

**REGIONAL DISTRICT OF NANAIMO**

**SPECIAL ELECTORAL AREA PLANNING COMMITTEE**

**TUESDAY, OCTOBER 14, 2014**

**3:00 PM**

*(RDN Board Chambers)*

**A D D E N D U M**

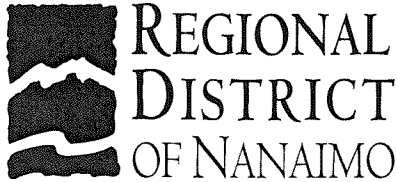
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2-49

Comments on the Ministry of Agriculture's Draft Bylaw Standard Guide for Medical Marijuana Production in the ALR.





RDN REPORT	
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BOARD	

# MEMORANDUM

**TO:** Geoff Garbutt  
GM Strategic and Community Development

**DATE:** October 7, 2014

**FROM:** Jeremy Holm  
Manager of Community Planning

**FILE:** 3015 01 MMPR

**SUBJECT:** Comments on the Ministry of Agriculture's Draft Bylaw Standard Guide for Medical Marihuana Production in the ALR

## PURPOSE

To provide background information to the Electoral Area Planning Committee (EAPC) to assist the EAPC to develop recommendations for the Regional District of Nanaimo (RDN) Board on the Ministry of Agriculture's draft criteria for developing local government bylaws regarding medical marihuana production in the Agricultural Land Reserve (ALR).

## BACKGROUND

At a special Board meeting on February 11, 2014, the RDN Board adopted zoning bylaw amendments to address medical marihuana production under Health Canada's Marihuana for Medical Purposes Regulations (MMPR). The Province has determined that medical marihuana production facilities are an allowable 'farm use' on ALR land. As such, local governments can regulate but not prohibit medical marihuana production on ALR land. This creates some unique challenges to local governments in relation to concerns expressed by the public. These concerns include commercial access and traffic, potential crime/security impacts, potential ground and surface water contamination, wastewater discharge and aquifer impacts where medical marihuana production facilities proposed on ALR land in unserviced rural areas.

In their June 26, 2014, joint memorandum on the issue the Honourable Coralee Oakes, Minister of Community, Sport and Culture Development and the Honourable Norm Letnick, Minister of Agriculture, committed to providing guidance to local governments on the regulation of medical marihuana production in the ALR through the development a set of Minister's bylaw standards (*see Attachment 1*). At its meeting of September 30, 2014, the RDN Board received correspondence from the Ministry of Agriculture (MOA) requesting comments on the Ministry's draft criteria which are intended to guide the development of local government bylaws related to medical marihuana production in the ALR (*see Attachments 2 and 3*). The Board directed that the matter be referred to an Electoral Area Director's Seminar. This special EAPC meeting has been scheduled in response to the Board's direction in order to allow broad discussion amongst Electoral Area Directors on the issue and to allow an opportunity for the EAPC to provide recommendations to the RDN Board on the matter while attempting to respect the Ministry's comment deadline of October 26, 2014.

## DISCUSSION

The Ministry has indicated that following input from stakeholders the draft criteria for developing local government bylaws regarding medical marihuana production in the ALR may be incorporated into the existing "Guide for Bylaw Development in Farming Areas" (*see web link on Attachment 4*). The Ministry's existing bylaw development guide sets standards to guide local governments in the preparation of various bylaws affecting agriculture in order to promote consistency amongst local governments for the benefit of the farming community. Ministry staff have advised that the intent of this process is to develop criteria that can be used by local governments to establish consistent land use policy or regulations to address medical marihuana production facilities (MMPFs) in the ALR and further advises that the criteria related to MMPFs are intended to:

1. Meet the needs of the agriculture industry;
2. Minimize the impact of MMPFs in the agricultural area; and
3. Minimize the risk of MMPFs being used for non-farm purposes.

