



INFORMATION BULLETIN 05

RESIDENCES IN THE ALR

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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**) and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**), in relation to residences in the agricultural land reserve (**ALR**). The ALCA and ALR Use Regulation will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA and the ALR Use Regulation. All other applicable laws, regulations and bylaws related to residential uses 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 changes to the use of ALR land for residences. All references in this information bulletin to the ALCA and the ALR Use Regulation are as of February 22, 2019, unless otherwise stated.

The following is a summary of key residential changes to the ALCA and the ALR Use Regulation:

- Generally land in the ALR may have **no more than one residence** per parcel: ALCA, s. 20.1(1)(a), subject to certain grandfathering exceptions (see “Grandfathering Provisions” section). In addition, the Commission may approve an application for an additional residence if necessary for farm use, but the Commission is prohibited from approving an additional residence otherwise: ALCA, s. 25(1.1).
- New size, siting and use requirements apply to residential structures: ALCA, s. 20.1(1)(c).
- The **total floor area of a principal residence must be 500 m² or less** in order to comply with the ALCA, though a local government may impose a lower size cap under their bylaws: ALCA, ss. 20.1(1)(b), 46. The Commission has resolved on a definition of “total floor area” for the purpose of the ALCA and ALR Use Regulation, as set out in the “Glossary” section at the end of this bulletin.
- The ALCA and regulations had previously contained provisions facilitating the construction of additional dwellings for farm help, manufactured homes for immediate family members, accommodation above an existing farm building, or (in parts of the province) a second single family dwelling. These provisions are no longer found in the ALCA and the ALR Use Regulation, though the ALCA provides some grandfathering protection for pre-existing structures of these kinds and the Commission may approve an application for an additional residence if necessary for farm use.

- If a landowner wishes in the absence of certain grandfathering exceptions to have a principal residence having a total floor area that is more than 500 m², to have an additional residence, or to use a residential structure in a manner that contravenes the regulations, the landowner may submit an application to the Commission, through the local government, seeking Commission approval: ALCA, ss. 20.1(2), 25. The ALCA calls this type of application an “**application for a non-adhering residential use**”. More information about this type of application is provided later in this bulletin under the heading “Applications for Non-Adhering Residential Use”.

3. ROLE OF LOCAL GOVERNMENTS

A. Role as Approving Body

I. Principal Residence

In order to comply with the ALCA, an approving body such as a local government may not approve or permit construction or alteration of a principal residence on ALR land unless the principal residence has a total floor area of 500 m² or less and is sized, sited and used in accordance with the ALR Use Regulation, or is permitted by the Commission on application: ALCA, s. 18. See the Section 11 “Glossary”, found at the end of this bulletin, for the definition of “**total floor area**”.

II. Additional Residence

An approving body may not approve or permit construction or alteration of an additional residence on ALR land unless the residence is approved by the Commission on application or is permitted under the ALR Use Regulation: ALCA, s. 18.

B. Applications

An application to the Commission asking it to approve a non-adhering residential use, such as new construction of a principal residence with a total floor area of more than 500m² or an additional residence, may be submitted through the landowner’s local government. 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 as well as Section 10 of this information bulletin entitled “Applications For Non-Adhering Residential Use”.

C. Consistency with Zoning and Other Bylaws

Any portion of a local government bylaw that purports 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).

For example, **if a zoning bylaw provides for more residences on ALR land than do the ALCA and the ALR Use Regulation, its provision for extra residences is of no force or effect and cannot be relied on.**

Construction, alteration or use of any residences in contravention of the ALCA or the ALR Use Regulation may be subject to compliance and enforcement action even if the construction, alteration or use seems to be in compliance with a local government bylaw.

D. Local Government May Restrict

Local government bylaws can be more restrictive of residential use of the ALR than the ALCA: ALCA, s. 46(6). The ALR Use Regulation identifies certain designated farm uses and permitted non-farm uses that local governments must not prohibit, but places no limitation on local government powers to prohibit or otherwise restrict residential uses of ALR land. **As such, a local government may impose restrictions on sizing, siting and use of principal residences on ALR land additional to those found in the ALCA.** For example, a local government could enact a bylaw imposing a size limit smaller than 500 m² total floor area on principal residences on ALR land.

E. Areas Without Zoning Bylaws

Note that some areas of the province do not have zoning bylaws. The absence of local zoning bylaws does not relieve a landowner from complying with the restrictions in the ALCA and ALR Use Regulation.

