



**INFORMATION BULLETIN 07**

**SOIL OR FILL USES IN THE ALR**

**March 22, 2019**

**Contents**

1.	SCOPE OF THIS INFORMATION BULLETIN .....	2
2.	RECENT CHANGES TO STATUTE AND REGULATIONS .....	2
3.	PLACEMENT OF FILL OR REMOVAL OF SOIL IN THE ALR .....	3
	A. Fill Placement or Soil Removal That May Occur Without Authorization .....	3
	B. Fill Placement or Soil Removal That Requires Authorization .....	4
4.	REMOVAL OF AGGREGATE.....	4
	C. Aggregate Removal That May Occur Without Authorization .....	4
	D. Aggregate Removal That Requires Authorization .....	4
5.	PROCESS TO REQUEST AUTHORIZATION.....	5
	A. Notice of Intent Process .....	5
	B. Soil or Fill Use Application Process.....	6
	C. Soil or Fill Use Application Considerations.....	7
6.	ROLE OF LOCAL GOVERNMENT .....	8
	E. Notice of Intent.....	8
	F. Soil or Fill Use Application .....	8
	G. Consistency with Zoning and Other Bylaws .....	9
7.	LAND DEVELOPMENT WORKS.....	9
8.	RESIDENTIAL CONSTRUCTION .....	9
9.	COMPLIANCE AND ENFORCEMENT .....	10
10.	GLOSSARY .....	10

## 1. SCOPE OF THIS INFORMATION BULLETIN

This information bulletin provides guidance to assist in interpreting the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (**ALCA**), the Agricultural Land Reserve General Regulation (the **ALR General Regulation**) and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**), in relation to fill placement or soil or aggregate removal in the agricultural land reserve (**ALR**). The ALCA, the ALR General Regulation and the ALR Use Regulation will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA, the ALR General Regulation and the ALR Use Regulation. All other applicable provincial and federal laws and regulations, as well as applicable local government bylaws, must also be complied with.

## 2. RECENT CHANGES TO STATUTE AND REGULATIONS

Effective February 22, 2019, the ALCA has been amended and the ALR Use Regulation has been created. Though many concepts contained in the ALCA and its regulations are unchanged from the past, there have been significant changes in relation to fill placement, soil removal, and aggregate removal. All references in this information bulletin to the ALCA and its regulations are as of February 22, 2019, unless otherwise stated.

The following is a summary of key fill placement, soil removal, and aggregate removal changes to the ALCA and ALR Use Regulation:

- Farm use is no longer defined in any circumstance to include soil removal or fill placement.
- Non-farm use is no longer defined in any circumstance to include soil removal or fill placement.
- Only in very limited circumstances, which are expressly identified in the ALR Use Regulation, can fill placement or removal of soil or aggregate be undertaken without interaction with the Agricultural Land Commission (ALC) via a *Notice of Intent* or a *Soil or Fill Use Application* as outlined in this bulletin.
- Prohibited fill has been defined.

The changes to the ALCA and the regulations mean that previous ALC bylaws, policies and information bulletins in relation to fill placement, soil removal and aggregate removal are superseded.

**Anyone who intends to place fill on land in the ALR or to remove soil or aggregate from land in the ALR must comply with the ALCA and its regulations.**

### 3. PLACEMENT OF FILL OR REMOVAL OF SOIL IN THE ALR

#### A. Fill Placement or Soil Removal That May Occur Without Authorization

See Section 4 of this bulletin for information on Aggregate Removal.

The following fill placement or soil removal activities are permitted uses and are considered “**Exempted Activities**” or an “**Exempted Activity**” and do not require authorization from the ALC:

- constructing or maintaining a structure for farm use OR for a principal residence **if** both of the following conditions are met:
  - (i) the total area from which soil is removed, or on which fill is placed, is 1,000 m<sup>2</sup> or less; AND
  - (ii) if the area from which the soil is removed, or on which the fill is placed, is in a floodplain, the resulting elevation level is consistent with the minimum elevation level established under all applicable local government enactments and first nation government laws, if any, respecting flood protection in the floodplain;

See the Section 9 “Glossary”, found at the end of this bulletin, for the definition of “**structure for farm use**” and “**principal residence**”.

