



To: Mayor and Councillors
From: Terry Crowe, MCIP
Manager, Policy Planning Department
Date: January 14, 2016
File: 08-4430-03-08/2016-Vol 01
Re: **Additional Proposed Requests to the Minister of Agriculture: Agricultural Land Reserve (ALR) Wineries**

Purpose

The purpose of this memorandum is to advise Council that staff have requested the BC Minister of Agriculture to make additional winery regulation changes. The requests were made to meet the Province's extended January 15, 2016 deadline for comments and ensure that wineries in the ALR in Richmond are farm based and not industrial type wineries which can be better located in Richmond's urban industrial areas.

Background

On November 23, 2015, Council adopted several recommendations related to the Proposed BC Ministry of Agriculture Bylaw Standards for Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve (ALR). Richmond's comments (Attachment 1) were provided in response to the Ministry's request for feedback by November 30, 2015. The recommendations adopted by Council on November 23, 2015 included the following:

That regarding ALR wineries, the Minister of Agriculture be requested to:

- a) Amend the Agriculture Land Use, Subdivision and Procedure Regulation of the Agricultural Land Commission Act, to enable Richmond and other municipalities:
 - i) To allow only Type 1 Wineries which grow at least 50% of the farm product used to make the wine on the farm where the winery is located and;*
 - ii) To not allow Type 2 Wineries which are industrial-scaled operations with limited ALR farming activity.**

Subsequently, the Ministry extended the deadline for feedback to January 15, 2016. In light of this opportunity and as Richmond staff continue to have concerns regarding how ALR wineries are managed, they reviewed the Ministry's winery regulations and consulted with Agricultural Land Commission (ALC) staff regarding their interpretation. Based on this information and upon further reflection, staff made several additional requests to the Minister of Agriculture which are summarized below and fully explained in the attached letter to the Minister.

1. There is the possibility that no soil based farm products for wineries (e.g. grapes) will be grown on a Richmond farm in the ALR on which the provincial ALC allows a winery. To address this important concern, staff request that the Minister require that all ALR winery

operators grow a minimum of 50% of their farm product for wineries on the specific farm site on which the winery is located.

2. There is a possibility that a Richmond ALR winery operator can import 50% of the farm product for their winery, from elsewhere in the World and not all from BC farms. Richmond requests that Richmond ALR winery operators not be given the option of using farm products for their wineries from outside of BC, unless the winery applicant specifically identifies on their application, the source and amount of outside BC farm product to be used in their winery and the Richmond Council approves it when the proposal is first considered.
3. Richmond is also concerned about the requirement that ALR winery operators who are allowed to use farm product for their wineries from another BC farm can do so only if they have a farm product supply contract which has a term of at least three years. Some current winery operators are using one year contracts. Richmond requests that: (a) the three year contract requirement be changed to allow lesser times, like one year terms and (b) winery operators be required to annually provide evidence of such contracts to the ALC and the City when they apply to renew their City winery Business Licence.
4. Importantly, Richmond is concerned that currently the ALC can approve proposed farm based ALR wineries without City approval, other than the operator obtaining a City Building Permit and an annual Business License. At its discretion the ALC may seek Council's comments, but they are only considered as advice. To address this problem, Richmond requests that it (and other municipalities) be given the authority to make the final decision regarding proposed ALR wineries (e.g., via a required Council approving resolution, or a rezoning), as Council, the Agricultural Advisory Committee and staff are closer to the problem and can co-operatively and effectively address City problems with the winery proponents.

As well, the letter to the Minister indicates that, if Ministry would like to pilot the above requests in Richmond, such will be considered.

In summary, the above requests have been made to ensure that wineries in the ALR in Richmond use BC soil based farm products and are not industrial type industries which can be better located in the Richmond urban industrial areas. The benefits of these requests are that they better enable the Council to effectively manage soil based wineries in the ALR, as Council, the Richmond Agricultural Advisory Committee (AAC) and staff are closer to the proponent and issues, can seek and achieve effective winery solutions and have demonstrated a long term commitment to protecting the ALR and supporting a range of uses in the ALR.

Next Steps

To ensure that the above requests are acceptable to Council, this memo with the attached letter to the Minister will be placed on the January 19, 2016 Planning Committee agenda for discussion as part of the "Manager's Report". If Council wishes to make any changes to the requests, they can be sent to the Minister by the end of January 2016.

January 13, 2016

- 3 -

Should you have any questions, please contact me at (604) 276-4139.

Tina Atva

f Terry Crowe,
Manager, Policy Planning

Att.1 Letter to the BC Minister of Agriculture

cc. Joe Erceg, General Manager, Planning and Development
Wayne Craig, Director of Development
Tina Atva, Senior Planning Coordinator
Minhee Park, Planner



City of Richmond

6911 No. 3 Road
Richmond, BC V6Y 2C1
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January 14, 2016

File: 08-4430-03-08/2016-Vol 01

Planning and Development Division
Policy Planning
Fax: 604-276-4052

The Honourable Norm Letnick
BC Minister of Agriculture
PO BOX 9043 STN PROV GOVT
Victoria, BC V8W 9E2

Dear Mr. Letnick:

Re: Additional City of Richmond Requests: Wineries in the Agricultural Land Reserve (ALR)

Given the extension to the public consultation period, the purpose of this letter is to request additional changes to the way in which wineries are managed in the Agricultural Land Reserve (ALR) to better protect ALR farmland.

The City of Richmond previously sent you comments in a letter dated November 24, 2015 (Attachment 1). As you advised on December 1, 2015 that the deadline for comments regarding proposed changes to the provincial Agriculture Land Use, Subdivision and Procedure Regulation of the Agricultural Land Commission (ALC) Act was extended to January 15, 2016, Richmond staff have further considered how wineries in the ALR are managed, discussed their concerns with ALC staff and have the following requests:

1. Richmond is concerned of the possibility that no soil based farm product (e.g., grapes) used in Richmond ALR wineries will be grown on a Richmond farm on which the ALC allows a winery. The concern arises, as currently an ALR land owner in Richmond can build a winery in the ALR, but is not required to grow any soil based farm product used in the winery, on the farm site. The current Provincial requirements allow a Richmond winery operator to obtain their farm products for their winery elsewhere (e.g. 100% on their total BC farm holding elsewhere in BC, or 50% elsewhere in BC and 50% outside of BC), but not on their Richmond ALR winery site. This interpretation has been verified by ALC staff. This approach is unacceptable, as Richmond considers it very important that BC ALR lands be used to support soil based farm winery products and other farm crops. To address this concern, Richmond requests that the Province enable Richmond (and similar municipalities) to require that all winery operators in the ALR grow a minimum of 50% of their soil based farm products for their wineries on the specific farm site on which the winery is located. Please note that Richmond, in its 2041 Official Community Plan (OCP) fully supports urban industrial wineries in its many industrially designated areas throughout the City as a viable way of accommodating industrial wineries.

