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**Public Hearing
Information Package**

June 28, 2021, at 7:00 p.m.
2225 Otter Point Road, Sooke, B.C.

Agricultural Land Commission regulations

Proposed Bylaw:	<i>Zoning Amendment Bylaw No. 817 (600-87), 2021</i>
Zoning Amendment:	The purpose of <i>Zoning Amendment Bylaw No. 817 (600-87), 2021</i> , is to amend Bylaw 600 to align with the Agricultural Land Commission regulations for additional dwelling units.

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*Please note that written and verbal submissions will
become part of the public record.*

Printed June 11, 2021



Notice of Public Hearing

The Council of the District of Sooke will hold a Public Hearing pursuant to the provisions of the *Local Government Act* in the Council Chambers at 2225 Otter Point Road, Sooke, BC on **Monday, June 28, 2021**, commencing at 7:00 pm with regard to the following proposed Bylaws.

Zoning Amendment Bylaw No. 817 (600-87), 2021

Proposal:

The purpose of Zoning Amendment Bylaw No. 817 (600-87), 2021 is to amend the Watershed, Forest, & Agriculture (RU1) and Small Scale Agriculture (RU3) zone to allow for one (1) additional dwelling unit in accordance with the provisions of the *Agricultural Land Commission Act*. The Small Scale Agriculture (RU3) zone is further proposed to be amended to include one (1) secondary suite or one small suite on a lot with a single family dwelling.

The amendments are proposed to bring the Zoning Bylaw into alignment with the regulations of the *Agricultural Land Commission Act* and address additional housing options community-wide which are supported by the District of Sooke *Housing Needs Report*, 2019.

Further Information: Copies of the bylaws, supporting written reports and any relevant background documentation may be viewed in the "Public Notices" section of the District of Sooke website www.sooke.ca or a copy can be picked up at the District Municipal Offices at 2205 Otter Point Road, Sooke, BC, between the hours of 8:30 am and 4:30 pm, Monday to Friday (excluding statutory holidays), commencing June 16, 2021 to and including June 28, 2021.

Public Input: Due to the current COVID-19 environment, the Province has provided local governments directive in the form of Ministerial Order M192 enabling Councils to hold an electronic Public Hearing. The District is moving forward as per the Provincial directive and will be holding an electronic Public Hearing for these bylaw amendments.

The electronic Public Hearing will follow the same format as an in-person Public Hearing, Public access to Council Chambers is not permitted as physical distancing cannot be achieved for unknown number of attendees. Meetings may be viewed on the District's live stream webcast at <https://sooke.ca/teamslive>. All persons who believe their interest in property is affected by the proposed bylaw will be given a reasonable opportunity to be heard at the Public Hearing on the matters contained in the proposed bylaw. You may indicate your support or opposition to a Public Hearing item in one of the following ways:

1. Submit written comments to Council

Should you have any concerns or comments you wish to convey to Council, please submit in writing by fax to 250-642-0541, email publichearing@sooke.ca or in person to the Corporate Officer at the District Municipal Offices no later than **Monday, June 28, 2021, at 12:00 pm**.

2. Register to Speak Live

You can register to speak live via phone. Once registered, you will be provided with a phone number and instructions to call to join the live meeting. To register to speak live and to receive further instructions, email publichearing@sooke.ca or phone 250-642-1634. The deadline to register to speak live is **Monday, June 28, 2021, at 12:00 pm**.

3. Register to Participate Electronically

If you have a webcam and microphone, you can register to participate via a Microsoft Teams Meeting with a valid email address. Once registered, an invitation to participate will be sent to your email. To register to participate electronically, email publichearing@sooke.ca or phone 250-642-1634. The deadline to register to speak live is **Monday, June 28, 2021, at 12:00 pm**.

Only registered participants will be admitted to the meeting. Please be advised that the opinions you express orally and any submissions to Council will become part of the public record and are subject to disclosure under the *Freedom of Information and Protection of Privacy Act (FOIPPA)*.

NOTE: Council cannot receive further information concerning this application after the Public Hearing has concluded.



DISTRICT OF SOOKE ZONING AMENDMENT BYLAW NO. 817

A bylaw to amend Bylaw No. 600, *Sooke Zoning Bylaw, 2013* to align with Agricultural Land Commission regulations for additional dwelling units.

