

 <p><b>Agricultural Land Commission</b></p>	<p><b>NON-ADHERING RESIDENTIAL USE APPLICATIONS FOR HOUSING IN THE ALR</b></p>	<p><b>POLICY L-26</b></p> <p><b>Amended June 2023 Adopted April 2020</b></p>
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*On February 22, 2019 the ALCA was amended by the Provincial Government to directly address - principal residences and requiring that the Agricultural Land Commission (the "Commission") not grant permission for additional residences unless it is necessary for a farm use as explained in the Minister of Agriculture's [February 23, 2019 news release](#).*

*This policy outlines general guidelines for the Commission's consideration of non-adhering residential use applications which request residential uses in excess of those residential uses permitted by the Agricultural Land Commission Act (the "ALCA") or its regulations. This includes applications for temporary farm worker housing, and other housing for farm labour, as well as applications to construct or alter a principal residence which will exceed 500m<sup>2</sup> in total floor area.*

*For more information on the kinds of factors the ALC may consider when deciding on applications, please see the ["What the Commission Considers"](#) page on the ALC's website.*

## **Principal Decision-Making Considerations:**

### **1.0 Additional Residences**

Section 20.1 of the ALCA provides that unless permitted by the Commission or the regulations, an owner of agricultural land who constructs, alters or uses a residential structure on the land may have no more than one residence per parcel. The Agricultural Land Reserve Use Regulation (the "ALR Use Regulation") may permit an additional residence if certain conditions are met. If an owner wishes to construct an additional residence not permitted by the ALR Use Regulation, the owner must make a Non-Adhering Residential Use ("NARU") application to the Commission for permission.

Section 25(1.1)(b) of the ALCA states that the Commission must not grant permission for an additional residence unless the additional residence is necessary for a farm use. The Commission may consider the number of residences currently on the property, and the contribution of those their occupants to the farm operation when considering whether an additional residence is necessary to support the farm operation.

### **2.0 Housing for temporary farm workers under a federal agricultural worker program**

In considering whether a non-adhering residential use is necessary for a farm use, the Commission will assess the scale and intensity of the farm operation. As such, the Commission's determination of a NARU application for temporary farm worker housing ("TFWH") as part of a federal agricultural worker program will be based on the agricultural operation's need. In addition to the information outlined below in Section 4.0 'Housing to reflect agricultural activity', applicants can provide other documentation associated with a federal agricultural worker program application (e.g. previous or current Labour Market Impact Assessment "LMIA").

The Commission prefers that temporary housing for farm workers, including foreign workers, should be in an existing building, or a residential structure constructed or manufactured to be moved from one place to another, and installed on a temporary foundation with no basement.

On April 26, 2019, the Commission delegated decision-making authority to the Chief Executive Officer ("CEO") to streamline the process of NARU applications for TFWH registered in a federal

agricultural worker program that meets specific criteria outlined in CEO Delegated Decision-Making Criterion 15. If the application does not meet the criteria (including because the applicant cannot or prefers not to meet all the requirements), then the application will be referred to the Commission for a decision.

The circumstances in which the CEO's delegated decision-making authority applies are as follows:

CEO Delegated Decision-Making Criterion 15:

Based on an assessment of the intensity and scale of the farm operation, non-adhering residential use applications for temporary farm worker housing (TFWH) for workers registered in a federal temporary worker program that comply with the following criteria:

- i. The parcel where the TFWH is to be located is classified as 'farm' under the BC Assessment Act;
- ii. The minimum size of the farm operation\* on which the TFWH can be located is 4 ha;
- iii. The maximum number of workers requested in each application for a farm operation\* is limited to no more than:
  - a. 130 workers for greenhouse, mushroom, tree fruit, and berry/vegetable production
  - b. 40 workers for all other commodities
- iv. The workers are housed in a temporary residential structure designed to be moved from one place to another;
- v. Siting and placement of the TFWH minimizes the residential impacts on agricultural land taking into consideration topography, agricultural capability, access, and encourages the clustering of residential structures;
- vi. The registration of a restrictive covenant stating that the TFWH will only be used by temporary farm workers and that the owner will remove the TFWH and restore the land to agricultural use if the TFWH is vacant for two consecutive years; and
- vii. The receipt of an ILOC sufficient to remove the TFWH provided to the ALC upon approval of the NARU.