- constructing or maintaining berms for producing cranberries, if any fill placed on the area is (i) no higher than 2 m above the natural grade, and (ii) no wider than 10 m at the base;
- constructing or maintaining flood protection dikes, drainage, irrigation and livestock watering works for farm use, if the total annual volume of soil removed or fill placed is 320 m<sup>3</sup>/16 ha or less;
- maintaining an existing farm road, if the total annual volume of soil removed or fill placed is 50 m<sup>3</sup> or less;
- using clean sand as a top-dress for berry production, if the total annual volume of soil removed or fill placed is 100 m<sup>3</sup>/ha or less;
- applying soil amendments, if incorporated into the soil to a depth of 30 cm or less. “Soil amendment” means compost, fertilizer, manure, mulch and soil conditioners;
- conducting soil research and testing, if the soil removed or fill placed is limited to the amount necessary for the research or testing.

For any of the above purposes, fill must not include any of the following, which are defined as **Prohibited Fill** in the ALR Use Regulation:

- (a) construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste;
- (b) asphalt;
- (c) glass;

- (d) synthetic polymers (e.g., plastic drainage pipe);
- (e) treated wood;
- (f) unchipped lumber.

## **B. Fill Placement or Soil Removal That Requires Authorization**

Other than those fill placement and soil removal activities described as Exempted Activities, a person must not place fill on, or remove soil from, land in the ALR without successfully completing one of the following processes:

- **Notice of Intent** – A landowner who wishes to place fill or remove soil in the ALR must submit a *Notice of Intent* to the CEO of the Commission in accordance with the process set out in this bulletin in Section 5.
- **Soil or Fill Use Application** - A landowner is always at liberty to make an application for fill placement or soil removal to be decided by the Commission under s. 25 of the ALCA. If the Commission approves the *Soil or Fill Use Application*, the landowner may proceed with the approved use on the terms of that approval.

If a landowner is unsure as to which type of authorization they should seek, they should contact the Commission staff for guidance at [ALC.Soil@gov.bc.ca](mailto:ALC.Soil@gov.bc.ca).

**A person who places fill or removes soil from land in the ALR without successfully having completed one of these processes, may be subject to a penalty or order to remediate the land or remove the unauthorized fill.**

## **4. REMOVAL OF AGGREGATE**

### **C. Aggregate Removal That May Occur Without Authorization**

If a person engages in aggregate removal within the following parameters, a *Notice of Intent* is not required and the removal will not breach the ALCA (ALR Use Regulation, s. 26) (a “**Section 26 Aggregate Removal**”) if:

- the total volume of aggregate removed from any single parcel is less than 500 m<sup>3</sup>; and,
- regardless of the volume of aggregate removed, the disturbed area is rehabilitated in accordance with good agricultural practice as soon as reasonably practicable after (i) aggregate removal is complete, if the aggregate is removed as part of a single continuous operation, or (ii) each stage of aggregate removal is complete, if subparagraph (i) does not apply; and,
- the cultivable surface layer of soil is salvaged, stored on the parcel and available for rehabilitation in accordance with the bullet point above.

### **D. Aggregate Removal That Requires Authorization**

A person must not remove aggregate from land in the ALR, with the exception of activities related to Section 26 Aggregate Removal, without successfully completing either a *Notice of Intent* or *Soil or Fill Use Application*, as described in this bulletin.

**A person who removes aggregate from land in the ALR without successfully having completed one of these processes, may be subject to a penalty or order to remediate the land or remove the unauthorized fill.**

## 5. PROCESS TO REQUEST AUTHORIZATION

If a landowner is unsure as to which type of authorization they should seek, they should contact ALC staff for guidance at [ALC.Soil@gov.bc.ca](mailto:ALC.Soil@gov.bc.ca).

