



Regional District of  
**Kootenay Boundary**

# MEETING AGENDA

Rural Bridesville Land Use Plan Steering Committee

**Bridesville Hall**

**5724 Bridesville Townsite Road**

**6:00 pm, Tuesday, March 12, 2019**

1. Progress to date and 2019 proposed timeline
2. Changes to the ALC Act and ARL Regulations
  - Information Bulletin No. 5 Residences in the ALR
  - Information Bulletin No. 6 Accommodation of Tourists in the ALR
3. Subdivision Regulations
4. Property Maintenance and Safety
5. Adjournment

## Progress to date and future timeline

**Meeting Location:** Bridesville Hall

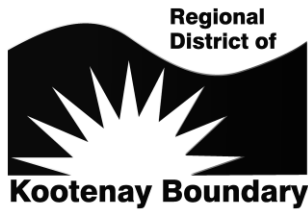
**Meeting Time:** 6:00PM

**Meeting Date:**

- 2017: 2nd Monday of the Month
- 2018: 3rd Monday of the month / last Monday of the month

| Mtg. #      | Month     | Comment                                                                                                                                             |
|-------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>2018</b> |           |                                                                                                                                                     |
| --          | January   | No Meeting                                                                                                                                          |
| 1           | February  | Rural Resource Land Use                                                                                                                             |
| 2           | March     | Residential<br>Drinking Water Resource                                                                                                              |
| 3           | April     | Objectives:<br>1. Agricultural Resource<br>2. Rural Resource<br>3. Drinking Water Resource<br>4. Residential<br>5. Solid Waste Management           |
| --          | May       | Public Consultation                                                                                                                                 |
| 4           | June      | Review Survey Results<br>Revisit Objectives from April meeting                                                                                      |
| --          | July      | No Meeting                                                                                                                                          |
| --          | August    | No Meeting                                                                                                                                          |
| --          | September | No Meeting                                                                                                                                          |
| 5           | October   | Landuse Designations and Zones<br>1. Commercial<br>2. Industrial<br>3. Institutional<br>4. Parks and Recreation<br>5. Conservation<br>6. Rail/Trail |
| --          | November  | No Meeting                                                                                                                                          |
| --          | December  | No Meeting                                                                                                                                          |

| <b>Mtg. #</b>                    | <b>Month</b> | <b>Comment</b>                                                                                       |
|----------------------------------|--------------|------------------------------------------------------------------------------------------------------|
| <b>2019 to date:</b>             |              |                                                                                                      |
| --                               | January      | No Meeting                                                                                           |
| --                               | February     | No Meeting                                                                                           |
| 1                                | March        | Changes to ALC Act and ALR Regulations<br>Subdivision Regulations<br>Property Maintenance and Safety |
| <b>Going Forward (Proposed):</b> |              |                                                                                                      |
| 2                                | April        | Greenhouse Gas Reduction<br>Heritage Resources<br>Sand and Gravel Deposits                           |
| 3                                | May          | Natural Hazards<br>Environmentally Sensitive Areas<br>Transportation                                 |
| 4                                | June         | General Regulations<br>1. Campgrounds<br>2. Home-based Business<br>3. Others<br>Definitions          |
| --                               | July         | No meeting scheduled                                                                                 |
| --                               | August       | No meeting Scheduled                                                                                 |
| 5                                | September    | Remaining items –or– Draft Revised OCP                                                               |
| 6                                | October      | Draft Revised OCP                                                                                    |
| --                               | November     | Referrals and Public meeting                                                                         |
| --                               | December     | No meeting scheduled                                                                                 |
| <b>2020</b>                      |              |                                                                                                      |
| --                               |              | If required                                                                                          |



## Rural Bridesville Land Use Plan Steering Committee Staff Report

### Changes to the ALC Act and ALR Regulations

**Date:** March 12, 2019

**Report Prepared by:** Ken Gobeil, Senior Planner

### ISSUE INTRODUCTION

As of February 22, 2019, the Agricultural Land Commission (ALC) announced changes to the *Agricultural Land Commission Act* (ALC Act) and the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* (ALR Regulation). These changes will affect all lands in the ALR, including those outside of the Plan Area.

The purpose of this report is to review these changes, and the implications for land-use bylaws.

### RESIDENCES IN THE ALR

#### Maximum dwelling size

The maximum size for a residence in the ALR has been set to 500m<sup>2</sup> (approximately 5382ft<sup>2</sup>). It is very unlikely this restriction will affect many residents within the RDKB.

#### Secondary Suites

Within the ALR, secondary suites are only permitted if they are attached to and form part of the principal residence. Detached suites are not permitted. This regulation has not changed.

#### Additional Residences

Before February 22, 2019, a second dwelling was permitted on parcels under the following conditions:

- A modular home less than 9 metres in width was used for immediate family or farm labour
- A residence was built on top of an existing single-story accessory building
- The property was larger than 50 hectares

As of February 22, 2019 only one residence will be permitted on a property within the ALR. Secondary suites will still be permitted as long as they are part of the principal dwelling. This regulation change will have the largest impact on RDKB land-use bylaws.

## **ACCOMODATION FOR TOURISTS IN THE ALR**

Definitions and regulations for Agri-tourism and tourist accommodations have been updated. These amendments are mostly for clarification and will not have any effect on land-use bylaws in the RDKB.

### **Agri-tourism**

The use of land in the ALR for providing accommodation in relation to an agri-tourism activity is permitted if all of the following apply:

- 1) the accommodation is in relation to an "agri-tourism activity". Agri-tourism uses must be secondary to, incidental to and compatible with the agricultural production activities. Expressly under section 12 of the ALR Use Regulation, "agri-tourism activity" is an activity:
  - a) conducted on land in the ALR that is classified as a farm under the Assessment Act;
  - b) to which members of the public are ordinarily invited, whether or not a fee or other charge is payable;
  - c) in connection with which no permanent facilities are constructed or erected.; AND
  - d) that falls into one of the following categories:
    - i) an agricultural heritage exhibit displayed on the agricultural land;
    - ii) a tour of the agricultural land, an educational activity or demonstration in respect of all or part of the farm operation conducted on that agricultural land, and activities ancillary to any of these;
    - iii) cart, sleigh and tractor rides on the agricultural land;
    - iv) subject to section 9 [horse facilities], activities that promote or market livestock raised or kept on the agricultural land, whether or not the activity also involves livestock raised or kept elsewhere, including shows, cattle driving and petting zoos;
    - v) dog trials held on the agricultural land;
    - vi) harvest festivals and other seasonal events held on the agricultural land for the purpose of promoting or marketing farm products produced on that agricultural land;
    - vii) corn mazes prepared using corn produced on the agricultural land on which the activity is taking place;
- 2) the accommodation is located on land in the ALR that is classified as a farm under the Assessment Act;
- 3) the total developed area for structures, landscaping and access for the accommodation is less than 5% of any parcel;
- 4) the accommodation is limited to 10 sleeping units in total, including any bedrooms used for tourist accommodation;  
AND
- 5) accommodation is provided on a seasonal or short-term basis only: ALR Use Regulation, s. 33(2)(d).

Note that:

- "Tourist" is a person who travels for pleasure from place to place away from their permanent residence.
- "Seasonal" is a use or activity that fluctuates according to one or more seasons (spring, summer, fall and winter) (but not all seasons) or available or taking place during one or more seasons (but not all seasons) or at a specific time of the year.
- "Short-term" is the use by a tourist of accommodation for agri-tourism for a period of not more than 30 consecutive days.
- "Sleeping unit" means "(a) a bedroom or other area used for sleeping located in a residence, cabin or other structure; (b) a vehicle, trailer, tent or other structure located on a campsite, field or other area

### **Tourist Accommodation (B&B's)**

Tourist accommodation on ALR land is permitted without application to the Commission in a principal residence that is 500 m<sup>2</sup> or less, and that is otherwise also in compliance with the ALR Use Regulation, if both of the following conditions are met:

- (1) the accommodation is limited to 4 bedrooms in total; AND
- (2) accommodation is provided on a short-term basis only.

