

# Report

Date December 6, 2023

File: ALR00029  
ALC File 59756

Subject ALR Exclusion Application for 8682 Trans-Canada Highway – Chemainus River  
Campground

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## PURPOSE

To provide Council with the Agricultural Land Commission's decision on an application to exclude 8682 Trans-Canada Highway from the Agricultural Land Reserve (ALR) and to seek direction on requesting reconsideration of the decision.

## BACKGROUND

At the September 4, 2019, Council meeting, a delegation requested that North Cowichan apply to the Agricultural Land Commission (ALC) under Section 29 of the *Agricultural Land Commission Act (ALCA)* to exclude 8682 Trans-Canada Highway (See Attachment 1 – Location Map) from the ALR. In response to the delegation, Council passed the following resolution:

***That Council direct staff to submit an application to the Agricultural Land Commission (ALC) under Section 29 of the ALC Act to exclude the Chemainus River Campground lands from the Agricultural Land Reserve;***

***And That the Mayor be authorized to write the Minister of Agriculture, with copies to the Minister of Municipal Affairs and Housing, the Minister of Environment and Climate Change Strategy, Minister of Tourism, Arts and Culture, and the Minister of Forests, Lands, Natural Resource Operations and Rural Development, citing the following concerns:***

- ***By shutting down the campground there will be a loss of temporary and permanent housing which is unreasonable given the housing crisis we are facing;***
- ***The land was previously never used for Agriculture purposes as it was forest; and***
- ***The existing water license, which permits 1,000 gallons a day from the Chemainus River for domestic use only, would not support agriculture use without a substantial increase to the water license to accommodate agriculture use during the growing season.***

Staff subsequently initiated the ALC exclusion application and prepared a report to Council that was reviewed at the January 20, 2020, special Council meeting where the following resolution was passed:

1. ***That Council direct staff to issue notice and schedule a public hearing for the application to exclude 8682 Trans-Canada Highway from the Agricultural Land Reserve in accordance with Agricultural Land Commission requirements; and***
2. ***That the application be referred to Halalt First Nations and be given 30 calendar days to respond.***

The public hearing for the application was delayed due to the COVID-19 pandemic but was eventually held on April 21, 2021. After concluding the public hearing Council passed the following resolution:

***That Council forward the application to exclude 8682 Trans-Canada Highway from the Agricultural Land Reserve to the Agricultural Land Commission with a recommendation that the application be approved for reasons outlined in the September 12, 2019 letter to the Minister of Agriculture from Mayor Siebring.***

The application was subsequently forwarded to the ALC for its consideration and decision. The ALC released its decision on the application on October 23, 2023 (Attachment 3).

## DISCUSSION

### Summary of Decision

The ALC's reasons for the decision are outlined in detail in Attachment 3. The decision itself is summarized as follows:

1. The application to exclude the subject property from the ALR is denied.
2. The ALC will allow the existing campground to remain in its current size and configuration as a non-farm use, subject to the following conditions:
  - The campground use is limited to the existing campground area of approximately 3.08 ha.
  - The non-farm use approval for the existing campground is only applicable to the current owners and is non-transferable.
  - Long-term stays (beyond 28 days) are not permitted, and any structures associated with long-term stays, such as sheds, patios and fencing, must be removed by October 31, 2024.
  - If the current property owners cease the campground use, the campsite area must be removed and remediated within nine months to a standard specified by the ALC.
  - If the current property owners sell or transfer the property, the campsite area must be removed and remediated to a standard specified by the ALC before transfer of title.
  - Within 90 days of the decision (by January 23, 2024), the property owners must register a covenant in favour of the ALC that,
    - a) limits the campground use to short-term accommodation only (less than 28 days);
    - b) restricts the non-farm campground use for the sole benefit of the current property owners; and,
    - c) requires removal and restoration of the campsite area as specified in the decision should the property owners cease operation of the campground, or prior to the property's title transfer.

If the conditions of non-farm use approval are not completed within the specified timeframes, the non-farm use approval will expire.

### Opportunity for Reconsideration:

Section 33 of the ALC Act allows a person affected by a decision to submit a request for reconsideration of the decision. However, to be eligible for reconsideration, the request must meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
  - Evidence that was not available at the time of the original decision that has become available and that could not have been available at the time of the original decision had the applicant exercised due diligence, or
  - Evidence that all or part of the original decision was based on evidence that was in error or was false.

Reconsideration requests may be submitted no later than one year from the date of the decision release. The deadline for submitting a reconsideration is, therefore, October 23, 2024.

### Conclusion:

Staff are unaware of any new evidence related to the application that could not have been provided prior to the decision. We are also unaware of any meaningful evidence that was considered with the original decision that is in error or false. Therefore, we do not believe there is a basis for applying for reconsidering the decision. Furthermore, even if a basis for submitting a reconsideration request were found, it would need to be sufficiently compelling to change the findings of the ALC and its decision. In the absence of any new information that meets the criteria for reconsideration or new information that is likely to change the decision, it is recommended that reconsideration not be pursued.

While reconsideration is not recommended, staff wish to acknowledge the hardship the ALC decision imposes on the property owner and campground residents. The Chemainus River Campground was jointly owned and operated by John and Jeri Wyatt. Shortly before the release of the ALC decision, John Wyatt passed away, leaving Jeri Wyatt as the sole owner. Being elderly and on her own, she cannot continue operating the campground much longer. And now, she cannot sell without closing the campground and removing the campground infrastructure. In addition, there are residents living in recreational vehicles at the campground who will be displaced due to the ALC's decision. Long-term residency within the Chemainus River Campground is not condoned by the Municipality's Zoning bylaw or ALC land use regulations but has been occurring nonetheless because of the housing shortage and lack of affordable housing options in the Cowichan region. Compliance with the ALC's decision will require residents currently housed at the campground to find alternative accommodation in a very difficult housing market.

### OPTIONS

1. **(Recommended Option)** THAT Council does not request reconsideration of the Agricultural Land Commission's decision to deny ALC Exclusion Application 59756 for 8682 Trans-Canada Highway.
2. (Alternate Option) THAT Council direct staff to request reconsideration of the Agricultural Land Commission's decision to deny ALC Exclusion Application 59756 for 8682 Trans-Canada Highway due to there being:

- (a) Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence [Council to specify], or
- (b) Evidence that all or part of the original decision was based on evidence that was in error or was false [Council to specify].

**IMPLICATIONS**

By not requesting reconsideration, the subject property would remain in the ALR, and any use of it would be required to comply with ALR regulations and the terms and conditions specified for the campground use by the ALC in the decision.

Requesting reconsideration could result in a different decision, but only if substantive new information is provided or identification of a substantive error in the original evidence that is sufficiently compelling to change the ALC's opinion.

**RECOMMENDATION**

THAT Council does not request reconsideration of the Agricultural Land Commission's decision to deny ALC Exclusion Application 59756 for 8682 Trans-Canada Highway.

Report prepared by:



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Report reviewed by:



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**Approved to be forwarded to Council:**



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Ted Swabey  
Chief Administrative Officer

Attachments:

- (1) *Location Map*
- (2) *September 12, 2019 letter to the Minister of Agriculture*
- (3) *October 23, 2023 ALC Reasons for Decision*