

Date: 11/08/2020

To: Chair and Directors, Committee of the Whole

And To: John MacLean, Chief Administrative Officer

From: Nigel Whitehead, Manager of Planning Services

Date of Meeting: Committee of the Whole_Aug20_2020

File: 6635-02

Short Summary:

Agricultural Land Commission (ALC) Update and Exclusion Policy Discussion

Background:

This memo is presented in three parts. Part 1 provides a brief overview of the mandate and functions of the Agricultural Land Commission (ALC). The Board will be familiar with much of this information, however it has been included for context. Part 2 broadly outlines the recent history of legislative, administrative, and regulatory changes of the Agricultural Land Commission (ALC) over the past six years. Part 3 presents to the Board a discussion on developing a processing policy for ALC exclusion applications, considering further provincial changes coming into effect on September 30, 2020.

1.0 - ALC and ALR Overview

The Agricultural Land Commission is a provincial independent administrative tribunal charged with the protection of agricultural land throughout BC. It was created in 1973, along with the Agricultural Land Reserve (ALR). The ALC's mandate, authorizations, and broad regulations are driven by the *Agricultural Land Commission Act*. Additional detailed regulation of land uses and processes, implementing some of the provisions of the *Act* are specified through provincial regulation. Regulations are amended from time to time by Cabinet Order (Order in Council). Currently, the Ministry of Agriculture provides general direction to the ALC by managing the legislation, regulations, and public consultation of proposed changes.

Land uses are regulated within the ALR through the *Act* and various ALR Regulations. The ALC (and court precedence) usually requires a "meet or beat" requirement of local government land use regulations (i.e. zoning bylaws) within the ALR, where local government regulation may be more restrictive of non-agricultural land uses, but not less restrictive than ALR regulations. The reverse is true for "unrestricted agricultural uses", where local government may not restrict certain agricultural land uses within the ALR, regardless of zoning regulations. Any local

government regulations which conflict with these ALR regulatory principles have no force and effect on lands within the ALR.

1.1 - ALC Application Types

Different [ALC approvals](#) can be sought for various uses and activities on ALR land. Some of the application types are new as of 2019. The ALC timeline outlined in Part 2 of this report provides some context on these new processes and requirements. Some application types require local government (Board or Council) resolutions of support. Others are made directly to the ALC and do not require local government approval. Further approval processes have been laid out through amended legislation for ALR lands within current and future First Nations Treaty Settlement lands, but for brevity are not discussed in this report.

ALR Inclusion Applications

Inclusion applications can be made by landowners or local governments to include properties into the ALR. The process requirements vary slightly, where increased consultation and notification requirements are imposed on local governments as they generally make inclusion applications for private lands under their own accord and not on behalf of the individual landowners. This would commonly include applications driven by long range planning processes where the local government proposes changes to ALR boundaries (commonly a combination of inclusions and exclusions).

ALR Exclusion Applications

Exclusion applications can be made by landowners or local governments. On September 30, 2020, landowners will no longer be permitted to make an exclusion application. Public notification and engagement requirements are higher for local government applications than landowner applications, and will remain the same after September 30, 2020. For a detailed discussion of the impacts of this change, see Part 3 of this report.

Non-Farm Use (NFU) Applications

Non-Farm Use (NFU) applications are made where a landowner requests permission from the ALC to conduct a land use normally prohibited by ALC Regulation. NFU applications must first receive local government endorsement, prior to receiving consideration by the ALC. NFU applications commonly considered in the CRD include gravel extraction, placer mining, and industrial agriculture uses such as abattoirs.

Non-Adhering Residential Use (NARU) Applications

Non-Adhering Residential Use (NARU) applications are a new sub-type of Non-Farm Use applications implemented when residential restrictions were brought into effect in February of 2019 (See Part 2 timeline). NARU applications request permission to exceed residential limitations imposed by the ALC Act and Regulations, and must receive local government endorsement prior to ALC consideration. Additional residences for farm help, which were previously routinely approvable by CRD staff, now require a NARU application.

Common NARU applications that the CRD has been receiving are primarily related to the order of construction, allowing applicants to live in an existing dwelling while constructing a new one, or to permit an additional dwelling for farm help. The CRD Board will be considering its first oversized residence application at the August 21, 2020 meeting.

