

Report

Date April 17, 2024

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Subject Agricultural Land Commission Non-Farm Use (Placement of Fill) application for 6651 Lakes Road.

PURPOSE

To consider an Agricultural Land Commission (ALC) Non-Farm Use (Placement of Fill) application to enable the applicant to construct an agricultural storage building at 6651 Lakes Road.

BACKGROUND

Property Details

The 3.2847-hectare subject property is at 6651 Lakes Road (Attachments 1 & 2). The subject and surrounding properties:

- are zoned Agricultural (A2) (Attachment 3) and in the Agricultural Land Reserve (ALR); and,
- share the Agriculture, Forestry, and Conservation Official Community Plan (OCP) designation.

ALC's Agricultural Capability Classification system informs us that the subject property is Class 4 and Subclass A.

Class 4 Land in this class has limitations that require special management practises or severely restrict the range of crops, or both.

Subclass A Indicates soil moisture deficiency.

The property is planted with Christmas trees and hay fields and supports a single-family dwelling and an accessory structure containing an electrical generator and tractor storage.

Proposal

The property owner wishes to build a 304.75 m² agricultural storage building (Attachment 4) on the north side of the property (Attachment 5). The building is required to facilitate the current Christmas Tree operation, including storage of equipment, seedlings, and cut Christmas trees for customer pick up. The applicant has provided a letter of rationale (Attachment 6).

Before the ALC will consider the Non-Farm Use (Placement of Fill) application, Council must resolve to submit it for decision. If Council does not resolve to submit the application, it will be terminated.

Building Permit and ALC Application History for 6651 Lakes Road

January 2022	<p>The applicant/homeowner applied to North Cowichan for two building permits using an agent/contractor. One building permit was for a combined tractor shed and electrical building, and the other was for an agricultural storage building. When a building was contemplated for property within the ALR, North Cowichan staff practice at the time was to interpret ALC regulation to the extent possible and advise the applicant to confirm with the ALC that the proposed plans and local government interpretation are permitted/acceptable to the ALC.</p>
March 2022	<p>The building department emailed the agent the Planning Department's review for the combined tractor shed and electrical building permit and the agricultural storage building permit. Both reviews confirmed the property was within the ALR, and therefore, the proposal must comply with all relevant ALC requirements and regulations under the <i>Agricultural Land Commission Act</i> (Attachments 7 & 8). When these permits were being processed, North Cowichan staff did not always require the owner or applicant to supply North Cowichan with written confirmation from the ALC that proposed works are authorized under ALC regulation. This process has since been amended to require written confirmation from the ALC before development on ALR land.</p> <p>Later that month, the applicant was issued building permit BP009489 for a tractor shed and electrical building.</p>
April 2022	<p>The applicant was issued building permit BP009488 for an agricultural storage building following a Planning Department review on the basis that the agricultural storage building is a permitted use within the ALR and compliant with municipal zoning. Work on the agricultural storage building is at a standstill and currently sits partially constructed (Attachment 9).</p> <p>Later in the month, a building permit for a principal residence was received by North Cowichan staff. As staff had processed other applications for residences in the ALR where a Notice of Intent (NOI) application to the ALC was required before building permit issuance, Planning staff advised the applicant to submit an NOI application to the ALC to secure permission for construction of the principal residence before issuing any building permits. In response, the ALC advised the applicant that they should have applied for an NOI before construction of any of the structures on the property. The applicant dutifully submitted an NOI to the ALC for the dwelling, driveway access road, electrical building/tractor shed, and agricultural storage building.</p>