4. NEW CONSTRUCTION OF A RESIDENCE ON ALR LAND THAT HAS NO EXISTING RESIDENCE

No application is required to the Commission in order to construct a residence with a total floor area of 500 m² or less on a parcel of ALR land which has **no existing residence** (a “**vacant parcel**”).

The Commission will consider the residence when built on a vacant parcel to be the “principal residence”.

If the proposed principal residence is more than 500m² or there is already another residence located on the ALR land, in order to construct the residence the landowner must apply to the Commission through the local government and obtain permission from the Commission: ALCA, s. 20.1(1).

“Construct” includes “to build a new structure” or “to place on land a new structure that is fully or partially pre-fabricated”: ALCA, s. 1(1).

5. GRANDFATHERING PROVISIONS

A. Completing a Residential Construction Initiated by February 22, 2019

If by February 22, 2019 a landowner had already initiated construction of a residence in the ALR, in certain circumstances the owner may be able to complete that work without application to the Commission. In other circumstances, the work will not be able to proceed unless the Commission first approves an **application for a non-adhering residential use** made by the owner: ALCA, ss. 20.1(2), 25. See Section 10 “Applications for Non-Adhering Residential Use” later in this bulletin.

I. Unfinished Principal Residence

Total Floor Area of 500 m² or less

If the landowner is completing construction of an unfinished principal residence which will on completion have a total floor area of **500 m² or less** and is otherwise also compliant with the ALCA and regulations, the owner may complete that construction without applying to the Commission for permission to do so.

Total Floor Area of more than 500 m²

If the landowner is completing construction of an unfinished principal residence which will, if completed as designed, have a total floor area of **more than 500 m²**, the landowner may continue if:

- a) Where building permit authorization **is required** by local government bylaw
 - all required authorizations to construct the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins on or before November 5, 2019, AND
 - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw
 - if no authorizations to construct the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
 - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

II. Unfinished Additional Residence

If the landowner is completing construction of a residence that, **if completed as designed**, will be an additional residence, the landowner may do so if:

- a) Where building permit authorization **is required** by local government bylaw
 - all required authorizations to construct the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins before February 22, 2019, AND
 - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw
 - if no authorizations to construct the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
 - from the date construction of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

B. Completing Residential Alterations Initiated by February 22, 2019

If an owner wants to complete alterations to a residence on ALR land that had been initiated prior to February 22, 2019, the owner may do so without application to the Commission only in limited circumstances.

To “alter” means “(a) to alter the exterior of a structure so as to increase its size; (b) to move or alter the exterior walls or edges of a structure so as to change its siting”: ALCA, s. 1(1).

I. Completing Alterations to a Principal Residence

Total Floor Area of 500 m² or less

If the landowner is completing alterations to a principal residence that will not cause its total floor area to exceed **500 m²** and that will otherwise also be compliant with the ALCA and regulations, the landowner may complete those alterations without applying to the Commission for permission to do so.

Total Floor Area of more than 500 m²

Alterations that had already been commenced as of February 22, 2019 to a principal residence that, **if completed as designed**, will have a total floor area of more than 500 m², may be completed if:

- a) Where building permit authorization **is required** by local government bylaw
 - all required authorizations to alter the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins on or before November 5, 2019, AND
 - from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw
 - if no authorizations to alter the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
 - from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

II. Completing Alterations to an Additional Residence

Alterations that had already been commenced as of February 22, 2019 to a residence in the ALR that, **if completed as designed**, will be an additional residence, may be completed if:

- a) Where building permit authorization **is required** by local government bylaw
 - all required authorizations to alter the residence were granted before February 22, 2019 and construction of the foundation of the residence substantially begins before February 22, 2019, AND
 - from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry; OR
- b) Where building permit authorization **is NOT required** by local government bylaw

- if no authorizations to alter the residence are required, construction of the foundation of the residence had substantially begun before February 22, 2019; AND
- from the date alteration of the residence began until completion, the construction or alteration (i) is carried out in accordance with all applicable authorizations and enactments, and (ii) continues without interruption, other than work stoppages considered reasonable in the building industry.

C. New Alterations Initiated After February 22, 2019

Alterations that were not initiated by February 22, 2019 may also be undertaken in some circumstances on ALR land even without application to the Commission.

