



Agricultural Land Commission
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November 15, 2016

ALC File: 55106

Richard Tegart
PO Box 452
Radium Hot Springs, BC V0A 1M0

Dear Mr. Tegert:

Re: Application to Conduct a Non-Farm Use in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #383/2016) as it relates to the above noted application. As agent, it is your responsibility to notify the applicant accordingly. A sketch plan depicting the decision has been attached.

Reconsideration of a Decision as Directed by the ALC Chair

Please note that pursuant to [s. 33.1 of the *Agricultural Land Commission Act*](#), the Chair may direct the executive committee to reconsider any panel decision if, within 60 days from the date of this decision, he considers that the decision may not fulfill the purposes of the commission as set out in s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

Reconsideration of a Decision by an Affected Person

We draw your attention to [s. 33\(1\) of the *Agricultural Land Commission Act*](#) which provides a person affected the opportunity to submit a request for reconsideration.

33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that:

- (a) evidence not available at the time of the original decision has become available,
- (b) all or part of the original decision was based on evidence that was in error or was false.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Further correspondence with respect to this application is to be directed to Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Riccardo Peggi', written in a cursive style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #383/2016)
 Sketch plan
 ALC Policy L-22: Gathering for an Event in the ALR

cc: Regional District of East Kootenay (File: P 716 602)

55106d1



AGRICULTURAL LAND COMMISSION FILE 55106

REASONS FOR DECISION OF THE KOOTENAY PANEL

Application submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act*

Applicant: Highland Ranch Ltd.
(the “Applicant”)

Agent: Rick Tegart
(the “Agent”)

Application before the Kootenay Regional Panel: Sharon Mielnichuk, Panel Chair
Ian Knudsen



THE APPLICATION

[1] The legal description of the property involved in the application is:

Parcel Identifier: 012-506-800

Parcel 1, District Lot 673, Land District 26, Except Plan R316
(the "Property")

[2] The Property is 124.7 ha in area (112.1 ha within ALR).

[3] The Property is located partially within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[4] The Property has the civic address 6755 Highway 95, Edgewater BC.

[5] The Property is located within Zone 2 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 20(3) of the *ALCA*, the Applicant is applying to utilize an existing permanent structure and the surrounding 1.6 ha to host events (the "Proposal"). The Proposal along with supporting documentation is collectively the "Application".

RELEVANT STATUTORY PROVISIONS

[7] The Application was made pursuant to s. 20(3) of the *ALCA*:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[8] The Panel considered the Application pursuant to its mandate in s. 4.3 of the *ALCA*:

4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;
- (b) economic, cultural and social values;
- (c) regional and community planning objectives;
- (d) other prescribed considerations.

[9] The purposes of the Agricultural Land Commission (the “Commission”) set out in s. 6 are as follows:

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest; and
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

EVIDENTIARY RECORD BEFORE THE PANEL

[10] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Agricultural capability map, ALR context map, and satellite imagery

All documentation noted above was disclosed to the Agent in advance of this decision.

[11] At its meeting of June 10, 2016, the Regional District of East Kootenay (the “RDEK”) resolved to forward the Application to the Commission with support.

SITE VISIT

[12] On September 21, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[13] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on October 17, 2016 (the "Site Visit Report").

AGRI-TOURISM AND GATHERING FOR AN EVENT REGULATION

[14] Subsequent to the Application being submitted to the RDEK and the Commission, on July 29, 2016 BC Order-in-Council No. 602/2016 (the "OIC") amended the Regulation to define and *gathering for an event*.

Gathering for an Event Definition

s. 1 (1) *In this regulation:*

"gathering for an event" means a gathering of people on a farm for the purpose of attending

(a) a wedding, unless paragraph (c) (ii) applies,

(b) a music festival, or

(c) an event, other than

(i) an event held for the purpose of agri-tourism, or

(ii) the celebration, by residents of the farm and those persons whom they invite, of a family event for which no fee or other charge is payable in connection with the event by invitees.

[15] In addition to the definitions, the Regulation now clearly places *gathering for an event* is in s. 3 of the Regulation which establishes permitted uses for land in the ALR.