2. There is a concern of the current possibility that a Richmond ALR winery operator can import 50% of the farm product used in their winery from elsewhere in the World and not from BC farms. This approach does not, importantly, maximize our support for BC ALR soil based farming. To address this concern and recognizing that there may be situations where it is desirable to allow 50% of the soil based farm product for wineries to be imported from outside BC, Richmond requests that ALR winery operators not be given the option of using farm product for their wineries from outside of BC, unless the winery applicant specifically identifies on the application, the source and amount of outside BC winery farm product to be used and the Richmond Council approves it when the proposal is first considered.
3. Richmond is also concerned about the requirement that ALR winery operators who are allowed to use ALR soil based farm product for their wineries from other BC farms can do so only if they have a winery product supply contract which has a term of at least three years. It is suggested that this requirement is not practical, as some current winery operators have advised that they are using different contract times (e.g. one year), to obtain suitable product. Richmond suggests that: (a) the three year contract requirement be changed to allow lesser times and (b) winery operators be required to annually provide evidence of such contracts to the ALC and the City when they apply to renew their City winery Business Licence. This approach will ensure that Provincial and City requirements are being met and that non soil based industrial wineries are avoided in the ALR. This solution is particularly necessary as Richmond has discovered that, over time, some winery operators and their staff have changed, and they do not know what the requirements are and are surprised when we tell them.
4. Currently, the ALC can approve proposed farm based ALR wineries without City approval, other than the winery operator obtaining a City Building Permit and an annual Business Licence. At its discretion the ALC may seek Council's comments which in Richmond's case are made after the City's Agricultural Advisory Committee (AAC) and staff have commented; but they are only advice, as the ALC makes the final decision. This arrangement is concerning as Richmond has important land use, soil fill, servicing, transportation and environmental concerns which need to be reviewed and addressed. To resolve this problem, Richmond requests that municipalities be given the authority to make the final decision regarding proposed ALR wineries (e.g., a Council approving resolution or a rezoning). The benefit of this approach is that proposed ALR wineries can be more effectively managed as the Richmond Council, the AAC and staff are closer to the issues and can seek and achieve effective, co-operative solutions. It is suggested that Richmond has demonstrated a long term commitment and capability to effectively manage ALR uses which makes this request worthy of consideration.

As well, if the Ministry would like to pilot the above requests in Richmond, such will be considered.

In summary, the above requests are made to ensure that wineries in the ALR in Richmond are farm soil based and not industrial type industries which can be better located in the Richmond urban industrial areas.

Thank you for your consideration of these requests.

Should you have any questions, please feel free to contact me at (604) 276-4139.

Yours truly,



for Terry Crowe,
Manager, Policy Planning

Att. 1

pc: Richmond Mayor and Councillors
Joe Erceg, General Manager, Planning and Development
Wayne Craig, Director, Development Applications



City of
Richmond

Malcolm D. Brodie
Mayor

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Richmond, BC V6Y 2C1
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November 24, 2015

The Honourable Norm Letnick
Minister of Agriculture
PO BOX 9043 STN PROV GOVT
Victoria, BC V8W 9E2

Dear Honourable Letnick:

Re: City of Richmond's Comments in Relation to Discussion Paper and Proposed Minister's Bylaw Standards Related to Regulating Agri-Tourism and Farm Retail Sales in the Agricultural Land Reserve

At its Regular Council meeting held on Monday, November 23, 2015, Richmond City Council considered the above matter and adopted the following resolution:

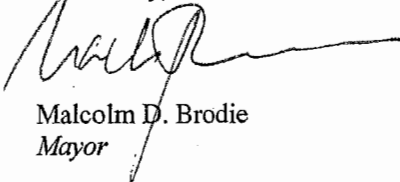
- (1) *That regarding the proposed Ministry of Agriculture Bylaw Standards for Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve (ALR), the Minister of Agriculture be requested to:*
 - (a) *specify how agri-tourism is to be subordinate to the principal active farm operation and only augment a farmer's regular farm income, not exceed or replace it;*
 - (b) *provide specific guidelines to determine the appropriate amount to be considered "small-scale (agri-tourism)" based on the size of the farm operation;*
 - (c) *provide more detailed criteria to determine the appropriate size and siting of agri-tourism structures (e.g., the maximum building area and site coverage);*
 - (d) *provide clarification on what types of uses can be permitted in an agri-tourism structure;*
 - (e) *provide specific guidance on the adequate amount of parking necessary for farm retail sales, to avoid excessive paving and minimize negative impacts on farmland;*
- (2) *That regarding ALR wineries, the Minister of Agriculture be requested to:*
 - (a) *amend the Agricultural Land Use, Subdivision and Procedure Regulation of the Agricultural Land Commission Act, to enable Richmond and other municipalities:*

- (i) *to allow only Type 1 Wineries which grow at least 50% of the farm product used to make the wine on the farm where the winery is located; and*
- (ii) *to not allow Type 2 Wineries which are industrial-scaled operations with limited ALR farming activity;*
- (b) *monitor all ALR farm-based wineries, to ensure that they comply with the 50% on site grow rule and enforce all related Ministry and ALR regulations;*
- (c) *where specific winery operators are already approved to enter into three year contracts with offsite BC farmers, allow them to enter into year to year contracts; not only the current Provincially required three year contracts, to provide more flexibility; and*
- (3) *That regarding ALR regulation monitoring and enforcement, the Minister of Agriculture and the Agricultural Land Commission, as the case may be, be requested:*
 - (a) *to monitor and enforce all Ministry and ALR regulations and requirements, as municipalities have limited resources; and*
 - (b) *to more frequently review the ALR regulations and requirements, in consultation with municipalities, for their effectiveness, practicality and ease of enforceability; and*
- (4) *That the above recommendations and this report be forwarded to the Ministry of Agriculture and the Agricultural Land Commission for a response, as well as Metro Vancouver and Richmond MLAs.*

A copy of the staff report titled "Richmond Comments: Proposed Ministry of Agriculture Bylaw Standards for Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve (ALR) and Related Matters (ALR Wineries, Monitoring and Enforcement)" is enclosed for your information.

