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February 7, 2025

Agricultural Land Commission
ATTN: Nicole Mak
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Burnaby, BC
V5G 4K6

Submitted via email alc@island@gov.bc.ca

Re: Application No. 69827

RESPONSE SUBMISSION

Introduction

1. This response submission is made on behalf of the Land Keepers Leadership Society (the "**LKS**") in response to the Applicant's submission dated June 13, 2024 (the "**NTBC Submission**"), with regards to application no. 69827 (the "**Application**")

2. LKS preserves the procedural objection that the ALC's Application record closed on May 1, 2024, and all materials submitted after that date should not form a part of the record. This Response Submission is notwithstanding that objection which LKS may rely on in the future before the ALC or a judicial review of any ALC decision. **Attachment A:** email dated March 22, 2024, from the ALC Regional Planner.

3. The LKS relies on its April 30, 2024, submission, the McTavish Report and the Active Earth Hydrogeological Assessment (the "**Active Earth Report**") (referenced in Attachment J to the April 30 Submission and **Attachment B,** hereto**)**, in addition to the significant public correspondence provided to ALC to oppose the Application. The LKS makes the following submissions.

4. The NTBC Submission frames the issues before the ALC as a) whether the proposed dike decommissioning to be carried out on ALR land is a permitted use under the *Agricultural Land Commission Act* S.B.C. 2002 Chapter 36 (the "**Act**") or the *Agricultural Land Reserve Use Regulation*, B.C. Reg.30/2019 (the "**Regulations**"); and b) if it is not, should the Commission grant its permission under s. 25 of the Act to permit the NTBC to decommission the dike located on the ALR portion of the Subject Lands (the "**Dike**")

thus flooding the Subject Lands with sea water and removing the historic and recent agricultural usage in perpetuity.

5. LKS submits that it is plain and obvious that the decommissioning of a dike erected to permit and protect agricultural uses is not a permitted non-farm use pursuant to the Act or the Regulation.

6. LKS submits that the proposed decommissioning of the Dinsdale Dike is not a permitted use under the Act or the Regulation because:

    a. Section 20 of the Act provides that a person must not use land in the ALR for a non-farm use unless permitted under section 25 or 45, or the Regulations. The wholesale removal of a dike is not considered in these provisions.
    b. Section 25 of the Regulations describes certain permitted non-farm uses, which include the construction, maintaining or operating, for the purpose of drainage or irrigation to combat the threat of flooding, dikes and related pumphouses […]. The wholesale removal of a dike is not considered in these provisions.
    c. The legislative drafters were express, specific and unambiguous in the language as to what constitutes a permitted non-farm use, specifically as the activity pertains to dikes; the demolition and removal of a dike is not a permitted use under section 25 of the Regulations.

7. LKS submits that the ALC should not grant the Application to proceed with the non-farm use decommissioning of the Dinsdale Farm Dike because:

    a. The lands are classified as prime agricultural capability and the proposed salination of same will render the Lands irreversibly incapable of the present and historic agricultural uses, including forage yields, grazing and animal staging;
    b. To complete its proposed project, the Applicant terminated a lease agreement with a local farmer, Sunny Vale Farms, in October 2023, thus ceasing the farm use which had been consistent and ongoing for over 100 years on the Lands.
    c. The decommissioning of the Dinsdale Farm Dike will have negative consequences on neighboring ALR lands and local farmers in the Cowichan Valley, including but not limited to:
        i. Displacement of waterfowl resulting in increased loss of crops on neighboring areas (page 14, McTavish Report);
        ii. Loss of 2% of the total corn silage production on Vancouver Island (page 14, McTavish Report);
        iii. Increased flooding on adjacent ALR properties, saltwater intrusion impacting local groundwater and wells (the Active Eart Report).
    d. Granting the non-farm use application is counter to the purpose and mandate of the ALC insofar as it will have negative impacts on the surrounding agricultural lands and silage market and displaces Sunny Vale Farms which has farmed the

lands for almost 30 years.

8. LKS submits that the tertiary question before the ALC in this whether granting the Application is congruent with the purpose and mandate of the Commission. It is irrefutable that the flooding and salination of the Dinsdale Farm will render the Subject Lands unusable for the agricultural uses which have occurred on the Subject Lands for over 100 years. It will also increase flooding events in neighboring ALR land and farms, which the ALC has a statutory duty to protect.