While the Ministry's discussion paper outlines the process for establishing criteria, provides an overview of the regulatory context and provides some examples of existing local government bylaws related to medical marihuana production on ALR land, the Ministry has specifically requested comment on Part 4 of the discussion paper which outlines the proposed set of criteria (*see Attachment 3*). Should the Minister approve bylaw standard criteria regarding medical marihuana production in the ALR, local governments will have a clearer understanding of the extent to which they may regulate medical marihuana production facilities in the ALR. The proposed criteria are summarized in the following table excerpt from the MOA's discussion paper for convenience:

### *Proposed provisions for MMPFs on ALR land*

Subject	Proposed provision
<b>Local Government Bylaw Standard</b>	
Minimum Lot Size	No minimum lot size
Lot Coverage	35% lot coverage maximum
Stormwater and Agricultural Liquid Waste management Plans	If the total impervious area of farm buildings and structures exceed 3700 m <sup>2</sup> (appr. 40,000 ft <sup>2</sup> ) or covers more than 10% of lot a plan is required
Height Limitations	15 metre maximum building height
Building Setbacks	15 to 30 metre maximum building setbacks from property lot lines for MMPFs
Setbacks from Watercourses	30 metre setback from any watercourse
Business license	Required to operate
<b>'Farm Bylaw' Standard</b>	
Farm-side 'Edge Planning'	100 metre maximum building setback from urban/ALR boundary

### *Proposed definitions*

Subject	Proposed definition
Marihuana for Medical Purposes Regulations	Means the same as found in the MMPR.
Medical Marihuana Production Facilities	Means "Site" as defined in the MMPR.

Criteria for developing local government bylaws regarding medical marihuana production in the ALR were not available at the time the RDN Board was considering zoning bylaw amendments to address medical marihuana production under the MMPR in late 2013. Staff relied on the guidance of the Ministry of Agriculture in order to draft the bylaw amendments. The staff report to the EAPC in November 2013 introducing the draft MMPR zoning amendment bylaws provides background on the bylaw development guidance offered by the Ministry in relation to regulation of medical marihuana in the ALR (see Attachment 5). Staff have reviewed the Ministry's proposed criteria and are of the opinion that the MMPR zoning amendments as adopted by the RDN Board in February 2014 are consistent with the proposed criteria and reflect the RDN's limited authority to regulate but not prohibit medical marihuana production on ALR land.

The Ministry's criteria as drafted outlines proposed provisions to regulate medical marihuana production in the ALR. However, it is unclear which regulatory tools are available to regional districts, as some tools such as business licencing are only available for municipalities. The proposed criteria could also provide greater clarity on which provision can be regulated through a Farm Bylaw and which provisions are available to local governments that do not operate under a Farm Bylaw. For example the draft criteria include 'farm-side edge planning' under Farm Bylaw provisions, but include 'stormwater and agricultural liquid waste management plans' under general provisions. Both of these criteria could be included as Farm Bylaw provisions. Staff recommend that comments to the Ministry of Agriculture include a request to ensure that the criteria provide greater clarity on provisions only available to municipalities, those available to regional districts and also which provisions are only available to local governments through approved Farm Bylaws.

Although there are real limitations on local governments to directly address issues such as traffic and security impacts, ground and surface water contamination, wastewater discharge and aquifer impacts in relation to 'farm uses' on ALR land, a Provincial and Federal regulatory framework exists for many of these issues. Health Canada has indicated that facilities operating under the MMPR will be subject to Federal and Provincial legislation and regulations, however given the approval process at the Federal level and Provincial legal jurisdiction it is unclear how Provincial authority is exercised on this Federally approved use. In order to address public concerns, confirmation of the Provincial authority over those matters/ issues is extremely important.

The Ministry of Agriculture has developed a 'Farm Practice Reference Guide' for various farm commodities, farm activities and farm related nuisances. The Ministry's 'Farm Practice Reference Guide' includes reference to existing government legislation, industry guidelines and other sources of information related to farm practices in British Columbia. The Ministry's 'Farm Practice Reference Guide' may also be used by the Farm Industry Review Board, the statutory body established under the Farm Practices Protection (Right to Farm) Act to hear formal complaints about farm practices. In order to provide the industry with a resource for best management practices and to provide clarity on regulations and legislation applicable to the industry, Staff recommend that the Board request the Ministry of Agriculture to include guidance specific to the production of medical marihuana in the Ministry's 'Farm Practice Reference Guide'.

## **ALTERNATIVES**

1. To receive this report for information and provide recommendations to the Board on comments to the Ministry of Agriculture regarding the Ministry's draft criteria for developing local government bylaws regarding medical marihuana production in the ALR.
2. To receive this report for information and not provide recommendations to the Board on comments to the Ministry of Agriculture regarding the Ministry's draft criteria for developing local government bylaws regarding medical marihuana production in the ALR.