An owner who wishes to alter a residential structure that exists on ALR land on February 22, 2019 but that (a) is an additional structure; or (b) is a principal residence with a total floor area of more than 500 m²; or (c) is of a size or is sited in contravention of a regulation, may do so in some circumstances. The owner may alter the structure without applying to the Commission **only** if the alteration will lead to no further contravention of the ALCA or regulations: ALCA, s. 20.2.

The Commission expects that the alterations undertaken in the context of the above paragraph would eliminate, or at least reduce or not worsen, any pre-existing contravention of the ALCA or the regulations. It does not expect that alterations would increase the size of the residential structure or initiate a non-adhering residential use; any such alterations should be the subject of an application to the Commission.

An owner who wishes to alter a principal residence that will remain no larger than 500 m² and that will otherwise also remain in compliance with the ALCA and regulations may also do so without application to the Commission.

D. Manufactured Home on ALR Land

If on February 22, 2019, there was one manufactured home which was an additional residence, was constructed in accordance with all applicable enactments, and was used as a residence by a member of the immediate family of the owner of the land in the ALR, it may continue to be used as a residence in the ALR if on February 22, 2019 there was one manufactured home, up to 9 m in width, constructed in accordance with all applicable enactments and used as a residence by a member of the immediate family of the owner of the land in the ALR, it may continue to be used as a residence in the ALR if:

- there is no other residence on the land other than the principal residence; AND
- the size and siting of the residence is not altered after February 22, 2019 unless
 - permitted on application, OR

- the size of the manufactured home or the total area occupied by all residences and other residential structures, roads and service lines, and all agricultural land between them, as applicable, is not increased by the alteration.

ALR Use Regulation, s. 32

There is no right to replace a residential structure which is permitted due to a grandfathering exception. An application to the Commission for its approval is required to replace such a structure. See the “Replacing a Residence” section for more information.

E. Single-Level Accommodation Constructed Above an Existing Building on the Farm

If on February 22, 2019 there was accommodation that had been constructed in accordance with all applicable enactments above an existing building on the farm and that had only a single level, it may continue to be used as a residence in the ALR if:

- there is no other residence on the land other than the principal residence; AND
- the size and siting of the residence is not altered after February 22, 2019 unless
 - permitted on application, OR
 - the total area occupied by all residences and other residential structures, roads and service lines, and all agricultural land between them, as applicable, is not increased by the alteration.

ALR Use Regulation, s. 32

There is no right to replace a residential structure which is permitted due to a grandfathering exception. An application to the Commission for its approval is required to replace such a structure. See the “Replacing a Residence” section for more information.

F. Second Single Family Dwelling in Former Zone 2 (“Zone 2 Second SFD”)

Until February 22, 2019, land in the ALR was considered to be either in Zone 1 (the panel regions of the South Coast, Island and Okanagan panels) or Zone 2 (the panel regions of the Interior, North and Kootenay panels).

Prior to February 22, 2019, certain activities were permitted in Zone 2 that were not permitted in Zone 1. The term “**Zone 2 Second SFD**” is used in this bulletin to refer to a second single family dwelling in the area of the province that until February 22, 2019 was Zone 2, if the parcel was at least 50 ha in size and if the total area occupied by all residences and other residential structures, roads and service lines, and all land between them, was 4 000 m² or less.

If on February 22, 2019 there was a “**Zone 2 Second SFD**” on Zone 2 land in the ALR, constructed in accordance with all applicable enactments, the Zone 2 Second SFD may continue to be used as a residence in the ALR if:

- there is no other residence on the land other than the principal residence; AND
- the size and siting of the Zone 2 Extra Home is not altered after February 22, 2019 unless
 - permitted on application, OR
 - the total area occupied by all residences and other residential structures, roads and service lines, and all agricultural land between them, as applicable, is not increased by the alteration.

ALR Use Regulation, s. 32

There is no right to replace a residential structure which is permitted due to a grandfathering exception. An application to the Commission for its approval is required to replace such a structure. See the “Replacing a Residence” section for more information.

6. REPLACING A RESIDENCE

The term “construct” includes “to replace a structure, 75% or more of which has been substantially damaged or destroyed”: ALCA, s. 1(1). In order to replace a structure, an owner must abide by the requirements in section 20.1 and, if applicable, section 20.2 of the ALCA.

