 <p><b>Agricultural Land Commission Act</b></p>	<p style="text-align: right;"><b>Policy L-03</b> <b>Amended April 2018</b> <b>October 2016</b></p> <p style="text-align: center;"><b>ACTIVITIES DESIGNATED AS FARM USE: ALCOHOL PRODUCTION FACILITIES IN THE AGRICULTURAL LAND RESERVE (“ALR”)</b></p>
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*This policy is intended to assist in the interpretation of the [Agricultural Land Commission Act, 2002](#), (the “ALCA”), BC Regulation 171/2002 ([Agricultural Land Reserve Use, Subdivision and Procedure Regulation](#)), (the “Regulation”) and ALC Bylaw No.2 – Placement of Fill in the Agricultural Land Reserve, (ALC Bylaw No.2). In case of ambiguity or inconsistency, the ALCA, Regulation, and ALC Bylaw No.2 will govern.*

**REFERENCE:**

**Agricultural Land Commission Act S.B.C. 2002 c.36**

*(1) “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](#).*

**Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), Sections 2 (1.1), (2.1) and 2 (2.4) and Section 1 (1)**

*Section 2(1.1) The activities designated under this section as farm uses for the purposes of the Act must not be prohibited*

- (a) by any local government bylaw except a bylaw under section 552 of the [Local Government Act](#), or*
- (b) by a law of the applicable treaty first nation government, if the activity is undertaken on treaty settlement lands.*

*Section 2(2.1) An alcohol production facility, and ancillary uses, are designated as farm uses for the purposes of the Act if*

- (a) at least 50% of the primary farm product used to make the alcohol product produced each year is grown on the farm on which the alcohol production facility is located, or*
- (b) the farm on which the alcohol production facility is located is more than 2 ha in area and at least 50% of the primary farm product used to make the alcohol product produced each year is grown*
  - (i) on the farm, or*
  - (ii) both on the farm and on another farm located in British Columbia that provides that primary farm product to the alcohol production facility under a contract having a term of at least 3 years.*

*Section 2(2.4) In subsections (2.1) and (2.2):*

*“alcohol product” means beer, cider, spirits, mead or wine;*

*“alcohol production facility” means a brewery, cidery, distillery, meadery or winery;*

*“ancillary use” means the following activities carried out at an alcohol production facility:*

- (a) processing, storing and retail sales of alcohol products produced by the alcohol*

*production facility;*

(b) *the operation of a food and beverage service lounge, if the area of the lounge does not exceed 125 m<sup>2</sup> indoors and 125 m<sup>2</sup> outdoors;*

(c) *selling an alcoholic beverage other than one produced by the alcohol production facility if the alcoholic beverage*

*(i) is sold as a single serving in a lounge referred to in paragraph (b) or a special event area operated in accordance with a special event endorsement under section 18 of the [Liquor Control and Licensing Regulation](#), B.C. Reg. 244/2002, and*

*(ii) is intended to be consumed immediately;*

(d) *Repealed. [B.C. Reg. 210/2016, s. 2 (b).]*

(e) *cooking classes, if*

*(i) the class is held in a food premises within the meaning of the [Food Premises Regulation](#) that has been constructed, and is being operated, in compliance with that regulation, and*

*(ii) the service of food is permitted under a manufacturer license issued under the [Liquor Control and Licensing Act](#);*

(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.*

**"brewery", "cidery", "distillery", "meadery" and "winery"** mean a brewery, cidery, distillery, meadery or winery, as applicable, that is licensed under the [Liquor Control and Licensing Act](#) to produce beer, cider, spirits, mead or wine;

**"primary farm product"** means the farm product that is the primary ingredient used in a fermentation process to make an alcohol product.

Section 1(1) **"farm product"** means a commodity that is produced from a farm use as defined in the Act or designated by this regulation.

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;

**ALC BYLAW No. 2–Placement of Fill in the Agricultural Land Reserve, Sections 4,5,6(j) & 7**

Section 4 Definitions:

**“Fill”** means:

- a) for the purposes of farm uses referred to in Part 2 Section 2 (2) to (2.3), (3), (4) and Part 3 of the ALRUSP, Soil and Aggregate that is clean and free of contaminants and Foreign Materials. The use of Aggregate as Fill is restricted to specified farm uses under Section 2(3) and 4(1) of the ALRUSP related to building construction and Ancillary Works as set out in Section 5;
- b) for the purposes of farm uses referred to in ALRUSP Part 3 Section 4(e), soil that is of good agricultural quality and:
  - i. has a soil texture ranging from sandy loam to silt loam and does not include heavy clays or excessively stony soils, unless approved by the Commission; and
  - ii. meets the Contaminated Sites Regulation (BC Reg. 3775/96) for agricultural soil standards and is free of foreign materials;
- c) Fill does not mean the Placement of Fill for the purposes of land development related to Clearing, Draining, Irrigating, or Leveling as defined by the Bylaw.