Note that:

- "Bedroom" for the purpose of section 34 of the ALR Use Regulation means "a bedroom or other area used for sleeping in a residence"
- "Tourist accommodation" is in the nature of bed and breakfast use, and may only occur in a principal residence.

## **NON-ADHERING RESIDENTIAL USE**

### **Existing Properties**

Any property that was legally approved to have a residential or tourist-accommodation use that no longer adheres to the ALC Act and ALR Regulation changes will be allowed to continue its use. However, The ALC has stated there will be no "grandfathering exception", so replacement will not be possible.

### **Future Developments**

An owner may apply to the ALC, for non-adhering residential use for any residential development that does not fit within the Act and Regulations. This is similar to an application for a non-farm use.

## **IMPLICATIONS**

Any land-use bylaw in effect that contradicts the changes to the ALC Act and ALR Regulations is no longer in effect. All existing land-use bylaws in the RDKB will need amending. Policies within the draft Rural Bridesville Land Use Plan will also need amending.

The ALC Act and ALR Regulation only apply to land within the ALR. The Planning and Development Department recommends that the definition regarding secondary suites be consistent across all zones to ensure there is no confusion, misinterpretation or frustration from the public.

## **ATTACHMENTS**

ALC Information Bulletin 05 – Residences in the ALR

ALC Information Bulletin 06 – Accommodation for Tourists in the ALR

Example definition and regulation on Secondary Suites



## INFORMATION BULLETIN 05

### RESIDENCES IN THE ALR

Revised February 26, 2019  
February 25, 2019

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## 1. SCOPE OF THIS INFORMATION BULLETIN

This information bulletin provides guidance to assist in interpreting the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (**ALCA**) and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**), in relation to residences in the agricultural land reserve (**ALR**). The ALCA and ALR Use Regulation will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA and the ALR Use Regulation. All other applicable laws, regulations and bylaws related to residential uses must also be complied with.

## 2. RECENT CHANGES TO STATUTE AND REGULATIONS

Effective February 22, 2019, the ALCA has been amended and the ALR Use Regulation has been created. Though many concepts contained in the ALCA and its regulations are unchanged from the past, there have been changes to the use of ALR land for residences. All references in this information bulletin to the ALCA and the ALR Use Regulation are as of February 22, 2019, unless otherwise stated.

The following is a summary of key residential changes to the ALCA and the ALR Use Regulation:

- Generally land in the ALR may have **no more than one residence** per parcel: ALCA, s. 20.1(1)(a), subject to certain grandfathering exceptions (see “Grandfathering Provisions” section). In addition, the Commission may approve an application for an additional residence if necessary for farm use, but the Commission is prohibited from approving an additional residence otherwise: ALCA, s. 25(1.1).
- New size, siting and use requirements apply to residential structures: ALCA, s. 20.1(1)(c).
- The **total floor area of a principal residence must be 500 m<sup>2</sup> or less** in order to comply with the ALCA, though a local government may impose a lower size cap under their bylaws: ALCA, ss. 20.1(1)(b), 46. The Commission has resolved on a definition of “total floor area” for the purpose of the ALCA and ALR Use Regulation, as set out in the “Glossary” section at the end of this bulletin.
- The ALCA and regulations had previously contained provisions facilitating the construction of additional dwellings for farm help, manufactured homes for immediate family members, accommodation above an existing farm building, or (in parts of the province) a second single family dwelling. These provisions are no longer found in the ALCA and the ALR Use Regulation, though the ALCA provides some grandfathering protection for pre-existing structures of these kinds and the Commission may approve an application for an additional residence if necessary for farm use.

- If a landowner wishes in the absence of certain grandfathering exceptions to have a principal residence having a total floor area that is more than 500 m<sup>2</sup>, to have an additional residence, or to use a residential structure in a manner that contravenes the regulations, the landowner may submit an application to the Commission, through the local government, seeking Commission approval: ALCA, ss. 20.1(2), 25. The ALCA calls this type of application an “**application for a non-adhering residential use**”. More information about this type of application is provided later in this bulletin under the heading “Applications for Non-Adhering Residential Use”.

### 3. ROLE OF LOCAL GOVERNMENTS

#### A. Role as Approving Body

##### I. Principal Residence

In order to comply with the ALCA, an approving body such as a local government may not approve or permit construction or alteration of a principal residence on ALR land unless the principal residence has a total floor area of 500 m<sup>2</sup> or less and is sized, sited and used in accordance with the ALR Use Regulation, or is permitted by the Commission on application: ALCA, s. 18. See the Section 11 “Glossary”, found at the end of this bulletin, for the definition of “**total floor area**”.

##### II. Additional Residence

An approving body may not approve or permit construction or alteration of an additional residence on ALR land unless the residence is approved by the Commission on application or is permitted under the ALR Use Regulation: ALCA, s. 18.

#### B. Applications

An application to the Commission asking it to approve a non-adhering residential use, such as new construction of a principal residence with a total floor area of more than 500m<sup>2</sup> or an additional residence, may be submitted through the landowner’s local government. For more information on the process for making applications to the Commission, please see the Commission’s website, at [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions) as well as Section 10 of this information bulletin entitled “Applications For Non-Adhering Residential Use”.

#### C. Consistency with Zoning and Other Bylaws

Any portion of a local government bylaw that purports to allow a use of land in the ALR that is not permitted under the ALCA or the ALR Use Regulation, or contemplates a use of land that would impair or impede the intent of the ALCA or the ALR Use Regulation, is inconsistent with the ALCA or the ALR Use Regulation and has no force or effect: ALCA, ss. 46(4), (5).

For example, **if a zoning bylaw provides for more residences on ALR land than do the ALCA and the ALR Use Regulation, its provision for extra residences is of no force or effect and cannot be relied on.**

Construction, alteration or use of any residences in contravention of the ALCA or the ALR Use Regulation may be subject to compliance and enforcement action even if the construction, alteration or use seems to be in compliance with a local government bylaw.

#### **D. Local Government May Restrict**

**Local government bylaws can be more restrictive of residential use of the ALR than the ALCA:** ALCA, s. 46(6). The ALR Use Regulation identifies certain designated farm uses and permitted non-farm uses that local governments must not prohibit, but places no limitation on local government powers to prohibit or otherwise restrict residential uses of ALR land. **As such, a local government may impose restrictions on sizing, siting and use of principal residences on ALR land additional to those found in the ALCA.** For example, a local government could enact a bylaw imposing a size limit smaller than 500 m<sup>2</sup> total floor area on principal residences on ALR land.

#### **E. Areas Without Zoning Bylaws**

Note that some areas of the province do not have zoning bylaws. The absence of local zoning bylaws does not relieve a landowner from complying with the restrictions in the ALCA and ALR Use Regulation.

### **4. NEW CONSTRUCTION OF A RESIDENCE ON ALR LAND THAT HAS NO EXISTING RESIDENCE**

No application is required to the Commission in order to construct a residence with a total floor area of 500 m<sup>2</sup> or less on a parcel of ALR land which has **no existing residence** (a “**vacant parcel**”).

The Commission will consider the residence when built on a vacant parcel to be the “principal residence”.

If the proposed principal residence is more than 500m<sup>2</sup> or there is already another residence located on the ALR land, in order to construct the residence the landowner must apply to the Commission through the local government and obtain permission from the Commission: ALCA, s. 20.1(1).

“Construct” includes “to build a new structure” or “to place on land a new structure that is fully or partially pre-fabricated”: ALCA, s. 1(1).

## 5. GRANDFATHERING PROVISIONS

### A. Completing a Residential Construction Initiated by February 22, 2019

If by February 22, 2019 a landowner had already initiated construction of a residence in the ALR, in certain circumstances the owner may be able to complete that work without application to the Commission. In other circumstances, the work will not be able to proceed unless the Commission first approves an **application for a non-adhering residential use** made by the owner: ALCA, ss. 20.1(2), 25. See Section 10 “Applications for Non-Adhering Residential Use” later in this bulletin.

#### I. Unfinished Principal Residence

##### Total Floor Area of 500 m<sup>2</sup> or less

If the landowner is completing construction of an unfinished principal residence which will on completion have a total floor area of **500 m<sup>2</sup> or less** and is otherwise also compliant with the ALCA and regulations, the owner may complete that construction without applying to the Commission for permission to do so.

