PROVINCIAL AGRICULTURAL LAND COMMISSION

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August 11, 2025

ALC File: 69827

Jesse Patterson
Ministry of Water, Land, and Resource Stewardship
Delivered by e-mail

Dear Jesse Patterson:

Re: Reasons for Decision - ALC Application 69827

Please find attached the Reasons for Decision of the Executive Committee for the above noted application (Resolution #530/2025). As the agent, it is your responsibility to notify the applicants accordingly.

Under section 33 of the *Agricultural Land Commission Act*, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
  - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or
  - Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per ALC Policy P-08: Request for Reconsideration.

Please refer to ALC Information Bulletin 08 – Request for Reconsideration for more information.

Please direct further correspondence with respect to this application to ALC.Island@gov.bc.ca

Yours truly,

Nicole Mak, Regional Planner

Enclosure: Reasons for Decision (Resolution #530/2025)

cc: Cowichan Valley Regional District (File: ALR23D01) Attention: Jaime Dubyna

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Agricultural Land Commission File 69827

Reasons for Decision of the Executive Committee

Non-Farm Use Application Submitted Under s. 20(2) of the *Agricultural Land Commission Act*

Applicants:	The Nature Trust of British Columbia Ducks Unlimited Canada
Agent:	Jesse Patterson, Ministry of Water, Land and Resource Stewardship
Properties:	**Property 1:** Parcel Identifier: 002-032-783 Legal Description: Block 2 (DD42679I) of Section 10 Range 2 Cowichan District Plan 1725 Civic: 2279 Cowichan Bay Road, Cowichan Bay Area: 15.8 ha (entirely within the ALR) **Property 2:** Parcel Identifier: 002-032-767 Legal Description: Lot 1 Block 4 Section 9 Ranges 2 and 3 Cowichan District Plan 1725 Civic: 2279 Cowichan Bay Road, Cowichan Bay Area: 35.1 ha (29.7 ha within the ALR)

Executive Committee:	Jennifer Dyson, Chair
	Ione Smith
	Janice Tapp
	Jerry Thibeault

OVERVIEW

[1] The Properties are located in the Cowichan estuary and are partially within the Agricultural Land Reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* ("ALCA"). The Properties are owned by Nature Trust of British Columbia (the "Nature Trust of BC") and Nature Trust of British Columbia in trust for Ducks Unlimited Canada. The Ministry of Water, Land and Resource Stewardship is the current leaseholder of the Properties.

[2] The Commission understands that Nature Trust of BC is "leading an initiative to help restore natural processes in the south Cowichan Estuary through removal of barriers to estuarine marsh development" as set out in the Cowichan Estuary Marsh Restoration Project: Assessment of Physical Processes and Restoration Opportunities prepared by Northwest Hydraulic Consultants Ltd. ("NHC") in March 2022.

[3] Between 2021 and 2023, the Nature Trust of BC also commissioned detailed assessments of the Dinsdale Dike (Dike 49) and Koksilah River Dike (Dike 88), which are located within the Cowichan estuary. Dinsdale Dike is a dike located along the eastern property line of Property 1 and along the eastern and southern property line of Property 2. Dinsdale Dike is approximately 1,700 m in length, approximately 450 m of which is within the ALR. Koksilah River Dike is a dike that is made up of Lochmanetz Road and a private unnamed road. Koksilah River Dike is not located on the Properties nor is it directly adjacent to the Properties.

[4] The Nature Trust of BC and Ducks Unlimited Canada are applying to the Agricultural Land Commission (the "Commission" or "ALC") under s. 20(2) of the ALCA to remove the ALR portion of Dinsdale Dike (approximately 450 m) (the "Proposal"). The remainder of Dinsdale Dike, which is located outside of the ALR, is intended to also be removed (See Schedule A). As a result of the removal of the ALR portion of Dinsdale Dike, approximately 8,000 m^3 of dike material (fill) would be removed and relocated to the non-ALR portion of Property 2.

[5] According to the Application, the removal of Dinsdale Dike is intended to restore estuary habitat for fish and wildlife conservation, and will be used to support Indigenous forms of agriculture (traditional foods and medicinal plants) that grow in estuarine environments in partnership with Cowichan Tribes (the "Project").

[6] The Agent has indicated that Nature Trust of BC and Ducks Unlimited Canada's intention is to remove the non-ALR portion of Dinsdale Dike regardless of the Commission's decision on removal of the ALR portion of Dinsdale Dike. Legal counsel for Nature Trust BC submits that "refusing the Application would achieve little" because the ALC has "no jurisdiction to regulate or prohibit the decommissioning" of the 74% of the 1,700 m Dike that is outside the ALR. The Commission makes no findings in this decision on whether this would constitute a contravention of the ALCA given any impact this may have on the ALR. That would be a matter for compliance and enforcement officials at the ALC to consider should they

wish to do so. Certainly, and in any event, on this application, the Executive Committee is not compelled to approve removal of the ALR portion of the Dinsdale Dike based on Nature Trust of BC and Ducks Unlimited Canada's stated intention to remove the non-ALR portion of Dinsdale Dike. The Executive Committee will consider the effect that the applied-for removal of the ALR portion of the Dinsdale Dike may have on the Properties, and consider as well whether, if the stated intention of Nature Trust of BC and Ducks Unlimited Canada to remove the non-ALR portion of Dinsdale Dike were implemented, refusal of the present application in respect of the ALR portion of the dike would make any incremental difference to the capability and use of the Properties for agriculture.

BACKGROUND

[7] Nature Trust of BC and Ducks Unlimited Canada purchased the Properties in 1990. The Application states that between 1990 and October 2023, the majority of both Properties (~13 ha of Property 1 and ~32 ha of Property 2) were leased to various local dairy farms for growing corn and forage crops. Since the lease to local dairy farms ended, representatives of Nature Trust of BC explained that they continue to make standing crop on the Properties available for harvest as the transition to estuary habitat may take between five to ten years. Currently, approximately 1.8 ha (4.5 ac) of the Properties is used for an

Indigenous plant nursery established at the highest point of the Properties.

[8] Between 2021 and 2023, Nature Trust of BC commissioned reports on Dinsdale Dike and Koksilah River Dike to understand opportunities for habitat restoration work and included engineering and modelling review of the physical processes occurring in the Cowichan and Koksilah River Estuary. The Commission received four reports prepared by Northwest Hydraulic Consultants Ltd. (the "NHC Reports").

