



## ATTACHMENT 1

### Agricultural Land Commission

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August 08, 2022

ALC C&E File: 191835

**Delivered Electronically ([BMartyniuk@klaw.ca](mailto:BMartyniuk@klaw.ca))**

LK Law  
1800, 401 West Georgia Street  
Vancouver, BC V6B 5A1

**Attention: Brad Martyniuk – Legal Representative**

Dear Brad Martyniuk,

### **Unauthorized Placement of Fill**

**CIVIC ADDRESS:** 2441 Herd Rd. Duncan BC

**LEGAL:** PARCEL A, SECTION 9, RANGE 7, SOMENOS LAND DISTRICT, EXCEPT  
PLAN 504 BL, (DD 67328I) & EXC PLANS 45592 & EPP1597

**PID:** 008-334-463  
**(the “Property”)**

This letter is in response to your July 26, 2022 email advising that you been retained by the Property owner in respect to the ALC compliance and enforcement file. This letter also summarizes the July 19, 2022 inspection observations and review of documents concerning the alleged unauthorized deposit of fill on the property for the purpose of constructing a principal residence and associated ancillary structures (the “Proposed Activities”). It is understood that the Agent/Contractor is Vic Mudhar (Agent Mudhar), and the owner is Salinder (Sally) Kullar.

Commission records indicate that the Property is within the Agricultural Land Reserve (the “ALR”) and therefore is subject to the *Agricultural Land Commission Act* (the “Act”) and the *Agricultural Land Reserve Use Regulation* (the “Use Regulation”).

### **Overview of Information assessed:**

In order to determine ALC legislative compliance and as you requested, a review of all available documents was conducted. The review included building plans both past and revised, the Notice of Intent 65028 application and decision, and email communications between Agent Mudhar, the Municipality of North Cowichan, and the ALC. Below is an overview, in chronological order, of the pertinent information available to the ALC.

On March 4, 2022, Agent Mudhar emailed the ALC planning department with a request to clarify on whether a home with square footage of 5,208.50 sq ft (483.88 m<sup>2</sup>) met the ALC’s maximum allowable building area (item IB-05; page 3 of 21). It is assumed the Agent was referencing Information Bulletin 05 Residences in the ALR. Further email communication showed the ALC

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planning department described the maximum allowable coverage to build a principal residence as 1,000 m<sup>2</sup>.

On March 8, 2022, Agent Mudhar submitted Notice of Intent # 65028 (the NOI). The NOI was submitted to request authorization for 1,300 m<sup>2</sup> of fill to be placed on the property for the purpose of building a new single family dwelling.

On April 25, 2022, Agent Mudhar was emailed the decision for NOI #65028 (the decision). The Agent was ordered not to proceed with the Proposed Activities. Rationale for this decision included the large accessory structures which were to be used for residential purposes and how their footprint caused the project to exceed the 500 m<sup>2</sup> permitted for constructing a primary residence. Within the decision was an order to not engage in the proposed fill placement unless an application was submitted to the Commission and that the application was approved. The decision summarized the total floor area in error by discussing only the main floors of each structure and labelling them as the total floor area.

On April 26, 2022, the municipality of North Cowichan emailed the ALC requesting further clarification on accessory structures related to the Proposed Activities. The email discussed how the floor area of the principal dwelling was a total of 483.92m<sup>2</sup> and had 2 accessory structures each with ground floor garage space and 114.05 m<sup>2</sup> upper floor residential uses. The email discussed how staff had contacted ALC's planning department by phone and understood the plans met the ALC's principal residence floor area limit. That same day a reply email from the ALC's Delegate of the CEO, Katarina Glavas, discussed how landowners cannot circumvent the maximum allowable total floor area of 500 m<sup>2</sup> by constructing residential uses in other buildings. It also described how if the Proposed Activities were not clearly compliant with the ALR Use Regulation then a soil and fill use application was required. The email continued that when the total floor area limit for a principal residence and the total floor area of all buildings forming the principal residence exceeded 500 m<sup>2</sup> then the Proposed Activities must go before the Commission by way of application.

Between April 30 and May 9, 2022, email communication occurred between Nikolai Karpun (ALC Soils Officer) and Agent Mudhar. Agent Mudhar discussed how new plans had been reviewed by the municipality and they had rectified the issue of exceeding the maximum 500 m<sup>2</sup> allowance. The municipality had re-issued new approved building permits based on the revisions. Mr. Karpun had in reply, advised the Agent that an application or a new NOI was still required. In the reply, Section 3 of the Act was referenced, informing Agent Mudhar how governments are not permitted to exercise a power granted under another enactment except in accordance with the Act and its regulations. A reply email from Agent Mudhar requested clarification on which type of application was required. A follow up reply from Mr. Karpun described that if the single residence was 500 m<sup>2</sup> or less it could be submitted through a Notice of Intent but that other structures required Commission approval through a full application. The municipality of North Cowichan was copied on the email communications.