##### Total Floor Area of more than 500 m<sup>2</sup>

If the landowner is completing construction of an unfinished principal residence which will, if completed as designed, have a total floor area of **more than 500 m<sup>2</sup>**, the landowner may continue if:

- a) Where building permit authorization **is required** by local government bylaw
  - all required authorizations to construct the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins on or before November 5, 2019, AND
  - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw
  - if no authorizations to construct the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
  - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

## II. Unfinished Additional Residence

If the landowner is completing construction of a residence that, **if completed as designed**, will be an additional residence, the landowner may do so if:

- a) Where building permit authorization **is required** by local government bylaw
  - all required authorizations to construct the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins before February 22, 2019, AND
  - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw
  - if no authorizations to construct the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
  - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

## **B. Completing Residential Alterations Initiated by February 22, 2019**

If an owner wants to complete alterations to a residence on ALR land that had been initiated prior to February 22, 2019, the owner may do so without application to the Commission only in limited circumstances.

To “alter” means “(a) to alter the exterior of a structure so as to increase its size; (b) to move or alter the exterior walls or edges of a structure so as to change its siting”: ALCA, s. 1(1).

### I. Completing Alterations to a Principal Residence

#### Total Floor Area of 500 m<sup>2</sup> or less

If the landowner is completing alterations to a principal residence that will not cause its total floor area to exceed **500 m<sup>2</sup>** and that will otherwise also be compliant with the ALCA and regulations, the landowner may complete those alterations without applying to the Commission for permission to do so.

### Total Floor Area of more than 500 m<sup>2</sup>

Alterations that had already been commenced as of February 22, 2019 to a principal residence that, **if completed as designed**, will have a total floor area of more than 500 m<sup>2</sup>, may be completed if:

- a) Where building permit authorization **is required** by local government bylaw
  - all required authorizations to alter the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins on or before November 5, 2019, AND
  - from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw
  - if no authorizations to alter the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
  - from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

### II. Completing Alterations to an Additional Residence

Alterations that had already been commenced as of February 22, 2019 to a residence in the ALR that, **if completed as designed**, will be an additional residence, may be completed if:

- a) Where building permit authorization **is required** by local government bylaw
  - all required authorizations to alter the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins before February 22, 2019, AND
  - from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw

- if no authorizations to alter the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
- from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

### **C. New Alterations Initiated After February 22, 2019**

Alterations that were not initiated by February 22, 2019 may also be undertaken in some circumstances on ALR land even without application to the Commission.

An owner who wishes to alter a residential structure that exists on ALR land on February 22, 2019 but that (a) is an additional structure; or (b) is a principal residence with a total floor area of more than 500 m<sup>2</sup>; or (c) is of a size or is sited in contravention of a regulation, may do so in some circumstances. The owner may alter the structure without applying to the Commission **only** if the alteration will lead to no further contravention of the ALCA or regulations: ALCA, s. 20.2.

The Commission expects that the alterations undertaken in the context of the above paragraph would eliminate, or at least reduce or not worsen, any pre-existing contravention of the ALCA or the regulations. It does not expect that alterations would increase the size of the residential structure or initiate a non-adhering residential use; any such alterations should be the subject of an application to the Commission.

An owner who wishes to alter a principal residence that will remain no larger than 500 m<sup>2</sup> and that will otherwise also remain in compliance with the ALCA and regulations may also do so without application to the Commission.

### **D. Manufactured Home on ALR Land**

If on February 22, 2019, there was one manufactured home which was an additional residence, was constructed in accordance with all applicable enactments, and was used as a residence by a member of the immediate family of the owner of the land in the ALR, it may continue to be used as a residence in the ALR if on February 22, 2019 there was one manufactured home, up to 9 m in width, constructed in accordance with all applicable enactments and used as a residence by a member of the immediate family of the owner of the land in the ALR, it may continue to be used as a residence in the ALR if:

- there is no other residence on the land other than the principal residence; AND
- the size and siting of the residence is not altered after February 22, 2019 unless
  - o permitted on application, OR

- o the size of the manufactured home or the total area occupied by all residences and other residential structures, roads and service lines, and all agricultural land between them, as applicable, is not increased by the alteration.

ALR Use Regulation, s. 32

There is no right to replace a residential structure which is permitted due to a grandfathering exception. An application to the Commission for its approval is required to replace such a structure. See the “Replacing a Residence” section for more information.

#### **E. Single-Level Accommodation Constructed Above an Existing Building on the Farm**

If on February 22, 2019 there was accommodation that had been constructed in accordance with all applicable enactments above an existing building on the farm and that had only a single level, it may continue to be used as a residence in the ALR if:

- there is no other residence on the land other than the principal residence; AND
- the size and siting of the residence is not altered after February 22, 2019 unless
  - o permitted on application, OR
  - o the total area occupied by all residences and other residential structures, roads and service lines, and all agricultural land between them, as applicable, is not increased by the alteration.

ALR Use Regulation, s. 32

There is no right to replace a residential structure which is permitted due to a grandfathering exception. An application to the Commission for its approval is required to replace such a structure. See the “Replacing a Residence” section for more information.

#### **F. Second Single Family Dwelling in Former Zone 2 (“Zone 2 Second SFD”)**

Until February 22, 2019, land in the ALR was considered to be either in Zone 1 (the panel regions of the South Coast, Island and Okanagan panels) or Zone 2 (the panel regions of the Interior, North and Kootenay panels).

Prior to February 22, 2019, certain activities were permitted in Zone 2 that were not permitted in Zone 1. The term “**Zone 2 Second SFD**” is used in this bulletin to refer to a second single family dwelling in the area of the province that until February 22, 2019 was Zone 2, if the parcel was at least 50 ha in size and if the total area occupied by all residences and other residential structures, roads and service lines, and all land between them, was 4 000 m<sup>2</sup> or less.

If on February 22, 2019 there was a “**Zone 2 Second SFD**” on Zone 2 land in the ALR, constructed in accordance with all applicable enactments, the Zone 2 Second SFD may continue to be used as a residence in the ALR if:

- there is no other residence on the land other than the principal residence; AND
- the size and siting of the Zone 2 Extra Home is not altered after February 22, 2019 unless
  - o permitted on application, OR
  - o the total area occupied by all residences and other residential structures, roads and service lines, and all agricultural land between them, as applicable, is not increased by the alteration.

ALR Use Regulation, s. 32

There is no right to replace a residential structure which is permitted due to a grandfathering exception. An application to the Commission for its approval is required to replace such a structure. See the “Replacing a Residence” section for more information.

## **6. REPLACING A RESIDENCE**

The term “construct” includes “to replace a structure, 75% or more of which has been substantially damaged or destroyed”: ALCA, s. 1(1). In order to replace a structure, an owner must abide by the requirements in section 20.1 and, if applicable, section 20.2 of the ALCA.

### **A. Parcels on which there is only one residence**

If an owner is replacing the only residence on a parcel in the ALR, the total floor area of the new residence must not be more than 500 m<sup>2</sup>.

### **B. Parcels on which there is more than one residence**

An application to the Commission, and Commission approval of that application, are required to replace residences which pre-date the ALR (that is, are older than December 21, 1972), residences approved by local government under the former section 18 of the ALCA and its predecessors, residences permitted without application to the Commission under previous versions of the ALCA and regulations, and residences constructed in contravention of local zoning bylaws or the ALCA or regulations.

Whether an application is required to replace a residence that the Commission itself had previously approved on application may depend on the terms of that approval.

## **7. USE OF RESIDENCE IN ALR**

Use of a residence located in the ALR is limited. Generally it may be used only as a residence, subject to limited exceptions:

### **A. Secondary Suites**

The use of land in the ALR for a secondary suite is permitted if there is one suite only, located in the principal residence: ALR Use Regulation, s. 31.

### **B. Limited Accommodation for Tourists**

See the Commission's information bulletin called "Accommodation for Tourists" for more information. Strict conditions must be met for such use.

