

To: CAO for the Electoral Area Services Committee
From: Julie Mundy, Planning Technician

Date: 2019-04-09
File No: 3015-01

Subject: For information – Summary of legislative changes to the Agricultural Land Reserve Regulation and the Agricultural Land Commission Act

INTENT

This report is intended to advise the Electoral Area Services Committee of recent changes to regulations governing the Agricultural Land Reserve. Staff is not looking for a recommendation and has forwarded this information should members want more clarification or to discuss the item further.

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BACKGROUND

On February 22, 2019 significant changes to the *Agricultural Land Commission Act* (ALC Act) and the *Agricultural Land Reserve Regulation* came into effect. These changes will affect all lands within the ALR.

DISCUSSION

The Agricultural Land Commission (ALC) is the provincial agency responsible for administering the Agricultural Land Reserve (ALR). Effective February 22, 2019, there were changes to the *ALR Regulations* and to the *ALC Act* which increased the oversight powers of the Agricultural Land Commission. Key changes can be generally grouped into three topics: 1) Governance & Structure 2) Residential Use and 3) Soil and Fill Use.

Governance & Structure

The former *ALR Use, Subdivision, and Procedure Regulation* has been restructured into two pieces: 1) *ALR General Regulation* and 2) *ALR Use Regulation*. The *ALR General Regulation* covers procedures for applications, subdivisions, inclusions, exclusions, and general administration.

The *ALR Use Regulation* categorizes all uses on ALR land into one of four streams: Farm use, Non-farm use, Residential use, and Soil or Fill use. The intention of this approach is to create clear delineation and regulation for each type of use. The definition of farm use has changed to exclude any type of soil removal or fill as these activities now form a distinct category.

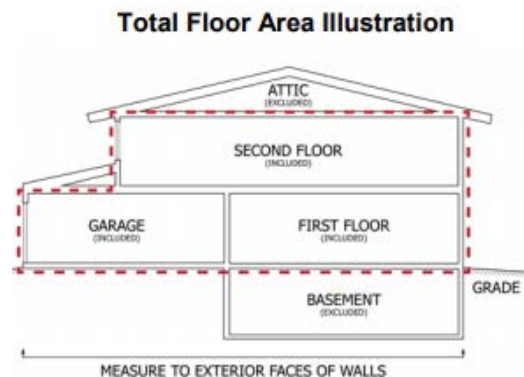
Other broad changes include the elimination of Zone 1 and Zone 2, resulting in a single set of rules for all ALR lands.

Residential Use

The legislative changes include new regulations for the size and number of residences permitted on ALR parcels. The maximum size of a new residence in the ALR is restricted to 500m² (5382 square feet). The size of a residence is calculated by adding the floor area of all stories above the basement.

There is also a new residential limit of one residence per ALR parcel unless the ALC grants approval for a secondary residence. Provisions that broadly permitted secondary residences for family members and farm employees have been removed from the *ALC Act* and the *ALR Regulations*. Under the new rules, the ALC is authorized to approve a secondary residence only if it is deemed necessary for a farm use.

Effective February 22, 2019, a local government may not approve or permit construction of a secondary residence or a residence over 500m² without approval by the ALC. Any portion of the FVRD's bylaws contradicting the new rules has no force or effect.



Construction of a secondary residence is allowed to continue if a building permit has been issued and the construction of the foundation substantially began before February 22, 2019. There are, however, no provisions for considering in-stream applications where a property owner has applied for a building permit or has invested in the property, but has not yet been issued a building permit. There are five properties within FVRD with active building permit applications which are adversely impacted by the regulation changes. Planning staff have coordinated with the property owners and have informed the ALC of the challenges for the owners.

Some grandfathering principles are in place for existing residences, however, there are no provisions to replace a second residence without an application for a "non-adhering residential use" to the ALC. The application fee is \$1500.

The ALR regulations permit one suite if it is located within the primary residence. It should be noted that most FVRD zones do not currently allow suites. Staff are working with Electoral Area Directors to develop a policy to support secondary dwellings in some circumstances.