The Council of the District of Sooke, in open meeting assembled, enacts as follows:

1. This bylaw is cited as “Zoning Amendment Bylaw No. 817 (600-87), 2021”.
2. Schedule 101 - Watershed, Forest, & Agriculture (RU1) is hereby amended by deleting section 101.2 k) and replacing it with a new section 101.2 k) as follows:
 - k) “One additional dwelling unit in accordance with the provisions of the *Agricultural Land Commission Act*.”
3. Schedule 103 – Small Scale Agriculture (RU3) is hereby amended by:
 - a) deleting section 103.2 h) and replacing it with a new section 103.2 h) as follows:
 - “h) One additional dwelling unit in accordance with the provisions of the *Agricultural Land Commission Act*.”
 - b) Deleting section 103.2 i) and replacing it with a new section 103.2 i) as follows:
 - “i) One secondary suite or one small suite on a lot with a single family dwelling”.

READ a FIRST and SECOND time the 25 day of May, 2021.

PUBLIC HEARING held the day of , 2021.

READ a THIRD time the day of , 2021.

ADOPTED the day of , 2021.

Maja Tait
Mayor

Carolyn Mushata
Corporate Officer

13. BYLAWS

13.1. Zoning Amendment Bylaw No. 817 (600-87), 2021 - Text Amendment ALR Dwellings

The Director of Planning & Development provided an overview of the written staff report to amend the Zoning Bylaw allowing for an additional dwelling unit as an accessory use on Agricultural Land Reserve parcels, in accordance with Agricultural Land Commission regulations.

2021-208

MOVED by Councillor Tony St-Pierre, seconded by Councillor Dana Lajeunesse:
THAT Council give first and second reading to the bylaw cited as Zoning Amendment Bylaw No. 817 (600-87), 2021.

CARRIED UNANIMOUSLY

In Favour: Mayor Maja Tait, Councillor Jeff Bateman, Councillor Al Beddows, Councillor Dana Lajeunesse, and Councillor Tony St-Pierre

Absent: Councillor Ebony Logins and Councillor Megan McMath

2021-209

MOVED by Councillor Jeff Bateman, seconded by Councillor Tony St-Pierre:
THAT Council direct staff to schedule a Public Hearing in accordance with section 466 of the *Local Government Act*.

CARRIED UNANIMOUSLY

In Favour: Mayor Maja Tait, Councillor Jeff Bateman, Councillor Al Beddows, Councillor Dana Lajeunesse, and Councillor Tony St-Pierre

Absent: Councillor Ebony Logins and Councillor Megan McMath



Zoning Amendment Bylaw No. 817 (600-87), 2021 - Text Amendment ALR Dwellings

RECOMMENDATION:

THAT Council give first and second reading to the bylaw cited as Zoning Amendment Bylaw No. 817 (600-87), 2021; and,

THAT Council direct staff to schedule a Public Hearing in accordance with section 466 of the *Local Government Act*.

Report Summary:

Staff are proposing an amendment to the Zoning Bylaw that references dwelling units subject to current regulations of the *Agricultural Land Commission Act*. The current reference to manufactured homes only for farm employees is a more restrictive regulation than what is allowed for by the Agricultural Land Commission (ALC). The proposed bylaw amendment is attached for Council consideration and seeks to bring alignment with the ALC regulations.

Previous Council Action:

May 10, 2021 Regular Council Meeting, Council resolved as follows:

- THAT Council direct staff to include a Zoning Bylaw amendment to support manufactured homes as an additional dwelling unit when located on Agricultural Reserve parcels as identified by the Agricultural Land Commission Act.

Report:

As outlined in the staff report brought forward to the May 10, 2021 Regular Council meeting (attached), the Land Use and Development Committee recommended that the District's Zoning Bylaw be brought into alignment with forthcoming changes to the *Agricultural Land Commission (ALC) Act*. Proposed amendments to the District's Zoning Bylaw will allow for an additional dwelling unit as an accessory use on Agricultural Land Reserve parcels, in accordance with Agricultural Land Commission regulations.

