

April 16, 2018

Minister's Advisory Committee
Revitalization of ALR and ALC
C/o Ministry of Agriculture
PO Box 9120 Stn. Prov. Govt.
Victoria BC V8W 9B4



Via Email: ALR_ALCRevitalization@gov.bc.ca

Response to the Ministry of Agriculture's Advisory Committee -
Revitalizing the Agricultural Land Reserve and the Agricultural Land Commission

RE: Discussion Paper for Stakeholder Consultation and Public Engagement Response

Thank you for this opportunity to provide a response to the Discussion Paper for Revitalizing the Agricultural Land Reserve (ALR) and the Agricultural Land Commission (ALC). The City of Kelowna (the City) has provided a detailed response based on the ten categories outlined in the paper. The City notes that several main themes run through this response. The defensibility of the ALR requires that the following items are strengthened by the Province:

1. **ALR Stability.** The ALR provides the backbone to much of the City's Permanent Growth Boundary and as such, it's stability is critical to Kelowna's core growth strategy and land use stability. The defensibility of the ALR is essential to Kelowna's overall planning policies.
2. **Provincial Leadership.** Provincial leadership and regulation is required to address the issues of the increasing non-farm uses on the ALR lands that lead to speculation and acceleration of land values. This should be done at the provincial level to avoid inconsistencies between municipalities, and resulting domino effects to neighboring jurisdictions.
3. **Clarity in Regulation.** The *ALC Act* and *ALR Use, Subdivision and Procedure Regulation* (the 'Regulation') requires an update to achieve additional clarity and intent. The goal is to provide certainty for landowners and municipalities, reduce property speculation and the multi-tiered government investment of time and resources spent in both interpretation and enforcement.
4. **Farm Classification Review.** Farm tax classification regulations require a policy evaluation to ensure a fair system that benefits farmers yet is not an enticement for residential tax relief. The criteria of a 'farmer' and a 'farm house' should be rigorous, and reflect and respect the level of time and commitment that farmers dedicate to production on their land. We understand that this is not to be covered in the current review, but is identified for future efforts.
5. **More Provincial Enforcement is Needed.** The City has greatly appreciated the presence of the ALC Enforcement officer in the Okanagan. However, more resources are needed to address the backlog of issues and ongoing enforcement activities in order to maintain the progress made to date and to maximize the synergies at both the municipal and provincial levels.

Policy & Planning
1435 Water Street
Kelowna, BC V1Y 1J4
TEL 250 469-8773
FAX 250 862-3363
kelowna.ca

Kelowna Context

The Okanagan is unique in the country for the wide range of produce it supports. It has an opportunity to be exemplary to access fresh farm products and showcase a wide variety of agri-tourism related products. However, this one benefit often is challenged by the competing objectives of population growth vs. agricultural activities. Populated areas and fertile land have overlapped for generations, however as urban areas continue to grow and intensify, surrounding farmland, forested land, and parklands fall under development pressure. With over 12,000 ha of the City's land based zoned agricultural (55%) and 8,600 ha in the ALR (40%), the preservation of agricultural land is critical to the City's long term economic and environmental sustainability, as well as climate change resiliency. However, this land is often at risk as it tends to be flat, affordable and well located, making it attractive for urban development. Preserving and protecting agricultural lands is of paramount importance for Kelowna's citizens and City Council as seen in the following documents or actions:

- Kelowna's OCP, adopted in 2011, outlines fundamental objectives to 'Preserve Productive Agricultural Land' and to 'Protect and Enhance Local Agriculture'. Kelowna has made significant process and policy improvements towards this goal;
- Council adopted a policy in 2012 to send all requests for second dwellings for farm help to the ALC through a non-farm use application. Since then, no requests for permanent second dwellings have been approved;
- Council endorsed the City of Kelowna's Agricultural Compliance and Enforcement Strategy in 2015. These efforts have resulted in reducing illegal uses, particularly landscaping and contracting businesses operating in the ALR. One of the benefits is the reduction of inquiries and requests for these businesses on farm land;
- In updating Council's priorities, in 2017 Council made the goal to "Preserve Agricultural Land" a focused priority. This was further reinforced with the endorsement of the City's updated Agriculture Plan¹, endorsed in 2017 which has outlined 34 actions to strengthen policies to protect agricultural land. Current implementation action items are underway, with significant progress expected to be complete by the end of this year.