Permitted uses for land in an agricultural land reserve

3(4) The following non-farm uses are permitted in an agricultural land reserve and must not be prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government:

(k) *gathering for an event, if all of the following conditions are met:*

- (i) the farm must be located on land classified as a farm under the Assessment Act;*
- (ii) permanent facilities must not be constructed or erected in connection with the event;*
- (iii) parking for those attending the event must be available on the farm, but must not be permanent nor interfere with the farm's agricultural productivity;*
- (iv) no more than 150 people, excluding residents and employees of the farm, may be gathered on the farm at one time for the purpose of attending the event;*
- (v) the event must be of no more than 24 hours duration;*
- (vi) no more than 10 gatherings for an event of any type may occur on the farm within a single calendar year.*

FINDINGS

Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture

[16] Weddings and Special Events

With respect to hosting weddings and special events, the Panel evaluated the Proposal against the definition of *gathering for an event* defined in s. 1(1) and the criteria in s. 3(4)(k) of the Regulation. While some of the activities meet the definition of *gathering for an event*, the activities exceed one of the conditions in s. 3(4)(k). The Panel will speak to the Proposal's compliance with each criteria of s. 3(4)(k) of the Regulation below.

i. "Farm" Classification

The Applicant states that the Property is currently classified as "farm" under the *Assessment Act*. The Panel finds that in order to continue hosting special events, the Farm must maintain its farm status.



ii. Use of Permanent Facilities

The proposed event structure is a historic barn which has been converted for assembly use (the "Historic Barn"). In the Application, the Agent states that "[t]he *Historic Barn is structurally sound, has electrical service, smoke alarms, exit signs and egress points on both levels*". At the Site Visit, the Agent stated that all the upgrades to the barn were completed by the previous owner in order to use the Historic Barn as a showroom for nearby residential developments. Despite the conversion of the Historic Barn prior to the Application, the conversion of existing buildings and the construction associated with bringing them up to public assembly building code is also deemed as the construction or erection of a permanent facility. For this reason, utilizing a converted structure is contrary to s. 3(4)(k)(ii) of the Regulation, and as such is the catalyst for the Application.

iii. Parking

Parking areas must not be permanent (asphalt, concrete, etc) and parking must not interfere with the farm's agricultural productivity. The Panel is not aware that parking has been deleterious to the farm under current operation. The Panel finds that parking for events should remain consistent with s. 3(4)(k)(iii) of the Regulation and ALC Policy L-22: Gathering for an Event in the ALR.

iv. Maximum 150 People per Event

The Application states that events will host up to 150 people. The Panel finds that the size of event should remain consistent with s. 3(4)(k)(iv) of the Regulation and ALC Policy L-22: Gathering for an Event in the ALR.

v. Maximum 24 Hour Duration

The Panel is not aware that any of the events are intended to exceed a 24 hour duration. The Panel finds that the duration of event should remain consistent with s. 3(4)(k)(v) of the Regulation and ALC Policy L-22: Gathering for an Event in the ALR.

vi. Maximum 10 Gatherings Per Year

For clarification, 10 events refers to the total of all event types held per year. It does not imply 10 events from each category per year (i.e. 10 weddings, 10 birthday parties, 10

craft fairs, etc.). With respect to the number of events, the Applicant has stated that they “*will be hosting a maximum of 10 events per calendar year*”. The Panel finds that the number of events held per year should remain consistent with s. 3(4)(k)(vi) of the Regulation and ALC Policy L-22: Gathering for an Event in the ALR.

[17] The Panel considered whether the level of agriculture taking place on the Property justifies the use of the Historic Barn for hosting events. According to the RDEK Staff Report, “*the current farm operation consists of a beef farm with approximately 51 ha of irrigated hay field and the bulk of the remaining 70 ha used as seasonal grazing. [The Applicants] also operate a 40 hive commercial apiary and a 0.25 ha market garden*”. The Panel finds that the Applicant currently farms the Property to an extent that the use of the Historic Barn for events would remain ancillary to agricultural activity on the Property, especially given that the Proposal is compliant with most of s. 3(4)(k).

Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values

[18] The Application stated the following:

The community has a need for a venue for family gatherings, weddings and special occasions. Hosting a few events per season will allow us to share the beauty of our surroundings while fulfilling the communities (sic) desire for a unique and natural place to gather. Having gatherings at the Upper Ranch will benefit our local economy through increased trade at our local retail, catering, rental, and accommodation providers. Residents of the Upper Columbia Valley own and are employed by these small businesses.