An analysis of zoning parcels identified 8 parcels within the Watershed, Forest, & Agriculture (RU1) zoning; only 1 of these parcels was not within the Agricultural Land Reserve (ALR) and is restricted by topography and does not have a developed road for access and future development. Within the Small Scale Agriculture (RU3) zone, there were 130 parcels identified and 10 of those parcels were not within the ALR; 5 of the 10 parcels are located within the Rural Residential or Gateway Residential areas of the Official Community Plan (OCP). While the remaining 5 parcels located within the Community Residential area of the OCP may support higher density zoning, current use

of the property could address the ongoing housing needs of the community by including small suites as an accessory use for these 10 parcels. Staff have included this as proposed amendment 3. b) of the amending bylaw. A total of 119 parcels within the RU1 and RU3 zones will be subject to the proposed amendment for one additional dwelling unit under the ALC Regulations.

The proposed amendment contains wording that allows for flexibility within the Zoning Bylaw as it links additional dwellings to the provisions of the ALC. Should changes to ALC regulations occur, further amendment to the District's Zoning Bylaw is not anticipated unless the ALC removes the use in its entirety.

Strategic Relevance:

- Manage long-term growth while enhancing community identity, vitality and safety - Continue to address housing affordability and accessibility for all income levels

Attached Documents:

[817 \(600-87\) Zoning Bylaw Text Amendment \(ALR dwellings\)](#)

[Staff Report May 10, 2021 Land Use and Development Committee Recommendations](#)

Approved by

Matthew Pawlow, Director of Planning & Development

Carolyn Mushata, Corporate Officer

Norm McInnis, Chief Administrative Officer

Approved - 19 May 2021

Approved - 19 May 2021

Approved - 19 May 2021



DISTRICT OF SOOKE ZONING AMENDMENT BYLAW NO. 817

A bylaw to amend Bylaw No. 600, *Sooke Zoning Bylaw, 2013* to align with Agricultural Land Commission regulations for additional dwelling units.

The Council of the District of Sooke, in open meeting assembled, enacts as follows:

1. This bylaw is cited as “Zoning Amendment Bylaw No. 817 (600-87), 2021”.
2. Schedule 101 - Watershed, Forest, & Agriculture (RU1) is hereby amended by deleting section 101.2 k) and replacing it with a new section 101.2 k) as follows:
 - k) “One additional dwelling unit in accordance with the provisions of the *Agricultural Land Commission Act*.”
3. Schedule 103 – Small Scale Agriculture (RU3) is hereby amended by:
 - a) deleting section 103.2 h) and replacing it with a new section 103.2 h) as follows:
 - “h) One additional dwelling unit in accordance with the provisions of the *Agricultural Land Commission Act*.”
 - b) Deleting section 103.2 i) and replacing it with a new section 103.2 i) as follows:
 - “i) One secondary suite or one small suite on a lot with a single family dwelling”.

READ a FIRST and SECOND time the day of , 2021.

PUBLIC HEARING held the day of , 2021.

READ a THIRD time the day of , 2021.

ADOPTED the day of , 2021.

Maja Tait
Mayor

Carolyn Mushata
Corporate Officer



Land Use & Development Committee Recommendations

RECOMMENDATION:

Committee Recommendation

THAT Council receive the following recommendations from the Land Use and Development Committee:

- THAT the Land Use and Development Committee recommends Council expeditiously adopt the forthcoming provincial changes to residential use in the ALR into the Sooke Zoning bylaw, and that the adoption of the provincial changes be planned for in the current Official Community Plan (OCP) review.
- THAT the Land Use and Development Committee recommends Council forward the request to the OCP Advisory committee for consideration in the OCP review

Staff Recommendation

THAT Council direct staff to include a Zoning Bylaw amendment to support manufactured homes as an additional dwelling unit when located on Agricultural Reserve parcels as identified by the Agricultural Land Commission Act.

Report:

At the April 21, 2021, Land Use and Development committee the following discussion occurred, which resulted in the above recommendations.

ALC-Residences in the ALR

The Director of Planning & Development provided an overview of the information provided and lead a fulsome discussion on the regulations of secondary suites/dwellings on designated Agricultural Lands.

Committee discussion:

- The Ministry of Agriculture is in the final stages of introducing new rules to provide more flexibility to help farming families living in the ALR.
- Concerns with local governments creating more barriers than offering solutions.
- A desire for long-range planning associated with this.
- Challenges associated with identifying whether a secondary resident is being utilized by families, additional farm help or privately rented.
- Difficulties in justifying to the ALC the need for a secondary residence, with limited guidelines to assist applicants.
- Frustration with stringent restrictions for agricultural lands and the difficulty in fully utilizing the lands.