On May 12, 2022, revised building plans were approved and permits issued by the Municipality of North Cowichan. The revised building plans listed a fill plate of 976.164m<sup>2</sup>. The plans appeared to show a decrease in the area taken by the driveway and to label the second accessory building as a farm building.

On July 06, 2022, a complaint was received by the ALC planning department advising that the construction of several residential structures was planned that appeared too big to be located in



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the ALR. A picture of a sign posted on the Property showed a large principal residence with two large accessory structures and a driveway.

On July 07, 2022, emails between North Cowichan staff and ALC staff discussed total floor areas. North Cowichan staff indicated that building permits had been issued based on the main floor sizes of the principal residence, the 1<sup>st</sup> accessory building and the pool shed ( $361\text{m}^2 + 111\text{m}^2 + 14\text{m}^2$ ) totaling  $486\text{m}^2$ . There had been a separate building permit issued for the second accessory structure as it had been reclassified as a farm use building.

On July 12, 2022, in an email from Katarina Glavas (ALC) to North Cowichan's Lane Killick (North Cowichan's Building Chief), Ms. Glavas reiterated that the total floor area of the primary residence cannot exceed  $500\text{m}^2$ . The email calculated the 3 structures: Main house ( $122.73\text{m}^2 + 361.19\text{m}^2 = 483.92\text{m}^2$ ), 1<sup>st</sup> accessory building ( $114.05\text{m}^2 + 114.05\text{m}^2 = 228.10\text{m}^2$ ), total of both as  $712.02\text{m}^2$  and listed them as in excess of  $542\text{m}^2$  permitted by ALC regulations. The email described that although the 2<sup>nd</sup> accessory building was reclassified as a farm building at  $114.05\text{m}^2 + 114.05\text{m}^2 = 228.10\text{m}^2$  there was not enough information to confirm the structure to be for farm use. The email discussed how an application was required to request authorization for the structures.

On July 13, 2022, an email from Allison Westin (ALC Soils Program Manager) to Agent Mudhar stated that Delegate of the CEO had ordered that the fill placement activities were not to proceed as per the April 25, 2022 NOI decision. The email described how ALC staff did not provide assurances that building plans comply with ALC Act or regulations. The email also described that an application was required, that the matter had been referred to Compliance and Enforcement and that if it was determined to be in non-compliance a Stop Work Order may be issued.

On July 19, 2022, Steve Laing (ALC Compliance and Enforcement Officer) conducted a site inspection of the property with Agent Mudhar, the property owner Sally and their partner Ted. During the inspection Mr. Laing observed that the foundations for structures had been poured, and that there was aggregate in the driveway area and between structures. Sally, Ted and Agent Mudhar discussed how they believed they had been permitted to pursue the Proposed Activities as the municipality had issued the building permits and they believed the ALC had reviewed and approved them.

### The Legislation and Information Bulletin 05:

Pursuant to Section 20.1 (1)(b) of **The Act**:

*Unless permitted under section 20.2, 25 or 45 or the regulations, an owner of agricultural land who constructs, alters or uses a residential structure on the agricultural land must comply with all of the following:*

...

*(b) the total floor area of a principal residence must be  $500\text{m}^2$  or less;*

Pursuant to Section 35 (a)(i) of the **Use Regulation**:

*Subject to section 36 [prohibited fill], the removal of soil from, or placement of fill on, agricultural land for one or more of the following purposes is permitted if all applicable conditions are met:*

- (a) 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;*

**Information Bulletin 05 Residences in the ALR** as of December 31, 2021 (IB 05). Note IB 05 was revised in June of 2022 however the Bulletin available at the time of reference included the language discussed below.

IB 05 discusses how an application is not required for residences with a total floor area of 500 m<sup>2</sup> or less. The glossary section defines the “total floor area” as the total area of all floors excluding attached garages to a maximum of 42 m<sup>2</sup>. The definition showed a diagram which defined how the total floor area was to be calculated. The bulletin also referenced the use of agricultural land to construct, maintain or operate a structure other than a residential structure that is necessary for a residential use permitted under Part 4. Examples included detached garages.

#### **Information Bulletin 07 Soil or Fill Uses in the ALR (IB 07)**

IB 07 discusses how placing fill on ALR land in connection with accessory residential facilities including pools requires submission of an application.