With the recent steps Kelowna has made towards maintaining the viability and health of agricultural lands, it is imperative that it can also rely on the backbone of sound provincial policy and regulation to further uphold this vision. The preservation of farm land is important to Kelowna's citizens, as shown in the Agriculture Plan survey where 95% of respondents indicated "*policies preserving farm land were either important or very important*". Also of note, the survey indicated that the top challenges for farming were:

- a. Difficulty accessing land due to high costs, speculation, and capital inputs
- b. Competing uses for farm land
- c. Lack of succession planning

The City and community partners recently undertook the most extensive public engagement process to date to create a new community vision for the future. Key draft directions from Imagine Kelowna included: '*Protect agricultural land and promote sustainable farming*'. It noted that farming has been a foundation of Kelowna's local economy and identity for over a century.

¹ City of Kelowna, 2017. Agriculture Plan. https://www.kelowna.ca/sites/files/1/docs/related/agriculture_plan_final_august_2017.pdf

In concert with local and provincial partners, the City is making strong efforts to protect our valuable agricultural land while encouraging a vibrant, sustainable agricultural industry for the future. These efforts will be even more vital in a future where food security is challenged by the impacts of a changing climate. The ALR revitalization process is timely and complements the importance of agricultural land in the Province. The City encourages the Province to strengthen the ALR and provides the following response to each category as identified Ministry of Agriculture's Discussion Paper.

Specific responses to the discussion paper questions follow.

1. A Defensible and Defended ALR

Over the next 20 years, Kelowna is projecting an additional 50,000 new residents moving to the City, requiring ~24,000 new homes by 2040. A strong and defensible ALR, one that is sustained regardless of political cycles, is essential to maintaining the integrity of Kelowna's strategy of preserving farm land and focusing growth in a compact urban community. Kelowna's Permanent Growth Boundary mirrors the ALR boundary for much of its length. A defensible ALR provides a foundation to the City's agricultural policies, which focus on the long term protection and viability of farm land, as well as playing a critical role in growth containment and intensifying existing urban areas.

Overall, it is critical that the ALC and ALR legislation be strengthened to become an institution that is undisputable and enduring, to provide consistency for farmers, property owners and municipalities, and reduce the uncertainty that stimulates speculation. This will be critical as Kelowna continues to grow, and updates various policies and plans the acknowledge the permanence of the ALR. However, there are instances where proposed uses in the ALR that achieve broader public objectives warrant case by case consideration, and where no alternatives exist. It is recognized that processes must be in place for those exceptions (ie. transportation network updates or public utilities).

Recommendations:

1. **Consistent application of the objectives and regulations of the ALC.** Strong, clear and consistent administration of the principles and regulation of the ALR throughout the province will reduce speculation and provide consistency for landowners and local governments.
2. **Consideration of public objectives.** Consider proposals that achieve broad public objectives where no alternatives exist.

2. ALR Resilience

Provincial legislation that is stable through time is essential for municipalities to plan and maintain alignment with regulation. Responding to frequent changes to the regulation presents challenges to local governments and can lead to:

- Inconsistency between provincial and municipal regulations; and
- Increased Staff/Council time and resources to respond to legislative changes, delayed alignment, and lack of government streamlining to administer the regulations as they relate to development application review.

Regulations that are unclear or open to interpretation are problematic for property owners, prospective owners, and staff alike. Lack of clarity in the regulation intent (ie. where the regulation/policy is open to interpretation) can be time consuming for staff and lead to systematic decisions that fail to protect the

overarching objectives of the ALR. Proposed changes to the Regulation due to new issues or technologies, should be done so in consultation with stakeholders and the public to improve transition and implementation.

Recommendation:

1. **Annual reporting.** Annual reporting on the status and stability of the ALR would be an effective tool to monitor ALR resilience for the public and local governments. A monitoring program to ensure consistent decision making is executed across the Province will ensure equity and stability.