Thank you in advance for your review and consideration of the above City of Richmond's requests. Should you have any questions, please feel free to contact Terry Crowe, Manager, Policy Planning, at 604-276-4139.

Yours truly,



Malcolm D. Brodie
Mayor

Att. 1

pc: Agricultural Land Commission
John Yap, MLA – Richmond-Steveston
Teresa Wat, MLA – Richmond Centre
Linda Reid, MLA – Richmond East
Metro Vancouver




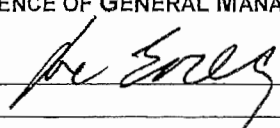
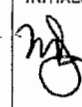

To: General Purposes Committee **Date:** October 27, 2015
From: Joe Erceg, MCIP **File:** 08-4430-03-07/2015-
General Manager, Planning and Development Vol 01
Re: **Richmond Comments: Proposed Ministry of Agriculture Bylaw Standards for Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve (ALR) and Related Matters (ALR Wineries, Monitoring and Enforcement)**

Staff Recommendation

1. That regarding the proposed Ministry of Agriculture Bylaw Standards for Agri-tourism and Farm Retail Sales in the Agricultural Land Reserve (ALR), the Minister of Agriculture be requested to:
 - a) specify how agri-tourism is to be subordinate to the principal active farm operation and only augment a farmer's regular farm income, not exceed or replace it;
 - b) provide specific guidelines to determine the appropriate amount to be considered "small-scale (agri-tourism)" based on the size of the farm operation;
 - c) provide more detailed criteria to determine the appropriate size and siting of agri-tourism structures (e.g., the maximum building area and site coverage);
 - d) provide clarification on what types of uses can be permitted in an agri-tourism structure;
 - e) provide specific guidance on the adequate amount of parking necessary for farm retail sales, to avoid excessive paving and minimize negative impacts on farmland;
2. That regarding ALR wineries, the Minister of Agriculture be requested to:
 - a) amend the Agricultural Land Use, Subdivision and Procedure Regulation of the Agricultural Land Commission Act, to enable Richmond and other municipalities:
 - i) to allow only Type 1 Wineries which grow at least 50% of the farm product used to make the wine on the farm where the winery is located, and
 - ii) to not allow Type 2 Wineries which are industrial-scaled operations with limited ALR farming activity.
 - b) monitor all ALR farm-based wineries, to ensure that they comply with the 50% on site grow rule and enforce all related Ministry and ALR regulations;

- c) where specific winery operators are already approved to enter into three year contracts with offsite BC farmers, allow them to enter into year to year contracts; not only the current Provincially required three year contracts, to provide more flexibility; and
3. That regarding ALR regulation monitoring and enforcement, the Minister of Agriculture and the Agricultural Land Commission, as the case may be, be requested:
- a) to monitor and enforce all Ministry and ALR regulations and requirements, as municipalities have limited resources, and
 - b) to more frequently review the ALR regulations and requirements, in consultation with municipalities, for their effectiveness, practicality and ease of enforceability.
4. That the above recommendations and this report be forwarded to the Ministry of Agriculture and the Agricultural Land Commission for a response.


Joe Erceg, MCIP
General Manager, Planning and Development

REPORT CONCURRENCE	
CONCURRENCE OF GENERAL MANAGER	
	
REVIEWED BY STAFF REPORT AGENDA REVIEW SUBCOMMITTEE	INITIALS: 
APPROVED BY GAO	
	

Staff Report

Origin

The Ministry of Agriculture has prepared a Discussion Paper that contains a draft set of criteria to assist local governments when they prepare bylaws regarding agri-tourism, agri-tourism accommodation and farm retail sales in the Agricultural Land Reserve (ALR) (Attachment 1).

The Deputy Minister of Agriculture sent the Discussion Paper to the Mayor and Councillors by email on October 6, 2015 and requested feedback on all sections of the paper, specifically the proposed criteria, by November 30, 2015.

Findings of Fact

Context

The Discussion Paper was prepared following the Ministry of Agriculture's consultation, conducted from July 22 to August 22, 2014, on potential changes to the Agricultural Land Reserve Use, Subdivision and Procedure Regulation of the *Agricultural Land Commission Act*. One of the consultation questions asked during the consultation process was:

Should greater clarity be provided on what constitutes an agri-tourism activity that is allowable in the ALR without an application, and if so, what parameters should be established?

The Ministry received strong support from local governments to provide clearer parameters and guidelines for permitted agri-tourism activities in the ALR.

The purpose of the Ministry's Discussion Paper is to provide greater clarity on what constitutes agri-tourism, agri-tourism accommodation and farm retail sales, and provide guidance for local governments to address issues related to agri-tourism and farm retail sales in their community.

Once approved, these clearer standards will be incorporated into the Ministry's Guide for Bylaw Development in Farming Areas, to assist municipalities when preparing and amending bylaws affecting farming areas.

Analysis

Agri-Tourism, Agri-Tourism Accommodation and Retail Sales in the ALR

Agri-tourism is permitted to allow farmers to increase the economic viability of the farms. It must be accessory to land classified as a farm under the *Assessment Act*, must be temporary and seasonal, and promote or market farm products grown, raised or processed on the farm.

Agri-tourism and retail sales are defined as farm uses by the Agricultural Land Reserve Use, Subdivision and Procedure Regulation of the *Agricultural Land Commission Act*. As these uses are designated farm uses, they can be regulated but cannot be prohibited.

On the other hand, agri-tourism accommodation is considered a non-farm use that is permitted in the ALR and can be either regulated and/or prohibited by local governments.

The City of Richmond's Zoning Bylaw permits all three uses in the "Agriculture (AG1)" zone.

Discussion Paper

The Discussion Paper provides more detailed definitions and a set of criteria to help guide local governments in managing agri-tourism and farm retail sales.