- Support for stimulating food production on agricultural lands in the community, and the municipality's support on secondary dwellings will offer additional hands on the farm or extra income to allow more time for farmers to work the lands.

Additional information provided by staff to Council:

With the July 31, 2021 deadline approaching (anticipated provincial extension to December 31, 2021), staff are receiving inquiries and recently an application for the placement of a manufactured home as an additional dwelling unit on an Agricultural Land Reserve parcel. The Zoning Bylaw permits the placement of a manufactured home when required for farm help; however, it does not include when the dwelling unit is required for a family member. To address the need for affordable housing and encourage continued family farming practices, Staff are recommending that the Zoning Bylaw aligns with the Agricultural Land Commission regulations for manufactured homes. The District of Sooke Housing Needs Report, 2019 notes that a typical household with a median income can only afford a manufactured home which highlights the need for considering an amendment to the accessory use list of the Watershed, Forest & Agriculture (RU1), and Small Scale Agriculture (RU3) zones to allow a manufactured home as an additional dwelling unit on an Agricultural Land Reserve parcel.

Strategic Relevance:

- Build a reputable organization - Support Council and staff with the necessary tools to provide excellent governance and customer service
- Manage long-term growth while enhancing community identity, vitality and safety - Develop a regulatory framework to promote more sustainable land use patterns and development practices

Attached Documents:

[Residential flexibility in the Agricultural Land Reserve BC Gov News Bulletin 05-ALC](#)
[Residential Flexibility-Ministry Paper](#)

Approved by

Matthew Pawlow, Director of Planning & Development

Carolyn Mushata, Corporate Officer

Norm McInnis, Chief Administrative Officer

Approved - 03 May 2021

Approved - 03 May 2021

Approved - 05 May 2021

Residential flexibility in the Agricultural Land Reserve

<https://news.gov.bc.ca/24203>

Friday, April 9, 2021 10:46 AM

The ministry's 2020 intentions paper outlined proposed changes to create more residential opportunities in the Agricultural Land Reserve (ALR).

After hearing from farmers, ranchers, ALR landowners, the Agricultural Land Commission (ALC), local governments and First Nations governments, government is now finalizing these changes.

- In the coming months, government expects to detail rules that will, in most circumstances, enable ALR landowners to have both a principal residence (that could include a secondary suite) and a small additional residence, whether or not there is farming activity on the property, and without having to apply and receive permission from the ALC.
- The ministry is proposing new rules to provide more flexibility to help farming families thrive and to benefit non-farmers living in the ALR.
- New rules will also help small-scale farmers by streamlining approval for a small-farm labourer residence or agri-tourism accommodation.
- Local government rules continue to apply and may be more restrictive on residential use of the ALR and may even prohibit any additional residences on the ALR.
- People who are farming already have a path with the ALC to build one or more residences of any size if it can be demonstrated that they are reasonably necessary for farming purposes.
- The ALC approves approximately 80% of applications for additional residences for farm use. Local government approval is also required.
- While changes are being finalized, the grandfathering period for manufactured homes on the ALR is planned to be extended until Dec. 31, 2021 to provide the necessary six-month transition period for local governments to adjust their rules as necessary.

Learn More:

Residential Flexibility intentions paper:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/agriculture-land-reserve/residential_flexibility_intentions_paper.pdf
(https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/agriculture-land-reserve/residential_flexibility_intentions_paper.pdf)

What we heard report on residential flexibility:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/agriculture-land-reserve/what_we_heard_summary_residential_flexibility.pdf
(https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/agriculture-land-reserve/what_we_heard_summary_residential_flexibility.pdf)

Media Contacts

Dave Townsend
Government Communications and Public Engagement
Ministry of Agriculture, Food and Fisheries
250 356-7098
250 889-5945 (cell)



INFORMATION BULLETIN 05

RESIDENCES IN THE ALR

Revised: March 18, 2021
Revised: January 28, 2020
Revised: August 12, 2019
Revised: May 8, 2019
Revised: February 26, 2019
Issued: 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 was 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.