[9] The Application submits that, due to a lack of investment and maintenance, and to sea level rise, Dinsdale Dike and Koksilah River Dike no longer provide adequate flood protection for 10-year or 200-year flood events, do not meet the provincial standards for flood protection, are subject to overtopping, and provide limited erosion protection. The Executive Committee understands that such flood events may result in short term event-specific salt water inundation of the Properties. The Application further submits that during peak flood events, Dinsdale Dike creates a reservoir effect whereby fresh water from the river cannot drain into the estuary. The Executive Committee understands that such flood events may result in short term event-specific fresh water inundation of the Properties.

[10] The NHC Reports explain that removal of the Dinsdale Dike, in part or in whole, will reduce the "maximum flood depths in the estuary through improved flow conveyance" which reduces the short term event-specific

salt water inundation and fresh water inundation on the Properties; however, the NHC Reports also explain that removal of Dinsdale Dike, in part or in whole, will result in direct exposure of the Properties to incoming diurnal tides and flows. The Executive Committee understands that tides and flows may result in daily and consistent salt water inundation of the Properties.

[11] The NHC Reports explain that wave exposure drives landscape (geomorphic) changes and flooding in coastal areas and uses wave height model to understand the most frequent waves that may impact the Properties during storm events under different scenarios. The NHC Reports note that removal of the Dinsdale Dike as a whole will increase wave height along the edge of the Properties where the Dinsdale Dike is removed and the areas adjacent to where the Dinsdale Dike is removed. In comparison, removal only of the non-ALR portion of Dinsdale Dike results in increased wave height only along the edge of the Properties where the non-ALR portion of Dinsdale Dike is removed and areas adjacent to where the non-ALR portion of Dinsdale Dike is removed. The removal of only the non-ALR portion of Dinsdale Dike results in less area being impacted by increased wave height than if the ALR portion were also removed. The Executive Committee concludes that less of the Properties will be impacted by increased wave heights if the non-ALR portion of Dinsdale Dike is the only portion removed.

[12] The NHC Reports explain that with the full removal of Dinsdale Dike, water velocities will increase which may cause erosion along the marsh fringe or cause widening of distributary channels that are formed. Removal only of the non-ALR portion of Dinsdale Dike results in lower velocities compared to the full removal of Dinsdale Dike. The Executive Committee concludes that removing only the non-ALR portion of Dinsdale Dike may result in less potential erosion of the Properties.

[13] According to a representative of Nature Trust of BC, on October 9, 2022 and March 17, 2023, Nature Trust of BC and the West Coast Conservation Land Management Program ("WCCLMP") applied to the Inspector of Dikes for approval under the *Dike Maintenance Act* to decommission Dinsdale Dike and upgrade a portion of Koksilah River Dike. In support of the application to the Inspector of Dikes, Nature Trust of BC and WCCLMP received letters of support from Cowichan Tribes Lulumexun (Lands and Self-Governance) Department (July 27, 2022), the Cowichan Estuary Environmental Management Committee (September 2, 2022), and the Cowichan Valley Regional District (November 7, 2022). Legal counsel for Nature Trust of BC submits that the Project has also received support from Environment and Climate Change Canada, the Department of Fisheries and Oceans, the Ministry of Water, Lands and Resource Stewardship, and the Ministry of Environment and Climate Change Strategy.

[14] On April 13, 2023, the Deputy Inspector of Dikes conditionally approved the decommissioning of Dinsdale Dike under s. 2(4) of the *Dike Maintenance Act*. The Deputy Inspector of Dikes authorization also notes that the "approval only pertains to the *Dike Maintenance Act* and does not apply to any approvals that may be required by other approving agencies" which includes the ALC.

[15] Although, at present, there is some inundation due to a low section of Dinsdale Dike along the southern property line of Property 2, decommissioning of Dinsdale Dike would result in the removal of the dike structure which would allow more saltwater from the estuary to inundate the Properties. The Application views this as a benefit, stating that this could allow for estuarine habitat restoration and could allow for Indigenous forms of food production to be re-established.

[16] The Executive Committee understands that a 1.8 ha (4.5 ac) nursery has been built and planted, since the Application was submitted, for the purpose of propagating plants to be used for the restoration of the Properties for Indigenous forms of agriculture and for use elsewhere as well. This activity has occurred on the Properties in their current form, without the removal of any dike structures.

Cowichan Tribes' Support

[17] In a July 27, 2022 letter, Cowichan Tribes' Director of Lulumexun (Land and Self-Governance) Department noted that Cowichan Tribes has been

"working in partnership" with Nature Trust of BC since 2018 and they are in support of the Project. They state that this Project will help them manage their "traditional territory through habitat restoration, monitoring and evaluating climatic impact" of an ecosystem that is important to Cowichan Tribes.

[18] In a February 20, 2025 letter, Cowichan Tribes Chief Cindy Daniels reiterated Cowichan Tribes' long-standing support for the Proposal and Nature Trust of BC. Chief Daniels explained that Cowichan Tribes and Nature Trust of BC are working toward a formal agreement to support the Cowichan Peoples' "responsibilities as long-term rights holders and stewards of this land".

NECESSITY FOR THE APPLICATION

[19] Legal counsel for Nature Trust of BC submitted, in correspondence of June 13, 2024, that an application to the Commission and approval of the Commission are not required to "perform decommissioning activities" on the portion of Dinsdale Dike that is within the ALR as such activities are permitted under the ALR Use Regulation. For clarity, in the context of the application, the Agent confirmed that "decommissioning" of Dinsdale Dike refers to the removal of the dike structure. Counsel advised that the submissions were supported by Ducks Unlimited Canada.

[20] In particular, legal counsel for Nature Trust of BC submitted that the proposal to remove 450 m of Dinsdale Dike is permitted as it would

facilitate biodiversity conservation and wildlife values under s. 22(2) of ALR Use Regulation, is "required to facilitate Indigenous food systems farm-use activity" on lands under s. 6(2) of the ALR Use Regulation, and is an area established to protect the environment under the *Environmental Management Act* and the *Environment and Land Use Act* under s. 16(f) of the ALR Use Regulation. As such, Nature Trust of BC submits a non-farm use application under s. 25 of the ALCA is not required.