**“Placement of Fill”** means to deposit, place, store, or stockpile directly or indirectly, filling on any land in the Agricultural Land Reserve, where that Fill did not previously exist.

Sections 5 and 6(j) Placement of Fill for Farm Use:

Section 5 Except as otherwise permitted in this Bylaw, a person must not place Fill or undertake any action which results in the Placement of Fill on any land in the ALR until the Commission has been notified pursuant to this bylaw.

Section 6 Placement of Fill will be considered necessary under Part 2 Section 2 of the ALRUSP for the following farm uses, and exempt from the requirement to notify the Commission in accordance with Section 7, if the following requirements are met:

- j. alcohol production facilities only if associated with the construction of buildings, associated parking, landscaping and loading areas not to exceed a total combined area of 0.2 hectares or less per 16 hectares and to a height not to exceed the minimum level required to satisfy Flood Protection Requirements;

*Section 7 Notification and Decision Process for Farm Use:*

*Section 7 An owner wishing to place Fill in excess of the limits established in Section 6 above or for a farm use not specifically referenced in Section 5 must notify the Commission and applicable local government or treaty first nation, using the form provided in Schedule A, of their interest to Fill at least 60 days before engaging in the intended use.*

**INTERPRETATION:**

The Regulation permits an active agricultural operation (farm) to engage in certain value added processing and ancillary uses. The intent of the Regulation is to allow a farmer to supplement the primary agricultural production on the farm. An alcohol production facility and its defined ancillary uses may be a designated farm use provided that it meets the prescribed thresholds and is an appropriate scale and scope as per the intent of the Regulation and the ALCA. An alcohol production facility should be of a size and scale that is commensurate with the agricultural production on the parcel that it is located on. Correspondingly, an alcohol production facility would not qualify as a designated farm use if located on a parcel that is not actively producing the required Primary Farm Product.

**Primary Farm Product (PFP):** The PFP means the farm product that is the primary ingredient used in a fermentation process to make an alcohol product, generally fruit, grain or honey. Hops and other flavourings are not PFPs for the purpose of alcohol production.

There must be a robust relationship between the PFP and the farm in order for the alcohol production facility and its ancillary uses to qualify as a designated farm use. At least 50% of the PFP must be grown on the farm, OR a minimum of 2 ha of the PFP must be in production on the facility parcel if Section 2.1(b) of the Regulation applies. Evidence that may collectively assist in showing compliance with the intent of the Regulation includes:

- BC Assessment farm status on the facility parcel for the PFP, and
- A total Development Area no greater than 1.0 ha or 5% of the parcel, whichever is less, which allows substantial use of the farm for production of the PFP.

**Development Area:** The total development area of no more than 1.0 ha or 5% of the parcel, whichever is less, comprises all buildings and structures involved in processing, manufacturing and retailing, landscaping, access and parking associated with the facility, and its defined ancillary uses. It also includes other designated farm uses and/or permitted non-farm uses affiliated with the facility, such as agri-tourism accommodation.

**Farm:** A farm may be comprised of one or several parcels of land owned or leased by a farmer as a farm business. The parcel on which the alcohol production facility is located must be on, contiguous to, or in the same general geographic area as any additional parcels growing the PFP as part of the farm.

**Farm size:** If the farm is less than 2 ha, at least 50% of the PFP must be grown on the farm. If the farm is greater than 2 ha, then at least 2 ha of the PFP must be grown on the facility parcel in order to then include PFP purchased under a minimum 3 year contract from another BC farm.

**Contract:** A contract must be with another farm that is growing the PFP and not solely with a third party distributor or malter. A three party contract is permitted if the farm

growing and selling the PFP and the farm purchasing the PFP are both parties under the contract.

**50% Threshold:** The 50% threshold is measured by the quantity (measured by volume or weight) of the PFP processed and calculated on an annual basis.

**Tours & tastings:** Tours & tastings (or the free offering or sale of product samples) are considered part of the tour activity and are part of the designated farm use.

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

### **ANCILLARY USES:**

Ancillary means supplementary or secondary to the primary land use of growing a PFP (generally fruit, grain, or honey). The following alcohol production facility ancillary uses are designated as farm uses:

**Lounges:** Food and beverage service lounges up to a maximum area of 125m<sup>2</sup> indoors and 125m<sup>2</sup> outdoors.

The 125m<sup>2</sup> floor space area is roughly equivalent to a seating capacity of 65 persons in the lounge or on the patio. Thus the maximum capacity is potentially a total of 130 persons, where both indoor and outdoor seating are provided. However, the person or patron capacity remains subject to the limits and conditions established by the general manager under the [Liquor Control and Licensing Act](#).

The threshold areas specified in the Regulation for the lounge includes patio space and landscaped areas, but do not include picnic areas, the tasting room, washrooms or kitchen facilities.