Part 3 of the Discussion Paper introduces a set of criteria which local governments will be encouraged to consider when preparing or amending their own bylaws. The proposed set of criteria includes:

- New definitions of various terms, specifically definitions of "accessory", "temporary" and "seasonal", to clarify what constitutes agri-tourism activities
- Examples of permitted agri-tourism activities and those activities that require ALC's non-farm use approval
- A set of recommended standards for agri-tourism accommodation (e.g., the total developable area for agri-tourism accommodation buildings)
- Standards for parking and loading areas associated with agri-tourism
- Criteria for signage, lighting and noise
- Clarification on how areas (both indoors and outdoors) of farm retail sales should be calculated

Richmond Agri-Tourism Comments

Staff have reviewed the Discussion Paper and have the following comments focusing on the proposed set of criteria and definitions.

1. "Accessory (Agri-Tourism)" Definition

The proposed definition of "accessory (agri-tourism)" is as follows:

"Accessory" means that the agri-tourism is subordinate to the active farm operation on the same lot. Agri-tourism uses and activities only augment a farmer's regular farm income, not exceed or replace it.

The City of Richmond requests that the Ministry and ALC, as the case may be, monitor and enforce the requirement that agri-tourism is subordinate to the active farm operation and only augments a farmer's regular farm income, not exceed or replace it.

2. "Small-Scale (Agri-Tourism)" Definition

The proposed definition of "small-scale (agri-tourism)" is as follows:

"Small-scale (agri-tourism)" means to be minor, or limited in size, scope or extent (local governments could specify amounts).

The City of Richmond requests that the Ministry provide specific guidelines, to determine the appropriate amount to be considered “small-scale” based on the size of the farm operation.

3. Agri-Tourism Structure

The Discussion Paper notes that site coverage and setbacks for agri-tourism structures must follow the standards for farm structures provided in Part 2 of the “Guide for Bylaw Development in Farming Areas”. It also notes that agri-tourism facilities should be located to minimize the coverage of farm land and minimize disturbance to the present and potential future operation of the farm, neighbouring farms and nearby urban uses (e.g., be close to the road, and/or clustered with other farm structures).

It is requested that more detailed criteria be provided to determine the appropriate size and siting of agri-tourism structures (e.g., the maximum building area and site coverage) and to clarify what types of uses can be permitted in an agri-tourism structure (e.g., administration office).

4. Parking For Retail Sales Area

The City of Richmond requests the Ministry to provide specific guidance on the amount of parking necessary for farm retail sales to avoid excessive paving and minimize potential impact on farmland.

5. Monitoring and Enforcement

The City of Richmond requests that the Ministry and / or ALC, as the case may be, monitor and enforce the proposed agri-tourism and farm retail sales regulations and requirements, as municipalities have limited resources.

Richmond Additional Comments

In responding to the Ministry’s consultation on agri-tourism and farm retail sales, staff suggest that Council take this opportunity to share its concerns regarding the ALR farm-based wineries, breweries, distilleries, cideries and meaderies, as they also affect farming in the ALR.

1. Clarifying The 50% Requirement for ALR Breweries, Wineries and Distilleries

On September 28, 2015, Richmond Council made the following referral:

That staff investigate the requirements for microbreweries, wineries and distilleries on farmland in Richmond to determine whether the City can require that they be required to produce at least 50% of their product in Richmond. (Note that in the ALR regulations “microbreweries” are just called “breweries”).

Staff advise that, in the ALR, breweries, distilleries and meaderies (honey) are designated farm uses, if at least 50% of the farm product used to make the beer, spirits, or mead produced each year is grown on the farm on which the brewery, distillery or meadery is located. Thus, they are required to produce at least 50% of their product in Richmond.

2. Encouraging Only Certain Wineries in the ALR

On October 20, 2015, Richmond Planning Committee requested staff to advise the Ministry of Agriculture that Richmond would like ALR wineries and distilleries to provide a minimum of 50% of agricultural product on the site. As stated above, distilleries must meet the 50% requirement.

Currently, two types of farm-based wineries are permitted in the ALR:

- Type 1 Wineries: at least 50% of the farm product used to make the wine produced each year is grown on the farm on which the winery is located.
- Type 2 Wineries: the farm on which the winery is located is more than 2 ha in area and at least 50% of the farm product used to make the wine produced each year is grown:
 - a) on the farm, or
 - b) both on the farm and another farm located in British Columbia that provides that farm product to the winery under a contract having a term of at least three years.

Richmond City Council has expressed that they prefer Type 1 Wineries as they promote the best farming. Council does not wish to consider additional Type 2 Wineries, as their operations are often on an industrial scale.

On October 21, 2015, staff attended a Professional Development Session organized by the Ministry of Agriculture with ALC staff in attendance at the Metro Vancouver office, to state that:

- the City of Richmond would like to allow only Type 1 wineries where at least 50% of the farm product used to make the wine be produced on the farm where the winery is located, and
- as the City has limited resources, the Ministry and ALC should monitor and enforce Provincial ALR guidelines and requirements (e.g., the amount of winery farm products provided under contracts, and whether the contracts are properly renewed). Other municipalities attending the Session agreed with this approach.

3. ALR Wineries, ALR Monitoring and Enforcement Recommendations

As staff could not address all of Richmond's concerns at the Session, it is recommended that Council make the following requests to the Ministry of Agriculture and Agricultural Land Commission (ALC):

1. That the City of Richmond have:
 - (a) the authority to allow only Type 1 Wineries which grow at least 50% of the farm product used to make the wine on the farm where the winery is located, and
 - (b) the authority to not allow Type 2 Wineries which are industrial-scaled operations with limited ALR farming activity.
2. That, as some current ALR winery operators have indicated that off site farm wine product growers are willing to provide only a year to year supply contract, rather than the Provincially required three year minimum, one year contracts be allowed.
3. That the Ministry and / or ALC staff:
 - (a) monitor and enforce all Provincial ALR Ministry and ALC regulations, and requirements, as municipalities have limited resources, and
 - (b) review Provincial ALR Ministry and ALC regulations more frequently in consultation with municipalities to determine their effectiveness, practicality and ease of enforceability.

Financial Impact

None.

Conclusion

The Ministry of Agriculture has prepared a Discussion Paper to assist local government in preparing agri-tourism, agri-tourism accommodation and farm retail sales bylaw amendments, and has requested that comments be provided by November 30, 2015.

