta committed to Canada in the Conservation Covenant, and further articulated in the Burns Bog Management Plan, are likely not attainable should the project proceed as proposed.

This conclusion was carried forward through to the completion of the harmonized environmental assessment, in effect compelling Gateway to shift the previously proposed alignment from being in close proximity to the 72nd Street right-of-way to prime agricultural land west of Crescent Slough

Still having very serious concerns about the loss of prime agricultural land associated with this re-alignment, the Commission explored this matter further to determine the land use interactions among agricultural, environmental and transportation interests, particularly in relation to the establishment of the ALR in 1973. The Commission noted that this application is based on over 45 years of planning and decision-making by national, provincial, regional and local levels of governments and their agencies. These planning reviews and decisions touch on the following:

- the need for the SFPR can be traced back to decisions in the 1960s to build a port at Roberts Bank;
- the protection of the Burns Bog ecosystem can be traced back to the designation of this area for conservation in a 1963 regional planning strategy and a 1966 Official Regional Plan;
- coincidental to the Gateway project, the federal, provincial and local governments jointly purchased and committed to conserving the Burns Bog area and the naturally functioning integrity of its ecosystems.

Although the Commission deeply regrets that suitable highway alignment alternatives to the use of prime agricultural land were found not to be acceptable from transportation and environmental perspectives, the Commission acknowledges that in-depth assessments have been done and due public processes have been followed in reaching this outcome.

This being said, the Commission remains absolutely committed to ensuring that Gateway undertakes the commitments summarized in the application's "Summary of Agricultural Impacts and Mitigation/ Compensation Commitments", "Agricultural Enhancement Strategy" and "EA Table of Agricultural Commitments and Assurances" (the "Commitments") as well as any other measures necessary to mitigate the impact on those farmers directly affected by the relocation of the alignment west of 72nd Street. The Commission intends to ensure that the agricultural productivity potential of the majority of the remaining ALR lands in Delta is substantially enhanced to offset the loss of agricultural land as a result of the SFPR.

IT WAS

MOVED BY: Commissioner Tomlinson

SECONDED BY: Commissioner Pranger

THAT the revised SFPR alignment be approved;

AND THAT the Ministry of Transportation and Infrastructure must undertake the Commitments and take any other measures necessary to mitigate the impact on those farmers directly affected by the relocation of the alignment west of 72nd Street;

AND THAT within the scope of this application, as part of this approval and with regard to mitigating the impact on those farmers directly affected by the relocation of the alignment west of 72nd Street, the Commission will consider approving agriculturally-focused subdivisions intent on relocating the affected farmers or providing a comparable land base elsewhere in Delta on which to continue farming operations that would have otherwise continued had it not been for the re-alignment west of 72nd Street, such subdivisions to include consideration of the 20 October 2008 proposal by Campbell Froh May & Rice LLP on behalf of Martiann Holsteins Ltd. to maintain its land base by acquisition of a portion of a parcel of ALR land elsewhere on Crescent Island;

AND THAT all agricultural quality soils within the project footprint must be salvaged and relocated either within the affected parcel or to other ALR lands;

AND THAT the Commitments as well as mitigation measures for those farmers directly affected by the relocation of the alignment west of 72nd Street are to be overseen by a Professional Agrologist specializing in soils, who will also be responsible for overseeing the agriculturally suitable relocation of all agricultural quality soil;

AND THAT prior to construction the Professional Agrologist must submit for review and approval a monitoring and reporting plan including any suggestions that may more properly facilitate his/her effectiveness to ensure that the Ministry of Transportation and Infrastructure successfully implements its commitments to agriculture;

AND THAT the approval is contingent on the Ministry of Transportation and Infrastructure entering into a memorandum of understanding specific to the SFPR that will insure the Ministry (not its contractors) is responsible to undertake and deliver on the Commitments as well as the mitigation measures to address those farmers directly affected by the relocation of the alignment west of 72nd Street;

AND THAT the memorandum of understanding must also provide that the Ministry of Transportation and Infrastructure will undertake the following:

