

Notice of meeting of the
Agricultural Advisory Planning Commission
August 30, 2018
To commence in the CVRD boardroom
located at 500B Comox Road, Courtenay BC, at 7:00 pm

PAGE

1. Call to order and recognition of traditional territories.
2. Minutes of the Agricultural Advisory Planning Commission dated June 21, 2018, for receipt.
4. 3. Memorandum dated August 9, 2018, regarding 3110-20 / ALR 3C 18 – Agricultural Land Reserve Non-Farm Use – 3080 Macaulay Road (Evansdale Farms Ltd and Ducks Unlimited Canada)
4. Verbal update regarding previous Agricultural Advisory Planning Commission recommendations.
5. Next meeting date: Scheduled for Thursday, September 20, 2018.

ADDENDUM

Memorandum dated August 23, 2018 regarding 3110-20 / ALR 4C 18 – Subdivision within the Agricultural Land Reserve – 9314 Doyle Road (Proctor).

Distribution:

AAPC members
Area Director
Alternate Area Director
Chief Administrative Officer
General Manager of Planning & Development
Manager of Planning Services
Corporate Legislative Officer
Manager of Legislative Services
Planners
CVRD website
File copy
Reception notice board (cover page)

Minutes of the meeting of the Agricultural Advisory Planning Commission (AAPC) of the Comox Valley Regional District held June 21, 2018 in the CVRD boardroom located at 500B Comox Road, Courtenay, BC commencing at 1:33 pm

PRESENT:	Chair:	Gerry McClintock via teleconference
	Members:	Chris Brown via teleconference
		Andrea Burch via teleconference
		Brad Chappell via teleconference
		Carl Goldscheider via teleconference
		Megan Halstead via teleconference
		Wendy Prothero
		Marc Vance via teleconference
ABSENT:	Members:	Arzeena Hamir
ALSO PRESENT:	Electoral Area Director, Area C	Edwin Grieve
	Rural Planner	Jodi MacLean
	Long-Range Planner	Robyn Holme

Agenda Items

Minutes of Advisory Planning Commission Meeting

PROTHERO/GOLDSCHIEDER: THAT the minutes of the Agricultural Advisory Planning Commission meeting held May 3, 2018 and May 24, 2018 be received.

CARRIED

3360-20/RZ 1CV 18 – Zoning Bylaw Amendment Application – To Prohibit Non-Medical Cannabis Retail and Production (CVRD)

GOLDSCHIEDER/CHAPPEL: THAT the Agricultural Advisory Planning Commission support Zoning Bylaw Amendment Application RZ 1CV 18 To Prohibit Non-Medical Cannabis Retail and Production as proposed.

Status update on AAPC recommendations

Jodi MacLean, Rural Planner, provided an update regarding Electoral Area Services Committee and board decisions related to AAPC recommendations.

Next Meeting Date

The next Agricultural Advisory Planning Commission meeting is scheduled for Thursday, July 26, 2018 in the CVRD boardroom located at 500B Comox Road, Courtenay, BC commencing at 1:30 pm.

Termination

The meeting terminated at 2:15 pm.

Recording Secretary:
Carl Goldscheider

Chair:
Gerry McClintock

Received by the Electoral Areas Services Committee on the 9th day of July, 2018.

Memo

File: 3110-20 / ALR 3C 18

DATE: August 9, 2018

TO: Agricultural Advisory Planning Commission

FROM: Planning and Development Services Branch

RE: Agricultural Land Reserve Non-Farm Use – 3080 Macaulay Road (Evansdale Farms Ltd and Ducks Unlimited Canada) Lot 1, Section 21 and 22, Township 4, Block 29, Comox District, Plan EPP23099, PID 028-979-516

An application (Appendix A) has been received to consider a non-farm use (conservation covenant) within the Agricultural Land Reserve (ALR). The Comox Valley Regional District may forward the applications to the Agricultural Land Commission (ALC) with comments and recommendations or refuse the application.

The subject property (Figures 1 and 2), was part of the former University of British Columbia Research Farm. It is currently a 245 hectare privately-owned property located between Macaulay Road and the Oyster River. It is partially cleared for agricultural use (e.g. grass, forage, corn silage, cereal crops). The remainder is forested or wetland.

The applicants propose to add a conservation covenant to the parcel's land title (Appendix A). This covenant is an agreement between the property owner and Ducks Unlimited Canada which would prevent the property owner from altering or developing the land for non-farm uses and limit the farm uses by not allowing more than 30 per cent of the property being used for non-waterfowl compatible crops (such as vegetables, grains, grasses and other forages) and no more than 10 per cent for non-soil-based agriculture (such as greenhouses), except upon written approval of Ducks Unlimited.

Agricultural Land Reserve

Pursuant to Section 22(2) of the ALC Act, "*A covenant that prohibits the use of agricultural land for farm purposes has no effect until approved by the Commission*". ALC staff reviewed the proposed covenant with the agent and concluded that a non-farm use application is required for the Commission to review the proposal.

Official Community Plan

The Official Community Plan (OCP) designates the subject property "Agricultural Areas" which includes the policy direction to "*Protect farming integrity and function of land designated agricultural area*". The proposal is consistent with the OCP's natural environment objectives and policies which seeks "*To protect the quality of air, land, and water, and through stewardship, maintain the quantity of ground water and surface water.*"

Zoning

The subject property is zoned Rural-Agricultural Land Reserve. The proposal is consistent with the zone.

Sincerely,

A. Mullaly

Alana Mullaly, MCIP, RPP
Acting General Manager of Planning and Development Services Branch

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Attachments Appendix A - “ALR 3C 18 application”