## **8. SOIL OR FILL FOR RESIDENTIAL CONSTRUCTION**

Removing soil from or placing fill on ALR land is permitted for the construction or maintenance of a principal residence if the total area from which soil is removed or on which fill is placed is 1,000 m<sup>2</sup> or less. If the affected area is in a floodplain, an additional condition applies: the resulting elevation level must be consistent with applicable local government or first nation government requirements for flood protection: ALR Use Regulation, s. 35.

Removing soil from or placing fill on ALR land in connection with other residential uses (such as for the construction of an additional residence, alteration of a residence or where the area affected by a principal residence is greater than 1,000 m<sup>2</sup>) is not permitted. An owner of ALR land seeking to remove soil or place fill may submit a notice of intent along with payment of the required fee to the ALC's chief executive officer requesting approval: ALCA, s. 20.3. The landowner may also apply to the Commission for a soil or fill use under s. 25 of the ALCA.

The following types of fill are prohibited on ALR land (ALR Use Regulation, s. 36):

- construction or demolition waste (including masonry rubble, concrete, cement, rebar, drywall and wood waste);
- asphalt;
- glass;
- synthetic polymers;
- treated wood;
- unchipped lumber.

## 9. INFRASTRUCTURE NECESSARY FOR RESIDENTIAL USE

Subject to any limits and conditions set out in Part 4 of the ALR Use Regulation, the use of agricultural land to construct, maintain or operate the following is permitted:

- (a) a structure, other than a residential structure, that is necessary for a residential use permitted under Part 4. Examples include detached garages;
- (b) a driveway or utility necessary for a residential use permitted under this part: ALR Use Regulation, s. 30.

## 10. APPLICATIONS FOR NON-ADHERING RESIDENTIAL USE

An owner may apply to the Commission for permission under section 25 of the ALCA for a non-adhering residential use: ALCA, s. 20.1(2). A “**non-adhering residential use**” means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m<sup>2</sup>; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1).

For more information on making applications to the Commission, please see the Commission’s website, at [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions).

Section 25(1) of the ALCA provides that on receiving a use application the Commission normally may:

- refuse permission for the use applied for,
- grant permission, with or without limits or conditions, for the use applied for, or
- grant permission for an alternative use or subdivision, with or without limits or conditions, as applicable.

With respect to an application for a non-adhering residential use, the Commission (a) must consider the prescribed criteria, if any, (b) must not grant permission for an additional residence unless the additional residence is necessary for a farm use; and (c) must reject the application if required by the regulations to do so: ALCA, s. 25(1.1).

Examples of considerations that the Commission may take into account in determining a use application are found here: [www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers)

## 11. GLOSSARY

The following key definitions are relevant to this information bulletin:

**“additional residence”** means “a residence on a parcel of agricultural land, other than the principal residence”: ALCA, s. 1(1)

**“alter”** means “the following: (a) to alter the exterior of a structure so as to increase its size; (b) to move or alter the exterior walls or edges of a structure so as to change its siting”: ALCA, s. 1(1)

**“as designed”** means as stated or shown in (a) a design, proposal or other plan approved under or accepted in support of an authorization, or (b) a design or plan finalized, before the date this section comes into force, by an architect or engineer or, if none, the designer of the residence, if no authorizations are needed to construct or alter the residence: ALCA, s. 20.2

**“authorization”** means a permit or other authorization, issued under an enactment, to construct or alter a residence: ALCA, s. 20.2

**“construct”** means “the following: (a) to build a new structure; (b) to place on land a new structure that is fully or partially pre-fabricated; (c) to replace a structure, 75% or more of which has been substantially damaged or destroyed”: ALCA, s. 1(1)

**“farm use”** means “an occupation or use of agricultural land for (i) farming land, plants, mushrooms, truffles or animals, (ii) a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*, or (iii) a purpose designated as a farm use by regulation”, but “farm use” does “not include a residential use or a soil or fill use”: ALCA, s. 1(1)

**“fill”** means “any material brought onto agricultural land other than materials exempted by regulation”: ALCA, s. 1(1)

**“non-adhering residential use”** means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m<sup>2</sup>; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1)

**“non-farm use”** means “a use of agricultural land other than a farm use, a residential use or a soil or fill use”: ALCA, s. 1(1)

**“pre-existing residential structure”** means “a residential structure that exists on agricultural land on the date this section comes into force [February 22, 2019], and (a) is an additional residence, (b) is a principal residence having a total floor area of more than 500 m<sup>2</sup>, or (c) is of a size or is sited in contravention of a regulation”: ALCA, s. 20.2

**“prescribed residential structure”** is either a “structure” that, or a “vehicle” that, is “used, whether permanently or temporarily, to provide or in connection with providing accommodation as described in [Part 4 of the ALR Use Regulation]”: ALR Use Regulation, s. 29

**“principal residence”** means “the residence permitted under section 20.1(1)(a)”: ALCA, s. 1(1)

**“residential structure”** means “a structure used, during all or part of the year and whether fully or partially, as (a) a residence, (b) if prescribed, accommodation, or (c) if prescribed, in relation to a residence or accommodation”: ALCA, s. 1(1)

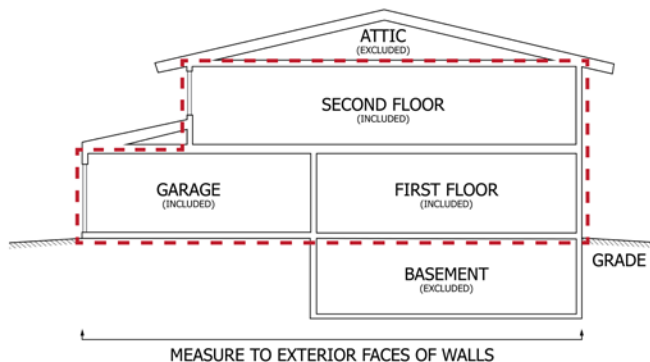
**“residential use”** means “a use of agricultural land for a residential structure” but “does not include a farm use or a soil or fill use”: ALCA, s. 1(1)

**“soil or fill use”** means “the removal of soil from, or the placement of fill on, agricultural land” but “does not include a farm use or a residential use”: ALCA, s. 1(1)

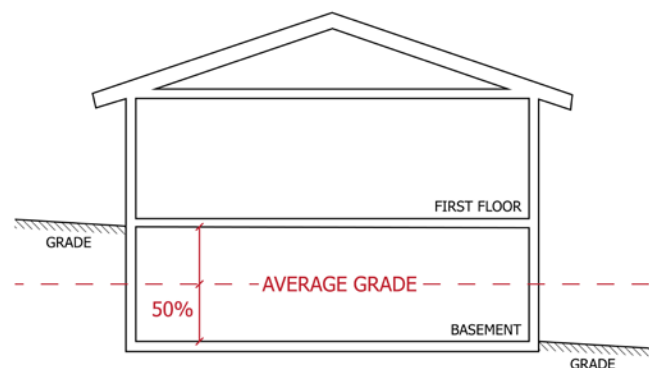
**“total floor area”** means, for purposes of the ALCA and ALR Use Regulation and pursuant to Commission Resolution No. 054N-2019, the total area of all floors measured to the outer surface of the exterior walls, including corridors, hallways, landings, foyers, staircases, stairwells, enclosed balconies, enclosed porches or verandas, attached garages and excluding:

- (a) unenclosed carports;
- (b) basements, with basement meaning that portion of any floor area having more than one-half its vertical height below the average finished grade at the perimeter of a building;
- (c) attics, with attic meaning the unfinished space between the roof and the ceiling of the top storey of a building or between a partial wall and a sloping roof.

**Total Floor Area Illustration**



**Basement Illustration**



**“unfinished pre-existing residence”** see the definition at s. 20.2 of the ALCA and in the body of the information bulletin above

**“use or subdivision application”** means “an application for permission made under any of the following: (a) section 20 (2) for a non-farm use; (b) section 20.1 (2) (a) for a non-adhering residential use; (c) section 20.3 (5) for a soil or fill use; (d) section 21 (2) for subdivision”: ALCA, s. 1(1)

**“Zone 2 Second SFD”** means a second single family dwelling in the area of the province that until February 22, 2019 was Zone 2, but only if the parcel was at least 50 ha in size and if the total area occupied by all residences and other residential structures, roads and service lines, and all land between them, was 4 000 m<sup>2</sup> or less



## INFORMATION BULLETIN 06

### ACCOMMODATION FOR TOURISTS IN THE ALR

February 25, 2019

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## 1. SCOPE OF THIS INFORMATION BULLETIN

This information bulletin provides guidance to assist in interpreting the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (**ALCA**) and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**), in relation to agri-tourism accommodation and tourist accommodation in the agricultural land reserve (**ALR**). The ALCA and ALR Use Regulation will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA and the ALR Use Regulation. All other applicable laws, regulations and bylaws related to accommodation for tourists must also be complied with.

