THOMPSON-NICOLA
REGIONAL DISTRICT
The Region of BC's Best

Development Services

Public Information Report

February 24, 2022

Zoning Bylaw amendments for residential flexibility to allow an additional dwelling on rural lands.

For decades and up to today, TNRD Bylaws allowed a MH for family or farm help in or out of the ALR but it was limited to the following: 5m wide MH (i.e. one single wide); parcels over 8ha in area; Class 9 Farm assessment; 8m setback to any property line; a covenant on title; and servicing (water/septic).

SUMMARY:

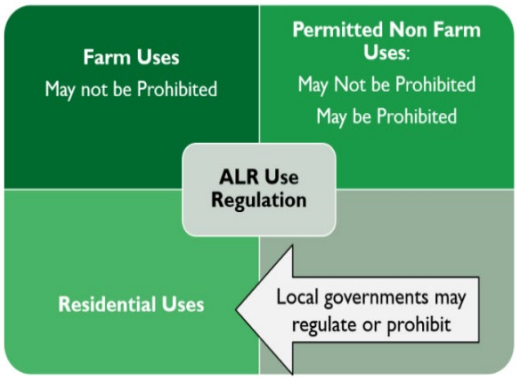
This report outlines recommended Zoning Bylaw 2400 changes to allow an additional detached dwelling unit in conjunction with the *agricultural or horticultural use* in various rural zones on both ALR and NON-ALR land – *in parallel*. It also recommends reducing the required parcel area from 8ha to 4ha (10 acres).

The changes significantly increase the opportunities for rural landowners to construct one additional freestanding dwelling, albeit with provisos as to size and location. This report undertakes the following:

1. Relay and explain the recent ALC changes, including background
2. Discuss the benefits and challenges of these changes in the TNRD context
3. Explain what the current TNRD regulations allow
4. Suggest how we may revise and harmonize TNRD Zoning Bylaw 2400

BACKGROUND:

In early 2019 the *Agricultural Land Commission (ALC) Act* and *ALR Use Regulation* (the "Regulation") were broadly amended, in particular for dwellings. The Regulation required that the total gross floor area (i.e. total of all floor levels) of a principal residence not exceed 500m^2 [5382ft^2] AND manufactured or mobile homes (MH) for immediate family were no longer allowed. After the announcement, the Province heard a good deal of opposition to the loss of an MH for family.



By July of 2019, the Regulation was amended to temporarily continue to allow MHs for immediate family *subject to specific criteria*. Subsequently, in April of 2021, it was amended *anew* to extend the period to the end of 2021. The ALC spent a year consulting and finally established these NEW regulations.

On July 12, 2021, an Order in Council amended ALR Use Regulation, BC Reg. 30/2019, effective 2022. Qualifying the ALC does not generate regulations: these are handed down from the Province, particularly the Ministry of Agriculture (MoA). Still, it remains ALC responsibility to interpret and administer regulation and to interact with local government. As per ALC recommendation, local government can and should impose criteria/restrictions for an additional dwelling. **The most restrictive rule applies.**

DISCUSSION:

Prev ALC Regulations

Until the end of, 2021, the ALC allowed one main residence of up to 500m^2 (with or without secondary suite) and one MH up to 9m wide for immediate family - *provided local zoning bylaws do not foreclose this and many across BC did*. If an ALR landowner wished to exceed this they must submit a NARU or *non-adhering residential use* application to the ALC and a variance or rezoning application to the given local government.

What are the ALC changes effective January 1, 2022?

As of 2022, permitted residential uses on ALR are based on parcel area, as illustrated, AND what is permitted by the local bylaw.

- **ALR parcels <40ha** can have max one 500m^2 principal residence and one 90m^2 additional residence;

Aside: while the new rules are more open to options, note that double-wide & most single MHs are over 90 m^2.

- **Parcels >40ha** can have one lawfully built principal residence-(which could be >500m^2 if built prior to 2019 or has ALC approval) and another 186m^2 [2002ft^2] home.

Aside: According to ALC officials, many BC local governments have responded that they are not revising bylaws to enable additional dwellings.

What housing types are allowed as additional dwellings?

The ALC provided samples of housing forms that would be acceptable under the new Regulations. See images above. These can be limited to any of the following: MH, unit above a farm building, garden suite, or carriage house meaning a unit above a garage. The TNRD can determine which, *if any*, we wish to permit (e.g. *continue to allow MHs only or above ground level farm use or small site-built*).

Staff recommends allowing a broad range of types (i.e. not limit it), PROVIDED parcel area be over 4ha.

Staff also recommends that we do not further reduce dwelling area from the 90m^2 or 186m^2 stipulated.

