



Agricultural Land Commission
201 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000 | Fax: 604 660-7033
www.alc.gov.bc.ca

October 26, 2020

Reply to the attention of Sara Huber
ALC Planning Review: 46743
Local Government File: X2020.014-ZONE

JoAnn Peachey
Planner 1, RDOS
planning@rdos.bc.ca

Delivered Electronically

Re: Regional District of Okanagan Similkameen Electoral Area Amendment Bylaw No. 2913, 2020 – ALR Exclusion Policy

Thank you for forwarding a draft copy of Regional District of Okanagan Similkameen (RDOS) Electoral Area Amendment Bylaw No. 2913, 2020 (the “Bylaw”) for review and comment by the Agricultural Land Commission (ALC). The following comments are provided to help ensure that the Bylaw is consistent with the purposes of the *ALC Act* (ALC Act), the Agricultural Land Reserve (ALR) General Regulation, (the “ALR General Regulation”), the ALR Use Regulation (the “ALR Use Regulation”), and any decisions of the ALC.

Current Proposal:

The Bylaw proposes to include policies to guide exclusion applications in Electoral Areas C, D, E, F, H, and I, in response to recent legislative changes (i.e. Bill 15) which took effect on September 30, 2020. The components of the Bylaw will also be incorporated into the Electoral Area A OCP Bylaw, which is currently underway.

The Bylaw proposes to consider ALR exclusions only within the context of an OCP review, and to encourage private landowners to seek other forms of approval, rather than exclusions from the ALR, through other application types (e.g. subdivision, non-farm use, etc.).

The Bylaw eliminates a policy in the Electoral Area D, F, H, and I OCP Bylaws that requires an ALR exclusion application be accompanied by an assessment from a qualified Professional Agrologist.

The Bylaw also includes a statement of support for maintaining the integrity of the ALR and its existing boundaries, except in the Electoral Area H OCP Bylaw, as that bylaw contains a policy to encourage the ALC to review the ALR boundaries under Section 10.3.2.

ALC Staff Comments:

ALC staff generally do not object to the Bylaw noting that the process for identifying lands for exclusion from the ALR shall be completed through the review of an OCP, which will identify land use needs over the long-term. This is the ALC’s preferred approach as opposed to exclusion applications based on an individual’s preferences.

RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2913, 2020

Approval Recommended for Reasons Outlined Below

Interests Unaffected by Bylaw

Approval Recommended Subject to Conditions Below

Approval Not Recommended Due to Reasons Outlined Below

Signature: Graham Daneluz

Digitally signed by Graham Daneluz
Date: 2020.10.23 11:50:57 -07'00'

Agency: Fraser Valley Regional District

Date: 23 Oct 2020

Signed By: Graham Daneluz

Title: Director of Planning & Dev't



December 1, 2020

File: 0280-30

Local Government File: X2020.014-ZONE

JoAnn Peachy, Planner I
Regional District Okanagan Similkameen
101 Martin Street
Penticton, B.C. V2A 5J9
Via E-mail: planning@rdos.bc.ca

Dear JoAnn Peachy:

Re: Regional District of Okanagan Similkameen Electoral Area Amendment Bylaw No. 2913, 2020 – ALR Exclusion Policy

Thank you for providing B.C. Ministry of Agriculture staff the opportunity to comment on the proposed OCP amendments to Bylaw 2913. Overall ministry staff consider the amendments to be positive given that the process for identifying lands for exclusion from the Agricultural Land Reserve (ALR) shall be completed through the review of an OCP, which will identify land use needs over the long-term. This appears to meet the intent of the legislative change to identify lands for exclusion through a planning process rather than an individual landowner's goals.

Ministry staff are available for consultation and to provide advice on exclusions from the ALR as we are for all applications affecting the ALR and agriculturally zoned land. As recommended by Agricultural Land Commission (ALC) staff, the RDOS may wish to include a statement in the OCP that will encourage consultation by RDOS with ALC and ministry staff during any OCP review that will consider exclusion of ALR lands.

If you have any questions, please contact us directly at the email addresses or numbers below.

Sincerely,

Alison Fox, P.Ag.
Land Use Agrologist
BC Ministry of Agriculture, Food and Fisheries
Alison.Fox@gov.bc.ca
(778) 666-0566

Christina Forbes, P.Ag.
Regional Agrologist
B.C. Ministry of Agriculture, Food and Fisheries
– Kelowna
E-mail: Christina.Forbes@gov.bc.ca
Office: (250) 861-7201

Email copy: Sara Huber, Regional Planner, Agricultural Land Commission



Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
V2A 0E8
Referrals@pib.ca | www.pib.ca
Telephone: 250-492-0411
Fax: 250-493-2882

Project Name:

Electoral Area Official Community Plan Amendment Bylaw-Agricultural Land Reserve (ALR) Exclusion Application Policy Update

FN Consultation ID:

L-201023-X2020014-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Friday, November 13, 2020

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

November 13, 2020

File Number: X2020.014-ZONE

We are in receipt of the above referral. This proposed activity is within the PIB Area of Interest within the Okanagan Nation's Territory, and the lands and resources are subject to our unextinguished Aboriginal Title and Rights.