## 2. RECENT CHANGES TO STATUTE AND REGULATIONS

Effective February 22, 2019, the ALCA has been amended and the ALR Use Regulation has been created. Though many concepts contained in the ALCA and its regulations are unchanged from the past, there have been changes to the use of ALR land for agri-tourism accommodation and tourist accommodation. All references in this information bulletin to the ALCA and the ALR Use Regulation are as of February 22, 2019, unless otherwise stated.

## 3. ROLE OF LOCAL GOVERNMENTS

### A. Role as Approving Body

The approvals that an approving body such as a local government may give in respect of the construction or alteration of residential structures for tourism are limited: ALCA, s. 18.

Any portion of a local government bylaw that purports to allow a use of land in the ALR that is not permitted under the ALCA or the ALR Use Regulation, or contemplates a use of land that would impair or impede the intent of the ALCA or the ALR Use Regulation, is inconsistent with the ALCA or the ALR Use Regulation and has no force or effect: ALCA, ss. 46(4), (5).

For example, **if a zoning bylaw provides for more agri-tourism accommodation or tourist accommodation on ALR land than do the ALCA and the ALR Use Regulation, the zoning bylaw's provision for that extra accommodation is of no force or effect and cannot be relied on.**

### B. Local Government May Restrict

**Local government bylaws can be more restrictive of residential use of the ALR, including use of land in the ALR for prescribed accommodation, than the ALCA: ALCA, s. 46(6).**

The ALR Use Regulation identifies certain designated farm uses and permitted non-farm uses that local governments must not prohibit, but places no limitation on local government powers to prohibit or otherwise restrict residential uses of ALR land.

A local government may decide that no agri-tourism accommodation or tourist accommodation should occur in its jurisdiction. The local government may expressly prohibit that use. Alternatively, the local government may simply not list those uses among uses that can occur in a particular zone, which accomplishes the same purpose. Where a zoning bylaw is in place, use of land for agri-tourism accommodation and tourist accommodation must be specifically permitted by the bylaw in order for that use to occur. Otherwise that use cannot occur even if the use would be compliant with the ALCA and ALR Use Regulation.

A local government also has the option of allowing agri-tourism accommodation or tourist accommodation, but allowing less than the ALCA and the ALR Use Regulation. For example, a local government bylaw may restrict the number of agri-tourism accommodation sleeping units to fewer than 10 and may specify the maximum number of persons who may be accommodated per sleeping unit.

Further, a local government may have additional requirements related to maximum floor area, parking, signage, setbacks, fire and emergency servicing, etc. Local governments that permit accommodation for tourists on ALR land may wish to develop monitoring methodology or require permits to ensure the occupation of the accommodation meets the requirements of their bylaws.

### **C. Areas Without Zoning Bylaws**

Note that some areas of the province do not have zoning bylaws. The absence of local zoning bylaws does not relieve a landowner from complying with the restrictions in the ALCA and ALR Use Regulation.

### **D. Applications**

An application to the Commission asking it to approve a non-adhering residential use, such as a use of a residential structure for accommodation that contravenes the regulations, may be submitted through the landowner's local government. For more information on the process for making applications to the Commission, please see the Commission's website, at [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions), as well as Section 6 of this information bulletin entitled "Applications For Non-Adhering Residential Use".

## **4. ACCOMMODATION FOR TOURISTS**

The ALR is **not** intended to be the venue for hotels or motels. The types of accommodation permitted in the ALR are very limited and subject to new restrictions for placement of fill and removal of soil. See Section 5 of this information bulletin entitled "Soil or Fill Restrictions for Accommodation Construction".

## A. Agri-Tourism Accommodation

The use of land in the ALR for providing accommodation in relation to an agri-tourism activity is permitted under section 33 of the ALR Use Regulation, without needing to bring an application to the Commission for that use, if **all** of the following apply:

- (1) the accommodation is in relation to an “**agri-tourism activity**”. Agri-tourism uses must be secondary to, incidental to and compatible with the agricultural production activities. Expressly under section 12 of the ALR Use Regulation, “**agri-tourism activity**” is an activity:
  - (a) conducted on land in the ALR that is classified as a farm under the *Assessment Act*;
  - (b) to which members of the public are ordinarily invited, whether or not a fee or other charge is payable;
  - (c) in connection with which no permanent facilities are constructed or erected. See ALC Policy L-04 for further discussion; AND
  - (d) that falls into one of the following categories:
    - (a) an agricultural heritage exhibit displayed on the agricultural land;
    - (b) a tour of the agricultural land, an educational activity or demonstration in respect of all or part of the farm operation conducted on that agricultural land, and activities ancillary to any of these;
    - (c) cart, sleigh and tractor rides on the agricultural land;
    - (d) subject to section 9 [*horse facilities*], activities that promote or market livestock raised or kept on the agricultural land, whether or not the activity also involves livestock raised or kept elsewhere, including shows, cattle driving and petting zoos;
    - (e) dog trials held on the agricultural land;
    - (f) harvest festivals and other seasonal events held on the agricultural land for the purpose of promoting or marketing farm products produced on that agricultural land;
    - (g) corn mazes prepared using corn produced on the agricultural land on which the activity is taking place;

- (2) the accommodation is located on land in the ALR that is classified as a farm under the *Assessment Act*: ALR Use Regulation, s. 33(2)(a);
- (3) the total developed area for structures, landscaping and access for the accommodation is less than 5% of any parcel: ALR Use Regulation, s. 33(2)(b);
- (4) the accommodation is limited to 10 sleeping units in total, including any bedrooms used for tourist accommodation under section 34 of the ALR Use Regulation: ALR Use Regulation, s. 33(2)(c). **“Sleeping unit”** means “(a) a bedroom or other area used for sleeping located in a residence, cabin or other structure; (b) a vehicle, trailer, tent or other structure located on a campsite, field or other area”: ALR Use Regulation, s. 33(1); AND
- (5) accommodation is provided on a seasonal or short-term basis only: ALR Use Regulation, s. 33(2)(d). **“Seasonal”** is a use or activity that fluctuates according to one or more seasons (spring, summer, fall and winter) (but not all seasons) or available or taking place during one or more seasons (but not all seasons) or at a specific time of the year. **“Short-term”** is the use by a tourist of accommodation for agri-tourism for a period of not more than 30 consecutive days.

Note that:

- **“Tourist”** is a person who travels for pleasure from place to place away from their permanent residence.

An owner of ALR land who wishes to construct or alter agri-tourism accommodation on ALR land must also comply with the requirements set out in section 20.1(1)(a) or (b) of the ALCA except as provided under section 32 of the ALR Use Regulation.

## **B. Tourist Accommodation (B&B’s)**

The use of land in the ALR for providing tourist accommodation is permitted under section 34 of the ALR Use Regulation, without needing to bring an application to the Commission for that use, subject to certain restrictions.

Note that:

- **“Tourist accommodation”** is in the nature of bed and breakfast use.
- **“Tourist accommodation”** may **only** occur in a principal residence.
- **“Tourist”** is a person who travels for pleasure from place to place away from their permanent residence.

## I. Tourist Accommodation in Compliant Principal Residence

Tourist accommodation on ALR land is permitted without application to the Commission in a principal residence that is 500 m<sup>2</sup> or less, and that is otherwise also in compliance with the ALR Use Regulation, if both of the following conditions are met:

- (a) the accommodation is limited to 4 bedrooms in total; AND
- (b) accommodation is provided on a short-term basis only.

**“Bedroom”** for the purpose of section 34 of the ALR Use Regulation means “a bedroom or other area used for sleeping in a residence”: ALR Use Regulation, s. 34(1).