Are secondary suites allowed?

There is no allowance for a secondary suite in an additional residence but suites (not duplexes) are still allowed in primary residences under s. 31 of the Regulation. If an owner seeks multiple farmworker housing on a parcel, this is only permitted by a NARU application and if the workers are in the same additional residence which may only have one kitchen.

This Richmond ALR dwelling is >500m^2 & would require NARU approval.

What does "*total floor area*" comprise? *Acknowledging that the regulations are complex!*

The ALC definition of "total floor area" applies if a local zoning bylaw does not define this term. They advise that – *if we have a definition* - we should use it, qualifying that we must use their definition in the case of the principal or primary dwelling – see next page. These limits make sense and are established to reduce farmland used for residential purposes. They foreclose the construction of homes such as that pictured above.

Imagine a 90m^2 [968 ft^2] additional dwelling if the total area includes attics and garages, this is problematic – i.e. *a double garage can take half the allotted area of 90m^2*. The ALC acknowledges the Ministry's intent for additional residences is to be small and accessory.

Zoning Bylaw 2400 has a current definition for *Gross Floor Area* which is applied to other cases of zoning caps on building sizes. Given it does not apply to the new requirements, staff suggest adding the following definition: (ALR & non-ALR)

*ADDITIONAL DWELLING TOTAL FLOOR **AREA*** means the horizontal area measured to the outer surface of exterior walls, including:

a) hallways, landings, foyers, staircases, stairwells;
b) enclosed balconies, porches, verandas, finished basements,
c) attached carports or garages unless the additional dwelling occupies the second storey above a one storey garage or is contained within a permitted building such as a barn or other farm use; but
d) excludes unfinished non-habitable attic or basement spaces less than 1.8 metres in height.

This definition respects ALC intent and is consistent with the BC Building Code.

Aside: **Definition of Primary Dwelling**

There is also a specific different definition for how we must calculate the total area of a main dwelling (i.e. up to 500m^2). See the ALC website for the full definition or the summary below:

TOTAL FLOOR AREA *means, 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 sqm;

(b) basements that do not end beyond . . exterior wall of the 1st floor (basement meaning area having more than 1/2 its height below the average grade;

(c) attics, with attic meaning unfinished space between the roof with the ceiling less than 2m . .

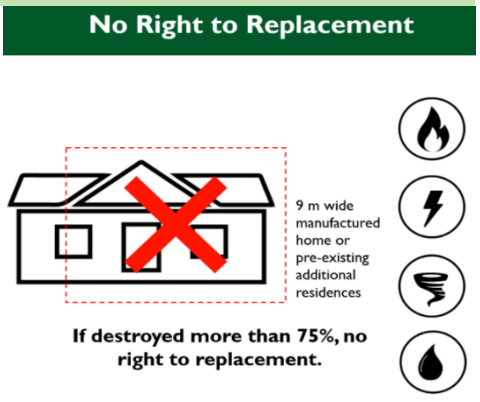
Order of Placement & Number of Dwellings on ALR lands

There is no required order of placement principal vs. additional dwelling; however, a property can only have two detached dwellings. If the principal residence is larger than 500m^2 on a parcel less than 40ha in area, it does **not** qualify for an additional residence. Similarly, if one already has a principal residence and MH, they do **not** qualify for another new or additional residence.

What is or is not 'grandfathered'?

Any lawfully constructed dwelling, meaning with a building permit, in compliance with both ALR regulations and local bylaws, prior to 2022, may be retained in its size and footprint, including:

- additional residence necessary for farm use
- MH for a family member
- additional residence conditionally approved by ALC
- residences that pre-date the ALR (1972)
- additional residence in former Zone 2
- a unit above an existing structure on a farm



BUT *if destroyed over 75% above foundation*, there is no right to replacement for MHs or pre-existing additional residences. This is identical to other non-conforming limits in legislation. Our Bylaw will merely defer to the ALR rather than spell out regulatory details.

Manufactured Homes (MH) vs. site-built additional dwellings & transition

Importantly, after 2021, additional dwellings are no longer limited to the owner or owner's immediate family but must stay the same size and footprint. So large MHs that had received all necessary authorizations (including Building Permit) before the end of 2021, can now be used for open-market rental revenue. **Qualifying, if an MH is >90m^2 [9968 ft^2] and is the *only* residence on a parcel on December 31, 2021, it is now deemed the principal residence and any additional home must meet the size limits.**

Non-Adhering Residential Use (NARU)

Additional residences which do not meet the Regulation require a NARU application and can only be approved if necessary and justifiable for farm use. For example, if there is a principal residence larger than 500m^2 on a parcel under 40 ha, an additional residence is not allowed outright and requires an application. **The ALC must confirm if previous conditions can be waived. Local governments must not issue new permits unless consistent with ALR Regulation.**

What does CURRENT Zoning Bylaw 2400 allow across the TNRD?