August 2022	<p>A response letter from the ALC was received (Attachment 10). ALC partial approval was granted, allowing construction of the driveway access road, single-family dwelling, and electrical building/tractor shed, but not the agricultural storage building. ALC staff advised they could not determine if the agricultural storage building was a farm building or whether it was necessary for farm use. As the ALC denied the NOI application, the applicant was advised in writing by ALC staff to pursue a Soil and Fill Use Application or Non-Farm Use Application or adjust the building plans to be commensurate with the existing farm activity and a new NOI may be required.</p> <p>The applicant then approached the ALC seeking clarity on their concerns with the agricultural storage building design.</p>
December 2022	<p>The applicant submitted a follow-up NOI application to the ALC, which was later cancelled at the direction of ALC staff as fill had already been placed on the property.</p>
March 2023	<p>The applicant then submitted a Soil and Fill Use Application. Due to outdated language hosted on the ALC portal, this application is currently called a Non-Farm Use (Placement of Fill) application. It does not include any non-farm uses.</p> <p>The footprint of the new agricultural storage building remains unchanged from the plans in building permit BP009488, which the ALC denied. Therefore, if granted Council and ALC approval, the applicant intends to use the existing foundation and complete construction of the amended agricultural storage building.</p>

DISCUSSION

ALC Policy Context

The ALC regulates the type of buildings permissible on properties within the ALR. The ALR Use Regulation section 5(1) states “a structure, other than a residential structure, that is necessary for a farm use” may be constructed, maintained, or operated within the ALR.

The total area impacted by the fill is consistent with permissible soil and fill uses in the ALR as outlined in Information Bulletin 7 (Attachment 11). The principal residence is smaller than 500 m², and the farm structure is smaller than 1000 m², which complies with ALC regulations.

North Cowichan Zoning Bylaw

The subject property is zoned Rural Zone (A2) and the proposed agricultural storage building use is compliant with the zone.

North Cowichan OCP Bylaw, 3900, 2022

The subject property is designated Agriculture, Forestry & Conservation (Rural) Land Use in the OCP Bylaw, 3900, 2022.

<i>Agriculture, Forestry & Conservation (Rural) Designation</i>	
3.2.17 g	Encourage small scale agricultural use and the processing of local agricultural products.

North Cowichan Strategic Agricultural Plan (SAP), 2001

Action Step 6	Allow appropriate agricultural production and a diversified product base on all rural lands (including non-ALR lands).
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Summary

The proposed agricultural storage building is supported by policy as it is intended for agricultural use and the processing of agricultural goods.

ANALYSIS & CONCLUSION

The application complies with the Zoning Bylaw, OCP, and North Cowichan Strategic Agricultural Plan. The applicant intends to complete the construction of the agricultural storage building on the same foundation as the original agricultural storage building denied by the ALC. Therefore, no additional agricultural land will be lost in the development of this structure. Staff recommend that Council resolve to forward this application to the ALC with a recommendation that the application be approved.

OPTIONS

1. **(Recommended Option)** THAT Council authorize the Agricultural Land Commission (ALC) non-farm use application No. 67792 regarding 6651 Lakes Road to be sent to the ALC for its decision whether to allow the agricultural storage building to be built on the same foundation as the original barn building denied by the ALC, and recommend that the application be approved.
2. THAT Council deny the request to forward Agricultural Land Commission (ALC) non-farm use application No. 67792 for the proposed agricultural storage building at 6651 Lakes Road to the ALC.

IMPLICATIONS

If the application is forwarded with Council support to the ALC, the revised agricultural storage building proposal will be reviewed. If the ALC approves the Placement of Fill application, North Cowichan can issue a revised building permit to the applicant to construct the revised agricultural storage building. Submitting the application to the ALC for consideration does not guarantee success, as the ALC may still choose to reject the proposal.

If the application is not submitted to the ALC for consideration, the applicant will not be permitted to finish constructing the proposed agricultural storage building and the ALC may undertake their own enforcement to bring the lot into compliance with their regulations.

RECOMMENDATION

THAT Council authorize the Agricultural Land Commission (ALC) non-farm use application No. 67792 regarding 6651 Lakes Road to be sent to the ALC for its decision whether to allow the agricultural storage building to be built on the same foundation as the original barn building denied by the ALC and recommend that the application be approved.

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Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Location Map
- (2) Orthophoto
- (3) Zoning Map
- (4) Building Plans
- (5) Site Plan
- (6) Applicant's letter of rationale and supporting documents
- (7) Tractor shed and electrical building planning review
- (8) Agricultural storage building planning review
- (9) Photos from site visit
- (10) ALC Decision for NOI 65886
- (11) ALC Information Bulletin 7