



INFORMATION BULLETIN

Coal Exploration & Extraction in the Agricultural Land Reserve (ALR)

The following is an explanation of the Provincial Agricultural Land Commission's position as it relates to both coal exploration and extraction.

Section 1 of the *Agricultural Land Commission Act* (the "ALCA") provides the following definition

"soil" includes the entire mantle of unconsolidated material above bedrock other than minerals as defined in the *Mineral Tenure Act*

Section 20(1) and (2) of the ALCA state:

20(1) A person must not use agricultural land for a non-farm use unless permitted by this Act, the regulations or an order of the commission.

Section 3(4)(h) of BC Regulation 171/2002 (*Agricultural Land Reserve Use, Subdivision and Procedure Regulation*) states:

3(4) The following land uses are permitted in an agricultural land reserve:

(h) surveying, exploring or prospecting for gravel or minerals if all cuts, trenches and similar alterations are restored to the natural ground level on completion of the surveying, exploring or prospecting;

Section 1 of the *Mineral Tenure Act* (the "MTA") provides the following definition:

"mineral" means an ore of metal, or a natural substance that can be mined, that is in the place or position in which it was originally formed or deposited or is in talus rock, and includes

- (a) rock and other materials from mine tailings, dumps and previously mined deposits of minerals,
- (b) dimension stone, and
- (c) rock or a natural substance prescribed under section 2 (1),

but does not include

- (d) coal, petroleum, natural gas, marl, earth, soil, peat, sand or gravel,

Based on the foregoing, the Commission has determined that since coal is not a mineral as defined in the MTA, coal exploration is not a permitted use identified in section 3(4)(h) of BC Regulation 171/2002. Rather, coal exploration is a non-farm use as stipulated in section 20 of the ALCA and therefore the Commission must approve of the activity following the submission and review of a non-farm use application under section 20(3) of the ALCA. The same holds true for coal extraction.

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land:

- (a) the Mediation and Arbitration Board under the *Petroleum and Natural Gas Act*;

- (b) the Mediation and Arbitration Board under section 19 of the *Mineral Tenure Act* or under the *Mining Right of Way Act*;
- (c) any other authority under an enactment.

Section 3(1) of the Coal Act provides the following:

- 3(1) A recorded holder must not begin the exploration for or development or production of coal unless the recorded holder first gives notice to every owner of surface area on which the recorded holder intends to carry out that activity.
- (2) A recorded holder is liable to pay compensation to the owners of surface area for loss or damage caused by the recorded holder entering, occupying or using the surface area.
- (3) On application of a recorded holder or owner, the Mediation and Arbitration Board under the *Petroleum and Natural Gas Act* has authority to settle disputes arising from rights acquired under this Act in respect of entry, use or occupation, security, rent and compensation and, for this purpose, the relevant provisions of Part 3 of the *Petroleum and Natural Gas Act* apply.
- (4) In an arbitration under subsection (3) involving a conflict between rights acquired under this Act and rights acquired under the *Land Act*, the Mediation and Arbitration Board must take into account which of the rights were applied for first and must give the holder of those rights some priority in its consideration of the dispute between the parties.
- (5) A copy of an order made by the Mediation and Arbitration Board under subsection (3) may be filed at any time in a Supreme Court registry and enforced as if it were an order of the court.

Along with an application for non-farm use for coal exploration and extraction it is necessary to include written authorization from the land owner(s) or a right of entry order issued by the Mediation and Arbitration Board under the *Petroleum and Natural Gas Act*. If this information is not provided, the Commission does not have the ability to consider such proposals under the ALCA.

For more information about the Commission please visit our website at www.alc.gov.bc.ca. The following links may be of particular interest.

http://www.alc.gov.bc.ca/alr/application_process.htm

http://www.alc.gov.bc.ca/How_Do_I/How_Do_I_ALR_Application.htm

http://www.alc.gov.bc.ca/Forms/ALRApp_Landowner.pdf

http://www.alc.gov.bc.ca/forms/Applicant_Info_Package.pdf