At present it allows a second dwelling on 8ha+ parcels having Class 9 Farm assessment *whether within ALR or not*. Current Bylaw 2400 reads as follows:

3.6.1 There shall be no more than one *single-family dwelling*, one *duplex* or one *manufactured home* on any *parcel* unless expressly permitted in this Bylaw . . .

3.6.2 Notwithstanding s. 3.6.1, where a *parcel* is used exclusively for *agricultural or horticultural use* in the AF-1, AF-2, or RL-1 Zones, an additional detached *dwelling unit* in conjunction with the *agricultural or horticultural use* is only permitted on that *parcel* subject to the following:

a) the *parcel* must be classified as 'Farm' under the Assessment Act;
b) the *parcel* area must be at least 8 hectares;
c) any additional dwelling must be occupied only by a member of the owner's immediate family or by a person employed in agricultural operation;
d) any additional dwelling must be 8 metres or more from any *parcel* boundary; and
e) any additional dwelling must be serviced with on-site water and sewage disposal in accordance with the requirements of the Provincial authority having jurisdiction.

3.6.3 In addition to the preceding, no more than one dwelling per parcel is permitted on ALR lands unless expressly approved by the Agricultural Land Commission.

3.6.4 Where an additional *dwelling unit* for *agricultural and horticultural use* is permitted pursuant to s.3.6.2, the owner must register a restrictive covenant against the title of the *parcel* under s.219 of the Land Title Act prohibiting the use of the additional dwelling for any other tenancy than the occupancy of a person(s) engaged full-time in *agriculture and horticulture* work on the property.

Recall that . . .

Bylaw 2400 also allows (additional to a permanent dwelling) for temporary installing of a CSA Z240 MH as a short-term residence to assist with medical care and daily living needs of (or by) the owner or a relative of the landowner. The temporary dwelling provision permits "*accessory accommodation use*" subject to certain conditions including physician certification, minimum parcel area, and covenant registration. The Bylaw must be clear that **three** dwellings, a primary home, an additional dwelling, and a temporary MH for assisted living are not permitted under the ALR regulations, or Bylaw 2400. Some minor clarification to the Bylaw text is required for concordance to the ALC changes and the additional dwelling changes.

What did the TNRD Advisory Agricultural Commission (AAC) recommend?

Our AAC met to discuss changes to the Zoning Bylaw to align with ALR changes. They offered the following input and recommendations to inform potential Bylaw 2400 changes:

- most critically, the allowance for a second dwelling lands must be tied to "farm" assessment;
- support reducing current parcel size for second dwellings from 8 to 6ha but no lower than 4ha. A reasonable minimum area is needed to prevent second dwellings on undersized lots;
- any bylaw change should avoid regulating driveway size or soil as it is not practical to enforce and there should be flexibility – specific soil regulations should default to ALR legislation for ALR lands;
- ideally, second dwelling placement should be limited to non-arable soils - no homes should not be placed in prime agriculture land (e.g. can be above a barn); and
- follow ALR home size limits for consistency, rather than set a lower TNRD size threshold. **Before considering changes, note some ALR anomalies . . .**

Additional comments:
AAC expressed frustration with repeated ALC changes in recent years. These seesaw amendments have made it confusing for residents and staff alike and have resulted in continual bylaw amendments trying to keep up alignment with BC legislation.

Given ALR changes and with AAC input, Planning Services have reviewed Bylaw 2400 and now suggest the following changes. Before forging ahead, note some TNRD anomalies within the ALR that need to be considered:

- There are entire communities surveyed ~100 years ago with tiny 1/8 acre parcels (e.g. Walhachin) that are entirely ALR. If no minimum parcel area is stipulated and farm assessment is not required, then each parcel owner could build an additional dwelling.
- There are hundreds of former Crown leaseholds on lakefronts that are now fee simple lots of +/-1 acre across the TNRD that remained within ALR. Given a lake's capacity and septic impacts as well as neighbour to neighbour conflict, we do not recommend doubling density on recreational properties.
- We have small lot (1/2 to 2 acre) subdivisions that were racing ALR creation in 1972-1973 and were approved but are nonetheless ALR. Again, doubling the density on these parcels is not viable.

What about Temporary Dwellings for caregiving?