**“Short-term basis”** means the use by a tourist of a bed and breakfast accommodation for a period of not more than 30 consecutive days.

## II. Tourist Accommodation in a Grandfathered Principal Residence

Tourist accommodation on ALR land is permitted without application to the Commission in a principal residence that has a total floor area of more than 500 m<sup>2</sup> or that is otherwise of a size or is sited in contravention of a regulation if all of the following conditions are met:

- on February 22, 2019, the number of bedrooms complied with section 3(1)(d) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, as it read immediately before February 22, 2019 (that is, “bed and breakfast use of not more than 4 bedrooms for short term tourist accommodation or such other number of bedrooms as specified in a local government bylaw, or treaty first nation government law, applicable to the area in which the parcel is located”);
- the number of bedrooms is not changed after February 22, 2019 unless (i) permitted under section 25 or 45 of the ALCA, or (ii) the number of bedrooms is not increased by the change; AND
- accommodation is provided on a short-term basis only.

An owner of ALR land who wishes to construct or alter tourist accommodation use in a principal residence on ALR land must also comply with the requirements set out in section 20.1(1)(a) or (b) of the ALCA except as provided under section 32 of the ALR Use Regulation.

## **5. SOIL OR FILL RESTRICTIONS FOR ACCOMMODATION CONSTRUCTION**

Removing soil from or placing fill on ALR land is permitted for the construction or maintenance of a principal residence if the total area from which soil is removed or on which fill is placed is 1,000 m<sup>2</sup> or less. If the affected area is in a floodplain, an additional condition applies: the resulting elevation level must be consistent with applicable local

government or first nation government requirements for flood protection: ALR Use Regulation, s. 35.

Removing soil from or placing fill on ALR land in connection with other residential uses (such as the construction of residential structures for agri-tourism accommodation or where the area affected by a principal residence is greater than 1,000 m<sup>2</sup>) is not permitted. An owner of ALR land seeking to remove soil or place fill may submit a notice of intent along with payment of the required fee to the ALC's chief executive officer requesting approval: ALCA, s. 20.3. The landowner may also apply to the commission for a soil or fill use under s. 25 of the ALCA.

The following types of fill are prohibited on ALR land (ALR Use Regulation, s. 36):

- construction or demolition waste (including masonry rubble, concrete, cement, rebar, drywall and wood waste);
- asphalt;
- glass;
- synthetic polymers;
- treated wood;
- unchipped lumber.

## 6. APPLICATIONS FOR NON-ADHERING RESIDENTIAL USE

An owner may apply to the Commission for approval under section 25 of the ALCA for a non-adhering residential use: ALCA, s. 20.1(2). A **“non-adhering residential use”** means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m<sup>2</sup>; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1). For example, use of more than four bedrooms in a principal residence for short-term tourist accommodation would be a non-adhering residential use requiring an application (subject to the potential exception for Tourist Accommodation in a Grandfathered Principal Residence discussed above).

For more information on making applications to the Commission, please see the Commission's website, at [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions).

Section 25(1) of the ALCA provides that on receiving a use application the Commission may:

- refuse permission for the use applied for,
- grant permission, with or without limits or conditions, for the use applied for, or
- grant permission for an alternative use or subdivision, with or without limits or conditions, as applicable.

With respect to an application for a non-adhering residential use, the Commission (a) must consider the prescribed criteria, if any, (b) must not grant permission for an additional residence unless the additional residence is necessary for a farm use; and (c) must reject the application if required by the regulations to do so: ALCA, s. 25(1.1).

Examples of considerations that the Commission may take into account in determining an application are found here: <https://www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers>

## 7. GLOSSARY

The following key definitions are relevant to this information bulletin:

**“agri-tourism activity”** means “an activity referred to in section 12” of the ALR Use Regulation: ALR Use Regulation, s. 1

**“additional residence”** means “a residence on a parcel of agricultural land, other than the principal residence”: ALCA, s. 1(1)

**“alter”** means “the following: (a) to alter the exterior of a structure so as to increase its size; (b) to move or alter the exterior walls or edges of a structure so as to change its siting”: ALCA, s. 1(1)

**“authorization”** means a permit or other authorization, issued under an enactment, to construct or alter a residence: ALCA, s. 20.2

**“bedroom”** means “a bedroom or other area used for sleeping in a residence”: ALR Use Regulation, s. 34(1)

**“construct”** means “the following: (a) to build a new structure; (b) to place on land a new structure that is fully or partially pre-fabricated; (c) to replace a structure, 75% or more of which has been substantially damaged or destroyed”: ALCA, s. 1(1)

**“farm use”** means “an occupation or use of agricultural land for (i) farming land, plants, mushrooms, truffles or animals, (ii) a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*, or (iii) a purpose designated as a farm use by regulation”, but “farm use” does “not include a residential use or a soil or fill use”: ALCA, s. 1(1)

**“fill”** means “any material brought onto agricultural land other than materials exempted by regulation”: ALCA, s. 1(1)

**“non-adhering residential use”** means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m<sup>2</sup>; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1)

**“non-farm use”** means “a use of agricultural land other than a farm use, a residential use or a soil or fill use”: ALCA, s. 1(1)

**“pre-existing residential structure”** means “a residential structure that exists on agricultural land on the date this section comes into force [February 22, 2019], and (a) is an additional residence, (b) is a principal residence having a total floor area of more than 500 m<sup>2</sup>, or (c) is of a size or is sited in contravention of a regulation”: ALCA, s. 20.2

**“prescribed residential structure”** is either a “structure” that, or a “vehicle” that, is “used, whether permanently or temporarily, to provide or in connection with providing accommodation as described in [Part 4 of the ALR Use Regulation]”: ALR Use Regulation, s. 29

**“principal residence”** means “the residence permitted under section 20.1(1)(a)”: ALCA, s. 1(1)

**“residential structure”** means “a structure used, during all or part of the year and whether fully or partially, as (a) a residence, (b) if prescribed, accommodation, or (c) if prescribed, in relation to a residence or accommodation”: ALCA, s. 1(1)

**“residential use”** means “a use of agricultural land for a residential structure” but “does not include a farm use or a soil or fill use”: ALCA, s. 1(1)

**“seasonal”** means a use or activity that fluctuates according to one or more seasons (spring, summer, fall and winter) (but not all seasons) or available or taking place during one or more seasons (but not all seasons) or at a specific time of the year

**“short-term basis”** means the use by a tourist of accommodation for a period of not more than 30 consecutive days

**“sleeping unit”** means “(a) a bedroom or other area used for sleeping located in a residence, cabin or other structure; (b) a vehicle, trailer, tent or other structure located on a campsite, field or other area”: ALR Use Regulation, s. 33(1)

**“soil or fill use”** means “the removal of soil from, or the placement of fill on, agricultural land” but “does not include a farm use or a residential use”: ALCA, s. 1(1)

**“tourist”** is a person who travels for pleasure from place to place away from their permanent residence

**“use or subdivision application”** means “an application for permission made under any of the following: (a) section 20 (2) for a non-farm use; (b) section 20.1 (2) (a) for a non-adhering residential use; (c) section 20.3 (5) for a soil or fill use; (d) section 21 (2) for subdivision”: ALCA, s. 1(1)

## **EXAMPLE DEFINITION AND REGULATION ON SECONDARY SUITES ELECTORAL AREA 'D'/RURAL GRAND FORKS**

### **Definition**

SECONDARY SUITE, means a second dwelling unit located upon a parcel as a secondary use of the land that is contained within the structure of a single family dwelling building.