### A. Notice of Intent Process

If a landowner intends to place fill or remove soil or aggregate for reasons other than an Exempted Activity, the landowner must submit the *Notice of Intent* prior to initiating an activity. The *Notice of Intent* is submitted through the ALC Application Portal along with the prescribed \$150 fee: ALCA s. 20.3(1)(c), ALCA General Regulation, s. 33.1(6). This is the required manner of submission under s. 20.3(1)(c) of the ALCA. Please see [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions) on the ALC website for more information.

**The purpose of a *Notice of Intent* is to seek authorization prior to lawful placement of fill or removal of soil or aggregate, and not as a mechanism to seek retroactive approval.**

#### I. Receipt of a Complete Notice of Intent

The CEO and employees of the Commission to whom authority is delegated under s. 20.3(6) of the ALCA (together referred to as the CEO as applicable in this bulletin) have certain powers and functions once both the *Notice of Intent* and fee have been received. The CEO will acknowledge the *Notice of Intent* when it has been received in the required form and manner and the fee has been paid. The *Notice of Intent* is not considered to be complete unless it is submitted to the CEO in the required form and manner and the fee has been paid.

**The 60 calendar day period for reviewing the *Notice of Intent* does not start running until the *Notice of Intent* has been acknowledged as complete.**

#### II. Additional Information Request from CEO

Upon review of a complete Notice of Intent, the CEO may request additional information from the landowner who submitted the *Notice of Intent*: ALCA s. 20.3(2)(a). The CEO has 60 days from when the *Notice of Intent* (in the form and manner) is found to be complete to request additional information.

Once all of the additional information requested by the CEO is provided, the CEO has 60 days either to:

- approve the placement of fill or the removal of soil or aggregate (either as set out in the *Notice of Intent* or subject to limits and conditions) (the “**CEO Approval**”) or
- issue a written order that the person stop or not engage in placing fill or removing soil or aggregate (the “**CEO Refusal**”): ALCA s. 20.3(2), (4).

**The 60 day period for issuing either the CEO Approval or the CEO Refusal does not start running until the CEO has received all of the additional information requested.**

If the CEO does not issue either a CEO Approval or a CEO Refusal within the 60 day period from receipt of all the additional information requested, fill placement or removal of soil or aggregate as described in the *Notice of Intent* will not contravene the ALCA or the regulations except if Prohibited Fill is placed on the property.

### III. CEO does not request additional information

If the CEO does not request additional information from the person who submitted the *Notice of Intent*, the CEO must within 60 days from receipt of the *Notice of Intent* (in the required form and manner) and fee, either:

- approve the fill placement or soil or aggregate removal activity (either as set out in the notice or subject to limits and conditions)(**CEO Approval**), or
- issue a written order that the person stop or not engage in placing fill or removing soil or aggregate (**CEO Refusal**): ALCA s. 20.3(2), (4).

### IV. Compliance with CEO Approval

A landowner who receives a CEO Approval may place fill or remove soil or aggregate in accordance with the terms of that approval. The CEO Approval will indicate terms and conditions of the fill placement or soil or aggregate removal activity.

### V. CEO Refusal

If the landowner who receives a CEO Refusal still wishes to place fill or remove soil or aggregate, he or she must submit and have an approved *Soil or Fill Use Application* to the Commission.

## **B. Soil or Fill Use Application Process**

A *Soil or Fill Use Application* is a form of “use application” to be decided by the Commission under s. 25 of the ALCA. A *Soil or Fill Use Application* may be made in any of the following circumstances:

- if a landowner in the ALR wishes to seek Commission approval via a use application rather than going through the *Notice of Intent* process;
- if a landowner in the ALR commences but changes their mind before completion of the *Notice of Intent* process and wishes to seek Commission approval via a use application;
- if at the conclusion of the *Notice of Intent* process, the CEO has issued a CEO Approval and the landowner is not satisfied with the terms and conditions of that approval and wishes to have different terms and conditions; or
- if at the conclusion of the *Notice of Intent* process, the CEO has issued a CEO Refusal.