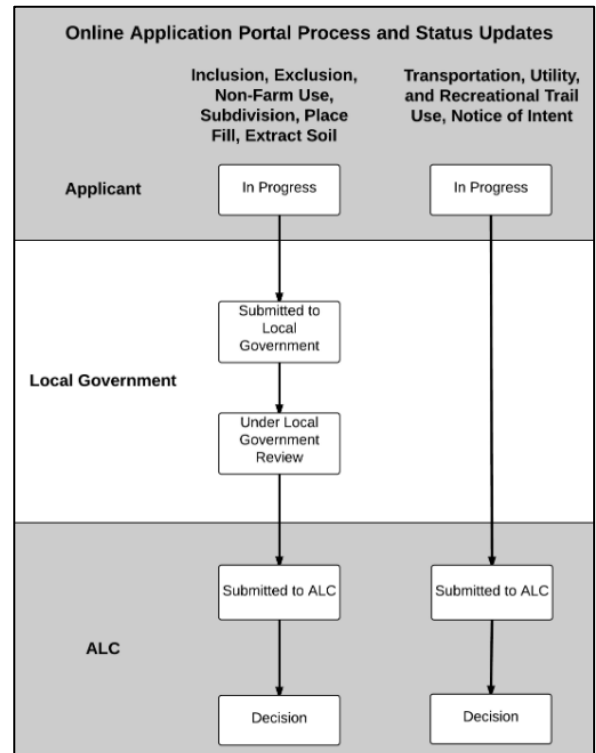
Soil and Fill

Under the new regulations, soil/fill removal and placement is its own land use category. In only very limited circumstances can soil/fill placement or aggregate removal be undertaken without interacting with the ALC through a Notice of Intent or a Soil or Fill Use Application. The Notice of Intent is a new procedure which enables the ALC to more closely monitor soil and fill use in the ALR.

A Notice of Intent is to be submitted by a land owner prior to initiating any soil or fill activity, and is not to be used as a mechanism to seek retroactive approval. The Notice of Intent is received by the ALC and is approved or refused by the Commissions CEO. The application fee is \$150.

If the Notice of Intent is refused, or if the property owner is not satisfied with the terms of an approval, the property owner may submit a Soil or Fill Use Application. The fee for a Soil or Fill Use Application is \$1500.

Local governments are notified when a Notice of Intent is submitted, however, they do not have a role in evaluating the proposal unless the ALC requests input. For a Soil or Fill Use Application to move forward, comments and a recommendation from the local government are required.



CONCLUSION

This information note summarizes key changes to the *Agricultural Land Commission Act* and to the *ALR Regulations* that are most relevant to the Fraser Valley Regional District. Additional Information from the ALC is attached.

COMMENTS BY:

Graham Daneluz, Deputy Director of Planning & Development: Reviewed & supported

Margaret Thornton, Director of Planning & Development: Reviewed & supported

Mike Veenbaas, Director of Financial Services: No further financial comments.

Paul Gipps, Chief Administrative Officer: Reviewed and supported



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 m² 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 m², 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 m² 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 500m² 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 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 m² 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 m² 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 500m² 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 m² or less

If the landowner is completing construction of an unfinished principal residence which will on completion have a total floor area of **500 m² 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 m²

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 m²**, 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 m² or less

If the landowner is completing alterations to a principal residence that will not cause its total floor area to exceed **500 m²** 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 m²

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 m², 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 m²; 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 m² 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
 - permitted on application, OR

- 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
 - permitted on application, 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.

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 m² 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
 - permitted on application, 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.

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 m².

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 m² 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 m²) 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 m²; (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.

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

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 m²; (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 m², 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)

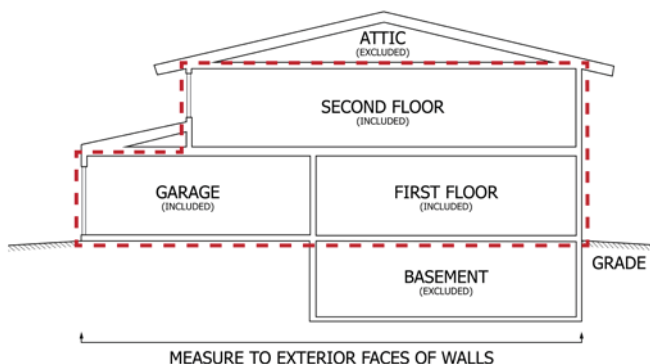
“residential use” means “a use of agricultural land for a residential structure” but “does not include a farm use or a soil or fill use”: ALCA, s. 1(1)