Subdivision Applications

Subdivision in the ALR requires ALC approval. Subdivision applications must first receive local government endorsement prior to ALC consideration. The ALC has been increasingly scrutinizing these applications over the past decade or so, ensuring that subdivisions are protecting and/or improving the agricultural viability of lands. This often limits subdivisions to cases where there is a farm business reason for the subdivision, allowing better utilization or layout of the land. Planning staff rely heavily on OCP direction where available when considering such applications, as per ALC recommended practice.

Homesite severances allow for a small subdivision where a long-time farmer can subdivide off their homesite and sell the remaining agricultural operation. These proposals are exempt from ALC applications, although are increasingly rare, as the landowner must have continuously owned and farmed the land since 1972.

A further application exemption exists for some types of minor lot boundary adjustments on agricultural properties.

Soil & Fill Applications

Soil & Fill Applications were brought into effect in February 2019, when the ALC heightened their regulation of such activities. It is generally a two-step process, with an expedited review process (Notice of Intent or NOI), with an ability for the ALC Chief Executive Officer to require a full application based on that review. An applicant who exceeds the soil and fill exemptions will generally first submit a Notice of Intent for removal or deposit of soil/fill directly to the ALC. Local governments are cc'd on such applications, but are not required to consider the proposal. The ALC has 60 days to approve the application, request more information, or require a full Soil Use for Placement of Fill or Removal of Soil application. The full application is treated similar to a Non-Farm Use application, in that it must first receive local government consideration and endorsement, prior to consideration of the ALC.

There are some soil and fill exemptions for construction or works with a minor total footprint (1,000 sq. m / 0.25 ac.), as well as agricultural road improvements. Some larger developments may require additional applications, such as a Non-Farm Use application.

The CRD has processed three Soil and Fill applications to date, and 16 Notices of Intent have been considered directly by the ALC for properties within the CRD. Staff have found that ALC approval is more likely at the NOI stage where the information supplied by the landowner is complete and fulsome (i.e. material details, cross-sections, detailed mapping and justification).

Transportation, Utility, and Recreation Trail Use Applications

This is a long-standing application type made directly to the ALC for approval of various uses of ALR lands for road construction, road right of ways, railways, recreation trails, utility corridors, water and sewer lines. The process allows for landowners to provide feedback to the ALC regarding the proposed utility/right of way location. Local government consideration and endorsement is not required. If the ALC determines the local government's consideration is required, then the application is referred to the local government for comment.

The ALC's online application database (going back to approximately 2014) shows five applications; four approved, with one recent application pending.

2.0 – ALC Changes (2014 to Present)

Over the past six years the ALC has gone through a period of increased government focus and regulatory transformation. For a regulatory body which generally remained quite constant over the past decades, keeping up with the ongoing changes has been a challenge for many local government planners across BC.

Although the ALC's operations are independent of provincial government, the commission is ultimately a tribunal of the province, receiving its regulatory framework, operational authority, and broad mandate from the Province.

Through 2014-2017 the ALC went through a period of government focus on decentralization, regionalized regulations (i.e. two zone system), increased localized decision making, and increased performance accountability to the government.

More recently, as the Board is aware, the period of 2018-present has seen another round of government focus on the ALC. Largely led by the BC Ministry of Agriculture, the Agricultural Land Commission has been undergoing a "revitalization" effort to roll back some of the decentralized authority, focusing more on Province-wide regulation, increasing the strength and focus on agricultural protection, and closing many loopholes that individuals and business were utilizing which resulted in damage to the overall quality and integrity of agricultural land within the Province. Generally, many of the issues (i.e. mega-mansions, damaging fill dumping, proliferation of right of ways) have not been identified in the central interior of the province. The ALC revitalization project appears to be mostly a response to pressures of economic growth and real estate development in the southern portions of the province, as well as industrial development in the Northeast.

2.1 - Timeline

A brief timeline highlighting major changes since 2014 is presented below. Links to background provincial documents are embedded where applicable.

May 2014 – Bill 24 establishes two zone system, ALC regional panels, OCP consultation requirements, ALC performance indicators.