[21] The Commissioners are the statutory decision-makers who have jurisdiction to adjudicate on the issue of whether an application is required, and, if any application is required, on whether permission should be granted under s. 25 of the ALCA: *Walters v Provincial Agricultural Land Commission*, 2016 BCSC 1618.

[22] The Executive Committee has considered the submissions made to the Commission on this issue by the participants as well as a letter from ALC staff to the Ministry of Water, Land and Resource Stewardship and the Ministry of Forests in December 2023, which was also included in the record. Although, as noted in that letter, the staff view is not binding on the Commissioners, the Executive Committee found that it provided helpful context. In all the circumstances, the Executive Committee is persuaded that an application was required and that, as such, the making of the Application was appropriate.

[23] As set out in the staff correspondence of December 2023 and as also noted in the submissions of Land Keepers Leadership Society ("LKS"), s.

20(1) of the ALCA states that "a person must not use agricultural land for a non-farm use unless permitted under section 25 or 45 or the regulations". Section 25 involves non-farm use applications to the Commission. Section 45 refers to the exceptional circumstance of a decision by the Lieutenant Governor in Council. The ALR Use Regulation permits certain non-farm uses without applications.

[24] With respect to dikes in the ALR, s. 25 of the ALR Use Regulation states the following uses of agricultural land are permitted non-farm uses:

(b) constructing, maintaining and operating, for the purpose of drainage or irrigation or to combat the threat of flooding,

(i) dikes and related pumphouses, and

(ii) ancillary works, including roads and facilities.

[25] Only the construction, maintenance or operation of a dike for drainage or irrigation or to combat flooding is expressly permitted as a non-farm use in the above section. The wording of s. 25 is very specific. The Executive Committee finds that the decommissioning, demolition, or removal of a dike is not the construction, maintenance or operation of a dike or structure.

[26] As the ALC staff letter of December 2023 notes, the only other use of the word "dike" in the ALR Use Regulation, outside of s. 25, is in s. 35. That reference is limited to a subset of the activity specifically addressed in s. 25, namely construction and maintenance of "flood protection dikes". The Executive Committee is persuaded that where the drafters of the ALR Use

Regulation intended to refer to dikes, they did so expressly, as in ss. 25 and 35.

[27] In the above context, caution should be exercised in attempting to interpret sections of the ALR Use Regulation where the word "dike" is not used expressly as including dikes as well.

[28] Among the sections on which the Nature Trust of BC relies in arguing that the Proposal is a use already permitted under the ALR Use Regulation is s. 22(2) of the ALR Use Regulation, which states:

The use of agricultural land for biodiversity conservation, passive recreation, heritage, wildlife and scenery viewing purposes, other than in a park referred to in subsection (1) (a), is permitted, but may be prohibited as described in section 20, if both of the following conditions are met:

(a) the area occupied by any associated structures does not exceed 100 m^2 for each parcel;

(b) the purpose does not include the creation of a wetland intended to manage urban runoff or waste.

[29] The Executive Committee notes this section does not directly include the term "dike". Further, while s. 22(2) contemplates "use" of land for "biodiversity conservation" and "wildfire and scenery viewing", this wording suggests the land is already in a state that can be used for this purpose. Section 22 does not address the activity, such as the act of

decommissioning a dike, proposed to facilitate or render possible the uses s. 22 does address.

[30] Nature Trust of BC also cites s. 16(f) of the ALR Use Regulation, which states the following use of agricultural land is permitted and may not be prohibited as described in s. 14:

An area established by order under section 7 (1) of the Environment and Land Use Act to protect the environment or restrict land or resource use within the area.

[31] Again, the Executive Committee notes that there is no direct reference to dikes in s.16(f) of the ALR Use Regulation. Further, the decommissioning of a dike is not, in itself, the use of land as an area established by order to protect the environment.

[32] In order to support their argument under s. 16(f) of the ALR Use Regulation, Nature Trust of BC refers to the pre-existing Cowichan Estuary Environmental Management Plan (the "CEEMP"). By Order in Council 1652/1986, the CEEMP was approved. The CEEMP was developed to address concerns that further industrial expansion would cause "unacceptable losses of the specialized fish and wildlife habitat that the [Cowichan] estuary provides". The CEEMP designates types of activities (e.g. industrial/commercial, agriculture, habitat management, possible mixed use, conservation/recreation, log storage) in certain areas that are acceptable.

[33] Projects in the Cowichan Estuary that are not already contemplated in the CEEMP require approval from regulatory agencies, including Cowichan Estuary Environmental Management Committee which has delegated decision-making authority from CEEMP. For lands within the ALR in the CEEMP area, the CEEMP notes that approval from the Ministry of Environment and Parks (now Ministry of Environment) "would not absolve the proponent's responsibility for obtaining approval from the Agricultural Land Commission". As such, a non-farm use application is appropriately submitted – this wording does not suggest that permission is automatic without recourse to the ALC.

[34] Nature Trust of BC refers, as well, to s. 6(2) of the ALR Use Regulation, which states:

Without limiting paragraph (b) of the definition of "farm operation" in section 1 of the Farm Practices Protection (Right to Farm) Act, land development works include all of the following:

(a) levelling and berming agricultural land;

(b) constructing reservoirs;

(c) constructing works ancillary to clearing, draining, irrigating, levelling or berming agricultural land and to constructing reservoirs.

[35] However, the Executive Committee finds that decommissioning of a dike is not a form of "land development work" as contemplated in s. 6(2) of the ALR Use Regulation. Again, dikes are not referenced in s. 6(2) of the ALR Use Regulation and the Executive Committee does not consider the

words s. 6(2) uses to extend to decommissioning a dike. The activity contemplated by the Applicants is not, for example, the construction of a work, as would fall in s. 6(2), but its removal.

[36] With respect to all of the above, it is important to keep in mind that, as ALC staff noted in their December 2023 letter, when interpreting the ALR Use Regulation, it must be read in conjunction with the legislative framework set out in the ALCA under which the regulation was made. The legislative framework under the ALCA does not provide for a blanket permission for the decommissioning, demolishing or removal of a dike, but requires the case-by-case consideration by the Commission on a non-farm use application in light of the purposes set out in s. 6 of the ALCA. As such, a non-farm use application was appropriately submitted and the Executive Committee proceeded to determine whether or not it should be approved.

EVIDENTIARY RECORD

[37] During the application process, the Executive Committee requested additional information to further its understanding of the Proposal, and the scope and purpose of the Project. For example, as returned to below, where it was concerned that its understanding of potential uses of the Properties was inadequate based on the limited record originally provided with the Application when submitted, the Executive Committee sought and received additional input.