Comox Valley Regional District

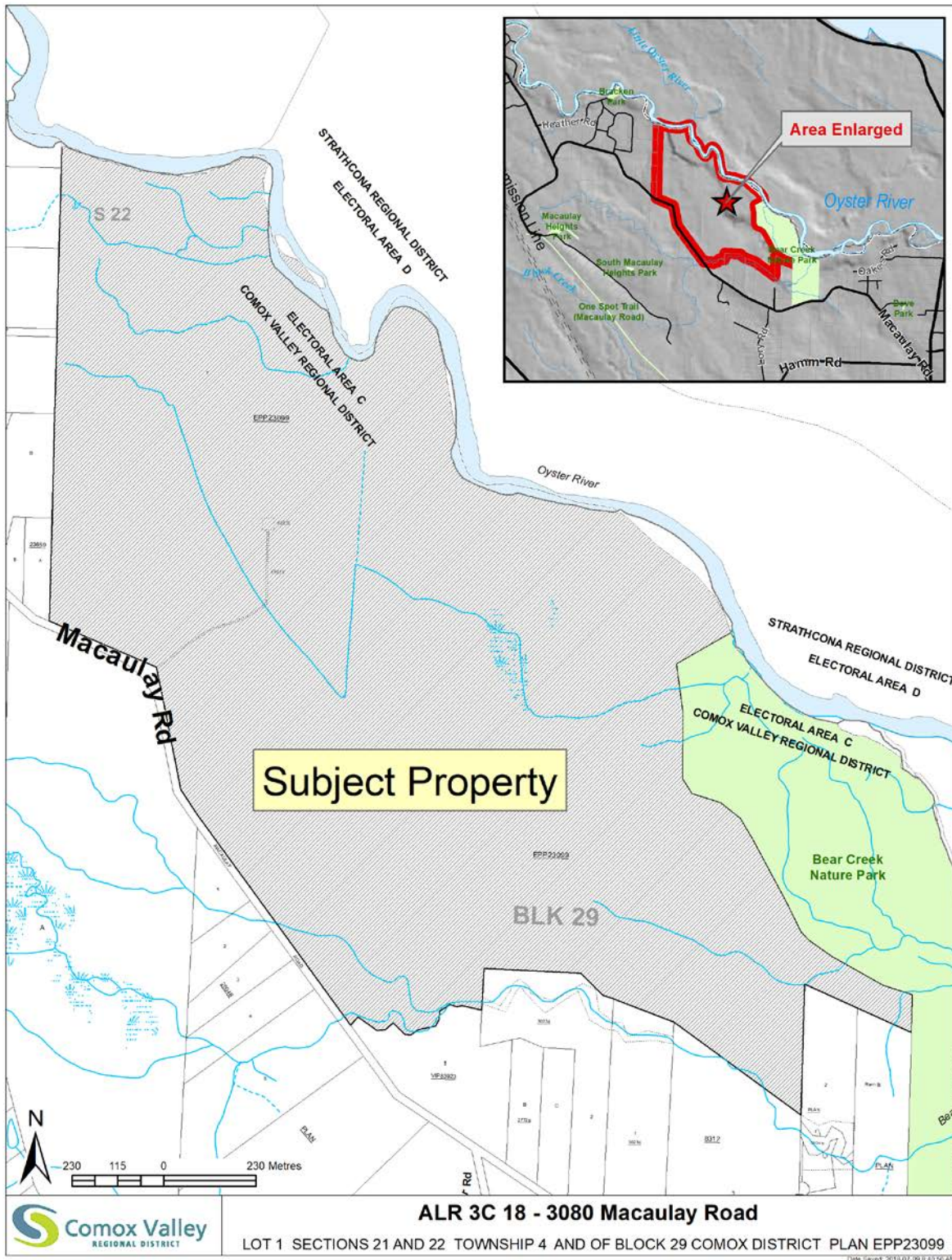


Figure 1. Subject property.

Comox Valley Regional District

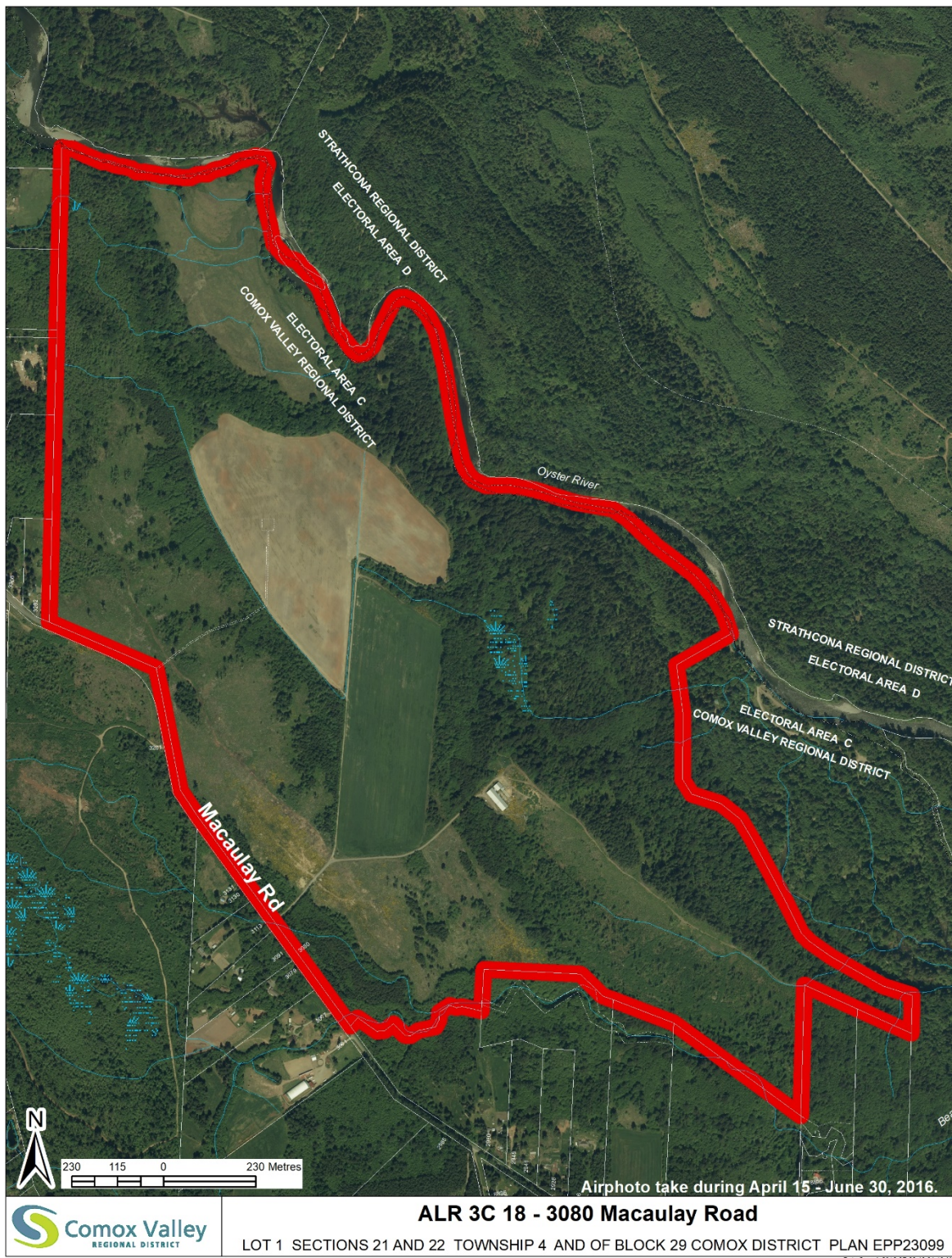


Figure 2. Airphoto (2016)

Comox Valley Regional District

Provincial Agricultural Land Commission - Applicant Submission

Application ID: 57804

Application Status: Under LG Review

Applicant: Evansdale Farms Ltd. Inc No BC0133094

Agent: Ducks Unlimited Canada

Local Government: Comox Valley Regional District

Local Government Date of Receipt: 06/25/2018

ALC Date of Receipt: This application has not been submitted to ALC yet.

Proposal Type: Non-Farm Use

Proposal: Ducks Unlimited Canada (DUC) and the landowner wish to register a conservation covenant on the entire property (257 ha) which will continue to allow the existing agricultural use of farming grass, grains, vegetables and corn crops but restricts buildings (10% of property) and other non-waterfowl compatible crops (30% of property). As the covenant continues to allow farm use of the entire property, a nominal value (0.1 ha) was entered as non-farm use area in this application.

DUC has a long history working with farmers and ranchers in BC and throughout DUCs 80 years of conservation in Canada. DUC has worked closely with ALC and farmers on the registration of conservation covenants on ALR land in past years, and modified covenant wording based on feedback from farmers and ALC to ensure the conservation covenant meets agricultural and wildlife goals. In all previous conservation covenant applications to the ALC, DUC has applied directly to ALC Commission Office as per the Guidelines for Conservation Covenants in the ALR - version 2003 and 2011 rather than through the non-farm use applications portal that are first filed with the local government office. In all previous cases, DUC has received ALC approval to file the conservation covenants on ALR land.

DUC worked with the same landowner (Evansdale Farms) and the ALC to file the same worded conservation covenant on agricultural land at the mouth of the Oyster River, approximately 5 km downstream of this proposed property. DUC received ALC approval for the conservation covenant on Dec 16, 2010 (ALC file 81500-07/01/Comox Valley)

The property contains important ecological values that will remain viable with agriculture land use. The property has approximately 2600 meters of frontage on the Oyster River and contains approximately 95 ha (235 acres) of riparian habitat that forms part of the Oyster River floodplain. As with many rivers on the East Coast of Vancouver Island, protecting floodplains of rivers and wetlands will maintain ecological functions for fish in the river and support resilience of down stream estuaries.

This property is immediately adjacent (to the west) of the Bear Creek Nature Park which was an Ecological Gift partially donated by Evansdale Farms to the Comox Regional District and DUC. The Sensitive Ecosystem Inventory (SEI) on Vancouver Island identified a large riparian and floodplain zone along the Oyster River that contains a series of wetlands and riparian area, trees and shrubs and is contiguous between Bear Creek Nature Park and the proposed property. This riparian and floodplain area along the Oyster River provides important fish habitat for salmonid species including Sockeye, Coho, Chinook, Chum and Pink salmon.