2015 – Various regulatory amendments considering liquor production, medical marihuana, residential uses, second permanent dwellings on large parcels, among others.

2016 – Various regulatory amendments considering block exclusions, tree planting, agri-tourism, on-farm events, application fees.

2017 – Regulatory amendments for liquor production within the ALR.

January 2018 – ALC Revitalization Advisory Committee established by Agriculture Minister Popham.

Spring 2018 – ALC Revitalization Advisory Committee conducted public engagement across the province and released a [summary report](#).

July 2018 – Provincial regulation clarifies soil-bound cannabis production may not be restricted by local governments. Also allows cannabis production in previously existing greenhouses or licensed grow-operations with some limits.

July 2018 – ALC Revitalization Advisory Committee's [interim report](#) published.

November 2018 – Bill 52 receives royal assent – to be implemented at a later date (Feb 19, 2019) via provincial regulation.

December 2018 – ALC Revitalization Advisory Committee's [final report](#) published.

February 19, 2019 –ALC Revitalization/Bill 52 changes come into effect via provincial regulation.

- Establishes maximum dwelling size of 500 sq. m. (5,382 sq. ft.)
- Soil and Fill regulations come into effect, strictly regulating importing fill and aggregate removal on properties within the ALR. (Note: this has affected trail maintenance activities within portions of the 108 Mile greenbelt lands, affects rural properties with long driveways).
- Total footprint of residential use of a property limited to 1,000 sq. m. / 0.25 ac. (includes areas of removal or importation of soil, gravel, concrete, etc., for driveways, building foundations, lawns, landscaping, etc.)
- Establishes additional permit types – Non-adhering residential use (NARU), soil and fill applications (NOI).

- NARU permit required for most cases where living in existing home during construction of new home.
- Additional residences for farm help now require application and assessment by ALC.
- ALC is prohibited from approving second residences not for farm help.
- Notice of Intent (NOI) required for most cases where agricultural or non-agricultural users need to bring fill on or off ALR properties.
- Increased compliance and enforcement tools available to ALC.

July 2019 – Regulatory amendments prohibit future second manufactured homes for family as of February 19, 2020.

Fall 2019 – Additional Ministry of Agriculture consultation initiated, called Supporting BC Farmers. Public meetings held across the province. [Summary report here](#).

January 27, 2020 – [Residential Flexibility Intentions Paper](#) published by Ministry of Agriculture, based on Supporting BC Farmers feedback.

- Ministry will work with stakeholders and continue to work on allowances for small second dwellings within the ALR.

January 28, 2020 – Second manufactured home for family deadline extended from February 19, 2020 to Dec. 31, 2020 while Ministry of Agriculture works on revised second dwelling regulations.

March 12, 2020 – Phase 1 of Bill 15 Implementation.

- Largely procedural and administrative changes.
- ALC decision appeals/reconsideration requests limited to one request within one year of decision.
- Requires ALC to consider ***the size, integrity and continuity*** of the ALR (in addition to agricultural protection) when assessing applications.

April 17, 2020 – North Cariboo Agricultural Development Committee’s report on Ministry of Agriculture Residential Flexibility paper received by Board and staff directed to forward to the Ministry.

June 26, 2020 – Ministry of Agriculture [news release](#) on additional changes to come into effect

September 30, 2020.

- NARU application fees reduced from \$1,500 to \$900. Local government portion increased from \$300 to \$400.
- Increase fill importation for repair and construction of farm roads from 50 cu. m. (approx. 40 dump trucks) total to 50 cu. m. per 100 m. of farm road.

July 30, 2020 – Ministry of Agriculture informational letter to Local Governments – see attachment

September 30, 2020 – Phase 2 of Bill 15 implementation. In addition to the June 26, 2020 announcement, scheduled Bill 15 changes include:

- Removal of private landowners’ ability to apply for exclusion from the ALR
- Proportioned ALC fees paid directly to ALC and local governments.
- Time limit for reconsideration requests of ALC decisions further reduced from one year to 90 days from decision.
- ALC must be notified prior to registration of a Statutory Right of Way within the ALR.
- Allow ALC remediation orders to be registered on property titles.