“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)

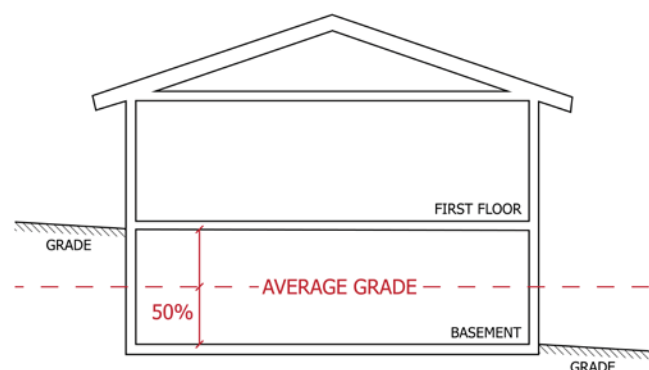
“total floor area” means, for purposes of the ALCA and ALR Use Regulation and pursuant to Commission Resolution No. 054N-2019, the total area of all floors measured to the outer surface of the exterior walls, including corridors, hallways, landings, foyers, staircases, stairwells, enclosed balconies, 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 m² or less



INFORMATION BULLETIN 07

SOIL OR FILL USES IN THE ALR

March 22, 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**), the Agricultural Land Reserve General Regulation (the **ALR General Regulation**) and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**), in relation to fill placement or soil or aggregate removal in the agricultural land reserve (**ALR**). The ALCA, the ALR General Regulation and the ALR Use Regulation will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA, the ALR General Regulation and the ALR Use Regulation. All other applicable provincial and federal laws and regulations, as well as applicable local government bylaws, 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 significant changes in relation to fill placement, soil removal, and aggregate removal. All references in this information bulletin to the ALCA and its regulations are as of February 22, 2019, unless otherwise stated.

The following is a summary of key fill placement, soil removal, and aggregate removal changes to the ALCA and ALR Use Regulation:

- Farm use is no longer defined in any circumstance to include soil removal or fill placement.
- Non-farm use is no longer defined in any circumstance to include soil removal or fill placement.
- Only in very limited circumstances, which are expressly identified in the ALR Use Regulation, can fill placement or removal of soil or aggregate be undertaken without interaction with the Agricultural Land Commission (ALC) via a *Notice of Intent* or a *Soil or Fill Use Application* as outlined in this bulletin.
- Prohibited fill has been defined.

The changes to the ALCA and the regulations mean that previous ALC bylaws, policies and information bulletins in relation to fill placement, soil removal and aggregate removal are superseded.

Anyone who intends to place fill on land in the ALR or to remove soil or aggregate from land in the ALR must comply with the ALCA and its regulations.

3. PLACEMENT OF FILL OR REMOVAL OF SOIL IN THE ALR

A. Fill Placement or Soil Removal That May Occur Without Authorization

See Section 4 of this bulletin for information on Aggregate Removal.

The following fill placement or soil removal activities are permitted uses and are considered “**Exempted Activities**” or an “**Exempted Activity**” and do not require authorization from the ALC:

- constructing or maintaining a structure for farm use OR for a principal residence **if** both of the following conditions are met:
 - (i) the total area from which soil is removed, or on which fill is placed, is 1,000 m² or less; AND
 - (ii) if the area from which the soil is removed, or on which the fill is placed, is in a floodplain, the resulting elevation level is consistent with the minimum elevation level established under all applicable local government enactments and first nation government laws, if any, respecting flood protection in the floodplain;

See the Section 9 “Glossary”, found at the end of this bulletin, for the definition of “**structure for farm use**” and “**principal residence**”.

- constructing or maintaining berms for producing cranberries, if any fill placed on the area is (i) no higher than 2 m above the natural grade, and (ii) no wider than 10 m at the base;
- constructing or maintaining flood protection dikes, drainage, irrigation and livestock watering works for farm use, if the total annual volume of soil removed or fill placed is 320 m³/16 ha or less;
- maintaining an existing farm road, if the total annual volume of soil removed or fill placed is 50 m³ or less;
- using clean sand as a top-dress for berry production, if the total annual volume of soil removed or fill placed is 100 m³/ha or less;
- applying soil amendments, if incorporated into the soil to a depth of 30 cm or less. “Soil amendment” means compost, fertilizer, manure, mulch and soil conditioners;
- conducting soil research and testing, if the soil removed or fill placed is limited to the amount necessary for the research or testing.