[19] While respectful of the cultural and social arguments presented in the Application, the Panel finds that the arguments are not germane to the Panel’s consideration in light of the findings pertaining to s. 4.3(a) and s. 6.

Section 4.3(c) of the ALCA: third priority to regional and community planning objectives



[20] The Property is designated as Rural Resource (RR) in the RDEK Official Community Plan. The RR Designation includes rural resources and rural residential land uses with parcel sizes 8.0 ha and larger.

[21] The Property is zoned as A-2, Rural Residential (Country) Zone which requires a minimum parcel size of 8.0 ha.

[22] The Panel gave consideration to regional and community planning objectives as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision.

Weighing the factors in priority

[23] The Panel finds that the use of the Historic Barn for hosting events would remain ancillary to the agricultural use of the Property.

[24] The Panel did not find any considerations under s.4.3(b) or (c) to be contributory to the decision given the Panel's finding following its review of the agricultural considerations under s. 4.3(a) and s. 6.

DECISION

[25] For the reasons given above, the Panel approves the Proposal to utilize the Historic Barn to host special events.

[26] The Proposal is approved subject to the following conditions:

- a. The Farm must retain classification as farm under the *Assessment Act*;
- b. parking must be available on the farm, but must not be permanent nor interfere with the farm's agricultural productivity;
- c. parking is located in the zone delineated in the attached sketch plan;
- d. no more than 150 people, excluding residents and employees of the farm, may be gathered on the farm at one time for the purpose of attending an event;



- e. events must be of no more than 24 hours duration;
- f. no more than 10 events may be held per calendar year; and
- g. no commercial kitchen may be constructed for the purpose of hosting events.

[27] The Panel advises the Applicant that any expansion of the activities associated with gathering for events on the Property beyond this approval would require a new application to the Commission.

[28] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[29] These are the unanimous reasons of the Kootenay Panel of the Agricultural Land Commission.

[30] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

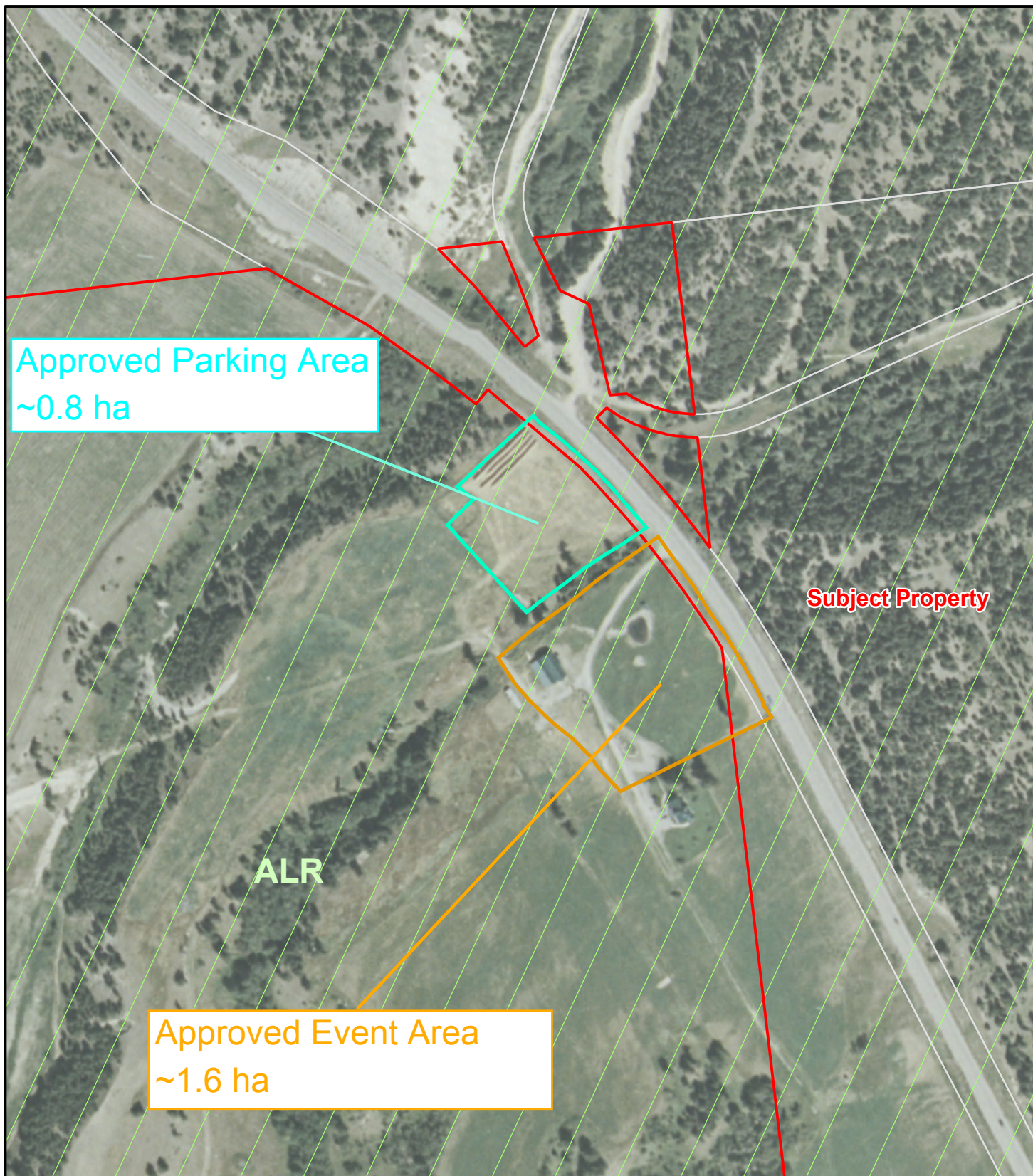
[31] This decision is recorded as Resolution #383/2016 and is released on November 15, 2016.