[38] The Executive Committee appreciates the responses provided by the Agent, and representatives and partners of Nature Trust of BC, Ducks Unlimited Canada, and Cowichan Tribes.

[39] The Executive Committee also provided opportunities for participants to review and respond to evidence and submissions that were filed over time, including through its Procedural Directions of December 18, 2024, as returned to below.

[40] The Proposal, along with related documentation from Nature Trust of BC, Ducks Unlimited Canada, the Agent, local government, third parties, and Commission is collectively referred to as the "Application". All documentation in the Application was disclosed to the Agent in advance of this decision.

[41] Representatives of the Executive Committee conducted a walk-around site visit on May 15, 2024 in accordance with the *ALC Policy Regarding Site Visits in Applications*, (the "Site Visit") with the Agent (Jesse Patterson), Tom Reid (West Coast Conservation Land Manager, Nature Trust of BC), and Steve Henstra (Restoration, Inventory and Monitoring Biologist, Nature Trust of BC). A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications*. The site visit report was accepted by the Agent on October 9, 2024 (the "Site Visit Report"). A copy of the Site Visit Report was provided to all members of the Executive Committee in advance of their deliberations.

[42] On May 22, 2024, the Executive Committee conducted a virtual meeting with the Agent, representatives of Nature Trust of BC, representatives of Cowichan Tribes and other individuals associated with the Project (the "Applicant Meeting"). The representatives of Nature Trust were Tom Reid (West Coast Conservation Land Manager) and Jason Emery (Director of Conservation Land Management). The representatives of Cowichan Tribes were John Stewart (Marine Project Supervisor, Lulumexun Department) and Tim Kulchyski (Fisheries Biologist, member of Cowichan Tribes). Other individuals who were present and had been invited to attend by Nature Trust of BC and/or the Agent were Qwustenuxun (Jared Williams) (member of Cowichan Tribes, Indigenous chef, traditional food educator, and member of BC Indigenous Advisory Council on Agriculture and Food) and Dr. Jennifer Grenz (farmer, Indigenous scholar, and assistant professor in the Department of Forest Resources Management (Faculty of Forestry & Faculty of Land and Food Systems) at the University of British Columbia). An applicant meeting report was prepared and was certified as accurately reflecting the observations and discussions of the Applicant Meeting by the Agent on November 15, 2024 (the "Applicant Meeting Report"). A copy of the Applicant Meeting Report was provided to all members of the Executive Committee in advance of their deliberations.

[43] On December 18, 2024, in response to continued participant engagement on various issues raised by the Application, the Executive Committee issued Procedural Directions which provided a timeline for

further, focused submissions from the Applicants and the public and directed further submissions to avoid repeating comments made in prior submissions. With respect to public comments, the Executive Committee's Procedural Direction noted that the public would have the opportunity to respond to material on the ALC Portal to which they did not have access at the time of their last submission. The public's deadline for doing so was 4 pm on February 7, 2025.

[44] As of December 18, 2024, the Commission had received 379 pieces of correspondence from members of the public regarding the Application. Of the 379 submissions, 137 were in support of the Proposal, 241 were in opposition to the Proposal, and the position of one author was unknown. The letters in support of the Proposal generally commented on the restoration of the Properties for Indigenous forms of agriculture. Generally, the letters in opposition of the Proposal were concerned about what they perceived to be the loss of existing farmland, the potential negative impacts to adjacent properties and drainage, and the potential loss of wintering habitat for waterfowl.

[45] Among the 379 pieces of correspondence, the Executive Committee received substantial submissions from the Land Keepers Leadership Society (as defined earlier, "LKS"). According to legal counsel for LKS, LKS is a volunteer-led organization whose members are farmers and landowners in British Columbia. LKS also includes members who own and reside on land adjacent to the Properties. LKS has provided

submissions in response to the Proposal as it believes its members will be "immediately and directly affected by the outcome of this Application".

[46] Between December 18, 2024 and February 6, 2025, the Commission received six pieces of correspondence from members of the public regarding the Application. Of the six submissions, five were form letters in support of the Proposal, and one was a form letter in opposition to the Proposal, but they did not comply with the Procedural Direction as they simply repeated the comments raised in the public correspondence received prior to December 18, 2024. For that reason, they should not be part of the evidentiary record. In any event of their non-compliance with the Procedural Direction, those six pieces of correspondence would not have provided any new information that was not already available to the Executive Committee.

[47] On February 6, 2025, the Commission received correspondence from Ian Paton, MLA for Delta South with comments regarding the Project that he believed the Commission should consider in its decision-making. The correspondence was directed in part to a member of the Executive Committee who is involved in adjudicating the Application and, as such, it was disclosed to all participants on the ALC website, although with the notation: "The Executive Committee will be considering whether or not to accept this submission on the evidentiary record on the merits of ALC Application 69827 (Ducks Unlimited et al.) in light of its Procedural Directions of December 18, 2024 (available on the ALC Portal), which

addressed what further submissions would be accepted after that date, and Policy G-02 – Policy Statement Concerning the Role of Elected Officials in Applications to and Other Adjudicative Decision-Making Functions of the Provincial Agricultural Land Commission (Available on the ALC website)".

[48] As reflected in the notation that was included with posting of the correspondence, the correspondence was sent by an elected official. As such, the Executive Committee reviewed ALC Policy G-02: Policy Statement Concerning the Role of Elected Officials In Applications To and Other Adjudicative Decision-Making Functions of the Provincial Agricultural Land Commission ("ALC Policy G-02") which sets out procedural rules to ensure the Commission's adjudicative decision-making functions are at all times not only fair, impartial and independent, but also perceived to be fair, impartial and independent. ALC Policy G-02 states that "elected representatives have no standing to advocate before the Commission on behalf of a constituent on any application or any other adjudicative decision-making matter". ALC Policy G-02 further outlines the requirements that must be satisfied for the Commission to respond to communications from elected officials:

(a) The communication is directed to the Commission Chair and/or the Chief Executive Officer;

(b) The communication is for the limited purposes of obtaining information to assist a constituent to understand the Commission's

application or other adjudicative decision-making process or to inquire as to the status of such a process before the Commission; and

(c) The communication is neutral in tone and avoids any reasonable perception that it is an attempt to influence either the outcome or the timing of the decision.