For any of the above purposes, fill must not include any of the following, which are defined as **Prohibited Fill** in the ALR Use Regulation:

- (a) construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste;
- (b) asphalt;
- (c) glass;

- (d) synthetic polymers (e.g., plastic drainage pipe);
- (e) treated wood;
- (f) unchipped lumber.

B. Fill Placement or Soil Removal That Requires Authorization

Other than those fill placement and soil removal activities described as Exempted Activities, a person must not place fill on, or remove soil from, land in the ALR without successfully completing one of the following processes:

- **Notice of Intent** – A landowner who wishes to place fill or remove soil in the ALR must submit a *Notice of Intent* to the CEO of the Commission in accordance with the process set out in this bulletin in Section 5.
- **Soil or Fill Use Application** - A landowner is always at liberty to make an application for fill placement or soil removal to be decided by the Commission under s. 25 of the ALCA. If the Commission approves the *Soil or Fill Use Application*, the landowner may proceed with the approved use on the terms of that approval.

If a landowner is unsure as to which type of authorization they should seek, they should contact the Commission staff for guidance at ALC.Soil@gov.bc.ca.

A person who places fill or removes soil from land in the ALR without successfully having completed one of these processes, may be subject to a penalty or order to remediate the land or remove the unauthorized fill.

4. REMOVAL OF AGGREGATE

C. Aggregate Removal That May Occur Without Authorization

If a person engages in aggregate removal within the following parameters, a *Notice of Intent* is not required and the removal will not breach the ALCA (ALR Use Regulation, s. 26) (a “**Section 26 Aggregate Removal**”) if:

- the total volume of aggregate removed from any single parcel is less than 500 m³; and,
- regardless of the volume of aggregate removed, the disturbed area is rehabilitated in accordance with good agricultural practice as soon as reasonably practicable after (i) aggregate removal is complete, if the aggregate is removed as part of a single continuous operation, or (ii) each stage of aggregate removal is complete, if subparagraph (i) does not apply; and,
- the cultivable surface layer of soil is salvaged, stored on the parcel and available for rehabilitation in accordance with the bullet point above.

D. Aggregate Removal That Requires Authorization

A person must not remove aggregate from land in the ALR, with the exception of activities related to Section 26 Aggregate Removal, without successfully completing either a *Notice of Intent* or *Soil or Fill Use Application*, as described in this bulletin.

A person who removes aggregate from land in the ALR without successfully having completed one of these processes, may be subject to a penalty or order to remediate the land or remove the unauthorized fill.

5. PROCESS TO REQUEST AUTHORIZATION

If a landowner is unsure as to which type of authorization they should seek, they should contact ALC staff for guidance at ALC.Soil@gov.bc.ca.

A. Notice of Intent Process

If a landowner intends to place fill or remove soil or aggregate for reasons other than an Exempted Activity, the landowner must submit the *Notice of Intent* prior to initiating an activity. The *Notice of Intent* is submitted through the ALC Application Portal along with the prescribed \$150 fee: ALCA s. 20.3(1)(c), ALCA General Regulation, s. 33.1(6). This is the required manner of submission under s. 20.3(1)(c) of the ALCA. Please see www.alc.gov.bc.ca/alc/content/applications-and-decisions on the ALC website for more information.

The purpose of a *Notice of Intent* is to seek authorization prior to lawful placement of fill or removal of soil or aggregate, and not as a mechanism to seek retroactive approval.

I. Receipt of a Complete Notice of Intent

The CEO and employees of the Commission to whom authority is delegated under s. 20.3(6) of the ALCA (together referred to as the CEO as applicable in this bulletin) have certain powers and functions once both the *Notice of Intent* and fee have been received. The CEO will acknowledge the *Notice of Intent* when it has been received in the required form and manner and the fee has been paid. The *Notice of Intent* is not considered to be complete unless it is submitted to the CEO in the required form and manner and the fee has been paid.

