

Report

Date May 15, 2024

File: 3025-20 23.12

Subject Agricultural Land Commission Non-Adhering Residential Use for 5753 Menzies Rd

PURPOSE

To consider an Agricultural Land Commission (ALC) Non-Adhering Residential Use (NARU) application for 5753 Menzies Road to enable the construction of a secondary dwelling to replace the current secondary dwelling.

BACKGROUND

Property Details

The 9-ha subject property is located at 5753 Menzies Road (Attachments 1 & 2). The subject property is zoned Agricultural (A1), as shown in Attachment 3, and within the Agricultural Land Reserve (ALR). The 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 practices or, severely restrict the range of crops or both.

Subclass A Soil moisture deficiency.

Hay fields, trees, and a lake dominate the property. There are currently two dwellings on the property:

- a 1950's era cottage,
- and a larger, single-family home constructed in 2009.

In addition, the subject property hosts several accessory structures, as well as animal paddocks.

The surrounding properties are zoned a mixture of A1 and Rural Zone (A2) and designated Agriculture, Forestry, and Conservation through the Official Community Plan (OCP). The subject property shares this designation.

Proposal

The property owner wishes to build a replacement secondary dwelling on the subject property and decommission the current secondary dwelling (the 1950s cottage). The replacement secondary dwelling is to be sited in an alternate location to the existing secondary dwelling (Attachment 4). The existing secondary dwelling will remain on the property but will be decommissioned and used as an accessory building after the replacement dwelling has been constructed. The need for ALC approval via the NARU application arises as the property owners wish to continue living in the 1950s cottage while building the replacement home. The complete NARU application can be viewed in Attachment 5, and a letter of rationale in Attachment 6.

Before the ALC considers the NARU application, Council must resolve to submit it for a decision. The application will be terminated if Council does not resolve to submit it.

DISCUSSION

ALC Policy Context

The ALC regulates the number of buildings permissible on lands within the ALR. These controls are explained under the Agricultural Land Reserve Use Regulation and the *Agricultural Land Commission Act* (ALCA) and further explained through associated ALC bulletins and policies.

Section 20.1 of the ALCA regulates residential use. Effective December 31, 2021, the ALR Use Regulation, section 34.3 permits one principal residence with a total floor area of 500 m² or less and one additional residence with a total floor area of 90 m² or less on a property 40 ha or smaller in area, if permitted by local government bylaw. ALC Policy L-26 advises that the total footprint for an additional residence (including the residential structure, driveways, septic fields, yards, etc.) should be not more than 1000 m². ALC Policy L-26 also advises that the type of NARU structure should reflect the agricultural uses on the property, with preference given to residential uses which utilize existing structures and minimize the impact on productive land.

Removing soil from or placing fill on ALR land to construct an additional residence is not permitted unless approved by the ALC. To secure approval, an owner of ALR land seeking to remove soil or place fill may submit an ALR Notice of Intent application along with payment of the required fee to the ALC's chief executive officer requesting approval under ALCA, section 20.3. As an alternate option, the landowner may apply to the Commission for a soil or fill use approval under section 25 of the ALCA.

North Cowichan Zoning Bylaw

The subject property is zoned Agricultural (A1). As the subject property is larger than 2 ha, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, subject to the smaller residential building being accessory to the principal dwelling and not exceeding 90 m² of gross floor area.

Should the ALC approve the construction of the replacement secondary residence (NARU application), the property owner must subsequently apply for a temporary use permit to get Council permission for the principal and secondary residence to be occupied while constructing the third dwelling (the new secondary residence). The existing secondary residence must be decommissioned before occupancy of the replacement dwelling. In addition, a \$10,000 security will be held on deposit by North Cowichan and released to the applicant when the existing secondary residence is decommissioned. Building permits will be required for both the new secondary residence and the decommissioning of the existing secondary residence.

North Cowichan OCP Bylaw, 3900, 2022

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

<i>Agriculture, Forestry & Conservation (Rural) Designation</i>	
3.2.17 c.	Maximize housing options without subdividing or urbanizing land, through zoning agricultural land reserve parcels that allow up to three permanent dwelling units per parcel, within no more than two separate buildings, and subject to servicing criteria or conditions that preserve natural features or agriculture.

The applicant has also complied with section 7.2.2.c of the OCP by providing a Soil Suitability Analysis (Attachment 7). This report concludes that the applicant is proposing a suitable site for the replacement second residence as it is not the most productive area of the farm and will be proximal to the edge of the property where a farm access road is currently located.

North Cowichan Strategic Agricultural Plan (SAP), 2001

Goal 1: Improve the Planning Framework for Agriculture	... require houses to be located near the frontage of the lot rather than in the middle of the lot... Where several houses are required for large farming operation, homes could be clustered...
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Agricultural Advisory Committee

This application was significantly progressed prior to the initiation of the Agricultural Advisory Committee (AAC), and staff considers it minor in nature. For this reason, it has not been referred to the AACAC.

ANALYSIS & CONCLUSION

The application complies with the Zoning Bylaw as the lot is large enough to contain a principal dwelling and a smaller secondary dwelling. The proposal largely complies with the OCP as the land use designation encourages higher housing density on agricultural land without subdividing. Separating the replacement secondary dwelling from the other residential buildings is not encouraged by the SAP, as clustering of buildings is preferable. However, the Soil Suitability Analysis advises us that the proposed location of the smaller secondary dwelling is suitable. Staff recommend that Council resolve to forward this application to the ALC along with a recommendation that the application be approved.

OPTIONS

1. **(Recommended Option)** THAT Council authorize the Agricultural Land Commission application ID: 67780 (ALR00061) regarding 5753 Menzies Road to be sent to the Agricultural Land Commission for its decision whether to allow the construction of a new secondary dwelling to replace the current secondary dwelling on the property, with a recommendation that the application be approved.
2. THAT Council deny the Agricultural Land Commission application ID: 67780 (ALR00061) to construct a new secondary dwelling to replace the current secondary dwelling at 5753 Menzies Road.

IMPLICATIONS

If the application is submitted to the ALC, the ALC staff will then review the application. If the ALC approves the NARU application, the applicant will be required to apply to North Cowichan for a subsequent Temporary Use Permit to allow them to live in the existing 1950s cottage while the construction of the replacement secondary dwelling takes place. Once the new secondary dwelling is ready for occupancy, the original 1950s cottage will be decommissioned before occupancy of the new secondary dwelling is granted. Applying the ALC does not guarantee the success of the application. The ALC may still reject the application.

If the application is denied, it will not be submitted to the ALC for consideration, and the applicant will not be allowed to construct a new secondary dwelling to replace the current one.

RECOMMENDATION

THAT Council authorize the Agricultural Land Commission application ID: 67780 (ALR00061) regarding 5753 Menzies Road to be sent to the Agricultural Land Commission for its decision whether to allow the construction of a new secondary dwelling to replace the current secondary dwelling on the property, with a recommendation that the application be approved.

Report prepared by:

Sarah Foulkes-Watson

Sarah Foulkes-Watson
Development Planner

Report reviewed by:



Amanda Young
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Location Map
- (2) Orthophoto Map
- (3) Zoning Map
- (4) Site Plan
- (5) ALC application
- (6) Letter of Rationale
- (7) Soil Suitability Analysis