[49] In accordance with ALC Policy G-02, the Executive Committee finds that Mr. Paton did not have standing to advocate before the Commission on the Application. Although it does not appear that any of Mr. Paton's constituents are participants in the Application, similar concerns arise in relation to other advocacy by elected officials. Further, the Executive Committee notes that the letter was neither for the limited purposes of obtaining information regarding the Commission's application process, nor neutral in tone. As such, the Executive Committee has not accepted this letter into the evidentiary record.

[50] On February 7, 2025, after the 4 pm deadline set in the Procedural Direction for further public submissions, the Commission received correspondence from Donegal Wilson, MLA for Boundary-Similkameen addressed to the Minister of Water, Land, and Resource Stewardship expressing "deep concern" regarding the Project. Again, as the correspondence was copied to a member of the Executive Committee who is involved in adjudicating the Application, it was disclosed to all participants on the ALC website, although with the notation: "The Executive Committee will be considering whether or not to accept this

submission on the evidentiary record on the merits of ALC Application 69827 (Ducks Unlimited et al.) in light of its Procedural Directions of December 18, 2024 (available on the ALC Portal), which addressed what further submissions would be accepted after that date, and Policy G-02 – Policy Statement Concerning the Role of Elected Officials in Applications to and Other Adjudicative Decision-Making Functions of the Provincial Agricultural Land Commission (Available on the ALC website)".

[51] Again, and as reflected in the above notation, as the correspondence was sent by an elected official, the Executive Committee reviewed ALC Policy G-02. The Executive Committee adopts the findings it made above in relation to Mr. Paton's letter, which the Executive Committee considers to be equally applicable to the February 7 correspondence. Further, the February 7 letter was received after the deadline set by the Executive Committee's Procedural Direction. Given all the above, the Executive Committee has not accepted this letter into the evidentiary record.

LEGAL FRAMEWORK

[52] As part of the LKS submissions, LKS raised concerns regarding the consultation that occurred as part of the Office of the Inspector of Dike's application process, the potential transference of flood risk, and the displacement of waterfowl should the Project be permitted. The Executive Committee finds that such concerns would be more appropriately directed to the Office of the Inspector of Dikes and the

Project proponents, given the relatively limited scope of the Commission's mandate under s. 6 of the ALCA.

[53] The LKS also raised concerns regarding the terms of the purchase agreement between the former owner of the Properties and the current owners. The Applicants dispute the LKS characterization of the contractual agreement. The Executive Committee finds that it is not in a position to resolve this issue but that, in any event, any possible breach of the terms of purchase would be a matter to be resolved between the purchaser and the seller.

[54] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA:

6 (1) The following are the purposes of the commission:

(a) to preserve the agricultural land reserve;

(b) to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest; and,

(c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of land within the agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.

(2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:

(a) the size, integrity and continuity of the land base of the agricultural land reserve;

(b) the use of the agricultural land reserve for farm use.

[55] For clarity, the Executive Committee notes that within the Application materials there is reference to future and/or potential projects such as the construction of erosion protection along Cowichan Bay Road, raising of Lochmanetz Road and a private road, and future sediment augmentation projects. Some of the future and/or potential projects may impact land in the ALR. The Executive Committee did not consider the future and/or potential projects as part of this Application. The Executive Committee expects that should future and/or potential projects impacting the ALR be pursued by the Applicants, an application will be submitted for the Commission's consideration.

ANALYSIS AND FINDINGS

[56] In considering whether or not to grant a non-farm use application, the Commission considers the legislative regime and a number of interrelated factors relevant to the particular application and weighs the likely impact of the proposal before it against the long-term goal of preserving agricultural land. The Commission considers factors such as whether the proposal would aid in preserving agricultural land, whether the proposal would support or benefit agriculture, whether the proposal would permanently damage the physical capability of the land or

surrounding land for agricultural use, and community planning objectives, among other things.

[57] To assess agricultural capability on the Properties, the Executive Committee considered several sources of information, as described below.

[58] In evaluating agricultural capability, an important consideration is the range of crops that can be grown on a site. The BC Land Inventory ("BCLI") 'Land Capability Classification for Agriculture in B.C.' system is a classification system developed to "determine land's capability for agricultural uses"[1] through evaluating climate which determines the range of crops that can be produced in an area, and soils which determine the type and level of management practices required. Under the BCLI, explained further below, the soils that can support the widest range of crops are rated Class 1 because they have the ideal criteria that allow for a diverse array of agricultural activities to be undertaken without limitations. As the class numbers increase from Class 1 to Class 7, the ability to grow a diversity of crops without mitigating existing limitations (such as stoniness, topography, or drainage) decreases. However, certain lower capability lands may be valuable for agriculture depending on the combination of climate, soil types and type of agriculture in an area or region.

[1] Land Capability Classification for Agriculture in British Columbia, Ministry of Environment (1983)

[59] Under the BCLI classification system, unimproved ratings were based on conditions at the time of the survey or inspection, without irrigation and included past improvements. Forested lands were assessed as if cleared. Improved ratings indicate the capability of the land after the existing limitations have been addressed. Improvements include "drainage, irrigation, diking, stone removal, salinity alleviation, subsoiling, and/or intensive addition of fertilizer or other soil amendments."[2] When determining improved agricultural capabilities "irrigation water is assumed to be available and inundation is assumed to be controlled by diking."[3]

[60] While the ALCA does not dictate the types of crops, if any, that should be cultivated within the ALR, the ALC has a role in maintaining the ALR in a state that can facilitate the widest array of agricultural production as possible over a long term timeframe. This is especially important given that the ALR only covers ~4.9% (4,612,331 ha) of the total land mass of BC and only a small portion of that total is on Vancouver Island. In the face of climate change and its potential impacts on the ALR and agricultural production, safeguarding land that is capable of producing a range of crops furthers the purposes of the Commission under s. 6 of the ALCA.

[61] Based on the BCLI, which is the classification system that the Commission has historically applied, the agricultural capability ratings applicable to

[2] Land Capability Classification for Agriculture in British Columbia, Ministry of Environment (1983)
[3] ibid

Property 1 are approximately 80.5% Class 5 with salinity (N) and inundation (I) limitations, improvable to Class 3 with excess water (W) and salinity (N) limitations; approximately 15.1% Class 5 with excess water (W) limitations; approximately 0.4% Class 4 with soil moisture deficiency (A) limitations, improvable to 80% Class 1 and 20% Class 2 with soil moisture deficiency (A) limitations. There is no data for the remaining 2.7% of Property 1. The agricultural capability ratings applicable to Property 2 are approximately 94.8% Class 5 with salinity (N) and inundation (I) limitations, improvable to Class 3 with excess water (W) and salinity (N) limitations; and approximately 4.7% is Class 5 with excess water (W) limitations.