3.0 – ALR Exclusion Application Policy

Presently, landowners may apply to the Agricultural Land Commission to exclude their property from the ALR. Over the past decade or two, the ALC has become increasingly reluctant to approve exclusions. As of March 12, 2020 the ALC is now mandated through legislation to consider not only protection of ALR land for agricultural uses, but to consider the size, integrity, and continuity of the ALR as a whole. This means that in some cases, regardless of agricultural viability of the land, the ALC will be less likely to permit exclusions unless an equivalent amount of agricultural land is brought into the ALR (size consideration), and the ALC will be unlikely to approve exclusion applications which create “donut-holes” within the ALR (continuity consideration).

Over the past 10 years, the CRD has received 13 ALR exclusion applications. On average, this represents 1.3 applications per year, although no exclusion applications have been received since 2018. The maximum annual number of exclusion applications received in the past ten years was four applications in 2013. Of the 13 exclusion applications received over the past ten years, 11 were endorsed by the CRD Board, and eight were approved by the ALC (two with alternative proposals approved).

As of September 30, 2020, individual landowners may no longer apply for exclusion applications. Realistically, it is not anticipated to have a significant impact in the Cariboo region, considering recent historical application numbers (two or less per year), and further considering that exclusion application approvals are increasingly unlikely.

Future exclusion applications must be made directly by the local government to the ALC. The ALC will expect that the local government acts as the sole agent in managing the application through the ALC’s required processes. This would include public notification such as signage, mailouts, newspaper advertisements, public hearing requirements, and potentially costly agricultural studies. Based on discussion with the CRD’s solicitor, local governments do not have the legislative ability to pass such costs on to individual landowners, however, where a local government-led ALR exclusion application is made in conjunction with a landowner-led bylaw

amendment, there may be an ability for partial cost recovery when some of the requirements such as advertising, agrology studies, and public hearings are required for both processes.

ALC staff have indicated, that along with their legislated considerations, they will lean heavily on considering long-range planning policy (i.e. OCP's) when looking at local government exclusion applications.

3.1 - Board Options for future ALR Exclusion Applications

The CRD Board has a number of options on how it wishes to proceed when dealing with any future landowner requests of consideration for ALR exclusions. Staff recommend that CRD policy be developed in how these requests are processed (if at all) and what considerations will be made to support or move forward with particular requests. Proposed options are described below, organized from least desirable to most desirable by CRD Planning staff.

(The below policy options should be considered with expected annual private landowner requests for ALR exclusion in the range of 0-4 requests per year.)

1. Landowner applications accepted ad-hoc with no staff consideration ("flow-through" applications).

The CRD could attempt to create a process which is as similar as possible to the historical exclusion application process where the CRD acts simply as a flow-through agent to give land owners an opportunity to be heard by the ALC. CRD staff would take information directly from land owners and act essentially as a disinterested party, making applications to the ALC more or less as an agent. The CRD may have an ability to pass some costs on to the applicant if the exclusion request is made in conjunction with a bylaw amendment (i.e. zoning or OCP amendment). This process would consume staff time, regardless of cost recovery from the applicant. This option is not recommended by CRD staff (nor ALC staff) due to the potential draw on staff time, and as it would likely set many applicants for failure at the ALC (as exclusion approvals are increasingly rare to receive).

2. No landowner applications.

The Board may wish to direct staff not to accept or consider any exclusion requests from private landowners. If exclusions are to be considered, it would be done internally through staff direction, generally as a result of long-range planning document updates or stand-alone planning department projects. ALC staff have indicated that some communities are strongly considering this option. This practice has already been a long-standing policy of at least one local government (Corporation of Delta).

3. Landowner applications received ad-hoc and considered based on OCP policy.

The Board may wish to develop policy where applications or proposals would be accepted from private landowners where there is a long range planning document (i.e. OCP) support for exclusions. The process would ultimately need to be staff-led; application costs and processing time would most likely need to be absorbed by the CRD. Applications

would be received and processed on first-come, first-served basis. CRD Planning Department would need to allocate staff time and project costs to manage applications through the ALC process, hold public meetings, post notices, contract agricultural studies, etc. The risk to the CRD is that by committing to processing requests as received from the public, it could negatively impact staff resourcing on other planned department projects.