Agent Information

Agent: Ducks Unlimited Canada

Mailing Address:

Unit 511 - 13370 78th Ave
 Surrey, BC
 V3W 0H6
 Canada
Primary Phone:
Email:

Parcel Information

Parcel(s) Under Application

1. **Ownership Type:** Fee Simple

Parcel Identifier: 028-979-516

Legal Description: Lot 1; Section 21 and 22; Township 4; Block 29; Plan EPP23099; Comox District

Parcel Area: 247 ha

Civic Address: 3080 MaCaulay Road, Black Creek, BC, V9J 1C1

Date of Purchase: 05/08/2006

Farm Classification: Yes

Owners

1. **Name:** Evansdale Farms Ltd. Inc No BC0133094

Address:

5848 Headquarters Road

Courtenay, BC

V9J 1M4

Canada

Phone:

Current Use of Parcels Under Application

1. Quantify and describe in detail all agriculture that currently takes place on the parcel(s).

Agriculture land use is forage fields, corn and barley to support dairy operation. The fields are identified as Class 3 to 5 with the center classified as 7T. Soils are acceptable for agricultural use, particularly within the field closest to the entrance of the property, which is classified as 80% 3WD and 20% 3WA. Fields at the southern portion of the site are described as 7% 5PA and 30% 4 PA with the centre being 7T. Areas at the north end of the site close to the river include one field and is classified as 4AP and 5MP due to the steep topography. Even the best quality agricultural lands on this property (ALR Class 3) have limitations requiring moderately intensive management practices.

2. Quantify and describe in detail all agricultural improvements made to the parcel(s).

Some subsurface drainage has been completed to date

3. Quantify and describe all non-agricultural uses that currently take place on the parcel(s).

Several stands of tree occur on the property. The property contains a mix of of farming fields, forest land, with sloping topography near the Oyster River, with some wetlands and water courses traversing the property. There is a series of roads for logging and access to the agricultural fields. At the centre of the property is an agricultural storage building to support agricultural operations of the farm.

Adjacent Land Uses

North

Land Use Type: Other

Specify Activity: Oyster River, Forest

East

Land Use Type: Other

Specify Activity: Forest includes Bear Creek Nature Park

South

Land Use Type: Other

Specify Activity: Forest

West

Land Use Type: Other

Specify Activity: Forest, some agriculture

Proposal

1. How many hectares are proposed for non-farm use?

0.1 ha

2. What is the purpose of the proposal?

Ducks Unlimited Canada (DUC) and the landowner wish to register a conservation covenant on the entire property (257 ha) which will continue to allow the existing agricultural use of farming grass, grains, vegetables and corn crops but restricts buildings (10% of property) and other non-waterfowl compatible crops (30% of property). As the covenant continues to allow farm use of the entire property, a nominal value (0.1 ha) was entered as non-farm use area in this application.

DUC has a long history working with farmers and ranchers in BC and throughout DUCs 80 years of conservation in Canada. DUC has worked closely with ALC and farmers on the registration of conservation covenants on ALR land in past years, and modified covenant wording based on feedback from farmers and ALC to ensure the conservation covenant meets agricultural and wildlife goals. In all previous conservation covenant applications to the ALC, DUC has applied directly to ALC Commission Office as per the Guidelines for Conservation Covenants in the ALR - version 2003 and 2011 rather than through the non-farm use applications portal that are first filed with the local government office. In all previous cases, DUC has received ALC approval to file the conservation covenants on ALR land.

DUC worked with the same landowner (Evansdale Farms) and the ALC to file the same worded conservation covenant on agricultural land at the mouth of the Oyster River, approximately 5 km downstream of this proposed property. DUC received ALC approval for the conservation covenant on Dec 16, 2010 (ALC file 81500-07/01/Comox Valley)

The property contains important ecological values that will remain viable with agriculture land use. The property has approximately 2600 meters of frontage on the Oyster River and contains approximately 95 ha (235 acres) of riparian habitat that forms part of the Oyster River floodplain. As with many rivers on the East Coast of Vancouver Island, protecting floodplains of rivers and wetlands will maintain ecological functions for fish in the river and support resilience of down stream estuaries.

This property is immediately adjacent (to the west) of the Bear Creek Nature Park which was an Ecological Gift partially donated by Evansdale Farms to the Comox Regional District and DUC. The Sensitive Ecosystem Inventory (SEI) on Vancouver Island identified a large riparian and floodplain zone along the Oyster River that contains a series of wetlands and riparian area, trees and shrubs and is

contiguous between Bear Creek Nature Park and the proposed property. This riparian and floodplain area along the Oyster River provides important fish habitat for salmonid species including Sockeye, Coho, Chinook, Chum and Pink salmon.

3. Could this proposal be accommodated on lands outside of the ALR? Please justify why the proposal cannot be carried out on lands outside the ALR.

No, in general lands outside the ALR have much lower ecological values for waterfowl than lands inside the ALR land. As well, the landowner for this property wishes for DUC to register the conservation covenant on the lands to maintain both the agricultural and ecological values of the property.

4. Does the proposal support agriculture in the short or long term? Please explain.

The proposal supports agriculture both in the short and long term. The conservation covenant is consistent with the ALC purpose to preserve agricultural land and to encourage farming on agricultural land in collaboration with other communities of interest and demonstrates the ability to meet agricultural and wildlife goals.

The covenant restricts the construction of new buildings (including residences) ensuring that the land base is available for agricultural production in the long term. The covenant continues to support the existing agricultural land uses for dairy farms (e.g. corn and forage production) as well as other land uses such as vegetable and grain production.

The covenant also supports the Comox Valley Agricultural Plan for goals:

Goal B: Land Management, Objective 3: Protect agricultural land base:

The covenant will restrict buildings to 10% of the property area and restrict further subdivision and therefore ensure protect the agricultural land base from fragmentation and loss of large scale non-farm use to buildings, roads.

Goal C: Agricultural/Environmental Stewardship, Objective 7: To develop and support plans and programs for environmental stewardship

DUCs approach capitalizes on compatibility between agricultural land and wildlife habitat by supporting agriculture crops that continue to benefit both agriculture and wildlife.

This covenant limits agriculture by restricting area planted in non-waterfowl compatible crops such as berries and buildings that would occupy more than 10% of the area. However, the conservation covenant contains several clauses that support the existing agriculture land use and supports the long term ecological values for wildlife. These include:

- 1. The general statement that DUC wishes to ensure that the lands continue to function as a traditional soil based farm for the benefit of agriculture and for the benefit of waterfowl by providing waterfowl habitat.*
- 2. Restriction that non-waterfowl compatible crops cannot be more than 30% of the gross area. Waterfowl compatible crops are defined as vegetables, grains, grasses or other forages that waterfowl consume as part of their normal lifecycle eg. Corn.*
- 3. Buildings may be renovated and new buildings restricted so that total building area (new and existing) will be maximum area of 10% of the property area.*
- 4. Non-soil based agriculture is restricted to 10% of the property area.*
- 5. Subdivision of the land into small parcels is prohibited, but consolidating the land with adjacent lands is allowed.*
- 6. The Owner may carry out on-going maintenance in the operation of the permitted farming activities, including clearing and realignment of ditches*