[62] The portions of the Properties with Class 1 capability ratings are prime agricultural lands; these lands are capable of producing the widest range of crops, where soil and climate conditions are optimum and can be managed without difficulty. The portions of the Properties with Class 3 capability ratings are also prime agricultural land; these lands are capable of producing a fairly wide range of crops under good management practices, where soil and/or climate limitations are somewhat restrictive. The portions of the Properties with Class 4 capability ratings are secondary agricultural land; these lands are capable of a restricted range of crops, where soil and climate conditions require special management considerations. The portions of the Properties with Class 5 capability ratings are also secondary agricultural land; these lands are capable of production of cultivated perennial forage crops and

specially adapted crops, where soil and/or climate conditions severely limit capability.

[63] Under the BCLI system, inundation (I) is the subclass limitation applied when soils are overflown by streams, lakes or marine tides that can cause crop damage or restrict agricultural uses. As noted above, the inundation subclass limitation can be improved by diking and any limitation that is expected to continue after diking, such as a high water tables, is shown as the subclass of excess water (W). Excess water (W) is the subclass limitation applied to soils where excess free water, other than flooding or inundation, limits its use for agriculture. Salinity (N) is the subclass limitation applied when soils are negatively affected by soluble salts which reduce the range of crops that can be grown and crop growth.

[64] The Executive Committee also received a report prepared for representatives of LKS by McTavish Resource & Management Consultants Ltd. titled Agricultural Capability, Soils and Production Dinsdale Farm 2279 Cowichan Bay Road, dated April 26, 2025 (the "McTavish Report"). The McTavish Report considered agricultural capability ratings as well. The McTavish Report is based on findings from a desktop assessment, field observations from the public walking path, review of current and historic imagery, and interviews with the farmer who tended the Properties. The McTavish Report suggests revised agricultural capability ratings for the Properties of Class 3 with excess water (W) and salinity (N)

limitations and Class 3 with excess water (W) limitations, improvable to Class 1.

[65] The McTavish Report also notes that there are two published soil series polygons associated with the Properties: ~50 ha of 70% Corydon and 30% Chemainus, and ~4 ha of 100% Crofton. Specifically, it explains that the soil series are "mineral soil parent materials that have developed from fluvial deposits." With respect to Corydon soils, "agricultural use is restricted by the need for major reclamation measures (e.g. diking, drainage, irrigation) to remove flooding and salinity problems. After reclamation and with irrigation a variety of field crops can be grown". With respect to Chemainus soils, they are "well suited for a wide range of crops; however, irrigation is necessary for maximizing yields. With respect to Crofton soils, they are "poorly drained with a year-round water table fluctuating between 0 and 2m. Pasture and hay production are the predominant present uses. However, potential exists for a wide range of crops if drainage and irrigation systems are installed."

[66] The McTavish Report was not prepared in accordance with ALC Policy P-10: Criteria for Agricultural Capability Assessments for revising existing capability mapping. For example, it is not based on detailed soil test pits conducted at an appropriate scale.

[67] As such, the Executive Committee does not rely on the McTavish Report as evidence of revised agricultural capability ratings. However, the Executive Committee notes that, in any event, the improved capability

conditions indicated in the McTavish Report are similar to those that the Executive Committee finds based on the BCLI agricultural capability ratings outlined above.

[68] In all the circumstances, based on the BCLI agricultural capability ratings outlined above, the Executive Committee finds that the Properties, in their present state, have secondary agricultural capability, improvable to ~91% prime agricultural capability and ~8% secondary agricultural capability.

[69] With respect to the use of the Properties for agriculture, according to these classifications and as evidenced by prior use, the Properties, as they presently are, with dikes, can support production of cultivated perennial forage crops and specially adapted crops. The Executive Committee also notes that a portion of the Properties is currently being used as an Indigenous plant nursery established by the Nature Trust of BC and its partners.

[70] According to the McTavish Report, the Properties were used for more than two decades for the production of silage corn (~17.8 ha) and perennial forage grasses (~22 ha). The McTavish Report indicates that the amount of corn silage produced on this site alone represents 2% of the production across Vancouver Island.

[71] There was also evidence provided to the Executive Committee regarding Indigenous food production, in particular, camas cultivation. The

Application submitted: "The area currently occupied by the dike will be revitalized to support the revitalization of Indigenous Food Systems and the resilience of the estuary for fish and wildlife. The Indigenous food system that we are seeking to re-establish on the site, with the support of Cowichan Tribes and Dr. Jennifer Grenz, is the production of camas (Camassia spp)." The Executive Committee understands that camas is a bulb-forming plant used as a traditional food source by Cowichan Tribes and that some varieties have been found to be grown and/or cultivated in estuarine environments.

[72] With respect to camas, the Application noted: "[t]here is historical and ethnographic evidence that camas was grown extensively in the Project area". The Application notes: "Historical and ethnographic evidence indicates that camas was one of the most important food staples for Quwʼutsun, and that it formed an essential commodity of Quwʼutsun economies and trade relationships with other Coast Salish groups". Dr. Grenz notes that plant surveys conducted in the most northern section of the estuary (the most intact portion) by her graduate students in the summer of 2024, confirm a legacy state Cowichan camas production system with camas growing in monoculture over 0.5 continuous hectares.

[73] The Executive Committee accepts that the production of camas is or can be a form of farming, with "farm use" being defined in s. 1 of the ALCA as including the farming of plants.