If a *Notice of Intent* and associated fee have already been submitted, the *Soil or Fill Use Application* fee is \$1,350; otherwise the fee is \$1,500: ALR General Regulation, s. 33(1.1).

The *Soil or Fill Use Application* must be submitted through the ALC Application Portal. Please see [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions) on the ALC website for more information. This is the required manner of submission under s. 20.3(5) of the ALCA.

On receiving a *Soil or Fill Use Application*:

- the Commission must reject the application if the fill to be placed includes any form of **Prohibited Fill**; or,
- the Commission must do one of the following:
  - (a) refuse permission for the fill placement or removal of soil or aggregate;
  - (b) grant permission, with or without terms or conditions, for the use applied for, or
  - (c) grant permission for an alternative use, with or without terms or conditions, as applicable: ALCA, s. 25(1)(b).

### **C. Soil or Fill Use Application Considerations**

For examples of general considerations that the Commission may take into account in determining a use application, please see [www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers).

Among the considerations that the Commission is likely to take into account on a *Soil or Fill Use Application* for soil or fill use are the following:

- Will the fill placement or soil removal aid the farm/farming activity?
- Will the fill placement or soil removal reduce the agricultural capability of the land, degrade soils, or limit the range of crops that can be grown on the subject property compared to the current crop suitability of the land?
- Is fill placement or soil removal the only means available to address implementation of standard agricultural best practices?
- Will the fill placement or soil removal aid in the rehabilitation of agricultural lands severely impacted by past fill activities or other activities that have degraded agricultural land, whether permitted or not permitted?
- Will the fill placement foul, obstruct, or impede the flow of any waterway?
- If fill is required for drainage improvements, will the proposed fill height exceed more than 0.5 metres above the maximum height of the water table (as confirmed by a Qualified Registered Professional) which is equivalent to a Class 1 excess water limitation?

- Will the final finished grade of the subject property complement adjacent landforms and provide for a smooth transition between the land contours and drainage channels on adjacent lands and the reclaimed area?
- How long are fill placement activities expected to last? Generally, the Commission will not consider fill placement activities that would extend beyond two years.

If the Commission approves a *Soil or Fill Use Application*, the fill placement or soil or aggregate removal activity may proceed only in accordance with that approval.

A person who places fill or removes soil or aggregate from land in the ALR without successfully having completed a *Notice of Intent* or a *Soil or Fill Use Application* may be subject to a penalty or order to remediate the land or remove the unauthorized fill.

**A *Notice of Intent* may NOT be made for a *Soil or Fill Use Application* that was refused by the Commission.**

## 6. ROLE OF LOCAL GOVERNMENT

The role of local government will depend on whether the landowner has submitted a *Notice of Intent* or a *Soil or Fill Use Application*.

### E. Notice of Intent

Local governments are notified when a *Notice of Intent* is submitted; however they do not have a role in processing or evaluating a *Notice of Intent*, unless the CEO requests their input. Local governments are also copied on decisions once the CEO has rendered them.

The local government must NOT approve or permit fill placement or soil or aggregate removal activities unless:

- the fill placement or soil removal is an **Exempted Activity**; or,
- there is a CEO Approval for the fill placement or removal of soil or aggregate.

### F. Soil or Fill Use Application

An application to the Commission asking it to approve a soil or fill use may be submitted through the local government.

Local governments that receive a *Soil or Fill Use Application* under section 34 (4) of the ALCA must:

- (a) review the application, and
- (b) forward to the Commission the application together with the comments and recommendations of the local government or the first nation government in respect of the application



The local government must NOT approve or permit fill placement or removal of soil or aggregate until such time that the Commission has approved the *Soil or Fill Use Application* for the subject property.

For more information on the process for making applications to the Commission, please see the Commission's website at [www.alc.gov.bc.ca/alc/content/applications-and-decisions](http://www.alc.gov.bc.ca/alc/content/applications-and-decisions).