3. Stable Governance

Agriculture is an industry that requires significant capital outlay in an environment of ever-changing market conditions. Stability and predictability of regulations over time and through political cycles is necessary to reduce risk in the industry and reduce land speculation. The stability of the ALR ultimately is a Provincial role. Strong leadership and consistent administration with clear regulation is required to avoid discontinuity between municipalities, and support local governments in their policies to protect agricultural land, contain growth and reduce non-farm uses.

Decisions at a Provincial level are generally less influenced by local influences than the current model of the regional panel. However, it is important that local commissioners have a voice at the table, to provide their understanding of agriculture in the area.

Recommendation:

1. **Establish a Review Committee.** Establish a standing independent review committee which is at arm's length to the government to oversee changes to the *ALC Act and Regulation*.

4. Efficacy of Zone 1 and 2

Kelowna is in Zone 1, along with the Lower Mainland and Vancouver Island. Kelowna has not experienced a notable difference in ALC decision-making resulting from the zone system since its inception. However, it is recognized that the challenges of farms, climate and topography in Zone 2 are very different than those in the Okanagan. For example, in Kelowna there are many competing interests for farm land. While Kelowna's farm land is some of the most expensive in Canada, it is simultaneously the least expensive land in the City. It therefore is attractive for non-farm uses, including residential uses, commercial and industrial uses, as well as for the deposit of construction fill.

Recommendation:

1. **Maintain Zones.** The City supports the maintenance of Zone 1 and Zone 2, with corresponding varying regulations to meet the specific needs of each zone.

5. Interpretation of the ALR Act and Regulation

The ALC Regulation is with respect to many uses and structures, unclear. This leaves the land vulnerable to 'use creep' and gradual transition to commercial or industrial uses that were intended to be ancillary and secondary, to become the primary economic contributor. The lack of clarity and the risk for ancillary commercial or industrial uses to become a primary use on the land lead can lead to speculation and increasing land values.

Regulations that are unclear and open to interpretation are problematic for property owners, prospective owners, and staff alike. Lack of clarity can be time consuming for staff and lead to systematic decisions that fail to protect the overarching objectives of the ALR. Any amendments should be easily communicated, administered, and enforced.

Additionally, the current interpretative nature of the Regulation is tremendously difficult to administer and enforce. Many buildings and uses proposed by property owners or prospective owners are undefined in the regulation. These uses are neither permitted with restriction nor prohibited in the Regulation (an example is a kitchen to support a winery). Additionally, the use of 'storage' is vague and can be largely misused. Additionally, the '50% Rule' for production is extremely difficult to administer and impossible to enforce.

The following are recommendations to improve the clarity of the Regulation with respect to interpretation, administration and enforcement.

Recommendations:

1. **Provide Specific Regulations for Permitted Uses.** Regulations, particularly for permitted non-farm uses and their structures, should be specified, such as maximum footprints or gross floor area of secondary use structures. This should be done within the Regulation rather than local bylaw standards to be consistent across the province. It may be reasonable to have different regulations for Zone 1 and Zone 2, but should be established provincially. This will remove the risk of local pressure influencing policy, and provide a level playing field between jurisdictions. This also helps local governments communicate the regulations to the public, as they often serve as a point of first inquiry. For example, the Regulation should include specific requirements and regulations for permitted ancillary uses such as picnic areas, parking, storage, washrooms, kitchens, offices, and staff rooms. Requests for structures larger than permitted should require a non-farm use application. The limits should be clearly defined (e.g. with a numeric values) that are clear to communicate, administer and enforce.
2. **The '50%' Rule.** The '50% Rule' is exceptionally difficult to administer and enforce. It should be replaced with a base area (in hectares) for crops with direct input into the secondary use, on the subject site.
3. **Lease Requirements to Qualify for Structures.** The requirements for leased land used to support structures on other ALR properties should be clearly outlined, both in terms of area of farmed land as well as lease duration. These requirements should be straightforward and consistently applied.
4. **Permitted Non-Farm Uses.** Where additional permitted non-farm uses are allowed, (e.g. gatherings) additional provincial enforcement resources should be provided to ensure compliance. For example, the responsibility and process for tracking number of events and number of guests should be undertaken by the ALC and not downloaded to local government.

