Treaty negotiations – is all Crown land created equal?

May 1995 Column, Country Life in B.C.

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As Crown land increasingly comes under scrutiny of the treaty negotiation process, what factors are important to consider to guide the preservation and enhancement of high-capability farmland (and farm communities)?

The former Roberts Bank Back-Up Lands are a case in point. Expropriated by the Province in 1968 and 1969 to facilitate port-related industrial development, the Back-Up Lands comprise 4,056 acres of prime farmland situated in the heart of the Agricultural Land Reserve in the Municipality of Delta.

First developed for agriculture in the late 1800's, the Back-Up Lands have remained in continuous agricultural production since that time. Many of today's farmers are third or fourth generation descendants of this province's earliest pioneers — farm families who moved west from the Prairies to settle and farm these fertile lowlands around the turn of the century.

The anticipated port development for which the Back-Up Lands were expropriated never materialized. Farmed on a tenant basis since expropriation, a number of government agencies have acted as landlord. Since November 1991, the Back-Up Lands have been administered by the B.C. Lands section of the B.C. Ministry of Environment, Lands and Parks.

The high agricultural capability of the former Back-Up Lands farms — which form an integral component of the region's agricultural base — have been well documented by recent provincial government studies. The area has the longest frost free period in Canada. The soils are predominantly deep, silty and have high moisture holding capacity. They are also recognized as nationally and internationally significant wildlife habitat.

Also well documented is the fact that Crown management of these lands has had a detrimental effect on stewardship. Six month cancellation clauses in favour of the Crown have resulted in poor stewardship practices because farmers, lacking long term security of tenure, cannot risk the level of investment otherwise warranted by agricultural capability and economic potential.

Recently, the Tsawwassen First Nation filed with the British Columbia Treaty Commission a statement of intent to negotiate a treaty within the boundaries of their traditional area. The Back-Up Lands fall within the area defined by the Band.

In preparation for upcoming treaty negotiations, second-stage discussions are now occurring between the B.C. Treaty Commission, the Tsawwassen First Nation, the Province of British Columbia and the Government of Canada.

Recent discussions with the farming community suggest a number of factors should be considered when determining strategies to guide preservation of agricultural interests in high-profile, high-capability Crown-held land under consideration by the treaty negotiation process:

- **CURRENT USE**
  Is the use to which the land is currently put considered critical to achievement of strategic objectives for the agri-food sector? Is retention and enhancement of current agricultural use also considered strategically important to the achievement of priorities in other sectors (e.g. regional economic development, environment, wildlife, tourism, recreation, transportation)? Could possible outcomes under the treaty negotiation process have a negative impact on agricultural land use and/or current farming practices? To what extent should current agricultural land use influence the Crown's determination of claims and remedies under the treaty negotiation process?

- **HISTORY OF ACQUISITION**
  What is the history of Crown interest in the lands? Did fee simple title ever exist for the lands in question? If so, how were the lands acquired by the Crown — were they purchased or expropriated, and under what circumstances? Is there anything in their acquisition history which differentiates them from other Crown-held land in the treaty negotiation process? To what extent should the acquisition history of the land influence the Crown's determination of claims and remedies under the treaty negotiation process?

- **VALUE ADDED**
  Has the value of the land been substantively enhanced by activities undertaken or appurtenances constructed by non-First Nation initiatives? What documentation exists to support this? To what extent do such activities differentiate these lands from other Crown-held lands in the treaty negotiation process? To what extent should such activities influence the Crown's determination of claims and remedies under the treaty negotiation process?

- **COMPETITIVENESS SCREEN**
  Does the treaty negotiation process pose any risk to the competitiveness potential of B.C. agriculture? Could an outcome under the treaty negotiation process prejudice the competitive position of B.C. agriculture? To what extent would this give rise to an obligation on the part of the Crown for mitigation and/or compensation? What is the likely scope and magnitude of such measures?

Following these issues as they effect the fate of the Roberts Bank Back Up Lands will undoubtedly prove interesting over the next several months!