Staff recommend that the Ministry and ALC be requested to make changes to the proposed ALR agri-tourism and farm retail sales criteria, clarify ALR winery requirements and take the lead role in ALR regulation monitoring and enforcement, as municipalities have limited resources.



Terry Crowe
Manager, Policy Planning
(604-276-4139)



Minhee Park
Planner 1
(604-276-4188)

MP:cas

Attachment 1: Discussion Paper and Proposed Minister's Bylaw Standards



Ministry of
Agriculture

**Regulating
Agri-tourism and Farm Retail Sales
in the Agricultural Land Reserve**

**DISCUSSION PAPER AND PROPOSED MINISTER'S BYLAW
STANDARDS**

September 14, 2015

**Prepared by:
Strengthening Farming Program
Innovation and Adaptation Services Branch**

Executive Summary

This discussion paper ('white paper') has been prepared by the B.C. Ministry of Agriculture (AGRI) Strengthening Farming Program, Innovation and Adaptation Branch for input on the establishment of a Minister's Bylaw Standard to assist local government bylaw development regarding agri-tourism, agri-tourism accommodation and farm retail sales.

Its preparation follows the 2014 AGRI's consultation on the Agricultural Land Reserve (ALR) Use, Subdivision and Procedure Regulation (ALR USP Regulation) in which local governments expressed strong support for AGRI to provide greater clarity in guidance to local government bylaws on agri-tourism.

The proposed Minister's Bylaw Standard criteria, set out in Part 3.0, result from input contributed by the Agricultural Land Commission (ALC), local governments and the agricultural sector. While the proposed Minister's Bylaw Standard provisions apply to land in the Agricultural Land Reserve (ALR), local governments may also wish to adopt for all agriculturally zoned property.

AGRI invites local governments to review the proposed Minister's Bylaw Standard and provide feedback to the contact listed on page 13 by November 30, 2015. Feedback received will be analysed by AGRI staff, with updates and improvements made to the proposed Minister's Bylaw Standard in preparation for the Minister of Agriculture's (Minister) consideration.

Table of Contents

Executive Summary	1
Introduction.....	3
1.0 Part one – The Criteria Development Process.....	3
1.1 Purpose and Goals.....	3
1.2 Stakeholders	3
1.3 Objectives of the Process	4
1.4 Key Steps.....	4
1.5 Current Status (August 2015)	4
1.6 Context for Bylaw Standard Establishment	4
2.0 Part two - Background.....	5
2.1 Context.....	5
2.2 Current Policy, Legislation and Regulation	5
3.0 Part three – Proposed Set of Criteria.....	7
3.1 Proposed Definitions	7
3.2 Accessory farm activity.....	8
3.3 Farm Class.....	8
3.4 Agri-tourism temporary and seasonal use in the ALR.....	8
3.5 Permitted and ALC approval required agri-tourism activities	9
3.6 Agri-tourism Accommodation	10
3.7 Other Agri-tourism Criteria.....	11
3.7.1 Off-street Loading Areas and Parking.....	11
3.7.2 Site Layout for Agri-tourism Activities.....	11
3.7.3 Lights	11
3.7.4 Signage.....	11
3.7.5 Noise	12
3.8 Farm retail sales and marketing	12
3.9 Local Government Permits and Fees	12
3.10 Commercial Weddings	12
3.11 Bistros and Restaurants.....	13
4.0 Ministry contact information	13

Introduction

This paper outlines draft criteria to assist local governments in regulating their agri-tourism, agri-tourism accommodation and farm retail sales bylaws, aiming to encourage further discussion on the matter with local governments, the ALC and the farm sector. It is important that the bylaw standard criteria effectively guide local government land use regulations within the context, and intents, of the *Agricultural Land Commission, Farm Practices Protections (Right to Farm)*, and *Local Government and Community Charter Acts* and their regulations. The draft criteria reflect analysis undertaken by AGRI staff, previous consultations with local governments, the ALC, industry, and the Ministry of Community, Sport and Cultural Development (CSCD).

1.0 Part one – The Criteria Development Process

This paper explores and proposes land use regulation and policy guidance for local governments to address agri-tourism and farm retail sales issues in their communities, while recognizing these uses are permitted (with exceptions) within the ALR.

Following consultation with stakeholders and approval by the Minister, the bylaw criteria will become a Minister's Bylaw Standard and incorporated within the "Guide for Bylaw Development in Farming Areas" (Bylaw Guide).¹

1.1 Purpose and Goals

The purposes of establishing land use regulation criteria to address local government concerns regarding agri-tourism and farm retail sales are to:

1. Establish a Minister's Bylaw Standard that provides flexibility for local governments to shape agri-tourism activity in their community while ensuring that agriculture in the ALR continues as a priority use;
2. Address the needs of the agriculture sector/industry to supplement farming income;
3. Minimize the impact of agri-tourism and retail sales on farm practices and farming potential in farming areas;
4. Minimize loss and/or fragmentation of farmland due to agri-tourism and retail sales uses;
5. Reduce the financial imbalance that results from large scale commercial operations locating inexpensively in the ALR and outcompeting those that have located in appropriate commercial zones; and
6. Minimize the risk of agri-tourism and farm retail sales buildings and structures being used for non-farm purposes.

1.2 Stakeholders

Stakeholders involved in developing these Bylaw Standard criteria include:

¹ Under the *Local Government Act* (Part 26, Division 8, Section 916), the Minister responsible for the *Farm Practices Protection (Right to Farm) Act* can develop bylaw standards to guide the development of zoning and farm bylaws. Development of provincial standards is intended to promote consistency in the regulation of, and planning for, farming. However, provision has been made under Section 916(3) to allow the standards to differ, if necessary, to respond to BC's diverse farming industry and land base.

- a) Local governments and their Agricultural Advisory Committees (AAC);
- b) Agriculture industry;
- c) ALC;
- d) Strengthening Farming Directors Committee,
- e) CSCD; and
- f) Ministry of Jobs, Tourism and Skills Training.

1.3 Objectives of the Process

The objectives of the process are to:

- 1. Create a set of Bylaw Standard criteria for stakeholder review;
- 2. Consult with stakeholders; and
- 3. Develop a Minister's Bylaw Standard that local governments can apply as regulation or policy.