Applicant Attachments

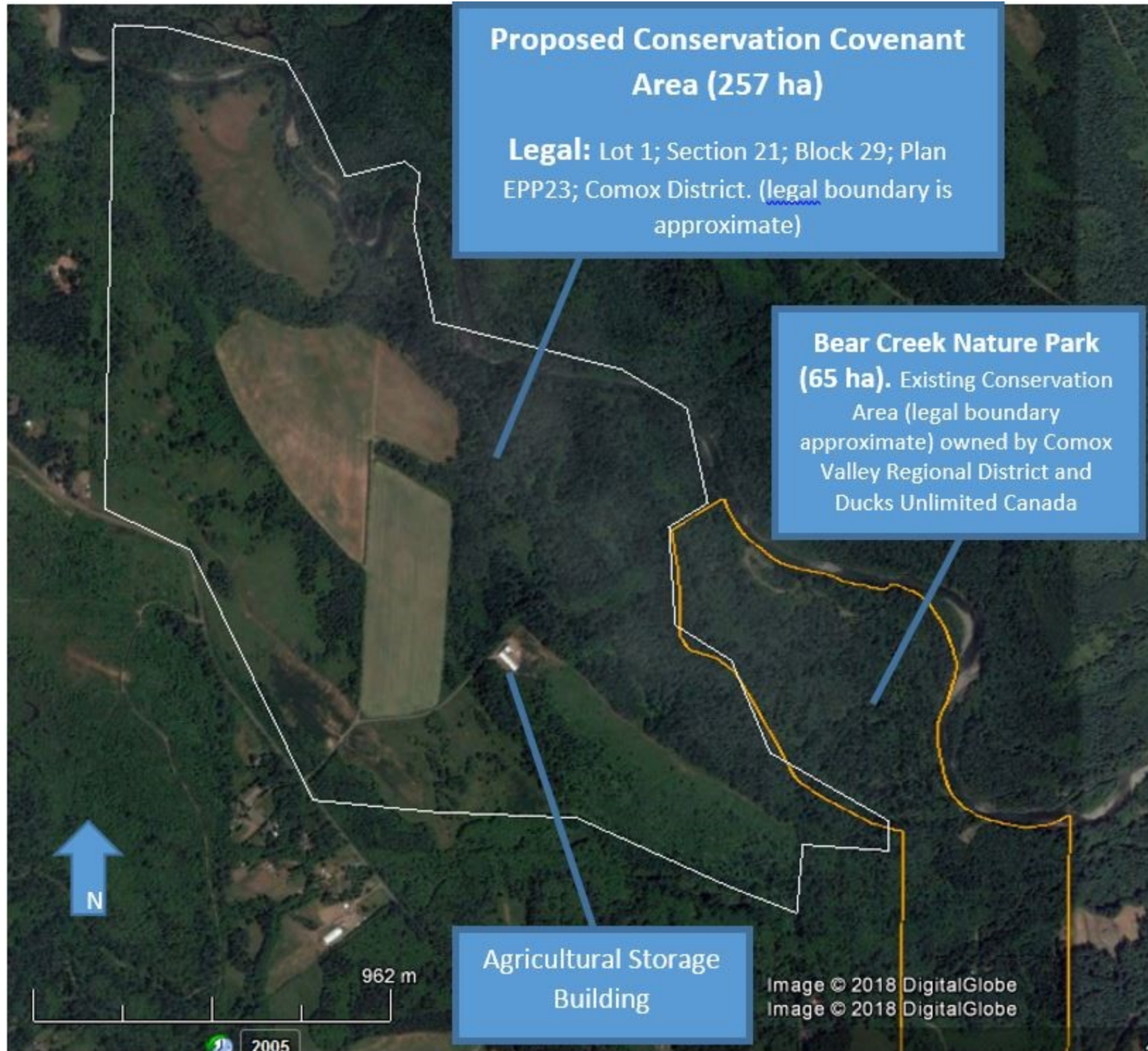
- Agent Agreement - Ducks Unlimited Canada
- Proposal Sketch - 57804
- Other correspondence or file information - Proposed Covenant
- Certificate of Title - 028-979-516

ALC Attachments

None.

Decisions

None.



TERMS OF INSTRUMENT – PART 2

SECTION 219 CONSERVATION COVENANT AND SECTION 218 STATUTORY RIGHT OF WAY

WHEREAS:

- A. The “**Transferor**” is the registered owner (the “**Owner**”) of the lands and premises described in item 2 of the Form C comprised herein (the “**Servient Land**”).
- B. The “**Transferee**” is Ducks Unlimited Canada (“**DU**”).
- C. DU has been designated by the Minister of Environment, Lands and Parks under section 219(3)(c) of the *Land Title Act* as a person in favour of whom covenants under s. 219(4) may be registered, provided it obtains the consent to the registration of such covenants by the Agricultural Land Commission; the Agricultural Land Commission has approved the registration of this Covenant/SRW, as defined below.
- D. The Owner wishes to ensure that the Servient Land continues to function as a traditional soil based farm for the benefit of agriculture and for the benefit of waterfowl by providing waterfowl habitat, all subject to the terms and conditions contained herein.
- E. DU is authorized as a person in favour of whom statutory rights of way under s. 218 may be registered.
- F. A statutory right of way pursuant to s. 218 of the *Land Title Act* in favour of the Transferee is necessary for the operation and maintenance of the s. 219 covenant contained in this Covenant/SRW.

NOW, THEREFORE, IN CONSIDERATION OF the payment of the payment of \$1.00 by each party to the other, the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which is acknowledged by the parties, the parties agree as follows:

Section 219 Conservation Covenant

- 1. Pursuant to s. 219(4) of the *Land Title Act*, the Owner covenants not to do (or allow to be done) any of the following on the Servient Land:
 - (a) alteration or interference with the hydrology other than in accordance with “normal farm practice” as defined in the *Farm Practices Protection (Right to Farm) Act RSBC 1996* and Regulations and amendments thereto;
 - (b) alteration or interference with any lake, pond, wetland, water course or other body of water other than in accordance with “normal farm practice” as defined in the *Farm Practices Protection (Right to Farm) Act RSBC 1996* and Regulations and amendments thereto;

- (c) application or introduction of herbicides, insecticides, pesticides, chemicals or any other toxic materials of any kind except in compliance with statutes and regulations and guidelines set by the Province of British Columbia and the Government of Canada;
- (d) removal of “soil” or placement of “fill”, or any matter, including fill, soil, gravel, rock, rubbish, ashes, garbage, waste or other material foreign to the Servient Land, on the Servient Land except as may be permitted the *BC Agricultural Land Commission Act 2002 and Regulations* thereunder, as amended from time to time; where the Servient Land is deemed to be “agricultural land” and the terms “soil”, “fill” and “agricultural land” are as defined in the *BC Agricultural Land Commission Act 2002*, as amended from time to time;
- (e) erection, placement or building of any fixtures or improvements, including buildings, electronic communication devices, cell phone transmitters, roads and parking lots (other than benches, nesting boxes or signs) other than:
 - i. farm buildings and improvements; and
 - ii. the combined footprint of any of the foregoing structures will not exceed more than **10%** of the area of the Servient land;
- (f) excessive use of motorized equipment, including snowmobiles, motorcycles, all-terrain vehicles and recreational motorized equipment; provided that the use of farm equipment and farm vehicles is permitted;
- (g) subdivision of the Servient Land; provided that the Owner may consolidate the Servient Land with any adjacent lands provided that the charge of this Covenant/SRW is extended across such adjacent lands without any payment being made by DU over and above DU’s payment of consideration under this Covenant/SRW;
- (h) grant any private easement or right of way or profit a prendre (i.e. not including easements or rights of way in favor of public utilities); provided that any such easement or right of way will:
 - i. minimize the interference with waterfowl being able to land, rest and feed on the Servient Land;
- (i) grant any commercial, farming or residential lease except with the prior written consent of DU, such consent not to be unreasonably withheld; provided that any commercial or farming lease or license will be substantially in DU’s standard form from time to time;
- (j) grant any lease, easement, profit a prendre, right of way, license or other right which permits the exploration or exploitation or extraction of any mineral, gas or other mineral resources from the Servient Land, without the prior written consent of DU, such consent not to be unreasonably withheld; provided that any fee or rental or

royalty therefor will be payable to the Grantor and provided further that at the end of such use, DU will work with the Servient Owner to ensure that impacts to the Servient Land are minimized and rehabilitated, at the cost of the Grantor, to the state the Servient Land was in when the Covenant/SRW was entered into;

- (k) plant or grow any non-waterfowl compatible crops over more than **30%** of the gross area of the Servient Land; for the purposes of this Covenant/SRW, “**waterfowl compatible crops**” shall mean vegetables, grains, grasses or other forages;
- (l) farm or otherwise use (including for buildings, improvements and roads) more than **10%** of the gross area of the Servient Land for non soil-based agriculture;

except if such acts have the prior written approval of DU. For clarity, if an activity is permitted by one of the foregoing subsections of **Section 1**, but not by another subsection, then the activity is permitted.