6. Food Security and BC's Agricultural Contribution

Farming has been a part of Kelowna's economy since before incorporation. There is a community desire to protect farm land. Results from a survey completed as part of the Agriculture Plan identify food security as the most important reason to protect farm land. A report on Kelowna's food self-sufficiency indicated that the City does not have the ability to provide food security for the entire community in emergency situations². Correspondingly, the stability of the ALR is critical to food security in Kelowna.

To make the ALR truly resilient, it needs to be economical to farm. The province needs to support the economic interests of farmers.

Recommendations:

1. **Economic Support.** The Province and all levels of government, need to further support the economics of farmers. This could be a number of policies or initiatives, including policies that government agencies buy BC produce, provide crop insurance, representation at NAFTA, etc.
2. **Foreign Ownership Restrictions.** Implement restrictions on foreign ownership for farm land ownership, similar to other provinces in Canada.

7. Residential Uses in the ALR

The rising cost of farm land is one of the greatest challenges facing farming in Kelowna. The Agriculture Plan survey found that 73% of respondents identified difficulties accessing land for farming due to speculation, high costs, and capital inputs as the primary challenge to farming in Kelowna. The price of farm land has been escalating in Kelowna in recent years, consistent with a corresponding increase in estate homes over this time frame. The Agriculture Land Use Inventory (ALUI)³ for Kelowna shows that while 93% of all homes in Kelowna in the ALR are less than 5,000 sq. ft. (464 m²), of new houses built between 2007 and 2014, 30% were over 5,000 sq. ft. The ALUI also notes that the average land improvement values doubled between a large single family house (3,500 to 5,000 sq. ft.) and an estate home (over 5,000 sq. ft.)⁴.

² City of Kelowna, Interior Health, UBC, 2015. Building a Case for Kelowna's Food Security Strategy: Kelowna's Current Food Self-Sufficiency Situation.

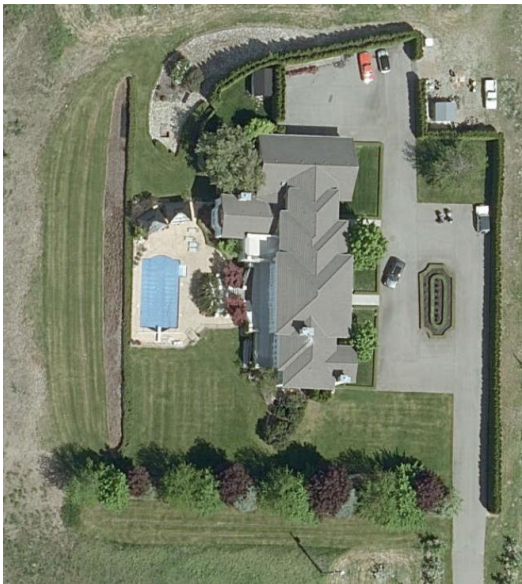
³ Ministry of Agriculture, October, 2017. Agricultural Land Use Inventory Data (2014) Kelowna – Special Run.

⁴ Ibid P. 31

Below is a table outlining 2017 farm property listings for sale in Kelowna:

Property	Parcel Size	House Size	MLS List Price (2017)	BC Assessment Land Value (2017)	BC Assessment Dwelling Improvements (2017)
Lakeshore Rd.	7.2 ha (17.8 acres)	11,000 ft ²	\$13,995,000	\$25,393	\$3,966,000
East Kelowna Rd.	8.1 ha (20 acres)	6,533 ft ²	\$4,650,000	\$160,767	\$2,300,600
Casorso Rd	3.7 ha (9.2 acres)	10,000 ft ²	\$12,998,000	\$7,684	\$3,380,000
Water Rd.	5.9 ha (14.5 acres)	10,000 ft ²	\$5,585,000	\$106,456	\$3,438,000
Hart Road	4.5 ha (11.3 acres)	9,200 ft ²	\$5,498,000	\$22,501	\$2,085,000
KLO Rd	14.2 ha (35 acres)	5,940 ft ²	\$6,800,000	\$142,120	\$3,006,200

Below is an example of a 14.5 acre property, which BC Assessment has assessed at \$3.5 million, with a list price of \$5,585,000. The residential improvements were assessed at \$3.4 million and the land only \$106,456.