CERTIFICATION OF DECISION

A handwritten signature in black ink, which appears to read 'Sharon Mielnichuk', is written over a horizontal line.


Sharon Mielnichuk, Panel Chair, on behalf of the Kootenay Panel

END OF DOCUMENT



Orthophoto
2007 Natural Colour - Ortho
Map Scale: 1:3,500
25 0 25 50 75 100 125
Meters

ALC Application 55106
Approved Non-farm Use
ALC Resolution #383/2016

 <p>Agricultural Land Commission Act</p>	<p style="text-align: right;">Policy L-22 October 2016</p> <p style="text-align: center;">ACTIVITIES DESIGNATED AS A PERMITTED NON-FARM USE: GATHERING FOR AN EVENT IN THE AGRICULTURAL LAND RESERVE ("ALR")</p>
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This policy is intended to assist in the interpretation of the [Agricultural Land Commission Act](#), 2002, including amendments as of September 2014, (the "ALCA") and BC Regulation 171/2002 ([Agricultural Land Reserve Use, Subdivision and Procedure Regulation](#)), including amendments as of August 2016, (the "Regulation"). In case of ambiguity or inconsistency, the ALCA and Regulation will govern.

REFERENCE:

Agricultural Land Commission Act, S.B.C. 2002, c. 36, Section 1.

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), the "Regulation", Section 1(4) and Section 3(4).

Section 3(4) The following non-farm uses are permitted in an agricultural land reserve and must not be prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government:

(k) gathering for an event, if all of the following conditions are met:

- i. the farm must be located on land classified as a farm under the [Assessment Act](#);*
- ii. permanent facilities must not be constructed or erected in connection with the event;*
- iii. parking for those attending the event must be available on the farm, but must not be permanent nor interfere with the farm's agricultural productivity;*
- iv. no more than 150 people, excluding residents and employees of the farm, may be gathered on the farm at one time for the purpose of attending the event;*
- v. the event must be of no more than 24 hours duration;*
- vi. no more than 10 gatherings for an event of any type may occur on the farm within a single calendar year.*

Section 1 (4) Definitions:

"gathering for an event" means a gathering of people on a farm for the purpose of attending

(a) a wedding, unless paragraph (c) (ii) applies,

(b) a music festival, or

(c) an event, other than

(i) an event held for the purpose of agri-tourism, or

(ii) the celebration, by residents of the farm and those persons whom they invite, of a family event for which no fee or other charge is payable in connection with the event by invitees.

Section 2(2.4) In subsections (2.1) to (2.3):

(f) gathering for an event, if the event is held only in the lounge referred to in paragraph (b) or the special event area referred to in paragraph (c) of this subsection, and, for this purpose, section 3 (4) (k) does not apply.

INTERPRETATION:

Gathering for an event is a permitted non-farm use in the Agricultural Land Reserve and must not be prohibited by a local government bylaw as long as the event meets the conditions set out in the Regulation.