[74] Further, as the Commission has previously noted in its decision on Application 62774 (Resolution #290/2020) involving Carrier Sekani Family Services, the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") also refers among other things to Indigenous peoples' rights to be secure in the enjoyment of their own means of subsistence and development (Article 20), to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (Article 29), and to aspects of Indigenous knowledge and cultural traditions including with respect to the environment, traditional medicines, seeds, and flora (Articles 11, 20, 24, 31). While the Legislative Assembly has not amended the ALCA pursuant to s. 3 of the *Declaration on the Rights of Indigenous Peoples Act* (which provides that "[i]n consultation and cooperation with the Indigenous peoples in British Columbia the government must take all measures necessary to ensure the laws of British Columbia are consistent with [UNDRIP]")), the Commission's existing statutory purposes and the framework that the ALCA provides allow it to draw on considerations intersecting with s. 6 of the ALCA. The Executive Committee also notes the importance under s. 6(1)(c) of the ALCA of encouraging First Nations to enable and accommodate farm use of land within the ALR and uses compatible with agriculture in their plans, bylaws and policies, and under s. 6(1)(b) of encouraging farming of land in the ALR in collaboration with other communities of interest.

[75] Evidence as to whether camas production could occur at scale on the Properties after removal of the Dinsdale Dike is somewhat mixed. The Application materials submit that camas "thrives in well-drained sandy or pebbly soil with full sun". However, the Applicants noted during the Site Visit that there are different types of camas that are adapted to brackish conditions and that camas seed would be sourced from Cowichan Bay for use in the Cowichan estuary. The Application materials also contain nine academic articles provided by the Agent which "highlight the traditional production of camas and the importance of Indigenous food systems on Vancouver Island" and provide more information on "intertidal food systems, their productivity and associated adaptations" on Indigenous agricultural practices, and Indigenous forms of agriculture that are suited to estuarine environments.

[76] Even if the conditions that may exist on the Properties, if the dikes were to be decommissioned, suit camas production, the Executive Committee is concerned about maintaining the Properties for a range of crops apart from camas, given that not many plants are suited to saline or wet conditions. The Executive Committee understands that the removal of Dinsdale Dike would increase the soil salinity and soil moisture levels, and may also affect the salinity of groundwater in the immediate vicinity of, and within, the Properties. The Executive Committee considered that even if the non-ALR portion of Dinsdale Dike is removed, as long as that is the only portion removed, the areas around the ALR portion of Dinsdale Dike may not experience the same level of soil salinity and soil

moisture as the areas where the non-ALR portion of Dinsdale Dike is removed.

[77] There was some discussion in the Application about other Indigenous plants beyond camas production, but any plans with respect to those other plants did not appear to be especially well formulated. The Application noted: "Although **not necessarily an objective of this project**, the land **could** continue to support the production of other halophytic (salt tolerant) crops in the absence of the dike, such as oats, rye, asparagus, sugar beet, millet, quinoa, salicornia, and triticale, **although a feasibility study would be required should the landowner wish to pursue these options**" (emphasis added).

[78] As reflected in s. 6 of the ALCA, the Commission's role is to preserve land in the ALR for long term agricultural uses. In doing so, the Commission considers that maintaining the widest variety of agricultural opportunities is paramount to encourage and allow for future agricultural use.

[79] The Executive Committee finds that the Proposal will result in the narrowing of the range of crops that can be grown on the Property to plants that are tolerant of increased salinity and periods of inundation.

[80] The Application explains that once the Dinsdale Dike is removed, the Properties will be subject to regular tidal forces which will gradually transition the Properties into an estuarine marsh environment. To assist

in developing the estuarine marsh environment, the Applicants will also be constructing some marsh channels and allowing the natural development of smaller channels over time. The Executive Committee understands this to mean that a marsh environment would be developed, that the soils will become impacted by seasonal and/or year-round inundation, and that the water may be characterized as saline.

[81] During the Site Visit, representatives of Nature Trust of BC explained that the Properties would not be "immediately flooded to Cowichan Bay Road"; instead, the Properties would be subject to daily high and low tides and may only be inundated during king tides or other flood events. However, coastal modelling provided with the NHC Reports indicate that removal of Dinsdale Dike, in part or in whole, would result in an increase of wave heights throughout the estuary area in the range of 0.1 to 0.5 m; while removal of only the non-ALR portion of Dinsdale Dike results in less area impacted by increased wave height compared to removing all of Dinsdale Dike.

[82] The Application explains that Nature Trust of BC and Ducks Unlimited Canada, along with Cowichan Tribes, intend to focus production on plant species (e.g. camas) that are adapted to soils subjected to wet and saline conditions. The Agent explains that native intertidal plants are adapted to saline conditions. While the Executive Committee understands that there are plants that are adapted to wet and saline conditions, the Executive

Committee remains concerned as to the diversity of crops that are feasible in an intertidal environment.

[83] LKS submits that the Proposal will result in the reduction of crop production (both yields and diversity) on the Properties once the soils are flooded and salinized.

[84] The Executive Committee is concerned that continued inundation of the Properties as a result of removal of the Dinsdale Dike, whether in duration or in frequency, will impact the soils and soil structure on the Properties. The continued inundation (whether in duration or in frequency) exacerbates subclass limitations such as inundation and/or salinity, which further restricts the range of crops that are suitable without improvements like diking.

[85] In fulfilling its purposes under s. 6(1) of the ALCA, the Commission must give priority to protecting and enhancing the size, integrity, and continuity of the land base of the ALR and the use of the ALR for farm uses. The Executive Committee finds that the Proposal results in impact to the integrity of the ALR due to inundation of the Properties which narrows the range of agricultural opportunities available on the Properties.

[86] The LKS submitted a Preliminary Hydrogeological Assessment: Cowichan Estuary Restoration Project prepared by Active Earth Engineering, dated September 2023 (the “Active Earth Report”) to support their submission

that removal of Dinsdale Dike will result in saltwater intrusion to groundwater and would impact local wells. The Active Earth Report notes that it did not have the benefit of reviewing the technical reports prepared by NHC with the exception of one draft letter regarding flood risk transfer (Feb 9, 2023). The Active Earth Report explains that "there will be saltwater intrusion of fresh groundwater resources that will impact the aquifer water quality to an undetermined extent (beyond the footprint of the Project) and likely impact existing nearby wells". Among its recommendations, it suggests further assessment of risk to the existing water supply wells and aquifers and further assessment of risk of advancing the freshwater/seawater intertidal zone.

[87] The contents of the conclusions of the Active Earth Report are concerning if accurate. The Active Earth Report noted that there would be impact to fresh groundwater resources, albeit the magnitude of impact is unknown. As freshwater resources are integral for most forms of agriculture, there may be a negative impact to agricultural activities occurring nearby on other land in the ALR and other current, future or potential agricultural uses.