There are additional risks posed with the omission of farm land in the foreign buyer’s tax and new speculation tax. This omission presents an incentive to these investors to purchase agricultural land in an effort to avoid these taxes. The application of these taxes to the ALR needs to be investigated.

Recommendations:

1. **House Size.** House size should be regulated by the province through the Regulation, not through policy of each individual local government or bylaw standards. This should be consistent through each zone, in order to avoid diverting the issue to neighbouring municipalities.
2. **Farm Residential Footprint Size.** Farm Residential Footprint Size (2,000 m²) should also be provincially regulated through the Regulation, at least in Zone 1, for consistency through the zone.
3. **Farm Residential Footprint Siting.** Farm Residential Footprint siting should remain a bylaw standard, enacted by each municipality, because siting can be extremely variable between different municipalities. Kelowna has varied topography, and variable agricultural potential on each lot, so one size does not fit all. Kelowna needs the flexibility to be able to work with farm land owners regarding siting to maximize agricultural potential, and currently does so through a Farm Protection Development Permit and associated guidelines, based on the provincial bylaw standard.
4. **Accommodation Constructed above an Existing Building.** In 2012, Council adopted a policy to send all requests for second dwellings, including those above existing buildings, to the ALC as a non-farm use requests. Since that time, all applications for second dwellings were denied by the ALC. The amendment⁵ to allow accommodation above an existing building is contradictory to previous direction. Further, the Regulation does not provide guidance on how long the structure needs to be on the property before it qualifies as an existing structure. This policy will promote the use of farm land for residential uses, including rentals, potentially increase the risk of urban/farm conflicts, and lead to increased land values. In addition, it undermines Kelowna's urban growth strategy. The Province should consider the removal of the use through the Regulation and return to the process of assessing the merits of each request on a case by case basis through a non-farm application.
5. **Farm Classification Review.** As mentioned previously, the Province should review farm tax classification regulations. Ensure a fair system that benefits farmers yet is not an enticement for residential tax relief. The criteria of a farmer and a farm house should be rigorous, and reflect and respect the level of time and commitment that farmers dedicate to production on their land.
6. **Residential Tax Structure – Speculation and Foreign Buyers Tax.** There should be equivalent taxes to the speculation and foreign ownership taxes applicable to the ALR, or be replaced with alternates specific to farm land, in order to limit the risk of redirecting investors looking to avoid these new taxes on residential properties.

8. Farm Processing and Sales in the ALR

Kelowna supports on-farm processing and farm retail sales. However, there is risk that the secondary nature of some operations outweighs the primary agricultural production, and the potential for these operations to be primarily commercial or industrial is a concern. Additionally, the introduction of permanent buildings supporting non-permanent farm uses can also have long-lasting unintended consequences. For example, a brewery and tasting room is permanent, while the grain that gives it legitimacy is an annual crop. The risk is that the farming operation dissolves and what remains are the commercial or industrial structures on the land.

⁵ Province of BC, June 15, 2015. ALR Use, Subdivision and Procedure Regulation BC Reg 171/2001, Order in Council 346.

Some risks of these secondary use structures are:

- The farm operation may change in the long term and leave the industrial/ commercial structure unused, and consequential pressure for an alternate, non-farm re-use;
- The difficulty in managing the 50% rule and the loose connections surrounding leased land or other parcels contributing to the structure's use;
- The demand for urban uses in the ALR will put pressure on municipal systems for urban services (e.g. water and sewer); and
- Consequential demand for urban services of nearby farm properties once urban services are installed, and the associated speculation and risk for increased land values.