*\*Clarification: farm operation means an area of land used for a farm operation consisting of one or more contiguous or non-contiguous lots, that may be owned, rented or leased, which forms and is managed as a single farm.*

### **3.0 Principal Residences Larger than 500 m<sup>2</sup>**

Section 25(1.1)(b) of the ALCA (the requirement that an additional residence must be necessary for a farm use) does not apply to a NARU application for a principal residence larger than 500 m<sup>2</sup>. This means that the Commission has discretion to permit a larger principal residence even if it is not necessary for a farm use.

However, the necessity for farm use of the proposed principal residence is still a relevant factor in the Commission's determination of whether a size over 500 m<sup>2</sup> should be allowed. The Commission will generally consider whether the requested increase in total floor area would be supportive of the current farming operation and necessary for farm use. The Commission may also consider unique or extenuating circumstances that do not negatively impact the agricultural use of the property. An applicant should provide evidence of such circumstances if it wants them to be considered by the Commission.

#### 4.0 Housing to reflect agricultural activity

In considering whether a non-adhering residential use is necessary for a farm use, the Commission will assess the scale and intensity of the farm operation. Where an applicant can demonstrate that the scale and intensity of the farm operation has exceeded the labour capacity of the owner/residents, the Commission may determine that an additional residence would be necessary to support the farm operation.

The Commission may not be supportive of housing proposals which “intend” to expand or intensify the farm operation unless it considers there to be a satisfactory mechanism to ensure that expansion is undertaken after the new housing is constructed.

NARU applications must include an appropriate level of information to aid the Commission in its determination of whether the proposed use is consistent with the purposes of the ALCA set out at section 6 and, if applicable, that an additional residence is necessary for a farm use. The following are examples of the information that may be submitted with an application:

- i. Size (ha) of the current farming operation (including leased lands)
- ii. Type(s) and amount of commodity(ies) produced on the property
- iii. Description and number of current farm labourers with details of roles and responsibilities
- iv. Rationale for additional farm labour requirements based on the applicant’s agricultural operation or commodity(ies)
- v. Proposed number of farm workers to reside in the additional residence or principal residence >500 m<sup>2</sup>
- vi. Proposed length of occupancy of farm workers (e.g. seasonal, temporary, year-round)
  - a. Include date ranges, if applicable
  - b. Include expected work hours (part-time or full-time)
- vii. Details of the proposed residence
  - a. Size of residence and total residential footprint
  - b. Foundation type
  - c. Site map
  - d. Associated infrastructure requirements
- viii. Farm plan or farm business plan (support future expansion, if applicable)
- ix. Professional reports (e.g. report by a professional agrologist, geotechnical report)
- x. Farm succession plan, if applicable
- xi. Expense receipts demonstrating equipment, start-up, or infrastructure costs
- xii. Lease agreements for other properties associated with the farm operation
- xiii. Farm quota records

#### 5.0 Limiting housing’s physical impact on the productive parcel

The type of non-adhering residential structure should reflect the agricultural use of the property. Preference will be provided to residential uses which utilize existing structures and/or residences that are sized appropriately and located in an area which minimizes negative impacts to the agricultural land or can easily be removed from the property, such as a manufactured home.

The total residential footprint, meaning the portion of a property used for the principal residence, additional residence(s), and the accessory residential facilities (e.g. yard, driveway, servicing, etc.), should maintain a viable agricultural remainder and should not unnecessarily infringe upon the productive farming area of the property. Unless a more restrictive local government bylaw is in place, the following parameters, consistent with the Minister's Bylaw Standards, will inform the Commission's consideration of the appropriate total residential footprint:

- a) **Principal Residence:** The total residential footprint for a principal residence should not be more than 2,000 m<sup>2</sup>.
- b) **Additional Residence:** The total residential footprint for an additional residence should not be more than 1,000 m<sup>2</sup>.
- c) **Temporary Farm Worker Housing:** The total residential footprint for each permitted temporary farm worker housing space should not be more than 35 m<sup>2</sup> per worker.
- d) **Siting:** The setback from the front lot line to the rear or opposite side of the total residential footprint should not be more than 60 metres. Lots narrower than 33 metres are exempted from the 60 metre maximum setback guideline (for the total residential footprint) from the front lot line, however, the footprint should fill the front of the lot to a maximum of 2,000 m<sup>2</sup>.
- e) The following exceptional circumstances may also apply to the siting of residential footprints and may be considered by the Commission:
  - i) **Existing Footprints:** The clustering of a residence with other existing non-agricultural uses on the property to limit the fragmentation of ALR land and avoid the restriction of agricultural activities.
  - ii) **Commodity-Specific Needs:** The strategic placement of a residence to benefit or optimize the agricultural operation (e.g. monitoring of livestock on a large property).
  - iii) **Topographic Features:** Siting of a residence as appropriate to reduce the use of potentially productive farming land for residential purposes (e.g. sited on a non-farmable area of the property).