1.4 Key Steps

The key steps in creating the Minister's Bylaw Standard are:

- 1. Review relevant literature including AGRI and ALC policies;
- 2. Review and compare local government regulations and policies;
- 3. Develop draft criteria;
- 4. Consult with internal and external stakeholders on the draft criteria;
- 5. Revise criteria for consideration by the Minister;
- 6. Seek Minister's approval; and
- 7. Encourage local governments to adopt and apply criteria.

1.5 Current Status (August 2015)

AGRI staff have:

- Reviewed previous agri-tourism and farm retail sales consultations with local governments, industry, the ALC and CSCD;
- Reviewed existing ALC policies on agri-tourism, agri-tourism accommodation and farm retail sales; and,
- Prepared this draft discussion 'white paper' on agri-tourism and farm retail sales land use bylaw guidance for further local government consultations over the 2015/2016 fall and winter.

1.6 Context for Bylaw Standard Establishment

AGRI has initiated Minister's Bylaw Standards in the past for three significant agricultural issues which have been approved by the Minister. AGRI staff use the Minister's Bylaw Standards to encourage local governments to adopt them into their land use bylaws. They are:

- Regulating Medical Marihuana Production Facilities in the ALR (2014);
- Combined Heat and Power Generation at Greenhouses in the ALR (2013); and

- Siting and Size of Residential Uses in the ALR (2011).

These Minister's Bylaw Standards can be found in AGRI's "Guide for Bylaw Development in Farming Areas" with additional information at:

<http://www2.gov.bc.ca/gov/content/industry/agriculture-seafood/agricultural-land-and-environment/strengthening-farming/local-government-bylaw-standards-and-farm-bylaws>.

2.0 Part two - Background

2.1 Context

Farmers throughout B.C. are looking for options to increase their economic viability, including agri-tourism and farm retail sales. These two particular issues have become more prominent in recent years and local governments are amending their agri-tourism, agri-tourism accommodation and farm retail sales bylaws, sometimes causing frustration with farmers and the public. Sometimes there may be conflicting community views on what actually constitutes agri-tourism activities, and what 'accessory', 'seasonal', and 'temporary' within this context really mean.

While the ALC provides direction regarding agri-tourism and farm retail sales in the ALR, one of the questions asked during the Ministry's 2014 ALR USP Regulation consultation process included agri-tourism, with local governments indicating strong support for AGRI to develop greater clarity in bylaw guidance for agri-tourism. Incorporating analysis from previous consultation, AGRI staff anticipate strong response from stakeholders on the subject.

Ideally, developing this new Minister's Bylaw Standard will assist in balancing stakeholder concerns, minimize community frustration, and provide greater certainty while maintaining the flexibility required for local government community decision making and variation. The proposed Minister's Bylaw Standard applies to property in the ALR. Given, however, that agricultural activity in B.C. takes place both on ALR and non-ALR property, local governments with agriculturally zoned land may also consider adopting it.

2.2 Current Policy, Legislation and Regulation

Agri-tourism and farm retail sales are defined as farm uses by the ALR USP Regulation² of the *Agriculture Land Commission Act* where a farm use means an occupation or use of land for farm purposes, including farming of land, plants and animals and any other similar activity. designated as farm use by regulation, and includes a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*:

- Agri-tourism is a tourist activity, service or facility accessory to ALR land classified as a farm under the *Assessment Act*, if the use is **temporary and seasonal**, and promotes or markets farm products grown, raised or processed on the farm.
- Farm retail sales if all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or at least 50% of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place

² B.C. Reg. 171/2002 Agricultural Land Reserve Use, Subdivision and Procedure Regulation. Last retrieved August 24, 2015 from <http://www.alc.gov.bc.ca/alc/content.page?pid=A631A2319799460A98F62978A2FE60E3>

and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m².

Local governments cannot prohibit agri-tourism activities, other than agri-tourism accommodation, or farm retail sales regulated by the ALR USP Regulation unless by a Farm Bylaw designated by the Minister by Section 917 of the *Local Government Act*.

The ALC also publishes several policy documents on agri-tourism, agri-tourism accommodation and farm retail sales with respect to land in the ALR.

*“The policies of the Commission provide interpretation and clarification of the regulations; outline guidelines, strategies, rules or positions on various issues and provides clarification and courses of action consistently taken or adopted, formally or informally.”*³ - ALC

These ALC policies include their terms of ‘seasonal’ and ‘temporary’:

- **Temporary** – means a use or activity in a facility or area that is established and used on a limited time basis for agri-tourism activities. If a building or structure is required for this use, temporary use of the building or structure means a use for agri-tourism for less than 12 months of the year. The building or structure may be used for other permitted uses during the course of, or for the remainder of the year.
- **Seasonal** - means a use or activity in a facility or area for less than 12 months of the year.⁴

A recent 2015 B.C. Supreme Court ruling *Heather Hills Farm Society v. Agricultural Land Commission*, addresses the subject of agri-tourism, and in this case whether a particular golf course and sheep pasture is a permitted agri-tourism use. Interestingly, within the reasons for judgement that ultimately dismisses the petition; the judge also references what cannot be described as reasonably temporary, with respect to what is written in the ALR USP Regulation:

*[51] The Regulation also requires that an agri-tourism use be temporary and seasonal. A golf course requires alteration of the land in the form of particular landscaping, sand traps, water hazards etc. Photographs that were put into evidence show changes of precisely that kind to the petitioners’ property. Those changes must remain in place as long as operation of the golf course continues and cannot reasonably be described as temporary.*⁵

The intent of this proposed Bylaw Standard is to provide greater clarity on what constitutes agri-tourism, agri-tourism accommodation, farm retail sales, and the definitions of temporary and seasonal.

³ ALC. *Legislation and Regulation*. Last retrieved August 24, 2015 from http://www.alc.gov.bc.ca/alc/content_page?id=4179AB0F33494261A5B6CEF2A4F8F206

⁴ ALC. *Policy #4 Activities designated as Farm Use: Agri-tourism Activities in the ALR*, 2003. Last retrieved August 24, 2015 from http://www.alc.gov.bc.ca/alc/DownloadAsset?assetId=9A907E9B31224D808675BE2E5D78ADBB&filename=policy_4_agri-tourism_activities.pdf

⁵ *Heather Hills Farm Society v. Agricultural Land Commission*, 2015 BCSC 1108

For farm retail sales, the processing/marketing of off-farm products may not be protected under the *Farm Practices Protection Act* unless there are limits prescribed by the Minister under the *Farm Practices Protection Act*.⁶ This has implications for farms considering those options.