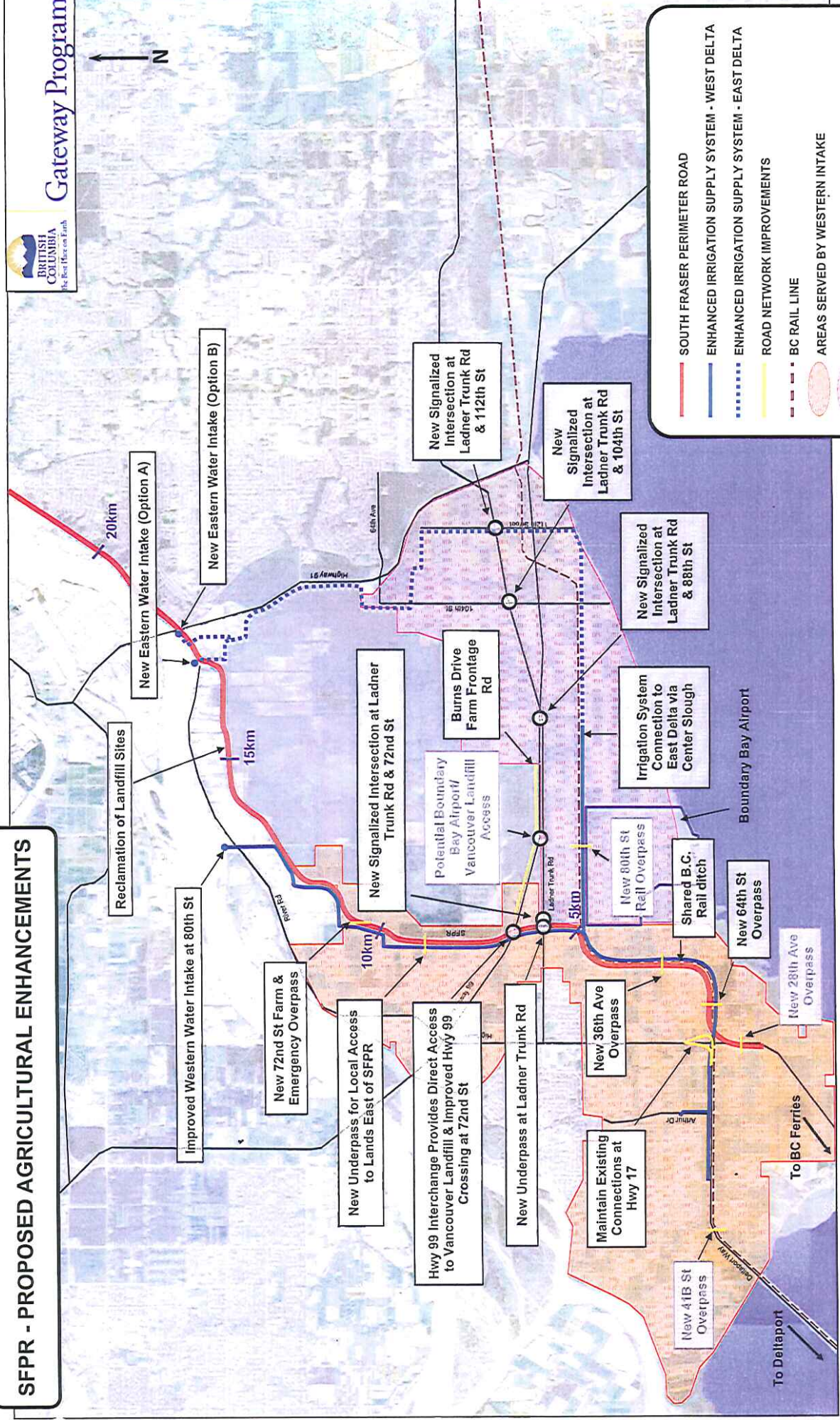
- ensure that the irrigation and drainage systems will be constructed and operated in support of agricultural production, not for the creation and management of fish and wildlife habitat, and that the management of these systems for agriculture will not be impeded by non-agricultural considerations;
- use intake option B to avoid the perception that irrigation water used on crops could be contaminated by overflows from the Annacis Island sewage treatment plant;
- ensure that the irrigation and drainage systems fully accommodate the special water management needs of cranberry farms not only for existing cranberry operations but also for lands with cranberry potential near Highway 91;
- arrange with the Corporation of Delta an operation and maintenance commitment for the constructed irrigation and drainage systems; and
- design, develop and manage this irrigation project and associated stormwater management systems as a best practices model to help guide others in the restoration of constructed irrigation and stormwater management systems in the lower Fraser River valley and delta areas;

AND THAT as a further condition of its decision with respect to the SFPR, the Commission has noted the high standards of agricultural impact assessment undertaken for this project and the approach taken to mitigate site specific impacts on agricultural land and farm operations. The Commission calls on the Ministry of Transportation and Infrastructure to enter into a memorandum of understanding with the Commission, committing the Ministry to:

- apply similar standards to its highway design, construction and maintenance in the ALR throughout the Province,
- through its contracts, and contract management as well as through such compliance measures as education, monitoring and enforcement, require its contractors to avoid the unlawful removal of soil or deposit of fill on agricultural lands throughout the Province, and
- require the Ministry to identify areas in the ALR that are or have been subject to sand and gravel extraction or the deposit of materials associated with Provincial highway construction and maintenance and to take responsibility for reclaiming these lands to agriculturally productive soil conditions.

AND FINALLY this decision does not relieve the proponent of the responsibility to comply with applicable Acts, regulations, decisions and orders of any person or body having jurisdiction over the land under an enactment.

CARRIED
Resolution #742/2008



LEGEND

- SOUTH FRASER PERIMETER ROAD
- ENHANCED IRRIGATION SUPPLY SYSTEM - WEST DELTA
- ENHANCED IRRIGATION SUPPLY SYSTEM - EAST DELTA
- ROAD NETWORK IMPROVEMENTS
- BC RAIL LINE
- AREAS SERVED BY WESTERN INTAKE
- AREA SERVED BY EASTERN INTAKE

The agricultural enhancement strategy will provide new and significant infrastructure to help improve the productivity of farmland in Delta, particularly field-based agriculture. This map illustrates the locations of the enhancements. See also *Agricultural Enhancements Strategy Summary* (April 2008) for additional information.

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