### G. Consistency with Zoning and Other Bylaws

Any portion of a local government bylaw that intends to allow a use of land in the ALR that is not permitted under the ALCA or the ALR Use Regulation, or contemplates a use of land that would impair or impede the intent of the ALCA or the ALR Use Regulation, is inconsistent with the ALCA or the ALR Use Regulation and has no force or effect: ALCA, ss. 46(4), (5).

The placement of fill or removal of soil or aggregate in contravention of the ALCA or the ALR Use Regulation may be subject to compliance and enforcement action even if the use seems to comply with a local government bylaw.

## 7. LAND DEVELOPMENT WORKS

Farm use of land in the ALR includes “a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*”: ALCA, s. 1. The definition of “farm operation” in the *Farm Practices Act* includes “clearing, draining, irrigating or cultivating land” if “involved in carrying on a farm business”. A subset of this category of work is known as “land development works”, which includes all of the following:

- (a) levelling and berming agricultural land;
- (b) constructing reservoirs;
- (c) constructing works ancillary to clearing, draining, irrigating, levelling or berming agricultural land and to constructing reservoirs.

Some of these land development works may require fill placement or removal of soil; however, **this does not mean that these activities can occur without authorization of the Commission**. Authorization in the form of a *Notice of Intent* or *Soil or Fill Use Application* **must be obtained** (other than for **Exempted Activities**) before the fill placement or soil or aggregate removal activity associated with land development works is undertaken.

## 8. RESIDENTIAL CONSTRUCTION

Fill placement or removal of soil or aggregate is permitted for the construction or maintenance of a principal residence if:

- the total area from which soil or aggregate is removed or on which fill is placed is 1,000 m<sup>2</sup> or less, AND

- the total floor area of the principal residence is 500 m<sup>2</sup> or less, or the residence has been authorized by a *Non-Adhering Residential Use Application*. See Information Bulletin 05: Residences in the ALR for more information on residential uses.

If the affected area is in a floodplain, an additional condition applies: the resulting elevation level must be consistent with applicable local government or first nation government requirements for flood protection: ALR Use Regulation, s. 35.

Removing soil or aggregate from, or placing fill on, ALR land in connection with other residential uses (such as for the construction of an additional residence, alteration of a residence or where the area affected by a principal residence is greater than 1,000 m<sup>2</sup>) is not permitted. A landowner seeking to remove soil or aggregate or place fill that exceeds the 1000 m<sup>2</sup> condition may submit a *Notice of Intent* along with payment of the required fee. The landowner may also apply to the Commission through a *Soil or Fill Use Application* under s. 25 of the ALCA.

**Prohibited Fill is not permitted for the construction or maintenance of any residential uses.**

## 9. COMPLIANCE AND ENFORCEMENT

The Commission receives many complaints regarding fill, soil and aggregate-related activities on ALR land. Compliance and enforcement officials of the Commission have a wide range of compliance and enforcement mechanisms available under ss. 49-57 of the ALCA. This includes mechanisms to ensure that the ALCA, regulations and orders are complied with, that land can be rehabilitated where non-compliance occurs, and that violations can be penalized administratively or through the courts.

**The purpose of a *Notice of Intent* is to seek authorization prior to lawful placement of fill or removal of soil and aggregate, and not as a mechanism to seek retroactive approval.**

## 10. GLOSSARY

The following key definitions are relevant to this information bulletin:

“**aggregate**” means sand, gravel, crushed stone, quarry rock and similar materials used in the construction and maintenance of civil and structural projects

“**ALCA**” means the *Agricultural Land Commission Act*

“**ALR**” means the Agricultural Land Reserve

“**ALR General Regulation**” means the Agricultural Land Reserve General Regulation

“**ALR Use Regulation**” means the Agricultural Land Reserve Use Regulation

“**berming**” means the construction of dykes;

“**CEO**” means the Chief Executive Officer of the Commission and, as applicable, such employees to whom powers and duties are delegated under s. 20.3(6) of the ALCA