3.0 Part three – Proposed Set of Criteria

Part three introduces a set of criteria in which local governments would be encouraged to consider when developing or amending their own bylaws on agri-tourism, agri-tourism accommodation and farm retail sales. A rationale is provided for why certain criteria provisions should be introduced and a proposed list is summarized of criteria and definitions.

3.1 Proposed Definitions

Accessory (agri-tourism)	means that the <i>agri-tourism</i> is subordinate to the active <i>farm operation</i> on the same lot. <i>Agri-tourism</i> uses and activities only augment a farmer's regular farm income, not exceed or replace it.
Agri-tourism	is travel that combines agricultural or rural settings with products of agricultural operations – all within a tourism experience that is paid for by visitors. It is a tourist activity, service or facility which is <i>accessory</i> to a <i>farm operation</i> , as defined in the <i>Farm Practices Protection (Right to Farm) Act</i> , where the land is classified as a farm under the <i>Assessment Act</i> ; and, where the farm is in active operation each year.
Off-farm and non-farm products	means products that are not from the <i>farm unit</i> of which the subject property is part.
Regular Seasonal (agri-tourism)	means the occurrence over the same <i>season(s)</i> , or at the same time, each year.
Season (agri-tourism)	means: one of the four periods of the year: spring, summer, autumn or winter; the period of the year when something that regularly occurs every year happens; e.g. pumpkin festival before Halloween; and/or the period(s) when most people take their holidays, go to visit places, or take part in an activity outside of work.
Seasonal (agri-tourism)	means: relating to, dependant on, determined by, or characteristic of a particular <i>season</i> of the year; fluctuating according to the <i>season</i> ; and/or

⁶ For more information, readers may wish to review the September 7, 2011 BC Farm Industry Review Board decision *Maddalozzo v. Pacific Coast Fruit Products Ltd* last retrieved September 8, 2015 from http://www2.gov.bc.ca/assets/gov/business/natural-resource-industries/agriculture/agriculture-documents/bc-farm-industry-review-board-docs/maddalozzo_v_pcfp_dec_sep7_11.pdf

available, or used, during one or more *seasons*, or at specific times of the year - for less than twelve months of the year.

Small-scale (agri-tourism)

means to be minor or limited in size, scope, or extent. [Local governments could specify amounts.]

Temporary (agri-tourism)

means having a limited duration, lasting or designed to last for only a limited time each week, month, or year. E.g. an activity occurs each year at the same time at a nearby festival, or other event, or only a maximum duration of three days at a time.

3.2 Accessory Farm Activity

Local governments should identify *agri-tourism* as a permitted *accessory* use in all zones where agriculture or farming is a permitted use. *Accessory agri-tourism* use in the ALR is subordinate and customarily incidental to the active *farm operation* on the same lot. **Agri-tourism uses and activities only augment a farmer's regular farm income, rather than exceed or replace it.**

Table 1. Examples of Agri-Tourism and Farm Incomes

Column A	Column B
Agri-tourism Income	Farm Income
Entry or participation fees, tour fees	Primary agricultural production income
Fees for tours, services and workshops related to the farm operation	Value-added operations: processing of <i>own farm products</i>
Retail sales of <i>off-farm</i> or <i>non-farm products</i>	Retail sales of <i>own farm products</i>
Agri-tourism accommodation charges	

To be considered *accessory*, the annual income from *agri-tourism* [Column A] must be no more than the annual regular farm income [Column B]. The ALC may allow a larger proportion of *agri-tourism* activity on a farm, if the farmer applies for a non-farm use approval.

Examples include a farmer intending to regularly host special events such as commercial weddings, conferences or an annual music festival. A local government could decide whether to support those commercial activities in its zoning if it is authorized by the ALC.

3.3 Farm Class

Income from *accessory agri-tourism* activities is not used to define *farm class* under the *Assessment Act* (Sec 23 and Farm Class Reg. 411/95). Income for the purposes of *farm class* is calculated based on the farm gate amounts for qualifying agricultural products and must be generated in one of two relevant reporting periods (i.e., once every two years).

3.4 Agri-tourism Temporary and Seasonal Use in the ALR

Local governments should regard *agri-tourism* uses as a *temporary* and *seasonal* use. See the definitions for guidance on defining these terms.

3.5 Permitted and ALC approval required agri-tourism activities

Table 2. Tiers of Agri-tourism Activities

Activities	Tier 1 Permitted Agri-tourism activities	Tier 2 Activities/events that require ALC approval
On-farm	<ul style="list-style-type: none"> • educational tours – general public, school children • on-farm marketing, including U-pick and pumpkin patches • temporary corn maze or Christmas tree maze • agricultural heritage events • ranch or farm tours • livestock shows • harvest festivals • on-farm classes and/or workshops related to the farm operation • farm stays or B&B • on-farm processing facility tours 	<ul style="list-style-type: none"> • Non-farm-uses and commercial entertainment activities which do not have an agricultural component: • e.g., paint ball course, dirt bike trails, all-terrain vehicles trails, mini-train parks, remote control runways, helicopter tours, etc. • event and facility rentals • concerts, theatre or music festivals • commercial weddings, banquets, celebrations and any other commercial assembly activity
Parking	<ul style="list-style-type: none"> • self-contained, off-road parking • some overflow could be on neighbouring farm(s) provided it's for infrequent events, no permanent alterations to the agricultural land, and no resurfacing such as with gravel or asphalt paving • allow for school and tour buses • on-road parking at the discretion of the local government or Ministry of Transportation in Regional Districts 	<ul style="list-style-type: none"> • Off-site overflow parking that is used on a frequent basis or that requires resurfacing
ALC non-farm use application approval or local government	<ul style="list-style-type: none"> • No local government temporary use or rezoning permits required,; outright use is permitted 	<ul style="list-style-type: none"> • ALC non-farm use application approval • Local government non-agriculture related activities or

permit requirements	<ul style="list-style-type: none"> No ALC non-farm use application approval 	events may also require a separate zone or temporary use permit <ul style="list-style-type: none"> Special local government permits - per event or per day, or both
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3.6 Agri-tourism Accommodation

Section 3 of the ALR USP Regulation permits *accessory* accommodation for agri-tourism on a farm in the ALR, but allows a local government to regulate and/or prohibit the use.

