



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

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

September 14, 2015

November 30, 2015 - *revised to extend the deadline for feedback to midnight PST
January 15, 2016 and to open the consultation to Agri-tourism Operators to provide
feedback.*

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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.

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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?id=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=4179AB0F33494261A5B6CEF2A4F8F296>

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/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 	<p>events may also require a separate zone or temporary use permit</p> <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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