The Supreme Court of Canada in the Tsilhqot'in case has confirmed that the province and Canada have been applying an incorrect and impoverished view of Aboriginal Title, and that Aboriginal Title includes the exclusive right of Indigenous People to manage the land and resources as well as the right to benefit economically from the land and resources. The Court therefore concluded that when the Crown allocates resources on Aboriginal title lands without the Indigenous peoples' consent, it commits a serious infringement of constitutionally protected rights that will be difficult to justify.

PIB has specific referral processing requirements for both government and proponents which are integral to the exercise of our management right and to ensuring that the Crown can meet its duty to consult and accommodate our rights, including our Aboriginal title and management rights. According to this process, proponents are required to pay a \$500 processing fee for each referral. This fee must be paid within 30 days. Proper consultation and consideration of potential impacts cannot occur without the appropriate resources therefore it is only with payment that proper consultation can begin and the proposed activity/development can be reviewed.

Invoice Number: L-201023-X2020014-ZONE

SubTotal Tax Total

Referral Processing \$ 500.00 \$ 0.00 \$ 500.00

Total \$ 500.00 \$ 0.00 \$ 500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

Please make cheque or cash payable to Penticton Indian Band. re: P.C.132 and send to 841 Westhills Drive, Penticton, British Columbia, Canada V2A 0E8

Upon receipt of the processing fee, we will commence our review. You may then expect to receive a letter from us notifying

you of the results of our review of potential impacts of the project within 30 to 90 days.

If the proposed activity requires a more in-depth review, PIB will notify the proponent and all parties will negotiate a memorandum of agreement regarding a process for review of the proposed activity.

Please note that our participation in the referral and consultation process does not define or amend PIB's Aboriginal Rights and Title, or limit any priorities afforded to Aboriginal Rights and Title, nor does it limit the positions that we may take in future negotiations or court actions.

If you require further information or clarification, please do not hesitate to contact me.

limlmt,

Maryssa Bonneau
Referrals Administrator
P: 250-492-0411
Referrals@pib.ca



Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
V2A 0E8
Referrals@pib.ca | www.pib.ca
Telephone: 250-492-0411
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Planning RDOS

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Friday, November 13, 2020

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

November 13, 2020

File number: X2020.014-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was sent on 10-23-2020.

This letter is to inform you that due to current levels of internal capacity, we are unable to review your referral in your proposed timeline. With additional time, the Penticton Indian Band will be able to ensure that an informed review process will occur. We are setting the new timeline to be 40 days from the existing timeline.

Most recently, in November 2019, the province of British Columbia implemented the United Nations Declaration on the Rights of Indigenous Peoples which aims to emphasize the Indigenous peoples' rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to pursue self-determined development, in keeping with Indigenous needs and aspirations. The United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration") recognizes and affirms:

- Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions

In 2014, the Supreme Court of Canada in the Tsilquot'in case confirmed that the province has been applying an incorrect and restrictive test to the determination of Aboriginal Title, and that Aboriginal Title includes the exclusive right of a First Nation to decide how that land is used and the right to benefit economically from those uses. In addition 30 days is not

sufficient time to facilitate meaningful engagement.

Please note that not receiving a response regarding a referral from Penticton Indian Band in the pre-application, current or post-application stage does not imply our support for the project.

I appreciate your co-operation.

limlɛmt,

Maryssa Bonneau
Referrals Administrator
P: 250-492-0411
Referrals@pib.ca

Lauri Feindell

From: RDCO Planning Services <planning@rdco.com>
Sent: November 19, 2020 4:24 PM
To: Planning
Subject: RE: OCP Amendment Bylaw Referral -X2020.014-ZONE (ALR Exclusion Policy Update)

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon,

Thank you for the opportunity to review the referral.

Our interests are unaffected however, it is recognized that regional consistency is beneficial and supporting the preservation of the agricultural land base is important.

RDCO staff held a Planning Lab on September 18, 2020 which focused on the changes to the ALR Exclusion Process and a discussion throughout the Okanagan as it relates to implications of this change, opportunities for regional consistency and next steps. Shannon Lambie, Regional Planner with the Agricultural Land Commission provided a brief overview of Bill 15 and changes to processing ALR Exclusion Applications.