2. Notwithstanding anything to the contrary in this Covenant/SRW and with the intent that this **Section 2** shall prevail over any other provision of this Covenant/SRW to the extent of any conflict, the Owner will continue the soil-based (e.g. no glass green houses or use of any other equipment or structures which would prevent waterfowl being able to land, rest and feed on the earth of the Servient Land, all as part of the normal waterfowl lifestyle, including over-wintering) agricultural use of the Servient Land in the manner described in the “**Baseline Report**”, a copy of which is attached as **Schedule A** to this Covenant/SRW, as may be amended from time to time with the prior written agreement of the Owner and DU. The Owner and DU agree that the agricultural use described in the baseline report will always be subject to the following conditions:

- (a) the Owner will not cultivate any non-waterfowl compatible crops, unless the area of the Servient Land which is planted with non-waterfowl compatible crops, as described above, may not exceed **30%** of the area of the Servient Land;
- (b) the Owner may carry out on-going maintenance in the operation of the permitted farming activities, including clearing and realignment of ditches;
- (c) the Owner may at any time renovate existing buildings and construct new buildings provided that:
 - i. any new buildings must be within 100m of existing buildings or DU first consents in writing to the footprint and location of any new construction and, if there is any increase in footprint, any new renovation;
 - ii. the Owner provides to DU a copy of all permits required;
 - iii. the aggregate footprint of all buildings and improvements (measured perpendicularly from the outermost boundaries of the building or improvement) does not at any time exceed **10%** of the area of the Servient Land.

Statutory Right of Way

3. Pursuant to the *Land Title Act*, s. 218, the Owner hereby grants to DU (and its officers, employees, contractors or agents or invitees) the non-exclusive right to enter over and on the Servient Land (the “**Statutory Right of Way**”) for the following purposes:
 - (a) to monitor the compliance of the Owner with the terms of this Covenant/SRW;
 - (b) to observe the migratory, breeding and other habits of waterfowl;
 - (c) to collect samples and specimens of flora and fauna (not including domesticated animals) for the purpose of study, display and research;
 - (d) to make such alterations to the landscape, hydrology, flora and fauna on the Servient Land as DU and the Owner consider desirable to protect, preserve, conserve, maintain, enhance or restore the Servient Land as a habitat for waterfowl provided that exercise of the Statutory Right of Way under this paragraph (d) is subject to the rights of the Owner to carry out its use of the Servient Land pursuant to the Section 219 Covenant comprised herein; and
 - (e) cure a default of the Owner under this Covenant/SRW;

all provided that DU will not interfere with the Owner’s peaceful and reasonable enjoyment of the Servient Land, unless DU requires access to cure a default of the Owner under this Covenant/SRW. For greater certainty, but without limitation, DU may conduct **3** inspections of the Servient Land per annum pursuant to **Sections 3(a)-(d)** above; provided that for each inspection, DU will provide to the Owner written or verbal notice of such inspection not less than 24 hours prior to each inspection, which notice shall include advice as to the number of DU employees or contractors who will form part of the inspection team, together with the Owner, if the Owner is ready and wanting to accompany the DU employees or contractors on any inspection of the Servient Land, and a summary of the action to be taken by the DU employees or contractors.

Grantee’s Right to Cure Breaches

4. If the Owner breaches this Covenant/SRW and has not cured the breach, or is not diligently proceeding to cure the breach, within 60 days after a written notice to cure has been delivered by DU to the Owner at the address for the Owner shown on the title to the Servient Land or at the registered office of the Owner, if the Owner is a corporation, DU (and DU’s agents and employees) may (in addition to any other remedies to which DU is entitled under this Covenant/SRW) enter on to the Servient Land, pursuant to the Statutory Right of Way, and do such things as DU reasonably considers necessary to cure the default of the Owner.
5. All amounts reasonably expended by DU under this section will constitute a debt owed by the Owner to DU, payable on demand, and which will accrue interest, before and after judgment, at 10% p.a., calculated monthly from the date of demand for payment until paid.

Remedies of DU

6. In addition to any other remedies available either at law or in equity to DU, DU will be entitled to a prohibitory or mandatory injunction and/or damages in respect of any breach by the Owner of this Covenant/SRW. The Owner agrees that these remedies are reasonable given the public interest in the need for effective protection of the Servient Land from breaches of this Covenant/SRW.
7. The enforcement of this Covenant/SRW will be entirely within the discretion of DU. The registration of this Covenant/SRW against the Servient Land will not be interpreted as creating any duty on the part of DU to the Owner or to any other person to enforce any provision or the breach of any provision of this Covenant/SRW.

Liability and Indemnification

8. The Owner hereby indemnifies and saves harmless DU for and from the following:
 - (a) all costs incurred and expenditures made by DU to cure a default by the Owner under this Covenant/SRW;
 - (b) legal costs (on a solicitor and own client basis) of DU in enforcing any rights it has under this Covenant/SRW;
 - (c) any occupier's liabilities and other liabilities and responsibilities related to the ownership, operation and maintenance of the Servient Land (including the payment of any taxes on the Servient Land);
 - (d) any claims, demands, losses, costs, damages, actions, suits or other proceedings of any kind based upon any injury to or death of a person or damage to or loss of property arising from any act, omission, condition or other matter related to or occurring on or about the Servient Land unless due to the negligence of DU, its officers, employees, contractors or agents.

Environmental Indemnity

9. The Owner hereby indemnifies and saves harmless DU (and its directors, officers and employees) from and against any and all losses, liabilities, damages, injuries, costs, expenses, and all claims of any and every kind whatsoever paid, incurred or suffered by or asserted against the foregoing persons at any time for or with respect to, or as a direct or indirect result of:
 - (a) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Servient Land of any hazardous, toxic or dangerous waste, substance or material, and
 - (b) the cost of removal or remediation of any hazardous, toxic or dangerous waste, substance or material from the Servient Land.

For greater certainty this indemnity extends to any matters contained in the Environmental Report referred to below.

10. The Owner and DU agree that the environmental state of the Land as at the date of execution of this Covenant/SRW is as set out in the Level 1 Environmental Report a copy of which is attached as **Schedule B**.

Modification, Discharge & Extinguishment of this Covenant/SRW

11. The Owner agrees that this Covenant/SRW is intended to be perpetual in order to protect the Servient Land as set out in this Covenant/SRW. In view of the importance of protecting the Servient Land as a habitat for waterfowl, the Owner agrees not to seek a court order modifying, discharging or extinguishing this Covenant/SRW under the *Property Law Act* (British Columbia), any successor to that enactment, any other enactment or the common law. In other words, the Owner agrees that this Covenant/SRW will become even more important to DU if land adjacent or nearby to the Servient Land is developed in a fashion which is less friendly to waterfowl than the current use of such land.

Encumbrances Run with the Servient Lands

12. The covenants granted pursuant to s. 219 of the *Land Title Act*, the statutory right of way granted pursuant to s. 218 of the *Land Title Act* each constitute both contractual obligations and charges on the Servient Lands, and this Covenant/SRW will burden the Servient Land and run with the Servient Land, thereby binding all the successors in title to the Servient Lands.
13. The Owner is only liable for breaches of this Covenant/SRW which occur while the Owner is the owner of the Servient Land.

INTERPRETATION & GENERAL

Assignment

14. DU is entitled to assign the benefit of this Covenant/SRW to Her Majesty the Queen in the Right of the Province of British Columbia or to another non-for-profit organization, the objects of which include the conservation or preservation of waterfowl habitat and that is authorized under the *Land Title Act* to hold a covenant under s. 219 and a statutory right of way under s. 218.

Governing Law

15. This Covenant/SRW and all matters arising under it will be construed in accordance with the laws of British Columbia.

Waiver

16. Waiver of any breach of this Covenant/SRW is effective only if it is an express waiver in writing of the breach by the appropriate party. A waiver of a breach under this Covenant/SRW does not operate as a waiver of any other breach of this Covenant/SRW.

Entire Agreement

17. This Covenant/SRW constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set out herein.

Amendments in Writing

18. No supplement, modification, waiver or termination of this Covenant/SRW will be binding unless executed in writing by all the parties to this Covenant/SRW.