#### **Assessment:**

After assessing the information provided it is my understanding that Agent Mudhar was aware the total floor area of the primary residence was 483.92 m<sup>2</sup> when he first contacted the ALC on March 4, 2022. Further discussion between Agent Mudhar and the ALC planning staff determined that an NOI was required for the project. After the ALC staff reviewed the NOI proposal a decision had been issued. The decision deemed the project to be beyond the scope of an NOI and outside the purview of the legislation due to the total floor areas of the structures. The Delegate of the CEO ordered the submitter not to proceed with the Proposed Activities and stated that an application to the Commission was required. The decision had listed the area calculations for the main levels of the structures and incorrectly labeled them as the total floor area.

Agent Mudhar then contacted the ALC and the municipality of North Cowichan to gain clarity on the decision and determine how to continue with the project. Emails show that ALC soils staff had advised the municipality and Agent Mudhar to submit another application. Agent Mudhar and the owner then went to the municipality of North Cowichan to determine how to alter the site plans in an attempt to bring the proposal within the scope of the ALC’s legislation without having to pursue an application. During this time the ALC soils staff had advised Agent Mudhar and North Cowichan that a new application was required for the project to proceed and that local governments could not enact powers which exceed the ALC Act and Regulations. Despite the emails, revised building permits were then issued. The ALC soils department again informed Agent Mudhar that they were not to proceed with the project without first putting forward a new NOI or full application. Foundations for all of the structures were poured despite the direction from ALC staff.

On my recent inspection it was apparent that Agent Mudhar and the Owner are wanting to proceed with the project and believe that having reviewed the plans with the municipality of North Cowichan and being issued building permits for the project that they had been permitted to proceed.



**Conclusion:**

From my assessment of the building plans and communications from Agent Mudhar I believe the following calculations for the project to be correct:

1. The principal residence is a total of:  $361.19 \text{ m}^2 + 122.73 \text{ m}^2 = 483.92 \text{ m}^2$
2. The 1<sup>st</sup> Ancillary Building is a total of:  $114.05 \text{ m}^2 + 114.05 \text{ m}^2 = 228.10 \text{ m}^2$
3. The 2<sup>nd</sup> Ancillary Building is a total of:  $114.05 \text{ m}^2 + 114.05 \text{ m}^2 = 228.10 \text{ m}^2$
4. The pool house is a total of:  $14.0 \text{ m}^2$
5. Pool: Unknown area
6. Septic Field: Unknown area

On review of the revised plans, it is my understanding that the principal residence has a total floor area of  $483.92 \text{ m}^2$  and meets the  $500 \text{ m}^2$  limit specified in the Act. Therefore construction can continue without any authorization and approval from the ALC.

All remaining structures in the proposal are considered residential structures for residential use in accordance with section 30 of the Use Regulation. Section 35 of the Use Regulation does not provide any soil or fill exemption for residential structures and therefore approval is required for any amount of fill. The residential structures listed below require an approval from the Commission by way of a "Soil Use for Placement of Fill or Removal of Soil" application:

- The 1<sup>st</sup> residential structure (item #2 above) has a total floor area of  $228.10 \text{ m}^2$ ;
- The 2<sup>nd</sup> residential structure (item #3 above) has the same floor area at  $228.10 \text{ m}^2$  and was labeled as farm use in the revised building permit. This structure has been assessed by ALC staff and does not appear to be conducive for farm use given the configuration, location, proposed floor plan, current farm activity and only appears to have been labelled farm use in attempt to evade ALC legislation requirements; and
- The **Pool House** has a total floor area of  $14 \text{ m}^2$  and is also not exempted under the legislation.

**Based on the above information I have determined that the foundations poured for both the 1<sup>st</sup> and 2<sup>nd</sup> residential structures and the pool house to be out of compliance with the Act and the Use Regulation. Therefore, the owner must either,**

1. **Remove all fill associated with those structures and remediate the affected areas,**  
**or**
2. **submit a "Soil Use for Placement of Fill or Removal of Soil" application to the Commission and receive approval before construction can proceed.**

Therefore, please respond to this letter in writing by no later than August 30, 2022, on your client's intentions. Failure to respond may lead to other enforcement actions as per the Act including a stop work order, remediation order and/or a penalty order.

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If you have any questions, I can be reached at [Steven.Laing@gov.bc.ca](mailto:Steven.Laing@gov.bc.ca) or 250-739-8751.

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

Sincerely,



Steven Laing  
ALC Compliance and Enforcement Officer

cc: Agent Vic Mudhar ([vic@aspyrhomes.com](mailto:vic@aspyrhomes.com))  
Municipality of North Cowichan Director of Planning and Building Rob Conway  
([Rob.Conway@northcowichan.ca](mailto:Rob.Conway@northcowichan.ca))  
Municipality of North Cowichan Chief Building Inspector Lane Killick  
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