



INFORMATION BULLETIN 06

ACCOMMODATION FOR TOURISTS IN THE ALR

February 25, 2019

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1. SCOPE OF THIS INFORMATION BULLETIN

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

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

2. RECENT CHANGES TO STATUTE AND REGULATIONS

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

3. ROLE OF LOCAL GOVERNMENTS

A. Role as Approving Body

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

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

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

B. Local Government May Restrict

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

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

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

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

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

C. Areas Without Zoning Bylaws

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

D. Applications

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

4. ACCOMMODATION FOR TOURISTS

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

A. Agri-Tourism Accommodation

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

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

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

Note that:

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

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

B. Tourist Accommodation (B&B’s)

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

Note that:

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

I. Tourist Accommodation in Compliant Principal Residence

Tourist accommodation on ALR land is permitted without application to the Commission in a principal residence that is 500 m² or less, and that is otherwise also in compliance with the ALR Use Regulation, if both of the following conditions are met:

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

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

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

II. Tourist Accommodation in a Grandfathered Principal Residence

Tourist accommodation on ALR land is permitted without application to the Commission in a principal residence that has a total floor area of more than 500 m² or that is otherwise of a size or is sited in contravention of a regulation if all of the following conditions are met:

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

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

5. SOIL OR FILL RESTRICTIONS FOR ACCOMMODATION CONSTRUCTION

Removing soil from or placing fill on ALR land is permitted for the construction or maintenance of a principal residence if the total area from which soil is removed or on which fill is placed is 1,000 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 the construction of residential structures for agri-tourism accommodation 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.

6. APPLICATIONS FOR NON-ADHERING RESIDENTIAL USE

An owner may apply to the Commission for approval under section 25 of the ALCA for a non-adhering residential use: ALCA, s. 20.1(2). A “**non-adhering residential use**” means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m²; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1). For example, use of more than four bedrooms in a principal residence for short-term tourist accommodation would be a non-adhering residential use requiring an application (subject to the potential exception for Tourist Accommodation in a Grandfathered Principal Residence discussed above).

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

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

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

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

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

7. GLOSSARY

The following key definitions are relevant to this information bulletin:

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

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

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

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

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

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

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

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

“non-adhering residential use” means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 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)

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

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

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

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

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

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