[88] However, on balance, the Executive Committee is not in a position to make findings on the impact of potential salt-water intrusion stemming from removal of the Dinsdale Dike on fresh groundwater resources that are relied upon for agriculture, including on adjacent properties. As noted above, the Active Earth Report did not have the benefit of the other

technical reports prepared by NHC. Further, it is unclear whether the Applicants have considered the potential for saltwater intrusion into groundwater as a result of the removal of Dinsdale Dike. The Applicants submissions do not speak directly to saltwater intrusion into groundwater. Potential impact on groundwater stemming from removal of the Dinsdale Dike is, therefore, not a basis for the Executive Committee's conclusions on this Application.

DECISION

[89] The Executive Committee finds that the Properties, in their current state, are capable of agricultural use as evidenced by their BCLI ratings, the previous agricultural production by local dairy farmers, and the current use of a portion of the Properties by the Applicants and their partners for an Indigenous plant nursery.

[90] In considering whether granting the application will result in impact to land in the ALR, the Executive Committee understands that the Properties may be subject to increased inundation due to tides and other flood events, even if just the non-ALR portion of Dinsdale Dike were removed. However, that impact would be less than if the ALR portion of Dinsdale Dike were also removed. The Executive Committee finds that inundation and salinization of the soil on the Properties narrow the range of crops that can be grown on the Properties and impacts the integrity of the ALR.

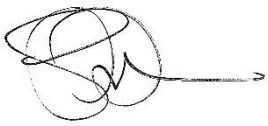
[91] Given all the considerations set out in these reasons, the Executive Committee refuses the Proposal to remove the ALR portion (approximately 450 m) of the Dinsdale Dike.

[92] These are the unanimous reasons of the Executive Committee.

[93] A decision of the Executive Committee is a decision of the Commission pursuant to s. 10(4) of the ALCA.

[94] Resolution #530/2025

Released on August 11, 2025



Jennifer Dyson, Chair

On behalf of the Executive Committee

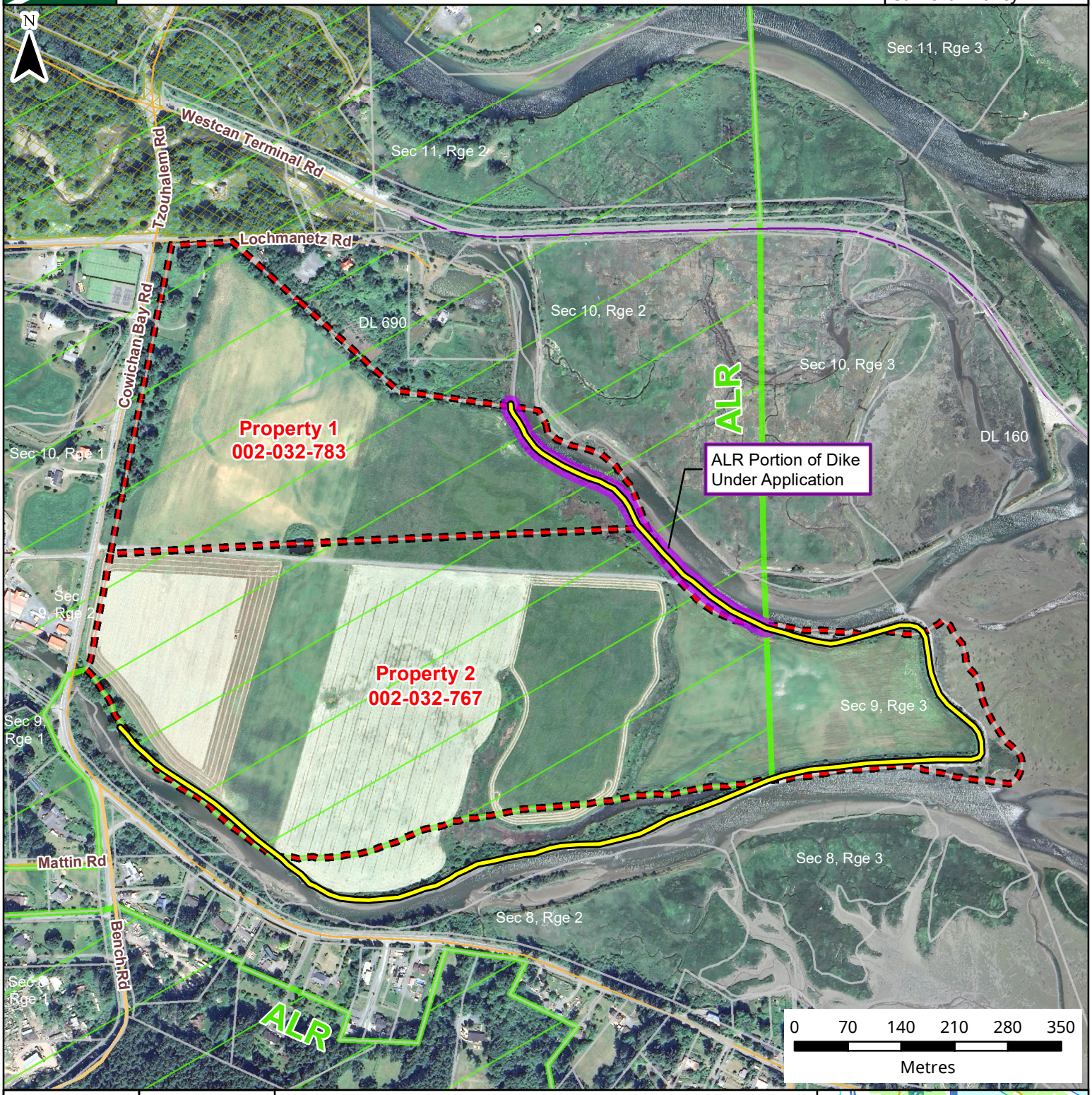
Enclosure: Schedule A: Context Map

Schedule A: Context Map

2024 Google Earth Orthophoto

MAPSHEET NO: 92B.072

LOCAL GOVERNMENT: Cowichan Valley



ALC FILE NO: 69827

RESOLUTION NO: 530/2025

MAP PRODUCED: June 13, 2025

MAP SCALE: 1:7,000

DATA SOURCES & NOTES:
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Map for reference only. Accuracy not guaranteed.

- Dinsdale Dike (Dike 49)
- Subject Properties
- PMBC Parcel Cadastre
- Agricultural Land Reserve
- Indian Reserves