Where accommodation for agri-tourism is allowed by a local government the following standards are recommended:

- Total developed area for buildings, landscaping and access to the accommodation must be no more than 5% of the parcel area;
- Could include a maximum of 10 sleeping units composed of:
 - Seasonal* campsites, *seasonal* cabins, or bed-and-breakfast (B+B) bedrooms (**maximum of four**) B+B bedrooms per legal parcel is recommended);
 - Unless ALC consent is received, accommodation must not include cooking facilities because doing so may result in long term rental housing on farm land;
 - The local government could specify the number of persons per unit;
 - Should an operator wish to have more than 10 sleeping units, he/she could apply to the local government and the ALC;
 - On smaller lots, a local government may wish to set a lower number of allowed sleeping units;
 - The BC Building Code should be the minimum standard applied for sleeping units such as cabins.
- Should be located close to the front of the lot, or an adjacent side road, and clustered with the *home plate(s)* of the farm residence(s). A farmer may wish to vary this location to minimise impact on his/her farm.
- Depending on the location of the farm, the *agri-tourism* accommodation may need to be available during more than one *season*, or its availability may vary with the *seasons*; e.g., horseback riding on trails in spring, summer, and fall, and cross-country skiing in the winter.
- Occupation of a lot *by agri-tourism* accommodation are only permitted to be *temporary, seasonal, and/or regular seasonal*, to a maximum stay per person or per family of 30 consecutive days in any 12 calendar-month period. The ALC may allow longer occupation if the farmer applies for a non-farm use; local zoning would also have to allow it.
- Each local government which permits *agri-tourism* accommodation could develop a monitoring methodology to ensure the occupation meets the above criteria.

3.7 Other Agri-tourism Criteria

3.7.1 Off-street Loading Areas and Parking

Off-street loading areas may be needed to transfer field products to a market stand/shop, and to the customer's vehicle. For criteria, see Part 2 of the "Guide for Bylaw Development in Farming Areas".

All vehicles visiting the *agri-tourism* activities must be parked on site, or as otherwise permitted by the local government. The parking capacity could be based on the average daily vehicle numbers (recommended); local parking bylaws may have a different measure and short term events with large numbers of people may require different parking standards. Overflow parking occurs on public roads should adhere to local bylaws including clearances for emergency vehicles and farm machinery.

For farm site parking overflow situations, *agri-tourism* operators should provide alternate means of transportation, such as shuttles, bicycle parking, or horse corrals and off-site horse trailer parking areas.

To minimise impacting farm land, parking should be along field edges, adjacent to farm roads, farm yard areas near farm structures.

- The parking and loading area surfaces should maximize infiltration of precipitation to limit impacting a farm's ground and surface water; pavement may not be appropriate.
- The depth and type of fill for *agri-tourism* parking and loading areas should facilitate possible future removal e.g., if the *agri-tourism* activity ceases.

3.7.2 Site Layout for Agri-tourism Activities

Site coverage and setbacks for *agri-tourism* structures must follow the standards for farm structures provided in Part 2 of the "Guide for Bylaw Development in Farming Areas". *Agri-tourism* facilities should be located to minimize coverage of farm land and minimise disturbance of the present and potential future operation of the farm, neighbouring farms or nearby urban uses; e.g., close to the road, and/or clustered with other farm structures.

3.7.3 Lights

Floodlights and spotlights for *agri-tourism* activities should be directed away and/or screened from adjacent farms and other land uses.

3.7.4 Signage

Each *agri-tourism* and farm retail operation, and the farm itself, should be allowed at least one sign of at least 1.0 square metre. Normally, signs are located at the farm entrance, but variation should be allowed for different building and site layouts and to ensure traffic safety. Third-party signs and lighting of signs should follow local bylaws.

3.7.5 Noise

Loudspeakers and other noise sources associated with the *agri-tourism* activity could be regulated with local government noise bylaws.

3.8 Farm Retail Sales and Marketing

For on-farm retail marketing, farmers sell their own *farm products*, and may sell some *off-farm or non-farm products* directly from the *farm unit* and may require a retail indoor and/or outdoor sales and display area.

Areas necessary for on-farm retail sales but not calculated as part of the on-farm retail sales area are:

- storage space for products awaiting display and/or bulk sales; larger storage areas may be available in a barn;
- an office area for doing sales and farm-related paperwork;
- washrooms;
- driveways, parking and loading areas; and
- some preparation space where products are put in packages for display or shipping.

Local governments should not limit retail sales area of a farmer's own *farm products* i.e. the *direct farm marketing area*. The ALR USP Regulation does not state an upper limit.

Local government regulations must allow for the possibility of a retail sales area for complementary *off-farm or non-farm products*. The ALR USP Regulation requires at least 50% of the total retail sales area be devoted to that farm's products, and where both *farm products* and *off-farm or non-farm products* being sold, the allowed upper limit of the total of the indoor and outdoor sales area is 300 square metres. This should be adopted by local governments and not reduced.

To develop a larger retail sales area, or to sell less than 50% of that farm's *farm products*, a farmer must have both local government and ALC non-farm use application approval.

3.9 Local Government Permits and Fees

Other than the usual permits and fees required for construction, local governments should only require permits and fees for operations that require a non-farm application to the ALC and should not require the use of temporary (commercial) use permits.

Local governments should only request reimbursement of extra local government costs generated by the event or operation; e.g., policing, fire service, road clean-up, and/or traffic management.

3.10 Commercial Weddings

The use of the ALR for commercial weddings is considered a non-farm use which requires approval of the ALC. Where a farm has received non-farm use approval from the ALC, the local

government may require a rezoning or temporary use permit. Temporary use permits are the preferred method of dealing with this use as the local government can place additional controls on the use that are not possible through zoning. These requirements could include hours of operation.

3.11 Bistros and Restaurants

Bistros, cafes and restaurants are considered in most cases non-farm uses which require non-farm use approval of the ALC. Under specific criteria in the ALR USP Regulation, however, winery, brewery, cidery, distillery, and meadery lounges are permitted which do not require non-farm use approval.

4.0 Ministry Contact Information

Stakeholders are welcome to provide feedback on the content of this discussion by email or letter.

Email: AgriServiceBC@gov.bc.ca
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