Recommendations:

1. **Ancillary Use Regulations.** As mentioned previously, these secondary uses should be further defined and specific requirements for production identified. Ancillary uses such as kitchens, storage, lunch rooms, washrooms, parking etc. should be specifically regulated to size, beyond which a non-farm use application would apply. Site coverage should not be used, due to the great variability in parcel size. Site coverage can be unfairly limiting on smaller parcels, and excessive on larger parcels.
2. **Large Scale Processing Facilities.** Further investigation should be completed to assess if the ALR is the best location for large scale industrial uses that previously existed in industrial areas within an urban location. There should be potential consideration for ultimate size restrictions, as there are for farm retail sales, beyond which a non-farm use approval could be made for certain operations.

9. Unauthorized Uses

In 2015, Council endorsed the City of Kelowna Agricultural Compliance and Enforcement Strategy. This program has resulted in reducing illegal uses, particularly landscaping and contracting businesses operating in the ALR. One of the co-benefits of the program has been a reduction of inquiries and requests for these businesses on farm land. This strategy has been further enhanced by working cooperatively and proactively with ALC compliance staff. The City has greatly appreciated having an ALC Compliance and Enforcement Officer reside in the valley, however, more enforcement resources is needed.

Typical illegal and unauthorized uses in Kelowna include RV storage, landscaping and soil companies, contractor services, general storage, and illegal dumping of fill.

Recommendation:

1. **More Provincial Enforcement is Needed.** While the City is greatly appreciative of the presence of the ALC Enforcement officer in the Okanagan, more resources are needed to address the backlog of issues and new concerns. Systematic and consistent enforcement on illegal uses is required for long term success.

10. Non-Farm Uses and Resource Extraction

From Kelowna's perspective, one of most significant non-farm use compliance activities and resulting degradation of agricultural land has been agri-tourist accommodation. This is currently a prohibited use in the City of Kelowna, after years of compliance abuse with respect to: i) non-compliance of seasonality, and ii) duration of individual stays. The current ALC Policy L-05 states that agri-tourist accommodation must be temporary, and not have municipal services or be constructed in a way that has potential for them to become

permanent accommodations for year round rental. Additionally, it states '*Other types of permanent accommodation including lodges, motels, inns, resorts, resort based campgrounds and RV parks with full servicing and amenities and bare land strata ownership require a non-farm use application and approval of the Commission.*' It would appear that, other than campsites, few agri-tourism accommodation applications would have neither services nor permanent structures, and would thereby require a non-farm use application.

Recommendation:

1. **Evaluate Permitted Non-Farm Uses.** The ALC should review the Regulation and policies to assess what reasonable activities are permissible. These should be clearly outlined with specific parameters, including parameters such as size and scale. Should the requirements for the uses or structures be extremely restrictive or difficult to enforce (e.g. seasonality, temporary stays, or production requirements), consider removing the permitted use from the Regulation and address applications on a case-by-case basis as a non-farm use application.

In summary, the City of Kelowna would like to thank the Committee for this opportunity to provide input into this critically important review exercise. Over the years, there have been select evaluations of the ALR/ALC to assess performance, success, and equity to both the provincial citizens and farmers. The public interest of all British Columbians related to the preservation of agricultural lands, has been previously defined⁶ and still remains pertinent to include:

- a) province-wide context;
- b) long-term consequences;
- c) open and accountable decision-making; and
- d) the preservation and management of scarce and important provincial assets.

This definition serves to underscore the prominent and important role of the ALC as a powerful body because its legislation, policies and decisions take precedent over most municipal, regional or provincial planning processes. Therefore, this independence and accountability come with a large responsibility, and this review is seen to ensure that the stability and consistency of the ALR will remain current at a time when it is needed most.

The importance of agricultural lands in BC is often understated and undervalued. Farmland and the resources it provides are difficult if not impossible to retrieve once such lands are converted to other uses. Development needs to be managed and directed to less important lands in order to realize a stable agricultural sector. However, as global markets shift, climate change impacts are better understood, and new technologies emerge, this will increase the complexity and uncertainty and increase conflict for resource management. Therefore, the longevity and stability of the ALC must remain current, and continue to foster a forward-thinking platform to ensure the Province's agricultural land supply remains to ensure our collective resiliency for an uncertain future.

Respectfully Submitted,

Danielle Noble-Brandt
Department Manager, Policy & Planning
City of Kelowna

⁶ Quayle, 1998: 4.