9. The Applicant has provided academic research on the production of camas. The Applicant has not provided evidence why camas must be cultivated on the Subject Lands, as opposed to the surrounding ALR lands owned by the NTBC. The NTBC has already decommissioned or removed the remnant agricultural dike located on PID 008-579-156, VIP45387, Lot A, and permitted saltwater intrusion over the ALR portion of that area. It is proposed to the ALC that the Applicant's alleged intention to cultivate camas will not be prejudiced if the ALC rejects the present non-farm use application and prohibits the Applicant from flooding some or all of the Subject Lands. The alleged camas cultivation could be undertaken on the areas already subject to saltwater intrusion and the Subject Lands could be protected from same thus also protecting the neighboring and nearby ALR Lands which rely on the Subject Lands as a safety valve from flooding events, for the staging of waterfowl and the production of forage crops.

10. The overarching issue that the ALC must address in this Application is whether speculative claims of food systems will take precedence over established uses which actively support local farmers and established food systems; or whether joint uses should be established. It is submitted that the role of the ALC is not to create a hierarchy of farm practices or food systems but rather to ensure the overall preservation and betterment of agricultural land and practices in B.C. The ALC must protect and maintain the integrity of the neighboring ALR lands which will negatively impacted if the Application is granted.

The ALC Must Consider Adjacent ALR Properties

11. The NTBC Submission takes the position that it does not matter whether the ALC grants or rejects the Application because it will remove the non-ALR portion of the Dike regardless of the ALC's decision, thus flooding the Dinsdale farm and eliminating historic agricultural uses. This position assumes that one can undertake activities on land which directly impact land in the Agricultural Land Reserve, with no regard for same. This is erroneous and hubristic. The ALC has a statutory obligation to protect and maintain the Reserve as a whole. In this regard and by analogy, there are limits and conditions imposed on buildings and developments on or bordering ALR land to ensure the protection and maintenance of the ALR; for example, buffers and setbacks will be required for the protection of the ALR. The standards and protections applied to the proposed "Cowichan Estuary Restoration Project" should be no different. A landowner

cannot be permitted to undertake a use on the land which will have detrimental impacts on the neighboring ALR lands and ALR as a whole.

12. The purpose of the ALC pursuant to section 6 of the Act is:

    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;
    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.

13. Mr. Daniel Jack McLeod is a director of the LKS and resides at 2288 Cowichan Bay Road, directly across Cowichan Bay Road from the Subject Lands. Mr. McLeod has sworn an affidavit in VIC-S-S 23-3282 which describes how the Subject Lands have historically acted as a buffer and safety valve for the Koksilah River, excessive rain and snow melt (**Attachment C,** hereto) If the Subject Lands are flooded with saltwater, excess fresh water from the Koksilah River and extreme weather will be forced into neighboring ALR Lands, including Mr. McLeods's property. This shift in flood activity is described in the Active Earth Report and described in Mr. McLeod's affidavit.

14. Mr. Allen Nikiforuk owns and operates an agricultural business at 2274 and 2278 Cowichan Bay Road. Mr. Nkiforuk is a member of LKS and swore an affidavit in VIC-S-S 23-3282 stating his concerns for the increased flood risk that the removal of the Dinsdale Farm dike and saltwater flooding on the Subject Lands will have on his property, including the impact of the well and groundwater. (**Attachment D,** hereto**).**

15. Mr. Tony Van De Mortal owns 2256 Cowichan Bay Road. Mr. Van De Mortal is a member of the LKS and has sworn an affidavit in VIC-S-S 23-3282 stating his concerns regarding the increased flood risk that the removal of the Dinsdale Farm dike and saltwater flooding on the Subject Lands will cause. (**Attachment E,** hereto**).**

16. Mr. Brian Sale resides at 2289 Lochmanetz Road, Cowichan Bay and is one of the surrounding residents that the NTBC alleges to have consulted in the application to the Deputy Inspector of Dikes to decommission the Dike. Mr. Sale swore an affidavit in VIC-S-S 23-3282 wherein he describes that he received pre-drafted letters which he was requested to sign, addressed to the Deputy Inspector of Dikes, in support of the Cowichan Estuary Restoration Project. Mr. Sale's swears in his affidavit that he does not support the Cowichan Estuary Restoration Project and that the Subject Lands act as a sink for the Koksilah River when it rises, and he is concerned about increased flooding at this property. (**Attachment F,** hereto**).**