**“clearing”** means tree and stump removal undertaken to prepare land for cultivation

**“Farm Practices Act”** means the *Farm Practices Protection (Right to Farm) Act*

**“structure for farm use”** means structures used in a farm operation for the growing, producing, raising, or keeping of farm animals or plants, including mushrooms and aquaculture facilities, and the primary products of those plants and animals

**“farm use”** (a) means an occupation or use of agricultural land for (i) farming land, plants, mushrooms, truffles or animals, (ii) a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act* or (iii) a purpose designated as a farm use by regulation, and (b) does not include a residential use or a soil or fill use: ALCA, s. 1

**“fill”** means “any material brought onto agricultural land other than materials exempted by regulation”: ALCA, s. 1

**“flood protection requirements”** means the elevation level as established by local government bylaws for flood protection within a defined floodplain

**“levelling”** means reshaping the soil surface within a field or parcel of land to eliminate high and low areas and resulting in a uniform field level (that is, cutting high spots and filling in low spots);

**“non-farm use”** means “a use of agricultural land other than a farm use, a residential use or a soil or fill use”: ALCA, s. 1

**“Notice of Intent”** means a notice of intent submitted to the CEO under s. 20.3(1)(c)(ii) of the ALCA, in the form and manner that the CEO requires

**“placement”** of fill, or **“fill placement”**, means to deposit, place, store, or stockpile directly or indirectly, fill on any land in the ALR, where that fill did not previously exist

**“principal residence”** means the residence permitted under section 20.1(1)(a) of the ALCA

**“Prohibited Fill”** means (a) construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste; (b) asphalt; (c) glass; (d) synthetic polymers; (e) treated wood; (f) unchipped lumber: ALR Use Regulation, s. 36.

**“Qualified Registered Professional”** means a person registered with a professional association including the Association of Professional Engineers and Geoscientists of BC, the Corporation of the Province of British Columbia Land Surveyors, British Columbia Institute of Agrologists or another person who is qualified because of knowledge, training and experience to organize, supervise and perform the relevant services

**“remove”** or **“removal”** means the act of removing soil or aggregate from any land in the ALR, where it existed or stood, which place or location shall include a stockpile or other storage facility

**“reservoir”** means a water impoundment that is used for agricultural water supply.

“**soil**” includes the entire mantle of unconsolidated material above bedrock other than minerals as defined in the *Mineral Tenure Act*: ALCA, s. 1

“**soil amendment**” means compost, fertilizer, manure, mulch and soil conditioners: ALR Use Regulation, s. 1

“**soil conditioner**” means organic or inorganic matter that has beneficial effects on the biological, chemical, or physical properties of soil

“**soil or fill use**” means (a) the removal of soil from, or the placement of fill on, agricultural land, and (b) does not include a farm use or a residential use: ALCA, s. 1

“**Soil or Fill Use Application**” means an application for permission made for a soil or fill

“**stockpile**” means a man-made accumulation of soil, fill, or organic materials held in reserve for future use, distribution or removal.

“**use application**” means an application for permission made under any of the following: (a) s. 20(2) of the ALCA for a non-farm use; (b) s. 20.1(2)(a) for a non-adhering residential use; (c) section 20.3 (5) for a soil or fill use: ALCA, s. 1

“**wood residue**” as defined by the Code of Practice for Agricultural Environmental Management means wood or a wood product that (a) is chipped or ground, (b) originates from (i) wood processing, (ii) the clearing of land, if the majority of the greenery is removed and no soil is present, or (iii) trimming or pruning activities, (c) has not been treated or coated with chemicals, including preservatives, glues, paints, varnishes, oils or finishing materials, (d) does not contain a foreign substance harmful to humans, animals, or plants when combusted, (e) has not been exposed to salt water, and (f) has not been used for or recovered from construction or demolition activities

“**wood waste**” includes wood residue, hog fuel, mill ends, bark, and sawdust, but does not include demolition waste, construction waste, tree stumps, branches, logs or log ends, or log yard waste