For the purposes of this policy, a food and beverage service lounge is an establishment serving food and liquor that has a “lounge” endorsement added to the manufacturer license issued under the *Liquor Control and Licensing Act*.

**Kitchen facilities:** Kitchen facilities in an alcohol production facility should be commensurate with the need for limited food provision under a lounge endorsement and be clearly ancillary to the primary function of the production of alcohol. A lounge endorsement requires that food be made available to the customer, but is not required to be prepared onsite.

**Restaurants:** Restaurants, cafes, and bistros with a food primary license are not a designated farm use or a permitted non-farm use in the ALR.

**Picnic area:** Picnicking is an open air portion of the farm where visitors can eat food (brought in or purchased) and consume the alcohol product from the farm if the alcohol production facility has a “picnic area” endorsement added to their license issued under the *Liquor Control and Licensing Act*. It is not an extension of the patio.

**Events:** Alcohol production facilities may host an unlimited number of events in an endorsed lounge or special event area, and an additional 10 events as per section 3(4)(k) of the Regulation held elsewhere on the farm. Events in excess of what is permitted under section 3(4)(k) require a Non-Farm Use application and approval of the Commission. A **special event area** means a “special event area” endorsement added to a license issued under the *Liquor Control and Licensing Act*.

**Retail sales:** Retail sales of alcohol produced on the farm are allowed as an ancillary use provided they are ancillary to the otherwise operating alcohol production facility.

**Other single serve alcohol:** The sale of a limited amount of alcoholic beverages other than those produced by the alcohol production facility is allowed as an ancillary use if they are sold as a single serving in the lounge or special event area and are consumed immediately. Please refer to Liquor Control and Licensing Regulations for further details.

**Cooking classes:** Cooking classes in kitchens that are operating in compliance with the Food Premises Regulation and take place in a food and beverage service lounge are permitted under the manufacturer license under the *Liquor Control and Licensing Act*.

Uses that do not meet the thresholds established in the Regulation for alcohol production facilities or ancillary uses require a Non-Farm Use application to and approval of the Commission prior to being undertaken.

#### **PLACEMENT OF FILL:**

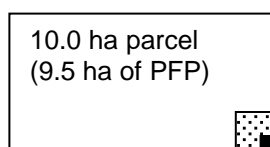
Except as otherwise permitted in ALC Bylaw No.2, a person must not place Fill or undertake any action which results in the Placement of Fill on any land in the ALR until the Commission has been notified pursuant to the bylaw.

Placement of Fill for alcohol production facilities and its ancillary uses is permitted without notification to the Commission or Commission approval for the construction of all buildings, associated parking, landscaping and loading areas not to exceed a total combined area of 0.2 hectares or less per 16 hectares and to a height not to exceed the minimum level required to satisfy Flood Protection Requirements. If a proposal exceeds these thresholds, notification to the ALC is required via Schedule A of the ALC Bylaw No.2 and an ALC response before any Placement of Fill can proceed.

Table 1.Placement of Fill - Notification Thresholds

Parcel size (ha)	Max fill area (ha)
0 - 16.0	0.2
16.0 - 32.0	0.4
32.0 – 48.0	0.6
48.0 – 64.0	0.8

**Example proportions of a 10.0 ha parcel: The suggested maximum development area is 0.5 ha for a 10.0 ha parcel (5% of the parcel). Per ALC Bylaw No.2 - 0.2 ha of Fill area is the maximum permitted for a 10.0 ha parcel without notification to the ALC.**



- - 10.0 ha parcel
- ▤ - 0.5 ha of Development Area (5% of a 10.0 ha parcel)
- - 0.2 ha of Fill placement area (0.2 ha per 16.0 ha threshold)

**LOCAL GOVERNMENT:**

Local governments have the authority to regulate alcohol production facilities by setting a maximum building and/or floor area or maximum site coverage and setbacks to a total development area of no greater than 1.0 ha or 5% of the parcel, whichever is less. Local governments may also regulate with regard to health and safety, parking, lighting, hours of operation, noise, access for police, fire and emergency vehicles and so on.

A British Columbia licensed alcohol production facility is designated by the Regulation as a farm use, and as such, may not be prohibited by a local government bylaw, except a farm bylaw approved by the Minister of Agriculture under Section 552 of the *Local Government Act*.

However, local governments should be aware that only alcohol production facilities and ancillary uses that meet the Regulation are considered to be designated farm uses that can proceed without a Non-Farm Use application to the ALC. Among other considerations, to fulfill the intent of the Regulation the size of the alcohol production facility should be commensurate with the amount of agricultural activity taking place on the farm and be ancillary to the primary activity of growing the PFP.

**RELATED POLICY:**

ALC Policy L-04 *Activities Designated as Farm Use: Agri-tourism Activities in the ALR*

ALC Policy L-22 *Gathering for an Event in the ALR*