Miscellaneous

19. DU makes no representation that the Servient Land is fit for the use intended by the Owner and the Owner alone is responsible for obtaining any necessary permits or licenses for such use of the Servient Land.
20. If the Servient Land is consolidated with other land to form a bigger lot, all provisions of this Covenant/SRW apply to such post subdivision or post consolidation land, without change (e.g. building footprints may cover only **10%** of the area of such consolidated land, in the same area specified in this Covenant/SRW); provided that no further consideration is payable by DU.

Time

21. Time is of the essence.

Independent Legal Advice

22. The Owner acknowledges and agrees that the Owner has obtained, to the Owner's satisfaction, independent legal advice from the Owner's solicitor and tax advisor and acknowledges that the Owner does not rely on DU for any advice in this regard and that DU has made no representation or warranty whatsoever regarding this Covenant/SRW.

IN WITNESS WHEREOF the parties have executed this Covenant/SRW by signing the Form C comprised herein.

Schedule A

[attach a copy of the Covenant Environmental Baseline Report]

Schedule B

[attach a copy of the Level 1 Environmental Audit Baseline Report]

Schedule B

END OF DOCUMENT

Memo

File: 3110-20 / ALR 4C 18

DATE: August 23, 2018

TO: Agricultural Advisory Planning Commission

FROM: Planning and Development Services Branch

RE: Subdivision within the Agricultural Land Reserve – 9314 Doyle Road (Proctor)
Lot 1, Block 29, Comox District, Plan 24877, 002-837-803

An application (Appendix A) has been received to consider a subdivision within the Agricultural Land Reserve (ALR). The Comox Valley Regional District may forward the applications to the Agricultural Land Commission (ALC) with comments and recommendations or refuse the application.

The subject property (Figures 1 and 2) is an 18 hectare lot, created in a 1971 two-lot subdivision, located along Doyle Road, between Macaulay Road and the Oyster River. The property was developed in the early-1990s as a livestock farm. The front half is currently cleared for the farm operation, as well as residential uses. Improvements on the property include two dwellings, two detached garages/workshops, a barn, hayshed, and various agricultural accessory buildings.

The applicants propose to subdivide the property along a natural contour in the land to create a 4.8 hectare lot along Doyle Road with a 13 hectare remainder in the rear. This configuration would place one of the existing dwellings (manufactured home) and most of the agricultural improvements on the front lot. The rear lot would be accessed off Doyle Road by a ~200 metre panhandle driveway to the main house.

Agricultural Land Reserve

The property is located within the ALR. Section 21(2) of the *ALC Act* allows an owner of property within the ALR to apply to the ALC to subdivide that property. However, Section 25(3) requires that such an application first be authorized by the local government to proceed to the ALC.

Official Community Plan

The property is designated “Agricultural Areas” within the Official Community Plan, Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”. Regarding subdivision, Policy 58(1) of this designation states: “Discourage subdivision of land in the ALR for residential use, other than an ALC-approved home site severance.” Likewise, Section 59(1) states: “Do not support subdivision for the purpose of residential development other than ALC home site severances.”

Policy 58(12) in this designation states: “Require an applicant proposing to subdivide land in the agricultural area to demonstrate how the proposal will benefit the agriculture and aquaculture

industries.” According to the application (Appendix A), the subdivision would allow the owner to sell unused farm land.

Zoning Bylaw

The property is zoned Rural-ALR (RU-ALR). Section 7 of this zone, titled “Subdivision Requirements” (Appendix B) states the minimum lot area for new subdivisions shall be 8.0 hectares and the minimum lot frontage shall be 10% of the perimeter of the lot. Because the proposed front lot is 4.8 hectares and the proposed rear lot’s frontage is less than 1%, the proposed lot configuration is not consistent with this zone.

Sincerely,

T. Trieu

Ton Trieu, MCIP, RPP
Assistant Manager of Planning Services
Planning and Development Services Branch

/jm

Attachments Appendix A - “ALR 4C 18 application”
Appendix B - “Rural-ALR zone”

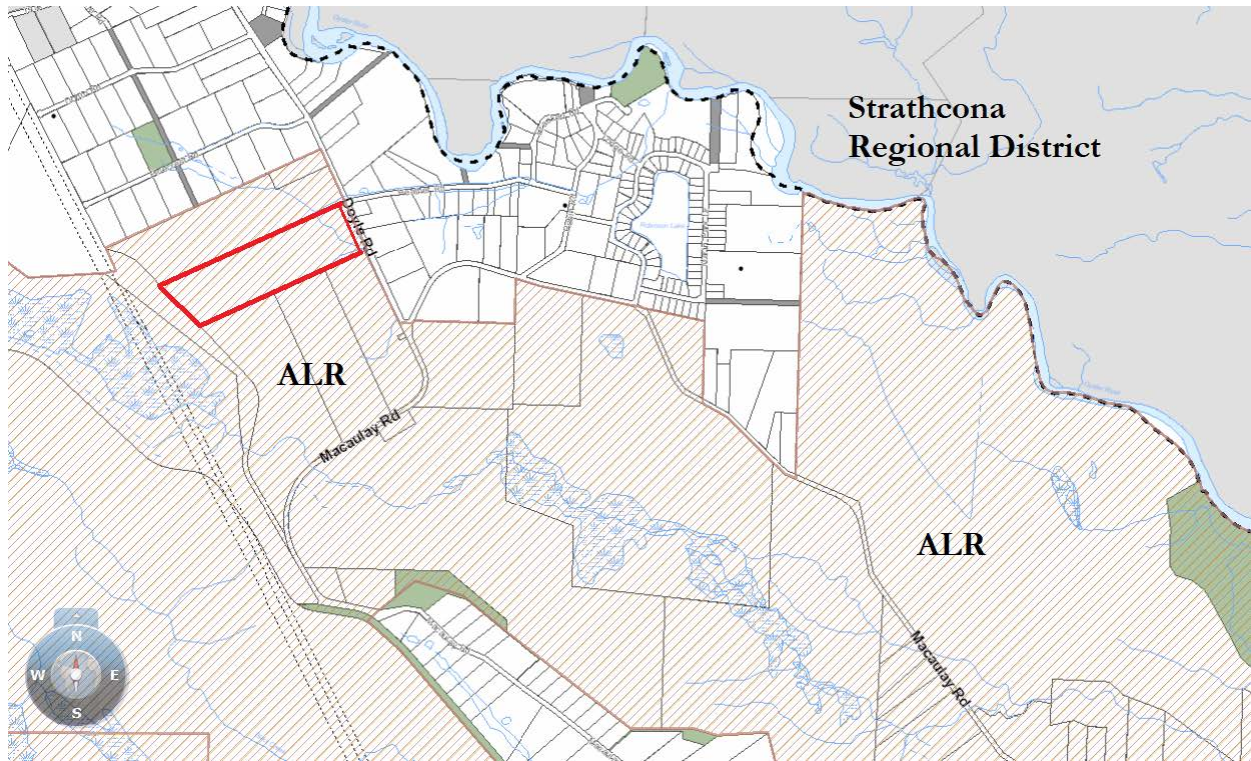


Figure 1. Subject Property Highlighted in Red



Figure 2. Air Photo (2016)



Provincial Agricultural Land Commission - Applicant Submission

Application ID: 57901

Application Status: Under LG Review

Applicant: Patricia Proctor , James Proctor

Local Government: Comox Valley Regional District

Local Government Date of Receipt: 08/16/2018

ALC Date of Receipt: This application has not been submitted to ALC yet.

Proposal Type: Subdivision

Proposal: Since purchasing in 1989, I have lived and worked together with my parents to develop the property from raw land into a farm where my children were raised and we have lived together generationally for almost 3 decades. Practicality dictated development of buildings and infrastructure to support a livestock operation was focused heavily at the front of the property near the manufactured home where my parents lived. The larger hay field and a rocky ridge separate those improvements from the house which is situated mid-property on the ridge and is where my husband and I reside.