A. Parcels on which there is only one residence

If an owner is replacing the only residence on a parcel in the ALR, the total floor area of the new residence must not be more than 500 m².

B. Parcels on which there is more than one residence

An application to the Commission, and Commission approval of that application, are required to replace residences which pre-date the ALR (that is, are older than December 21, 1972), residences approved by local government under the former section 18 of the ALCA and its predecessors, residences permitted without application to the Commission under previous versions of the ALCA and regulations, and residences constructed in contravention of local zoning bylaws or the ALCA or regulations.

Whether an application is required to replace a residence that the Commission itself had previously approved on application may depend on the terms of that approval.

7. USE OF RESIDENCE IN ALR

Use of a residence located in the ALR is limited. Generally it may be used only as a residence, subject to limited exceptions:

A. Secondary Suites

The use of land in the ALR for a secondary suite is permitted if there is one suite only, located in the principal residence: ALR Use Regulation, s. 31.

B. Limited Accommodation for Tourists

See the Commission's information bulletin called "Accommodation for Tourists" for more information. Strict conditions must be met for such use.

8. SOIL OR FILL FOR RESIDENTIAL CONSTRUCTION

Removing soil from or placing fill on ALR land is permitted for the construction or maintenance of a principal residence if the total area from which soil is removed or on which fill is placed is 1,000 m² or less. 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 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 m²) is not permitted. An owner of ALR land seeking to remove soil or place fill may submit a notice of intent along with payment of the required fee to the ALC's chief executive officer requesting approval: ALCA, s. 20.3. The landowner may also apply to the Commission for a soil or fill use under s. 25 of the ALCA.

The following types of fill are prohibited on ALR land (ALR Use Regulation, s. 36):

- construction or demolition waste (including masonry rubble, concrete, cement, rebar, drywall and wood waste);
- asphalt;
- glass;
- synthetic polymers;
- treated wood;
- unchipped lumber.

9. INFRASTRUCTURE NECESSARY FOR RESIDENTIAL USE

Subject to any limits and conditions set out in Part 4 of the ALR Use Regulation, the use of agricultural land to construct, maintain or operate the following is permitted:

- (a) a structure, other than a residential structure, that is necessary for a residential use permitted under Part 4. Examples include detached garages;
- (b) a driveway or utility necessary for a residential use permitted under this part: ALR Use Regulation, s. 30.

10. APPLICATIONS FOR NON-ADHERING RESIDENTIAL USE

An owner may apply to the Commission for permission under section 25 of the ALCA for a non-adhering residential use: ALCA, s. 20.1(2). A “**non-adhering residential use**” means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m²; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1).

For more information on making applications to the Commission, please see the Commission’s website, at www.alc.gov.bc.ca/alc/content/applications-and-decisions.

Section 25(1) of the ALCA provides that on receiving a use application the Commission normally may:

- refuse permission for the use applied for,
- grant permission, with or without limits or conditions, for the use applied for, or
- grant permission for an alternative use or subdivision, with or without limits or conditions, as applicable.

With respect to an application for a non-adhering residential use, the Commission (a) must consider the prescribed criteria, if any, (b) must not grant permission for an additional residence unless the additional residence is necessary for a farm use; and (c) must reject the application if required by the regulations to do so: ALCA, s. 25(1.1).

Examples of considerations that the Commission may take into account in determining a use application are found here: www.alc.gov.bc.ca/alc/content/applications-and-decisions/what-the-commission-considers

11. GLOSSARY

The following key definitions are relevant to this information bulletin:

“additional residence” means “a residence on a parcel of agricultural land, other than the principal residence”: ALCA, s. 1(1)

“alter” means “the following: (a) to alter the exterior of a structure so as to increase its size; (b) to move or alter the exterior walls or edges of a structure so as to change its siting”: ALCA, s. 1(1)

“as designed” means as stated or shown in (a) a design, proposal or other plan approved under or accepted in support of an authorization, or (b) a design or plan finalized, before the date this section comes into force, by an architect or engineer or, if none, the designer of the residence, if no authorizations are needed to construct or alter the residence: ALCA, s. 20.2

“authorization” means a permit or other authorization, issued under an enactment, to construct or alter a residence: ALCA, s. 20.2

“construct” means “the following: (a) to build a new structure; (b) to place on land a new structure that is fully or partially pre-fabricated; (c) to replace a structure, 75% or more of which has been substantially damaged or destroyed”: ALCA, s. 1(1)