17. Mr. Sean Taylor is the owner of 5115 Tzouhalem Road in Cowichan Bay and a member of the LKS. Mr. Taylor has sworn an affidavit in VIC-S-S 23-3282 stating his concerns regarding the increased flood risk on his property and the lack of consultation regarding the Cowichan Estuary Project generally. (**Attachment G,** hereto**).**

18. The owners of 2288, 2256, 2274, 2278 Cowichan Bay Road,2289 Lochmanetz Road, and 5115 Tzouhalem Road in Cowichan Bay in the ALR have all expressed concerns about these negative effects the saltwater flooding will have on their properties (**Attachments C**, **D**, **E**, **F**, and **G**, hereto) If the ALC approves the Application and permits the saltwater intrusion on the Subject Lands, it will be condemning the adjacent ALR Lands to increased flooding, waterfowl foraging and impacts on groundwater and wells.

19. The Active Earth Report concludes that the saltwater flooding of the Subject Lands will result in saltwater intrusion of fresh groundwater resources which will impact the local aquifer. The Active Earth Report further concluded that it is highly likely that local wells will be impacted by the saltwater intrusion and that existing drainage conditions of the Koksilah River be altered, resulting in diversion and increased flood risk on neighboring properties. Expert evidence shows that the neighboring ALR lands will be negatively impacted by the removal of the Dike and the saltwater flooding of the Subject Lands.

20. Neighboring farmers in the ALR have expressed concern regarding the displacement of waterfowl. Included as **Attachment H** hereto, is a letter from a Cowichan Valley Farmer who owns land at 4035 Hillbank Road and Thain Road in Cobble Hill, noting increased levels of geese, ducks and trumpeter swans on their 270 acres of forage land in 2024 when no cover crops were planted on the Subject Lands.

21. Mr. D.A. Bull is the owner of Silverside Farm in Cowichan Bay, a berry farm. Included as **Attachment I**, hereto is correspondence from Mr. Bull which notes an unprecedent increased in migratory birds on Silverside Farm, resulting in the need for Mr. Bull to increase efforts to keep birds away from their blueberry crop.

22. The shift away from forage production on the Subject Lands will create significant cost increases for replacement feed for the surrounding farms when waterfowl are displaced, as noted in the McTavish Report. The LKS submits that this displacement must be investigated and addressed by the ALC to protect the interests of local farmers in the Cowichan Valley, pursuant to its statutory duty and mandate.

23. Further, despite the NTBC Submission, the decommissioning of the remainder of the dike is not a foregone conclusion. The decommissioning approval granted to NTBC is the subject of a petition for judicial review, on the basis that the approval was granted on an erroneous and incomplete evidentiary basis, which failed to consider the relevant requirements of the *Dike Maintenance Act* R.S.B.C. 1996. In support of this position is the expert hydrogeological assessment of Active Earth Engineering. The petition is being

held in abeyance at the request of counsel for the Ministry of the Attorney General pending the outcome of the Application. While the NTBC's comments in this regard intonate a complete disregard for the authority of the ALC and the rule of law governing procedural fairness owed by public bodies, it is not a foregone conclusion that the remainder of the dike will be decommissioned, nor are the concerns and importance of concerned members of the agricultural community "effectively pointless" as stated by the NTBC at paragraph 47 of its submission.

Conclusion

24. The ALC is mandated to preserve the entirety of the Reserve. The granting of the Application is counter to the best interests of neighboring properties in the ALR, farm interest and wider farming community reliant on the corn silage produced on the Subject Lands, as well as the flooding buffer provided by the Subject Lands.

25. The Applicant has failed to address the negative implications and regional consequences that the breach of the Dike will have on agricultural production and activities in the region. The ALC's mandate to protect and enhance agricultural activities is at risk if the Application is granted. If the Application is granted it will create a precedent which will erode the integrity of the ALC, permitting the removal of productive lands from the ALR. The LKS does not oppose conservation activities or the promotion of estuary resilience; the LKS opposes the erosion of the ALR and the removal of productive farmland from the agricultural community.

26. Lastly, the NTBC Submission and Application fails to address the intended sediment placement along Cowichan Bay Road, which appears to be for the purpose of mitigating erosion of which will be caused by the flooding of the Lands. The movement of soil and sediment on ALR lands requires approval by the ALC, particularly where it is within the setback of the NTBC's lot line and neighboring ALR land.

Respectfully,

COX TAYLOR

Per: 

Carly D. Haynes

Counsel for LKS