The 60 calendar day period for reviewing the *Notice of Intent* does not start running until the *Notice of Intent* has been acknowledged as complete.

II. Additional Information Request from CEO

Upon review of a complete *Notice of Intent*, the CEO may request additional information from the landowner who submitted the *Notice of Intent*: ALCA s. 20.3(2)(a). The CEO has 60 days from when the *Notice of Intent* (in the form and manner) is found to be complete to request additional information.

Once all of the additional information requested by the CEO is provided, the CEO has 60 days either to:

- approve the placement of fill or the removal of soil or aggregate (either as set out in the *Notice of Intent* or subject to limits and conditions) (the “**CEO Approval**”) or
- issue a written order that the person stop or not engage in placing fill or removing soil or aggregate (the “**CEO Refusal**”): ALCA s. 20.3(2), (4).

The 60 day period for issuing either the CEO Approval or the CEO Refusal does not start running until the CEO has received all of the additional information requested.

If the CEO does not issue either a CEO Approval or a CEO Refusal within the 60 day period from receipt of all the additional information requested, fill placement or removal of soil or aggregate as described in the *Notice of Intent* will not contravene the ALCA or the regulations except if Prohibited Fill is placed on the property.

III. CEO does not request additional information

If the CEO does not request additional information from the person who submitted the *Notice of Intent*, the CEO must within 60 days from receipt of the *Notice of Intent* (in the required form and manner) and fee, either:

- approve the fill placement or soil or aggregate removal activity (either as set out in the notice or subject to limits and conditions)(**CEO Approval**), or
- issue a written order that the person stop or not engage in placing fill or removing soil or aggregate (**CEO Refusal**): ALCA s. 20.3(2), (4).

IV. Compliance with CEO Approval

A landowner who receives a CEO Approval may place fill or remove soil or aggregate in accordance with the terms of that approval. The CEO Approval will indicate terms and conditions of the fill placement or soil or aggregate removal activity.

V. CEO Refusal

If the landowner who receives a CEO Refusal still wishes to place fill or remove soil or aggregate, he or she must submit and have an approved *Soil or Fill Use Application* to the Commission.

B. Soil or Fill Use Application Process

A *Soil or Fill Use Application* is a form of “use application” to be decided by the Commission under s. 25 of the ALCA. A *Soil or Fill Use Application* may be made in any of the following circumstances:

- if a landowner in the ALR wishes to seek Commission approval via a use application rather than going through the *Notice of Intent* process;
- if a landowner in the ALR commences but changes their mind before completion of the *Notice of Intent* process and wishes to seek Commission approval via a use application;
- if at the conclusion of the *Notice of Intent* process, the CEO has issued a CEO Approval and the landowner is not satisfied with the terms and conditions of that approval and wishes to have different terms and conditions; or
- if at the conclusion of the *Notice of Intent* process, the CEO has issued a CEO Refusal.

If a *Notice of Intent* and associated fee have already been submitted, the *Soil or Fill Use Application* fee is \$1,350; otherwise the fee is \$1,500: ALR General Regulation, s. 33(1.1).

The *Soil or Fill Use Application* must be submitted through the ALC Application Portal. Please see www.alc.gov.bc.ca/alc/content/applications-and-decisions on the ALC website for more information. This is the required manner of submission under s. 20.3(5) of the ALCA.

On receiving a *Soil or Fill Use Application*:

- the Commission must reject the application if the fill to be placed includes any form of **Prohibited Fill**; or,
- the Commission must do one of the following:
 - (a) refuse permission for the fill placement or removal of soil or aggregate;
 - (b) grant permission, with or without terms or conditions, for the use applied for, or
 - (c) grant permission for an alternative use, with or without terms or conditions, as applicable: ALCA, s. 25(1)(b).

C. Soil or Fill Use Application Considerations

For examples of general considerations that the Commission may take into account in determining a use application, please see www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers.