4. Landowner requests compiled, considered and prioritized by Board at regular intervals.

CRD staff could compile landowner requests and bring them to the Board for consideration at regular intervals (i.e. once every two or three years). Staff could develop a series of considerations to assess the viability of each proposal, with recommendations of which proposals (or areas) warrant moving forward. In this case, the CRD still needs to allocate staff time and project costs to manage applications through the ALC processes, hold public meetings, post notices, fund agricultural studies, etc., but could be done as part of annual business planning activities.

5. Landowner requests earmarked for future long-term planning.

CRD staff could compile landowner requests and earmark them for consideration during future OCP updates in the area. This process would be the most equitable for communities as potential ALR boundary considerations would be considered and assessed at a high level by staff across a given OCP area, rather than only putting in staff time to consider properties where landowners have made an effort to reach out and make a request (as in option 4 above). Considering that staff time in option 4 would be broadly subsidized through the Planning Services budget, option 5 would be considered more equitable for staff to consider a community-wide priority to move towards exclusion of particular lands. However, note that a long-term planning process (i.e. OCP update) would generally only identify lands for exclusion; a subsequent planning process and department project would be required to pursue an exclusion application at a later date after the OCP update. This option would take the greatest amount of time from landowner's request, through to ALC application, but would also provide the most coherent and equitable process for a community-wide ALC decision.

3.2 - Discussion

In considering the options presented above, the Board needs to consider the extent to which the CRD should be utilizing department resources on applications that would generally impact only an individual or select few property owners. From a broader planning perspective, it is best to consider ALC boundaries from a long-range, community wide assessment. This allows for a greater chance at success as applications could consider inclusion of properties in conjunction with exclusion (the likelihood of landowner support of ALR inclusion remains to be seen).

It would appear from this legislative change, that the provincial government is positioning for local governments to be the lead driver of ALR boundary assessments. The challenge with such an assessment is that it is generally a high cost and time-consuming study. It is challenging for

local governments to justify such expense, when the mandate of the ALC is to consider such issues. ALC Boundary studies, and further long-range planning activities of the ALC were discussed broadly by the ALC Chair (R. Bullock at the time) as a priority in years 2010 to 2014. Since then, it seems that the ALC and provincial government's priority has shifted to strengthening regulation, and possibly moving the pendulum back towards a reactive agricultural planning regime.

From a long-range planning perspective, there are substantial land use planning challenges in some areas of the CRD, due in part to ALR boundary location and historical small lot subdivision approvals (often prior to formation of CRD). This is especially prevalent in the South Cariboo, where there are areas with very poor agricultural potential which are in the ALR, and some areas of high value lowlands that are not within the ALR. What has resulted in some cases is a fragmentation of the viable agricultural land that is not within the ALR, and a development "freeze" on the more rocky/forested upland areas contained within the ALR.

Further to the north (particularly north and west of Quesnel) are areas of densely forested lands with marginally capable soils. Significant resources could be spent assessing soil conditions and agricultural viability, with the possible result of more reasonable ALR boundaries. However, it must be noted that the ALC often takes a very high-level and broad based approach to protecting agricultural lands, considering not only current utility, but improved utility (with limited consideration of cost recovery), indoor technological (i.e. greenhouse) production, future viability due to climate change, and so forth.

With the ongoing regulatory and procedural evolution of the ALC and its operations, staff have largely been in a period of close observation and monitoring of ALC application decisions. It has been challenging for staff to provide supportive advice to applicants particularly on new application types. Moving forward, as more applications are adjudicated by the ALC and reviewed by CRD staff, we will be able to provide improved advice to potential landowners and applicants.

With respect to ALR exclusion proposals, by developing clear policy of the Board, we will be able to provide some certainty to landowners in their expectations when or if making such a request. Upon receipt of this report and Board discussion, staff will draft an ALR Exclusion Application Policy and bring back to the September 10 Committee of the Whole meeting for consideration.

Attachments:

AGRI Letter to Local Governments OIC 353 – July 30, 2020