“farm use” 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”, but “farm use” does “not include a residential use or a soil or fill use”: ALCA, s. 1(1)

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

“non-adhering residential use” means “any of the following: (a) an additional residence; (b) a principal residence having a total floor area that is more than 500 m²; (c) a use of a residential structure that contravenes the regulations”: ALCA, s. 1(1)

“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(1)

“pre-existing residential structure” means “a residential structure that exists on agricultural land on the date this section comes into force [February 22, 2019], and (a) is an additional residence, (b) is a principal residence having a total floor area of more than 500 m², or (c) is of a size or is sited in contravention of a regulation”: ALCA, s. 20.2

“prescribed residential structure” is either a “structure” that, or a “vehicle” that, is “used, whether permanently or temporarily, to provide or in connection with providing accommodation as described in [Part 4 of the ALR Use Regulation]”: ALR Use Regulation, s. 29

“principal residence” means “the residence permitted under section 20.1(1)(a)”: ALCA, s. 1(1)

“residential structure” means “a structure used, during all or part of the year and whether fully or partially, as (a) a residence, (b) if prescribed, accommodation, or (c) if prescribed, in relation to a residence or accommodation”: ALCA, s. 1(1)

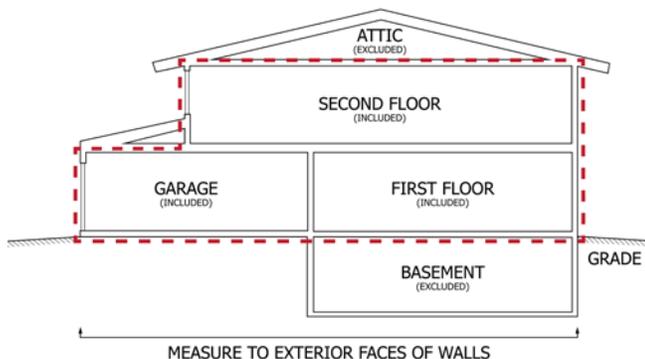
“residential use” means “a use of agricultural land for a residential structure” but “does not include a farm use or a soil or fill use”: ALCA, s. 1(1)

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

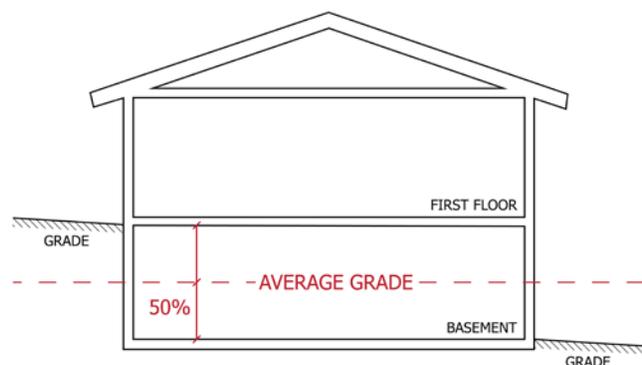
“total floor area” means, for purposes of the ALCA and ALR Use Regulation and pursuant to Commission Resolution No. 054N-2019, the total area of all floors measured to the outer surface of the exterior walls, including corridors, hallways, landings, foyers, staircases, stairwells, enclosed balconies, enclosed porches or verandas, attached garages and excluding:

- (a) unenclosed carports;
- (b) basements, with basement meaning that portion of any floor area having more than one-half its vertical height below the average finished grade at the perimeter of a building;
- (c) attics, with attic meaning the unfinished space between the roof and the ceiling of the top storey of a building or between a partial wall and a sloping roof.

Total Floor Area Illustration



Basement Illustration



“unfinished pre-existing residence” see the definition at s. 20.2 of the ALCA and in the body of the information bulletin above

“use or subdivision application” means “an application for permission made under any of the following: (a) section 20 (2) for a non-farm use; (b) section 20.1 (2) (a) for a non-adhering residential use; (c) section 20.3 (5) for a soil or fill use; (d) section 21 (2) for subdivision”: ALCA, s. 1(1)

“Zone 2 Second SFD” means a second single family dwelling in the area of the province that until February 22, 2019 was Zone 2, but only if the parcel was at least 50 ha in size and if the total area occupied by all residences and other residential structures, roads and service lines, and all land between them, was 4 000 m² or less