Among the considerations that the Commission is likely to take into account on a *Soil or Fill Use Application* for soil or fill use are the following:

- Will the fill placement or soil removal aid the farm/farming activity?
- Will the fill placement or soil removal reduce the agricultural capability of the land, degrade soils, or limit the range of crops that can be grown on the subject property compared to the current crop suitability of the land?
- Is fill placement or soil removal the only means available to address implementation of standard agricultural best practices?
- Will the fill placement or soil removal aid in the rehabilitation of agricultural lands severely impacted by past fill activities or other activities that have degraded agricultural land, whether permitted or not permitted?
- Will the fill placement foul, obstruct, or impede the flow of any waterway?
- If fill is required for drainage improvements, will the proposed fill height exceed more than 0.5 metres above the maximum height of the water table (as confirmed by a Qualified Registered Professional) which is equivalent to a Class 1 excess water limitation?

- Will the final finished grade of the subject property complement adjacent landforms and provide for a smooth transition between the land contours and drainage channels on adjacent lands and the reclaimed area?
- How long are fill placement activities expected to last? Generally, the Commission will not consider fill placement activities that would extend beyond two years.

If the Commission approves a *Soil or Fill Use Application*, the fill placement or soil or aggregate removal activity may proceed only in accordance with that approval.

A person who places fill or removes soil or aggregate from land in the ALR without successfully having completed a *Notice of Intent* or a *Soil or Fill Use Application* may be subject to a penalty or order to remediate the land or remove the unauthorized fill.

A *Notice of Intent* may NOT be made for a *Soil or Fill Use Application* that was refused by the Commission.

6. ROLE OF LOCAL GOVERNMENT

The role of local government will depend on whether the landowner has submitted a *Notice of Intent* or a *Soil or Fill Use Application*.

E. Notice of Intent

Local governments are notified when a *Notice of Intent* is submitted; however they do not have a role in processing or evaluating a *Notice of Intent*, unless the CEO requests their input. Local governments are also copied on decisions once the CEO has rendered them.

The local government must NOT approve or permit fill placement or soil or aggregate removal activities unless:

- the fill placement or soil removal is an **Exempted Activity**; or,
- there is a CEO Approval for the fill placement or removal of soil or aggregate.

F. Soil or Fill Use Application

An application to the Commission asking it to approve a soil or fill use may be submitted through the local government.

Local governments that receive a *Soil or Fill Use Application* under section 34 (4) of the ALCA must:

- (a) review the application, and
- (b) forward to the Commission the application together with the comments and recommendations of the local government or the first nation government in respect of the application

The local government must NOT approve or permit fill placement or removal of soil or aggregate until such time that the Commission has approved the *Soil or Fill Use Application* for the subject property.

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.

G. Consistency with Zoning and Other Bylaws

Any portion of a local government bylaw that intends 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).

The placement of fill or removal of soil or aggregate in contravention of the ALCA or the ALR Use Regulation may be subject to compliance and enforcement action even if the use seems to comply with a local government bylaw.

7. LAND DEVELOPMENT WORKS

Farm use of land in the ALR includes “a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*”: ALCA, s. 1. The definition of “farm operation” in the *Farm Practices Act* includes “clearing, draining, irrigating or cultivating land” if “involved in carrying on a farm business”. A subset of this category of work is known as “land development works”, which includes all of the following:

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

Some of these land development works may require fill placement or removal of soil; however, **this does not mean that these activities can occur without authorization of the Commission**. Authorization in the form of a *Notice of Intent* or *Soil or Fill Use Application* **must be obtained** (other than for **Exempted Activities**) before the fill placement or soil or aggregate removal activity associated with land development works is undertaken.

8. RESIDENTIAL CONSTRUCTION

Fill placement or removal of soil or aggregate is permitted for the construction or maintenance of a principal residence if:

- the total area from which soil or aggregate is removed or on which fill is placed is 1,000 m² or less, AND

- the total floor area of the principal residence is 500 m² or less, or the residence has been authorized by a *Non-Adhering Residential Use Application*. See Information Bulletin 05: Residences in the ALR for more information on residential uses.

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 or aggregate 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 m²) is not permitted. A landowner seeking to remove soil or aggregate or place fill that exceeds the 1000 m² condition may submit a *Notice of Intent* along with payment of the required fee. The landowner may also apply to the Commission through a *Soil or Fill Use Application* under s. 25 of the ALCA.

Prohibited Fill is not permitted for the construction or maintenance of any residential uses.