The ALR Use Regulation was amended on July 5, 2019 to permit manufactured homes for family members subject to specific criteria. On September 4, 2020, the ALR Use Regulation was amended again to extend the time period criteria to July 31, 2021 (refer to section 5 below).

The following is a summary of key residential changes to the ALCA and the ALR Use Regulation resulting from the February 22 and July 5, 2019 amendments:

- 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. In addition, the Commission may approve an application for an additional residence if necessary for farm use: 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 regulations had previously contained provisions facilitating the construction of 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, with the exception of provisions for manufactured homes for immediate family members, subject to specific criteria: (ALR Use Regulation s. 32(3)), and some grandfathering protection

for pre-existing structures of these kinds. In addition, the Commission may approve an application for these kinds of additional residences 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, must 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. NEW CONSTRUCTION OF AN ADDITIONAL RESIDENCE THAT IS A MANUFACTURED HOME

No application is required to the Commission in order to construct an additional residence that is a manufactured home if:

- a. the manufactured home is 9 m or less in width,
- b. the manufactured home is used only by the owner or any of the following persons who are related within the meaning of subsection (4) which provides that “[f]or the purposes of subsection (3)(b), a person is related to an owner or the owner’s spouse whether the relationship is by blood, marriage or marriage-like relationship within the meaning of section 3 of the Family Law Act:
 - i. a person who is the owner’s
 - A. parent, grandparent or great grandparent,
 - B. sibling, or
 - C. child, grandchild or great grandchild;
 - ii. the owner’s spouse, or a person who is a parent of the owner’s spouse,
- c. all required authorizations to locate the manufactured home on the agricultural land are granted before **July 31, 2021**, and
- d. the size and siting of the manufactured home is not altered after July 31, 2021, unless permitted under section 25 or 45 of the Act.
ALR Use Regulation s. 32

6. 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 a 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 the size and siting of the residence is not altered after February 22, 2019 unless

- the alteration of the size and siting is 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 the size and siting of the residence is not altered after February 22, 2019 unless

- the alteration of the size and siting is 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 the size and siting of the Zone 2 Extra Home is not altered after February 22, 2019 unless

- the alteration of the size and siting is 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.

7. 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.

If an owner wants to reside in the only residence on the property (also known as the “principal residence”) while constructing a new residence to replace the principal residence an application to the Commission for its approval is required.

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.

8. 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.

9. 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.

10. 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.

11. 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

12. 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)

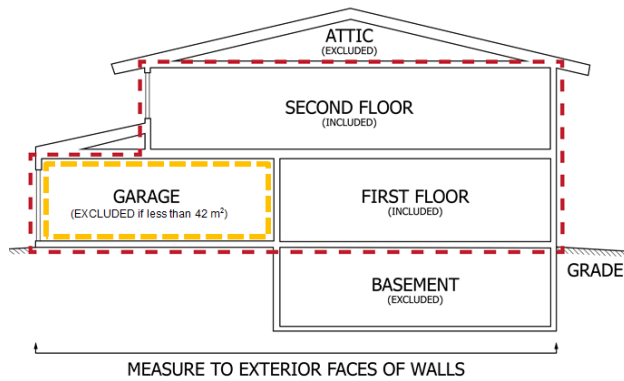
“residential use” means “a use of agricultural land for a residential structure” but “does not include a farm use or a soil or fill use”: ALCA, s. 1(1)

“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)

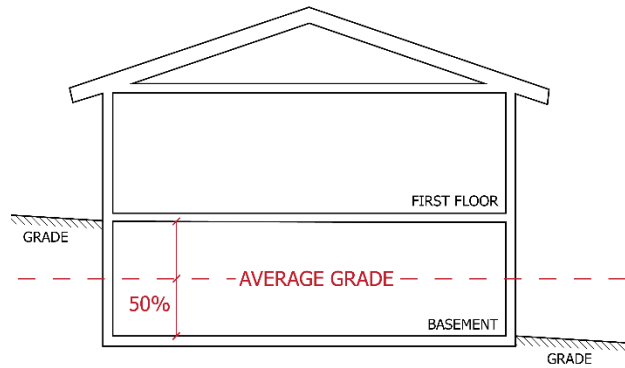
“total floor area” means, for purposes of the ALCA and ALR Use Regulation and pursuant to Commission Resolution No. 056N-2019, the total area of all floors measured to the outer surface of the exterior walls, including corridors, hallways, landings, foyers, staircases, stairwells, enclosed balconies, enclosed porches or verandas, and excluding:

- (a) attached garages and unenclosed carports to a cumulative maximum of 42 square metres;
- (b) basements that do not end beyond the outer surface of the exterior wall of the first floor, 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

January 27, 2020

Introduction

This paper outlines the Ministry of Agriculture's (the Ministry) proposed policy direction to increase residential flexibility in the Agricultural Land Reserve (ALR).