If the Commission approves a NARU application to place or construct an additional residence, to construct or alter a principal residence, or to reside in a residence while constructing another residence, its permission may be granted with limits or conditions. Examples of conditions may include:

- a) Siting of the residence in accordance with specified criteria
- b) A requirement that farm help must be contributing to the farm operation as described within the application
- c) Registration of a restrictive covenant requiring the removal or decommissioning of the additional residence should the residence not be used for the purpose of farm labour requirements or should the residence be unoccupied for a certain length of time
- d) The posting of a financial security in the form of an Irrevocable Letter of Credit in the amount of \$50,000 or as otherwise determined to ensure decommissioning of a residence being used during construction of another residence. Without limiting other potential repercussions to the applicant or property owner, the Commission may access some or all of the financial security upon a failure to comply with any or all aspects of the conditions of permission ordered by the Commission
- e) Consolidation with neighbouring parcel(s) and/or restrictions on the future residential use of other parcels included within the farm operation.

## 6.0 Building a New Principal Residence While Occupying an Existing Residence

It is the Commission's preference that the original principal residence be removed prior to the construction of a new principal residence, so that the new principal residence can be constructed in the same location as the original residence, thus minimizing the impact on the land base. However, the Commission recognizes that in some circumstances this may not be feasible. Applicants seeking to continue living in the existing residence while constructing a new residence should explain why they are required to do so, or why the new principal residence cannot be constructed in the same location as the existing principal residence.

On October 23, 2019, the Commission delegated its decision-making authority to the CEO to streamline the process of NARU applications which propose to build a new residence while occupying an existing residence, when the proposal meets the criteria outlined in CEO Delegated Decision-Making Criterion 17. If the application does not meet the criteria (including because the applicant cannot or prefers not to meet all the requirements), then the application will be referred to the Commission for a decision.

The circumstances in which the CEO's delegated decision-making authority applies are as follows:

### CEO Delegated Decision-Making Criterion 17:

Non-Adhering Residential Use applications for building a new principal residence while occupying an existing residence that complies with the following criteria:

- i. At the time of the application there is only one residence on the parcel;
- ii. Siting\* of the new principal residence has a maximum 60 metre setback from the front lot line to the rear or opposite side of the total residential footprint, with the total residential footprint being a maximum of 2,000 m<sup>2</sup>. Lots narrower than 33 metres are exempted from the 60 metre maximum setback (for the total residential footprint) from the front lot line; however, the footprint must fill the front of the lot to a maximum of 2,000 m<sup>2</sup>; and,
- iii. Receipt/confirmation of the following within 30 days of the date of a decision to approve is issued:
  - a. registration of a restrictive covenant requiring the removal of the original residence;
  - b. a signed affidavit committing to removal of the original residence; and,
  - c. an ILOC sufficient to ensure removal of the original residence within 60 days of completion of the new principal residence.

\* The following exceptional circumstances may also be considered with respect to the siting of the new principal residence:

- a. Clustering with Existing Residential Structures: The clustering of the new principal residence with other existing non-agricultural uses on the parcel to limit the fragmentation of ALR land and avoid the restriction of agricultural activities.

- b. Commodity-Specific Needs: The strategic placement of the new principal residence to benefit or optimize the agricultural operation (e.g. monitoring of livestock on a large parcel).
- c. Topographic Features: Siting of the new principal residence as appropriate to reduce the use of potentially productive farming land for residential purposes (e.g. sited on a non-farmable area of the parcel).

**Role of the Local Government:**

Local governments must review NARU applications and either provide comments and recommendations for the Commission's consideration or, in some cases, authorize the application to proceed to the Commission: ALCA, ss. 25(3), 34(4)-(5). For applications in relation to settlement lands, the First Nation Government must authorize the application to proceed to the Commission: ALCA, s. 25(3.1).

An absence of local zoning bylaws does not relieve a landowner of complying with the restrictions in the ALCA and ALR Use Regulation.

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.