9. COMPLIANCE AND ENFORCEMENT

The Commission receives many complaints regarding fill, soil and aggregate-related activities on ALR land. Compliance and enforcement officials of the Commission have a wide range of compliance and enforcement mechanisms available under ss. 49-57 of the ALCA. This includes mechanisms to ensure that the ALCA, regulations and orders are complied with, that land can be rehabilitated where non-compliance occurs, and that violations can be penalized administratively or through the courts.

The purpose of a *Notice of Intent* is to seek authorization prior to lawful placement of fill or removal of soil and aggregate, and not as a mechanism to seek retroactive approval.

10. GLOSSARY

The following key definitions are relevant to this information bulletin:

“aggregate” means sand, gravel, crushed stone, quarry rock and similar materials used in the construction and maintenance of civil and structural projects

“ALCA” means the *Agricultural Land Commission Act*

“ALR” means the Agricultural Land Reserve

“ALR General Regulation” means the Agricultural Land Reserve General Regulation

“ALR Use Regulation” means the Agricultural Land Reserve Use Regulation

“berming” means the construction of dykes;

“CEO” means the Chief Executive Officer of the Commission and, as applicable, such employees to whom powers and duties are delegated under s. 20.3(6) of the ALCA

“clearing” means tree and stump removal undertaken to prepare land for cultivation

“Farm Practices Act” means the *Farm Practices Protection (Right to Farm) Act*

“structure for farm use” means structures used in a farm operation for the growing, producing, raising, or keeping of farm animals or plants, including mushrooms and aquaculture facilities, and the primary products of those plants and animals

“farm use” (a) 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, and (b) does not include a residential use or a soil or fill use: ALCA, s. 1

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

“flood protection requirements” means the elevation level as established by local government bylaws for flood protection within a defined floodplain

“levelling” means reshaping the soil surface within a field or parcel of land to eliminate high and low areas and resulting in a uniform field level (that is, cutting high spots and filling in low spots);

“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

“Notice of Intent” means a notice of intent submitted to the CEO under s. 20.3(1)(c)(ii) of the ALCA, in the form and manner that the CEO requires

“placement” of fill, or **“fill placement”**, means to deposit, place, store, or stockpile directly or indirectly, fill on any land in the ALR, where that fill did not previously exist

“principal residence” means the residence permitted under section 20.1(1)(a) of the ALCA

“Prohibited Fill” means (a) construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste; (b) asphalt; (c) glass; (d) synthetic polymers; (e) treated wood; (f) unchipped lumber: ALR Use Regulation, s. 36.

“Qualified Registered Professional” means a person registered with a professional association including the Association of Professional Engineers and Geoscientists of BC, the Corporation of the Province of British Columbia Land Surveyors, British Columbia Institute of Agrologists or another person who is qualified because of knowledge, training and experience to organize, supervise and perform the relevant services

“remove” or **“removal”** means the act of removing soil or aggregate from any land in the ALR, where it existed or stood, which place or location shall include a stockpile or other storage facility

“reservoir” means a water impoundment that is used for agricultural water supply.

“soil” includes the entire mantle of unconsolidated material above bedrock other than minerals as defined in the *Mineral Tenure Act*: ALCA, s. 1

“soil amendment” means compost, fertilizer, manure, mulch and soil conditioners: ALR Use Regulation, s. 1

“soil conditioner” means organic or inorganic matter that has beneficial effects on the biological, chemical, or physical properties of soil

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

“Soil or Fill Use Application” means an application for permission made for a soil or fill

“stockpile” means a man-made accumulation of soil, fill, or organic materials held in reserve for future use, distribution or removal.

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

“wood residue” as defined by the Code of Practice for Agricultural Environmental Management means wood or a wood product that (a) is chipped or ground, (b) originates from (i) wood processing, (ii) the clearing of land, if the majority of the greenery is removed and no soil is present, or (iii) trimming or pruning activities, (c) has not been treated or coated with chemicals, including preservatives, glues, paints, varnishes, oils or finishing materials, (d) does not contain a foreign substance harmful to humans, animals, or plants when combusted, (e) has not been exposed to salt water, and (f) has not been used for or recovered from construction or demolition activities

“wood waste” includes wood residue, hog fuel, mill ends, bark, and sawdust, but does not include demolition waste, construction waste, tree stumps, branches, logs or log ends, or log yard waste