The intentions summarized here have been developed through collaborative work with the Union of BC Municipalities, the Agricultural Land Commission (ALC) and the BC Agriculture Council and are responsive to what the Ministry heard during recent public consultations.¹

The Ministry is publicly sharing this proposed policy direction now in order to ensure those interested have an opportunity to review. As always, input from the public and from stakeholders is appreciated.

Context

In February 2019, the province brought into force amendments to the *Agricultural Land Commission Act* (Act) to better protect ALR land for farming. There were three key changes that:

- Directly address mega-mansions and speculation in the ALR by limiting the size of primary residences and empowering the ALC to approve additional residences for farm use;
- Restrict the removal of soil and increased penalties for dumping of construction debris and other harmful fill in the ALR; and,
- Reunify the ALR as a single zone, ensuring consistent rules with strong protections for all provincial ALR land.

The first change noted above included a phase-out of a long-standing previous rule that had allowed ALR landowners to place a small secondary residence in the ALR without ALC approval, so long as it was a manufactured home for immediate family members.

In response to some public concerns about this phase-out change, in July 2019, the Ministry delayed its implementation to February 22, 2020. This grandfathering period has now been extended a second time to December 31, 2020, in order to allow time for the possible implementation of the policy direction outlined in the paper.

During the September to November 2019 engagement, the Ministry heard a key theme: more flexibility is needed for residences in the ALR. Therefore, this work has been given priority.

The rationale for more residential flexibility is argued in a number of ways. For example, it may be necessary to keep a loved one, especially an aging parent, on the property. It creates options for jointly owning a property (for farming or not). It can provide a residence for a farmer transitioning out of farming, or for a young or new person transitioning into farming. It can create efficiency for small-scale farmers as it could allow for farmer or farm-worker accommodation, without the need to apply to the ALC. Or it could be simply needed as a source of rental revenue (that may or may not be invested back into a farm).

Current and previous legal framework relating to secondary residences

Recent changes to the Act and regulations modified approval processes for residential uses. Under the previous law, local governments (LG) had the authority to approve all principal residences (up to any size

¹ See <https://engage.gov.bc.ca/supportingfarmers/> for more information on the Supporting BC Farmers public engagement.

as stipulated in bylaws) in the ALR, and LG had the authority to approve additional residences if they were necessary for farm use. In practice, if a LG did not want to approve, or was not sure if the additional residence was necessary for farm use, or it wasn't for farm use, the owner then applied to the ALC through a non-farm use application.

The Act and regulations additionally permitted the following dwelling types without a decision from the ALC if local bylaws allowed them to be constructed:

- Zone 1: one secondary suite in the single family dwelling, and either one manufactured home 9 meters wide for immediate family; OR, an accommodation constructed above an existing building on the farm and that has only a single level.
- Zone 2: one secondary suite in the single family dwelling, and either one manufactured home (as above); OR, an accommodation constructed above an existing building on the farm and that has only a single level; and, if parcel is greater than 50 hectares a residence that fits all residential needs into an area of 4,000m².

After the recent amendments, a LG can only approve a principal residence if the total floor area is less than 500m² (5,400ft²) but may also restrict the principal residence to a smaller size by bylaw. A suite within a principal residence's total floor area is still permitted if a LG permits it by bylaw. A principal residence larger than 500m² (5,400ft²) or an additional residence now requires application to the ALC. The ALC may not approve an additional residence unless it is necessary for farm use.

Considerations

The policy work outlined below will maintain the purpose of the Act and its regulations, is also guided by the results of the Minister of Agriculture's Advisory Committee on ALR Revitalization² (the Committee), including the core ALR policy objectives that came out of the Committee's work to:

- Preserve the productive capacity of ALR land.
- Encourage agriculture as the priority use of ALR land.
- Strengthen ALR and ALC administration and governance to increase public confidence and ensure land use regulation and land use decisions preserve agricultural land and encourage farming and ranching in the ALR.