My father was the driving force behind the livestock and with his decline, so did the operation. My father has passed and my mother has needed to be moved to town. The manufactured home has been vacant for over a year; additionally, we have not had animals for a few years now, yet all the assets remain. The upkeep and maintenance is significant even though barns are vacant and land use limited to hay crop. We do not see ourselves resuming agricultural land use involving animals. We harvest on average 600 bales of hay for which we have no need.

To divide the existing lot into two parcels would allow the significant land improvements and investments made in Lot 1 to be utilized for what they were designed without compromising the agricultural utility of what would be two parcels. Current land prices have made farming difficult for new and young entrepreneurial farmers. Numerous examples exist in our regional district of productive 5 and 10 acre small scale and successful agriculture enterprises. The proposed front lot at 12 acres (4.8h) preserves the objectives of the ALR and provides an affordable opportunity for new ownership and farm use supporting local agriculture. We would be relieved of the prohibitive cost incurred to maintain the improvements and buildings that have been vacant for over the past couple of years.

The proposed Lot 1 parcel with its hay production, buildings and lot size at 12 acres (4.8 h) would accommodate a broad range of farm based activities while preserving the objectives of the ALR regarding land use as well and remain consistent with the regional growth plan classification as agricultural area. It would provide an affordable opportunity for new ownership and actual farm use supporting rural local agriculture per the CVRD Community Plan. At 33 acres (13.6 h), Lot 2 would continue to be a large parcel of excellent agriculture land, no longer tied to capital investments specific to livestock, with near limitless opportunities for crop based agriculture with the option to leave the brush/treed area or invest in further clearing to expand the current cleared area planted in hay/pasture.

Affordability has become a defining deterrent for new agriculture as land prices rise as seen in the significant increase in boutique, small scale backyard marketing. Few buyers with the intent for agriculture can afford the investment of a large tract of land, nor do they expect to generate the annual income necessary to service the debt associated. Of note, many larger tracts of land are being purchased for residential use and the development of an estate rather than improvements for agriculture. The proposed subdivision would enable farm land use be resumed on Lot 1 through new ownership and encourages new improvements and agriculture capabilities on Lot 2 while preserving capacity for agriculture under the protection of the ALR and consistent with the the CVRD Community Plan.

Applicant: Patricia Proctor , James Proctor

This subdivision would free capital and allow our family to redirect assets and settle affairs thus providing more appropriate permanent housing for my aging mother and create new opportunity for agriculture improvements on Lot 2.

Mailing Address:

9314 Doyle Road
Black Creek , BC
V9J 1E5
Canada

Primary Phone: [REDACTED]

Mobile Phone: [REDACTED]

Email: [REDACTED]

Parcel Information

Parcel(s) Under Application

1. **Ownership Type:** Fee Simple
Parcel Identifier: 002-837-803
Legal Description: L 1 BK 29 COMOX PL 24877
Parcel Area: 18.4 ha
Civic Address: 9314A Doyle Rd.
Date of Purchase: 12/13/1989
Farm Classification: No
Owners

1. **Name:** Patricia Proctor
Address:
9314 Doyle Road
Black Creek , BC
V9J 1E5
Canada
Phone: [REDACTED]
Cell: [REDACTED]
Email: [REDACTED]

2. **Name:** James Proctor
Address:
9314A Doyle Rd.
Black Creek, BC
V9J 1E5
Canada
Phone: [REDACTED]
Email: [REDACTED]
-

Current Use of Parcels Under Application

1. **Quantify and describe in detail all agriculture that currently takes place on the parcel(s).**
*~15 + acres in hay and pasture land producing on average 600 bales of hay with a single crop;
~3 acres in barns, hay shed, holding pens, fenced areas and corrals for livestock; ~0.5 acre in gardens*

Applicant: Patricia Proctor , James Proctor

and orchard.

2. Quantify and describe in detail all agricultural improvements made to the parcel(s).

Over the past 29 years clearing and development of approximately 25 acres. This includes: ~15 acres in hay fields and pasture; Construction of barns, hay shed, equipment shed, and turkey shed, corrals, holding pen, round pen; Perimeter, fenced and cross fenced as well as extensive drainage ditches, ponds for irrigation and water for livestock.

3. Quantify and describe all non-agricultural uses that currently take place on the parcel(s).

House, manufactured home, detached garage, carpenters workshop, and various outbuildings including woodshed and storage.

Adjacent Land Uses

North

Land Use Type: Unused

Specify Activity: Uninhabited. Wooded. Unused.

East

Land Use Type: Residential

Specify Activity: Lots and small parcels of land with single family dwellings.

South

Land Use Type: Agricultural/Farm

Specify Activity: Large parcels. Single family dwelling. Limited agriculture activity limited to market gardening.

West

Land Use Type: Agricultural/Farm

Specify Activity: Powerline and Cranberry farm.

Proposal

1. Enter the total number of lots proposed for your property.

4.8 ha

13.6 ha

2. What is the purpose of the proposal?

Since purchasing in 1989, I have lived and worked together with my parents to develop the property from raw land into a farm where my children were raised and we have lived together generationally for almost 3 decades. Practicality dictated development of buildings and infrastructure to support a livestock operation was focused heavily at the front of the property near the manufactured home where my parents lived. The larger hay field and a rocky ridge separate those improvements from the house which is situated mid-property on the ridge and is where my husband and I reside.

My father was the driving force behind the livestock and with his decline, so did the operation. My father has passed and my mother has needed to be moved to town. The manufactured home has been vacant for over a year; additionally, we have not had animals for a few years now, yet all the assets remain. The upkeep and maintenance is significant even though barns are vacant and land use limited to hay crop. We do not see ourselves resuming agricultural land use involving animals. We harvest on average 600 bales of hay for which we have no need.

Applicant: Patricia Proctor , James Proctor

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The proposed Lot 1 parcel with its hay production, buildings and lot size at 12 acres (4.8 h) would accommodate a broad range of farm based activities while preserving the objectives of the ALR regarding land use as well and remain consistent with the regional growth plan classification as agricultural area. It would provide an affordable opportunity for new ownership and actual farm use supporting rural local agriculture per the CVRD Community Plan. At 33 acres (13.6 h), Lot 2 would continue to be a large parcel of excellent agriculture land, no longer tied to capital investments specific to livestock, with near limitless opportunities for crop based agriculture with the option to leave the brush/treed area or invest in further clearing to expand the current cleared area planted in hay/pasture.

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This subdivision would free capital and allow our family to redirect assets and settle affairs thus providing more appropriate permanent housing for my aging mother and create new opportunity for agriculture improvements on Lot 2.

3. Why do you believe this parcel is suitable for subdivision?

The driveway to the main house runs the current south property line. See Photo #1. The rocky ridge that extends the width of the property along with the existing driveway provide a natural division between parcels without encroaching on cultivatable land or compromising agriculture utility. Proposed Lot 1 at ~12 acres (4.8 hectares) is of adequate size to be self sustaining in terms of crop size, water, arable land, foraging, and infrastructure. As proposed, its boundaries respect the natural contour and characteristics of the land. Lot 2, (the remaining ~33 acres) would continue to hold high quality agricultural potential and utility with extensive options for row or field crop based agricultural practices including berries, hops, seeds, vegetables etc. Potential for further clearing of brush and trees exists. The existing driveway is a well built road with a generous allowance of 15 metres including ditching and provides reliable access to the proposed Lot 2 and is paralleled by the hydro line. The main house and outbuildings site is located on a rocky clay ridge mid property and was selected where crops were not likely to be planted to preserve the areas with soil best suited for cultivation. In addition to buildings referenced, this rocky clay ridge is treed and fenced providing good foraging and has excellent exposure making this area a good choice for greenhouses. To that end, our proposal suggests an exception to the CVRD zoning guideline for subdivision of minimum 8 hectares is in the interest of the ALR and Community Plan as it respects the natural contours thus usability of the land itself allowing Lot 2 to remain of significant size as well as preserving the cultivatable area within its perimeter.