### **Parking**

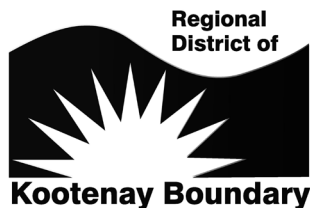
One additional space for a secondary suite

### **General Regulation**

#### Secondary Suites

Where a secondary suite is expressly permitted as a secondary use within a zone, the following regulations apply:

- a) The secondary suite or the principal dwelling unit on a parcel upon which a secondary suite is located shall be occupied by the registered owner of the property;
- b) The secondary suite shall have a floor area that does not exceed 90m<sup>2</sup> or 40% of the floor area of the single family dwelling building, whichever is less;
- c) Prior approval of the authority responsible for liquid waste disposal, pursuant to the relevant Provincial legislation, shall be obtained before issuance of a building permit;
- d) For parcels within an area served by community water system, confirmation from the water purveyor that the water service has sufficient capacity to serve the secondary suite shall be obtained before issuance of a building permit;
- e) Not more than one secondary suite shall be located on a parcel;
- f) No secondary suite may be stratified, subdivided, or otherwise legally separated from the principal single family dwelling use to which it is considered a secondary use; and
- g) A secondary suite shall not be connected to a community water system which is subject to a Drinking Water Notification pursuant to the Drinking Water Protection Act under an order of the Drinking Water Protection Officer.



## **Rural Bridesville Land Use Plan Steering Committee Staff Report**

### **Subdivision Regulations**

**Date:** March 12, 2019

**Report Prepared by:** Ken Gobeil, Senior Planner

### **ISSUE INTRODUCTION**

The minimum size for lands created by subdivision created by subdivision are set out within each zone. However, there are scenarios where minimum parcel sizes are not practical. In addition, the Local Government Act, and the ALC Act have subdivision regulations that need to be addressed in land-use bylaws. The purpose of this report is to review subdivision regulations, for discussion and recommendations for subdivision regulation within the Bridesville Plan Area.

### **BACKGROUND**

#### **Bridesville Townsite Land Use Plan Bylaw No. 1485, 2012**

##### 3.2.5 Minimum Parcel Area Exemptions

1. Unless otherwise stated in the regulations respecting a zone, a parcel which existed before the enactment of this Plan is not required to comply with the minimum parcel area requirements of the zone in which it is located, but such a parcel or any further subdivision of such a parcel shall comply with: all other provisions of this Plan, subject to exceptions expressly stated in this Section, and any other pertinent Provincial Statutes, Regulations and Orders.
2. A parcel which is reduced in size by expropriation or purchase of land by or to a public body in order to accommodate a necessary public service, utility, facility or highway, subsequent to the approval date of this Plan is deemed to be in conformity with the minimum parcel area requirements of this Plan.
3. Where as a result of land acquisition for a public use after this Bylaw comes into force by:
  - a. The Regional District;
  - b. The Provincial Government;
  - c. The Federal Government;
  - d. An Improvement District;
  - e. An Irrigation District;
  - f. A School District; or
  - g. a Public Utility

- i. The parcel of land that could have been subdivided into two or more parcels under this Bylaw when the land was acquired, and
  - ii. The parcel, as a result of the acquisition, can no longer be subdivided into the same number of parcels,
4. The parcel is deemed to conform to this Bylaw for the purposes of subdivision as though the land acquisition had not occurred, but only to the extent that none of the parcels that would be created by the subdivision would be less than 90% of the area that would otherwise be permitted by this Bylaw.
5. If a proposed single parcel is the result of a consolidation of:
  1. two or more parcels, or
  2. one or more parcels and a closed public roadway, and the aggregate area of the proposed single parcel is less than the minimum prescribed by this Bylaw, the proposed parcel shall nevertheless be deemed to comply with the minimum parcel size prescribed by this Bylaw.
6. The alteration of one or more interior parcel lines between two or more parcels shall be permitted provided that:
  1. no additional parcels are created upon completion of the alteration;
  2. the alteration does not infringe within the required setbacks for an existing building or structure located on a parcel, and
  3. the alteration does not reduce the site area required for a sewage disposal system on any parcel.

## **Local Government Act**

### Frontage

Section 512 of the Local Government Act requires that a parcel being created by subdivision must have frontage to the road that is greater than 10% of the perimeter of the lot. However, if there are land-use bylaws in effect, local governments have the authority to amend this.

The Regional District very rarely sets minimum frontage requirements. It is mainly used as a tool to ensure there is sufficient area for water and sewage utilities.

- Electoral Area 'B'/Lower Columbia-Old Glory has a 20 metre frontage requirement for new parcels created by subdivision within their Residential 1 (R1) Zone, which is the default zone for the Rivervale area.
- The Big White has multiple frontage requirements that depend on the use of land (single-family dwelling vs. multiple-family or commercial) and its location on a road (pan-handle lot, cul-de-sac,).

### Subdivision to provide residence for a relative

Section 514 of the Local Government Act sets out minimum standards for subdivision applications to provide a residence for a family member. This includes:

- Minimum years of ownership to be eligible;
- Definition of the family relationship that is eligible;
- Minimum parcel size ;
- Use of land (this section of the act cannot be used to subdivide farm land).

Determining whether the applicant can meet the requirements, or will intends to use the subdivision for a family member would be extremely difficult for the RDKB to confirm. Within other land use bylaws, there is a standard minimum parcel size for subdivision for a family member that is set to match the one of the highest minimum parcel sizes.

| Electoral Area | Minimum Parcel Size for subdivision for a family member as per section 514 |
|----------------|----------------------------------------------------------------------------|
| A              | 10 hectares                                                                |
| B              | 20 hectares                                                                |
| C              | 20 hectares                                                                |
| D              | 20 hectares                                                                |

### **Agricultural Land Commission**

The Agricultural Land Commission has the authority to approve or deny subdivision without regard to minimum parcel sizes set in local-government land-use bylaws.

### **Exemptions to Minimum Parcel Sizes**

#### Standard Exemptions to Minimum Parcel Sizes

The following exemptions to minimum parcel sizes for subdivisions are used in all land use bylaws in the RDKB:

- Subdivisions approved before the effect of the bylaw
- Subdivisions for public interests (utilities, school board, government, etc.)
- Consolidation of properties
- Alteration of interior parcel lines (ie. No new parcels are created)

#### Possible Exemptions to Minimum Parcel Size

The following exemptions to minimum parcel size offer flexibility. However, they need to be defined to ensure that un-usable lots are created:

- Properties that are split zoned may subdivide along that boundary
- Properties that are separated by a road or railway

Interior Health recommends the following minimum parcel sizes to ensure there is a safe space for a septic system:

- 2000m<sup>2</sup> for properties within a community water system.

- 1-hectare for properties without a community water service to ensure there is sufficient room for a well and septic system.

There is no common trend when comparing other land-use bylaws for a common exemption. There are bylaws that do not use either, and others will use only one.

### **Conservation Subdivisions**

Also referred to as cluster subdivisions, conservation subdivisions can offer greater density (smaller parcels) in exchange for the preservation of open space and recreational corridors as part of the development approval process.

This would be done through bylaw amendments to create a spot designation and spot zone. They are not common. This type of subdivision is unlikely due to the higher costs and market interest for this type of subdivision.

### **RECOMMENDATION**

The committee review the proposed bylaw:

## #\_\_Subdivision Regulations

1. Where a Zone includes a regulation entitled "Parcel Area", or this Bylaw otherwise refers to a minimum *parcel area*, then no *parcel* may be created by subdivision that has an area less than the figure specified for the Zone in which the *parcel* is located.
2. A *parcel* which is reduced in size by the dedication of land to a public body in order to accommodate a necessary public service, utility, facility or *highway*, subsequent to the approval date of this Bylaw is deemed to be in conformity with the minimum *parcel area* requirements of this Bylaw.
3. Where as a result of land acquisition for a public use after this Bylaw comes into force by:
  - a) The Regional District;
  - b) A municipality;
  - c) The Provincial Government;
  - d) The Federal Government;
  - e) An Improvement District;
  - f) The Board of School Trustees; or
  - g) A Public Utility,
    - i) The *parcel* of land that could have been subdivided into two or more *parcels* under this Bylaw when the land was acquired, and
    - ii) The *parcel*, as a result of the acquisition, can no longer be subdivided into the same number of *parcels*,the *parcel* is deemed to conform to this Bylaw for the purposes of subdivision as though the land acquisition had not occurred, but only to the extent that none of the *parcels* that would be created by the subdivision would be less than 90% of the area that would otherwise be permitted by this Bylaw.
4. The minimum *parcel area* requirements of this Bylaw do not apply to the consolidation of existing *parcels* or the addition of closed *highways* to an existing *parcel*, except that where a consolidation of existing *parcels* would include lands located within the Rail Corridor Zone the minimum *parcel area* requirement under this bylaw shall apply.
5. The alteration of one or more *interior parcel lines* between two or more *parcels* is permitted provided that:
  - a) no additional *parcels* are created upon completion of the alteration;
  - b) the alteration does not infringe within the required setbacks for an existing *building* or *structure* located on the *parcel*;
  - c) the alteration does not reduce the site area required for a sewage disposal system on any *parcel* being altered; and