Our understanding from ALC staff includes:

- That local governments consider the bylaw review process as a preferred policy option.
- They only want applications coming to them that benefit the long term planning objectives of the local government, which will depend on the nature of the community.
- Many objectives people are trying to meet can be achieved through other types of applications (ie: non-farm use application, etc.)

Sincerely,

Planning Services
Regional District of Central Okanagan
250-469-6227 | planning@rdco.com
Connect with us | rdco.com

From: JoAnn Peachey <jpeachey@rdos.bc.ca>

Sent: October 23, 2020 9:24 AM

To: Huber, Sara ALC:EX <Sara.Huber@gov.bc.ca>; Forbes, Christina D AGRI:EX <Christina.Forbes@gov.bc.ca>; RDCO Planning Services <planning@rdco.com>; plandept@rdkb.com; admin@tnrd.bc.ca; info@fvrd.bc.ca; jcvitko@sd53.bc.ca; kblack@sd58.bc.ca; rs@summer.com; development@penticton.ca; prince@nethop.net; tosoyoos@osoyoos.ca; admin@oliver.ca; info@summerland.ca; clerk@keremeos.ca; referrals@oib.ca; referrals@pib.ca; referrals@usib.ca; referrals@lsib.ca

Subject: OCP Amendment Bylaw Referral -X2020.014-ZONE (ALR Exclusion Policy Update)

CAUTION: This message was sent from outside the organization. Please do not click links, open attachments, or respond unless you recognize the source of this email and know the content is safe.

Re: Electoral Area Official Community Plan Amendment Bylaw
Agricultural Land Reserve (ALR) Exclusion Application Policy Update

<https://www.rdos.bc.ca/development-services/planning/strategic-projects/alr-exclusion-policy/>

RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2913, 2020

- Approval Recommended for Reasons Outlined Below** **Interests Unaffected by Bylaw**
- Approval Recommended Subject to Conditions Below** **Approval Not Recommended Due to Reasons Outlined Below**

On behalf of the Regional District of Kootenay Boundary, I would like to thank the Regional District of Okanagan-Similkameen for the opportunity to comment on the proposed bylaw.

While each local government contains ALR lands and develops their own ALR Exclusion approaches, the proposed Bylaw includes an approach that considers ALR exclusions at a broader, contextual, and regional level. This allows neighbouring local governments to be provided the opportunity to comment through the regular referral process. This may prove beneficial in cases where there are cross-jurisdictional effects of ALR exclusions near local government boundaries or along watercourses that traverse local government boundaries.

Signature: *D. Patterson* **Signed By:** Danielle Patterson

Agency: Regional District of Kootenay Boundary **Title:** Planner

Date: November 26, 2020



THOMPSON-NICOLA
REGIONAL DISTRICT
The Region of BC's Best

300-465 Victoria Street
Kamloops, BC V2C 2A9
Tel: 250-377-8673
Toll Free in BC: 1-877-377-8673
Email: admin@tnrd.ca

Department: Planning

November 5, 2020

Via Email: planning@rdos.bc.ca

Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, BC V2A 5J9

Dear Sir/Madam:

Subject: Referral Response No. REF 580
OCP Amendment Bylaw Referral -X2020.014-ZONE
(ALR Exclusion Policy Update)

Thank you for the opportunity to comment on the introduction of a new Official Community Plan (OCP) Amendment Bylaw for Electoral Area "C", "D", "E", "F", "H", and "I" (and anticipated amendments to Electoral Area "A" as part of the OCP update underway) updating Agricultural Land Reserve exclusion application policies.

This document has been reviewed by Thompson-Nicola Regional District (TNRD) staff and it has been determined that our interests are unaffected by the proposed OCP Amendment.

If you have any questions, please contact the undersigned at 250.377.7063 or uwalus@tnrd.ca.

Yours truly,

Urszula Walus, RPP, MCIP
Planner

UW/ad

MUNICIPALITIES: Ashcroft | Barriere | Cache Creek | Chase | Clearwater | Clinton
Kamloops | Logan Lake | Lytton | Merritt | Sun Peaks

ELECTORAL AREAS: "A" "B" "E" "I" "J" "L" "M" "N" "O" "P"

RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2913, 2020

- Approval Recommended for Reasons Outlined Below
- Interests Unaffected by Bylaw
- Approval Recommended Subject to Conditions Below
- Approval Not Recommended Due to Reasons Outlined Below

Signature: 

Signed By: R. Lyle Thomas

Agency: Town of Princeton

Title: CAO

Date: Nov. 4 2020