4. Does the proposal support agriculture in the short or long term? Please explain.

Both. In the short- term, Lot 1 could resume agricultural activities immediately contributing to the local

community while remaining consistent with the long - term objectives of the ALR including preserving land for agriculture. Lot 2 holds immediate short term agriculture potential as is and unlimited long - term potential either repurposing current cleared land that is planted in pasture with crop based practices or utilizing as is with the opportunity for further clearing and land development. Both lots would remain under the protection of the ALR and consistent with the CVRD Community Plan.

5. Are you applying for subdivision pursuant to the ALC Homesite Severance Policy? If yes, please submit proof of property ownership prior to December 21, 1972 and proof of continued occupancy in the "Upload Attachments" section.

No

Applicant Attachments

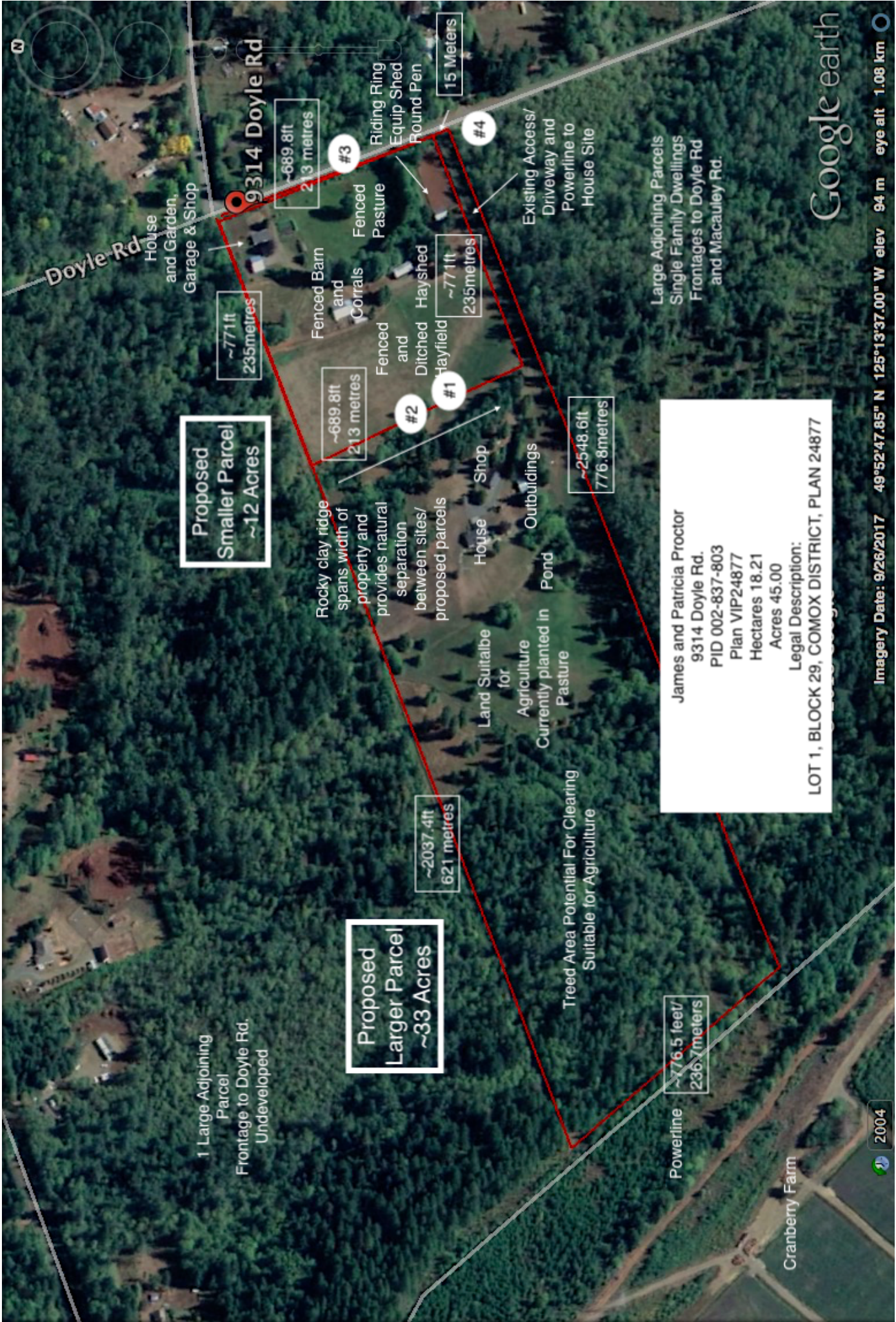
- Site Photo - Photo #1
- Site Photo - Photo #2
- Site Photo - Photo #3
- Site Photo - Photo #4
- Proposal Sketch - 57901
- Certificate of Title - 002-837-803

ALC Attachments

None.

Decisions

None.



**Proposed Smaller Parcel
~12 Acres**

**Proposed Larger Parcel
~33 Acres**

James and Patricia Proctor
 9314 Doyle Rd.
 PID 002-837-803
 Plan VIP24877
 Hectares 18.21
 Acres 45.00
 Legal Description:
 LOT 1, BLOCK 29, COMOX DISTRICT, PLAN 24877

Google earth



Proposed
Lot 1
Photo #1
Facing East

South Property
Line
Driveway to Main
House from Doyle
Rd

North Property Line

Ridge edge



South Property Line

North Property Line

Proposed
Lot 2
Photo #2
Facing West

Doyle Rd.

Driveway

Proposed
Lot 1
Frontage
Photo #3

North
Property Line



Proposed
Lot 2

Photo#4

Frontage
Doyle Rd

South Property
Line

15 Metre
Panhandle
for Driveway



803**Rural ALR (RU-ALR)****1. PRINCIPAL USE****On any lot:**

- i) Residential use;
- ii) Agricultural use;
- iii) On any lot in the Agriculture Land Reserve any other use specifically permitted by the Provincial Land Reserve Commission under the *Agricultural Land Reserve Act*, regulations and orders.

2. ACCESSORY USES**On any lot:**

- i) Accessory buildings.

3. CONDITIONS OF USE

- i) Any conditions imposed on applications made to the Provincial Land Reserve Commission under the *Agricultural Land Reserve Act*.
- ii) Any conditions or limitations imposed elsewhere in this bylaw (See Section 303).

4. DENSITY**Residential Use is limited to:**

- i) **On any lot:** One single detached dwelling plus additional dwelling units (attached or detached) where the additional dwelling units are required by full time farm employees working on farm operations or are specifically permitted by the Provincial Land Reserve Commission under the *Agricultural Land Reserve Act*.

5. SITING OF BUILDINGS AND STRUCTURES

The setbacks required for buildings and structures within the Rural ALR zone shall be as set out in the table below.

Type of Structure	Heights	Required Setback				
		Front yard	Rear yard	Side yard		Side yard abutting road
				Frontage <31m	Frontage >31m	
Principal	10.0m (32.8ft)	7.5m (24.6 ft)	7.5m (24.6ft)	1.75m (5.8ft)	3.5m (11.5ft)	7.5m (24.6ft)
Accessory	4.5m-or less (14.8ft)	7.5m (24.6 ft)	1.0m (3.3ft)	1.0m (3.3ft)	1.0m (3.3ft)	7.5m (24.6ft)
Accessory	6.0m-4.6m (19.7ft)	7.5m (24.6 ft)	7.5m (24.6ft)	1.75m (5.8ft)	3.5m (11.5ft)	7.5m (24.6ft)

Except where otherwise specified in this bylaw, no building or structure shall be located in any required front and side yard setback areas. [Note: Part 400, Siting Exceptions, of this bylaw and Bylaw No. 1836 being the "Floodplain Management Bylaw, 1997" may affect the siting of structures adjacent to major roads and the natural boundaries of watercourses and the sea, respectively.]

6. **LOT COVERAGE**

- i) The maximum lot coverage of all buildings and structures shall not exceed 15% (excluding greenhouses).

7. **SUBDIVISION REQUIREMENTS**

- i) Minimum lot area: 8.0 hectares (19.8 acres)
- ii) Minimum lot frontage: 10% of the perimeter of the lot.

End • RU-ALR