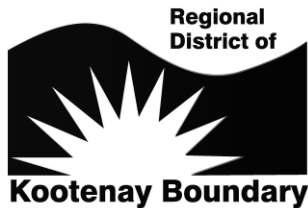
- d) if the alteration applies to land within the 'Rail/Trail Corridor Zone', a corridor must be maintained within that zone that is a minimum of \_\_\_ metres wide and is suitable for access and use of that corridor.
- 6. The minimum size for a *parcel* of land that may be subdivided pursuant to Section 514 (Subdivision for a relative) of the *Local Government Act* is 20 hectares. This regulation does not apply within the *Agricultural Land Reserve*.
- 7. New *parcels* created after the adoption of this bylaw must not be separated by an existing *highway* or railway right of way unless each portion of the *parcel* separated by a *highway* or railway right of way meets the minimum *parcel* area requirement of the zone.
- 8. The minimum *parcel* area at subdivision in any zone established under this bylaw does not apply where all of the following conditions are satisfied:
  - a) the *parcel* being created is to be used solely for the unattended equipment necessary for operation of
    - i) *public utility uses* with no exterior *storage* of any kind;
    - ii) radio or television broadcasting antennae, or other similar communications infrastructure;
    - iii) air or marine navigation aids;
  - b) no sewage is generated, and
  - c) the owner agrees in writing to registering a covenant pursuant to section 219 of the *Land Title Act* in favour of the Regional District of Kootenay Boundary at the time the subdivision is registered, and such covenant shall be satisfactory to the approving officer and shall restrict the use of the *parcel* in accordance with the applicable exception under this provision.

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 9. | <i>Parcels</i> that are split into more than one zone may be subdivided along the zone boundary provided: <ul style="list-style-type: none"> <li>a) the minimum <i>parcel</i> area requirement for new <i>parcels</i> created by subdivision can be achieved in at least one of the zones; and</li> <li>b) no <i>parcel</i> created pursuant to this section may be less than:               <ul style="list-style-type: none"> <li>i) 2000m<sup>2</sup> when connected to a <i>community water system</i>,</li> <li>ii) 1 hectare when not connected to</li> </ul> </li> </ul> | <u>Yes/No/Comments</u> |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|

a *community water system*.

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| <p>10. <b><i>Parcels</i></b> that are split by a road right-of-way may be subdivided along the boundary of the right-of-way boundary provided:</p> <p>a) the minimum <b><i>parcel</i></b> area requirement for new <b><i>parcels</i></b> created by subdivision can be achieved in at least one of the zones; and</p> <p>b) no <b><i>parcel</i></b> created pursuant to this section may be less than:</p> <p style="padding-left: 40px;">i) 2000m<sup>2</sup> when connected to a <b><i>community water system</i></b>,</p> <p style="padding-left: 40px;">ii) 1 hectare when not connected to a <b><i>community water system</i></b>.</p> | <p><u>Yes/No/Comments</u></p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|



## Rural Bridesville Land Use Plan Steering Committee Staff Report

### Property Maintenance and Safety

**Date:** March 12, 2019

**Report Prepared by:** Ken Gobeil, Senior Planner

### ISSUE INTRODUCTION

The *Local Government Act* recommends that OCP's include policies respecting social needs, well-being, and the maintenance and enhancement of lands. The purpose of this report is to review the current policy for the Bridesville plan area and provide a draft policy for discussion and recommendation.

### BRIDESVILLE TOWNSITE LAND USE PLAN NO. 1485, 2012

#### Property Maintenance and Safety

Most residents of the Bridesville Townsite take pride in the appearance of their property and value that quality in other community members. However, a number of concerns have been expressed regarding the upkeep of some properties in the community. Those poorly maintained properties are having negative impacts on a number of people in the community including enjoyment of their property and their perceived safety.

#### Objectives

The objectives of the **Board** with respect to Property Maintenance and Safety are as follows:

- To minimize disturbances to the natural environment as far as possible, and to promote a quiet, peaceful, and safe setting for the community;
- To recognize the natural visual qualities of the area; and
- To encourage residents of the Townsite to maintain their **parcels** in a healthy and safe manner.

#### Policies

The policies of the **Board** with respect to Property Maintenance and Safety are as follows:

- 1 Consider adopting an Unsightly Premises Bylaw for the **Plan Area**;
- 2 Consider adopting an Animal Control Bylaw for the purposes of controlling animals at large.
- 3 Consider adopting a Noise Bylaw for the purpose of establishing late evening and early morning quiet hours.

## **2017 SURVEY RESULTS**

In the 2017 survey asked residents and landowners, what three things in Electoral Area 'E'/West Boundary require improvement? The top results were

1. Unsightly properties
2. (Tied) Bridesville townsite cleanup; and  
More employment opportunities.

## **RECOMMENDATION**

The existing policy needs updating to include the rural area outside the townsite that has been included in this Plan Area.

The current bylaw does not acknowledge the specific qualities and features that make the area special. The objectives and policies can be expanded to include the concerns noted in the survey results.

## #\_\_Property Maintenance and Safety

The visual qualities of the Plan Area feature scenic rolling hills, steep valleys, forests, mountains agricultural and rural landscapes. It is attributable to the pride with which most residents maintain their properties.

Poorly maintained properties have negative impacts on a number of people in the community. Impacts include a loss of enjoyment of their property and their safety.

Many traditional rural land uses including farming involve the storage of materials and other elements of land-use, which may offend both new and long-time residents who perceive those uses as untidy. While seeking to encourage a high level of property maintenance standards in the Plan Area, some accommodation must be made for those elements of land-use, which are traditionally present in rural areas.

### Objectives

The objectives of the Board with respect to Sand and Gravel Deposits are as follows:

| <b><u>Objectives</u></b>                                                                                                                                                         | <b><u>Yes/No Comments</u></b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| To minimize disturbances to the natural environment as far as possible, and to promote a quiet, peaceful, and safe setting for the community;                                    |                               |
| To recognize the natural visual qualities of the plan area;                                                                                                                      |                               |
| To encourage residents to maintain their parcels in a healthy and safe manner.                                                                                                   |                               |
| To promote the retention of natural environmental and scenic values in the Plan Area.                                                                                            |                               |
| To promote actions that contribute to the health and safety of residents in the Plan Area                                                                                        |                               |
| To maintain a safe, efficient and healthy rural environment by discouraging unnecessary dilapidated structures and the occurrence of untidy or improperly maintained properties; |                               |
| To encourage landowners in the Plan Area to recognize the importance of maintaining visual values on their property whenever possible;                                           |                               |

## Policies

The policies of the **Board** with respect to Property Maintenance and Safety are as follows:

| Policies                                                                                                                                                                | Yes/No Comments |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Consider adopting an Unsightly Premises Bylaw for the Plan Area;                                                                                                        |                 |
| Consider adopting an Animal Control Bylaw for the purposes of controlling animals at large;                                                                             |                 |
| Encourage the proper care and maintenance of private property;                                                                                                          |                 |
| Encourage residents to minimize the impact of smoke from burning on their property onto adjacent properties; and                                                        |                 |
| Encourage residents to take advantage of incentive programs such as the Woodstove Exchange Program to replace old appliances with more efficient, cleaner burning ones. |                 |
| Encourage the safe and quiet enjoyment of residential properties.                                                                                                       |                 |
| Encourage compliance of existing dwelling units with regulations that contribute to safety standards.                                                                   |                 |
| Encourage property owners to ensure their street address is highly visible from the road both during the day and at night.                                              |                 |
| Encourage residents to minimize the impact of smoke from burning on their property.                                                                                     |                 |
| Encourage cleanup and beautification of the townsite area                                                                                                               |                 |