The Ministry will also consider how to incorporate views on residential flexibility that were raised through recent engagement, such as:

- Many participants expressed a desire to allow for a small second residence for all ALR land owners without requiring ALC approval;
- Some ALR landowners felt uncertain over their ability to replace a structure if it is destroyed (75% or more), or needs to be replaced because it is in disrepair;
- Some retiring and new farmers felt disadvantaged because they can't provide a secondary residence for family/workers without approval from the ALC;
- Participants generally wanted to ensure that the needs of LG, First Nation governments and regional districts are considered in the development of any future policy changes;
- It was recognized that some regional districts do not have zoning bylaws and there is a need to consider what this might mean against any policy options; and,

² See <https://engage.gov.bc.ca/agriculturalallandreserve/> for more information on the independent committee's work.

- BC ALR regions have different residential land uses, including the size of properties, population densities, and pressures to use ALR for non-farm uses.

These and potentially other considerations that were brought forward from the Committee's work and the Supporting BC Farmers engagement will help guide the Ministry in its work to increase residential flexibility in the ALR.

Proposed policy direction

In order to support farmers and non-farmers living in the ALR, the Ministry is considering a change to regulations that will enable landowners in the ALR to have both a principal residence and a small secondary residence on their property, provided they have approval from their LG. In other words, there would be no required application to the ALC. Further, the province would not impose restrictions to require this secondary residence be a manufactured home, or be for an immediate family member, or be part of a farming plan.

Farmers have always had the option to build additional residences in the ALR (two, three or more), provided they are needed for farming and have approval from LG and the ALC. The ALC routinely provides this approval for farming purposes.

The primary use of ALR land is, and will continue to be, for agriculture. Residential uses should be developed in a way that minimizes disturbance to agriculture. New secondary residences should be registered with the ALC for long-term land-use planning purposes.

This direction does not include reconsideration of the maximum size of a principal residence; nor changing the ALC as the decision maker for additional residences for farm use.

In terms of defining a "small secondary residence", consideration will be given to:

- a manufactured secondary home with conditions such as whether:
 - the foundation type should be limited to a concrete slab and no basement;
 - it can be restricted to a maximum of 9 meters in width and 22.86 meters in length; and
 - it can be restricted to the Canadian Standards Association (CSA) Z240 Manufactured Home (MH) series.
- a garden suite, guest house or carriage suite (e.g. usually meaning a detached dwelling, often no larger than 90m²).
- accommodation above an existing building on a farm with conditions on what type of existing structure it could be built on and whether it can be located on a parcel that already has a suite in the principal residence.
- permitting a principal residence to be constructed in addition to a manufactured home that was placed as the first principal residence.

Any of these concepts may also consider:

- per parcel, the maximum number of residences, maximum size, siting, and total floor area.
- how to preserve a total cumulative floor area of residential uses on a single parcel (e.g. additional dwellings that may be reintroduced so as not to exceed 500m² when added to principal dwelling).
- options to minimize impact on agriculture.

Next steps

Nothing in this paper should be considered as a final decision; it should be viewed as a policy direction and development guidance document. Its purpose is to inform interested parties and to assist Ministry discussions in further developing and finalizing the policy ideas presented in this document.

This Intentions Paper and links to current legislation are posted on the BC Government website and can be accessed via the following link: <https://www2.gov.bc.ca/gov/content/industry/agriculture-seafood/agricultural-land-and-environment/agricultural-land-reserve/the-agricultural-land-reserve>

The Ministry has created a technical review committee that includes the Ministry of Agriculture, ALC, Ministry of Municipal Affairs and Housing, Union of BC Municipalities, and the BC Agriculture Council. As part of the technical review committee process, the Ministry also works directly with local governments from across British Columbia. The Ministry will work through this technical review committee process on the further refinement of these options until April 17th, 2020, in preparation for potential recommendations to government.

Individuals or associations who would like more information on this process, or who want to provide feedback for policy consideration, should contact ALR_ALCRevitalization@gov.bc.ca, write the Minister of Agriculture at PO Box 9043 Victoria BC V8W 9E2, or call the AgriServiceBC line at 1 888 221-7141.