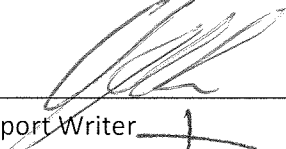
## **SUMMARY/CONCLUSIONS**

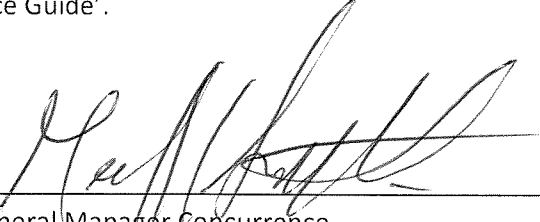
In British Columbia the ability of local governments to address issues related to the siting of medical marihuana production facilities within their communities is limited on ALR land given that the use has been determined by the Province to constitute a 'farm use' in the ALR. Local governments have limited authority to regulate and cannot prohibit farm uses on ALR land. This creates some unique challenges in unserved rural areas where public concerns have been expressed. These include traffic and security impacts, potential for ground and surface water contamination, wastewater discharge and aquifer impacts exist in relation to medical marihuana production facilities proposed on ALR land. With respect to the RDN's limited authority to address these concerns staff recommend that the Board provide correspondence to Health Canada requesting its thorough evaluation of such issues when considering MMPR applications on ALR land within the RDN.

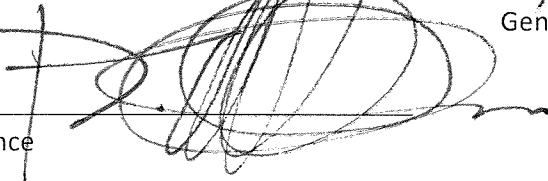
The RDN Board received correspondence from the Ministry of Agricultural requesting comments on the Ministry's draft criteria which are intended to guide development of local government bylaws related to medical marihuana production in the ALR. If the Minister approves bylaw standard criteria regarding medical marihuana production in the ALR, local governments will have a clearer understanding of the extent to which they may regulate medical marihuana production facilities in the ALR. Staff have reviewed the proposed criteria and are of the opinion that the MMPR zoning amendments as adopted by the RDN Board in in February 2014 are consistent with the proposed criteria and reflect the RDN's limited authority to regulate medical marihuana production on ALR land. Staff recommend that comments to the Ministry of Agriculture include a request to ensure that the criteria provide greater clarity on provisions available to municipalities, but not available to regional districts and also which provisions are only available to local governments through approved Farm Bylaws. In order to provide the industry a resource for best management practices and provide clarity on regulations and legislation applicable to the industry, Staff also recommend that the Board request the Ministry include guidance specific to the production of medical marihuana in the Ministry's 'Farm Practice Reference Guide'.

**RECOMMENDATION**

1. Receive this report for information.
2. Provide correspondence to Health Canada requesting its thorough evaluation of such issues as traffic and security impacts, potential for ground and surface water contamination, wastewater discharge and aquifer impacts when considering MMPR applications on ALR land within the RDN.
3. Respond to the Ministry of Agriculture's request for comments on draft criteria for developing local government bylaws regarding medical marihuana production in the ALR with the following requests:
  - a) that the criteria provide clarity with regard to provisions available only to municipalities and those available to regional districts.
  - b) that the criteria provide clarity on which provisions are only available to local governments through approved Farm Bylaws.
  - c) that the "Guide for Bylaw Development in Farming Areas" provide clarity with regard to Provincial and Federal regulations that apply to medical marihuana production in the ALR.
  - d) that the Ministry of Agriculture include guidance specific to the production of medical marihuana in the Ministry's 'Farm Practice Reference Guide'.

  
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Report Writer

  
\_\_\_\_\_  
General Manager Concurrence

  
\_\_\_\_\_  
CAO Concurrence

**Attachment 1**

**Memorandum from Ministers Oakes and Letnick (July 26, 2014) Outlining the Province's Position on  
Medical Marihuana Production in the ALR.**



## Attachment 1

**From:** Minister, CSCD CSCD:EX [<mailto:CSCD.minister@gov.bc.ca>]  
**Sent:** Thursday, June 26, 2014 4:14 PM  
**To:** corpsrv  
**Subject:** Medical Marihuana Production in British Columbia

We are writing in our capacities as Minister of Community, Sport and Cultural Development and Minister of Agriculture, regarding issues relating to medical marihuana production in British Columbia.