Staff recommends leaving this allowance in place but adding a provision to clarify the size restriction for ALR lands to be consistent with ALC regulation and to cite the maximum of two detached homes. Finally, we suggest increasing the area limit to a single wide MH and suggest 115m^2 (1238ft^2) is reasonable. This covers the larger single wide MH or the split offset units recently installed in the region.

What are the recommended changes to Zoning Bylaw 2400?

When a zoning bylaw is opened for change, there are often requests to simply drop all (or most) limitations and be outright permissive. Going back to 1972 (even then!), our Zoning Bylaw limited landowners as to when they could have an extra MH:

> (b) There shall be no more than one single or two family dwelling or mobile home on any parcel, unless such parcel is used exclusively for agricultural, horticultural or logging practice.

In 1984 under Bylaw 940 this provision evolved to limit the additional dwelling to Class 9 Farm assessment on certain rural zones and 8ha (20 acres) in area. This has remained in place for decades thus proposed changes to the Bylaw are significant.

Please find the changes to s. 3.6.2 below with the discussion shown in *blue* for ease of reference:

Where a *parcel* is used exclusively for a*griculture or horticultural use* in the AF-1, AF-2, RL-1 **& SH-1** zones, an additional detached *dwelling unit* in conjunction with the *agricultural or horticultural use* is only permitted on that *parcel* subject to the following:

*If we reduce the parcel area required for an additional dwelling under b) see below, it may make sense to add **SH-1: Small Holdings** zone (which has a parcel minimum of 2ha but many SH-1 properties are 4ha or more).*

a) *the parcel* must be classed as 'Farm' under the Assessment Act;

Farm assessment is the key indicator of the ability to farmland. We recommend to continue to require confirmation of Class 9 for all additional dwellings, given the following:

- *the extent of potential rural overdevelopment especially on the edge surrounding cities and towns is significant – increased help for farms is good as is the rental revenue but it is not the solution for urban homelessness or urban housing shortages;*
- *both AAC and ALC urge us to include a requirement for property to hold Class 9 Farm status;*
- *allowing it any/ everywhere contradicts all TNRD long-range planning policy and bylaws; and*
- *two dwellings on a parcel drive land cost up and we do not want to encourage this trend.*

b) the *parcel* area must be at least ~~8 hectares~~ **4 hectares;**

Parcel area is critical in our consideration. The ALC has suggested this be considered in the local context and a minimum be established. On-site wells and septic systems for one (never mind two dwellings) have an inherent requirement for adequate parcel area. Larger rural parcels make for better neighbour relations, especially when allowing additional dwellings.

Also, changes could result in it being more restrictive on non-ALR lands than ALR lands. Setting a minimum parcel area is critical to protect the integrity of farmland and limit the increase in land valuation. Planning staff suggests decreasing the current 8-hectare minimum parcel area to 6 or even 4 ha for an additional residence on both ALR and non-ALR. This allows for additional dwellings on smaller parcels that can support the additional services.

c) **for *parcels* within the ALR, the additional dwelling gross floor area must not exceed 90 sqm if parcel area is 40ha or less and 186 sqm if over 40 ha, or as expressly approved by the ALC;**

This proviso is added to remind readers of the ALR limit.

d) **for *parcels* not in the ALR, the additional dwelling gross floor area must not exceed 186 sqm;**

The proposed Bylaw allows a slightly larger dwelling in non-ALR. Staff suggests 186m (~2000 sqft) as a max second dwelling size for non-ALR lands. Again, setting a minimum parcel area will be critical and this limit assumes a minimum parcel area of 4ha or even 6 ha.

e) any additional dwelling must be serviced with water/sewage disposal in accordance with the requirements of the Provincial authority having jurisdiction.

This reminds readers that there are Provincial Government requirements not repeated in this Bylaw

Proposed deletions from current Bylaw 2400 and why?

3.6.2 c) "any additional dwelling must be occupied only by a member of the owner's immediate family or by a person employed in agricultural operations;"

Zoning Bylaw 2400 currently restricts who is permitted to occupy an additional residence to immediate family or a person employed in farm operations. By removing requirement 3.6.2 c), above, landowners may opt to have an additional residence for rental income to help offset the cost of operating the farm. This would reduce staff hours spent clarifying the difference between the TNRD zoning and ALR Regulations, as well as the time spent on processing restrictive covenants – as per below.

AND s. 3.6.4 the requirement for a s. 219 covenant

Currently, as part of the Additional Dwelling application process, we require that a landowner must register a restrictive covenant prohibiting the use of the additional dwelling for any other tenancy than the occupancy of a person(s) engaged full-time in agriculture and horticulture work on the property. Dropping the occupancy limitations means a covenant is superfluous. In cases where parcel area and home size fall within the new regulations, temporary dwelling covenants would no longer be required.