No more than 150 people may be in attendance and the event must be less than 24 hours in duration.

A maximum of 10 events of any type are permitted within a calendar year on a farm. For example, 5 weddings, 2 music concerts and 3 art shows. Where more than one farm business is being operated from a farm, the maximum 10 events applies. It is recommended that a record of events be maintained by the farmer including type of event, date and number of attendees.

There is no requirement for these events to directly market or promote agricultural products grown on the farm and therefore are not considered agri-tourism events.

People hosting events must make every effort to avoid negative impacts to the use of agricultural land including but not limited to, damage to agricultural land and structures, noise that disturbs animals and livestock, trespass, vandalism, theft and blocking access to adjacent farm businesses.

Events may include weddings, private parties, corporate retreats, music concerts and concert series, music festivals, film and theatrical presentations, art shows, dance recitals, charitable and political fundraising events, dances, and sports events, so long as otherwise compliant with the Regulation. Any event that is not an agri-tourism event falls into this category.

The Regulation allows gathering for events in the ALR provided the land is assessed as “farm” under the *Assessment Act*. If the assessment changes, the use is no longer permitted. The farm may be comprised of one or several parcels of land owned or operated by a farmer as a farm business. The farm parcels should be contiguous or in the same general geographic area.

Permanent facilities must not be constructed or erected for any event activity. Permanent facilities include, but are not limited to: buildings or permanent structures, hard surface parking areas, concrete pads, structural foundations, retaining walls, permanent tents (erected for more than 90 days) and permanent alteration to the landscape (fill, gravel, berms, hills, dugouts, amphitheatres). The conversion of existing buildings and the construction associated with bringing them up to public assembly building code is also deemed as the construction or erection of a permanent facility. If permanent facilities are required, an application and approval of the Commission is necessary.

For the purposes of this policy, parking areas must not be permanent (asphalt, concrete, gravel, etc) and parking must not interfere with the farm's agricultural productivity. All vehicles visiting the farm for the event must be parked on site. To minimize impacting farm land, parking should be along field edges, adjacent to internal farm driveways and roads, and in farm yard areas or immediately adjacent to farm buildings and structures.

Personal family celebrations hosted by the farm owner where no fee is charged continue to be allowed.

This Policy does not apply to agri-tourism activities. See Related Policies.

As per subsection 2.4(f) of the regulation, these conditions do not apply to wineries, cideries, meaderies, breweries and distilleries if the event(s) is held only in the ancillary food and beverage service lounge that has been developed in compliance with section 2(2.4)(b) of the Regulation. Regulation section 3(4)(k) and associated restrictions apply if the event(s) are held outside the lounge area. This means wineries, cideries, meaderies, breweries and distilleries may host an unlimited number of events in their lounge area and an additional 10 events as per section 3(4)(k) held outside the lounge area.

Local governments have the authority to regulate events with regard to structures and building occupancy (including determining if an existing farm building is appropriate for a gathering or requires upgrades for public assembly), parking, lighting, hours of operation, health and safety, noise, access for police, fire and emergency vehicles, etc. Local governments have the authority to require permits for events.

Events in excess of the what is permitted under section 3(4)(k) require an application pursuant to section 20(3) of the Agricultural Land Commission Act and approval of the Commission.

TERMS:

family event means an event attended by

- (a) family members, and
- (b) close personal friends or close business associates of family members

family member with respect to a person means

- (a) parents, grandparents and great grandparents,
- (b) spouse, parents of spouse and stepparents of spouse,
- (c) brothers and sisters,
- (d) children or stepchildren, grandchildren and great grandchildren, and

(e) aunts, uncles, cousins, nephews and nieces

fee or other charge includes a gift in lieu of a fee or charge given in connection with the event

wedding means the ceremony of marriage or a marriage-like ceremony and/or the reception celebration

music festival means concert or concert series no more than 24 hours in duration

Unless defined in this policy, terms used herein will have the meanings given to them in the ALCA or the Regulation.

RELATED POLICY:

ALC Policy L-04 Activities Designated as a Farm Use: Agri-Tourism Activities in the ALR

ALC Policy L-03: Activities Designated as Farm Use: Wineries and Cideries in the ALR

ALR Policy L-21: Activities Designated as Farm Use: Brewery, Distillery and Meadery in the ALR