Many local governments have expressed concern regarding the potential establishment of medical marihuana production facilities in our communities, under the new federal regulations. Some local governments and stakeholders have written expressing an array of concerns, the most common messages concerning the exclusion of these facilities from qualifying for provincial farm class and if they would be considered an allowable farm use.

These concerns have been taken seriously and we understand that the establishment of these facilities within your communities will have a potential impact on services and costs. We brought your concerns to the attention of Honourable Christy Clark, Premier, and our Cabinet colleagues in the context of a larger discussion about medical marihuana production in the province.

After careful consideration, we are pleased to inform you that the Province of British Columbia has made a decision to implement a regulatory change that excludes medical marihuana, and any other federally regulated narcotic, from being eligible for farm classification for property assessment and tax purposes. This decision to treat medical marihuana as a restricted narcotic substance and a pharmaceutical is also consistent with the Province of Alberta. This change will apply to facilities located on both Agricultural Land Reserve (ALR) and non ALR lands.

In addition, please be advised that the Province will continue to view medical marihuana production facilities as an allowable farm use on ALR lands. The Ministry of Agriculture's policy position is that local governments should not prohibit medical marihuana production in the ALR. Any local government that has passed or is considering bylaws that address the issue of medical marihuana production within its boundaries may wish to seek legal counsel, as enacting such a bylaw may give rise to a constitutional challenge as frustrating a lawful initiative of the federal government. This is consistent with the position of the Agricultural Land Commission's updated Information Bulletin from January 2014 ([http://www.alc.gov.bc.ca/publications/ALC\\_Info\\_Bulletin\\_Marihuana\\_Amended\\_Jan\\_2014.pdf](http://www.alc.gov.bc.ca/publications/ALC_Info_Bulletin_Marihuana_Amended_Jan_2014.pdf)).

Any applicant for a license must comply with all federal requirements including security and building standards, as well as local bylaws regulating site-specific requirements.

Consistent with British Columbia government policy, the Minister of Agriculture does not intend to approve any bylaw that would prohibit the production of medical marihuana in the ALR.

The Ministry of Agriculture will, however, offer guidance to local governments on the degree in which one of their farm bylaws could regulate medical marihuana production in the ALR through a Minister's Bylaw Standard specific to the production of medical marihuana on ALR land and will involve local governments in the development of those standards.

Minister's Bylaw Standards establish standards for the guidance of local government in the preparation of various bylaws affecting agriculture. Examples of current Minister's Bylaw Standards include:

- Building setbacks from lot lines
- Maximum lot coverage
- Maximum building heights

More information about Minister's Bylaw Standards is available on the Ministry of Agriculture's website at: [www.al.gov.bc.ca/resmgmt/sf/guide\\_to\\_bylaw\\_development/Guide\\_to\\_ByLaw\\_Dev\\_index.htm](http://www.al.gov.bc.ca/resmgmt/sf/guide_to_bylaw_development/Guide_to_ByLaw_Dev_index.htm).

Overall, we believe this decision reflects a balanced approach, which considers the interests of the federally licensed facility operators, the interests of the agricultural sector and the purpose of the Agricultural Land Reserve, and the concerns of local governments and communities. Also, please see [Information Bulletin and Backgrounder](#) for more information.

Sincerely,

Coralee Oakes  
Minister of Community, Sport and Cultural Development

Norm Letnick  
Minister of Agriculture

**Attachment 2**

**Correspondence from the Ministry of Agriculture (September 16, 2014) Requesting Comment on the Ministry's Draft Criteria Bylaws Regarding Medical Marihuana Production in the ALR.**



September 16, 2014

File:

Dear Stakeholder:

**Re: Draft Minister's Bylaw Standard on Medical Marihuana Production Facilities**

Attached is discussion paper prepared by the BC Ministry of Agriculture. This paper contains a draft set of criteria for developing local government bylaws regarding medical marihuana production in the Agricultural Land Reserve (ALR). The criteria describe what is considered a permitted use in the ALR by the Ministry.

The discussion paper describes the issue, provides the framework for developing the bylaw standard, and proposes criteria for developing local government bylaws. We are most interested in input on the criteria (Part 4) but we welcome feedback on all sections of the paper. Please provide us with comments directed specifically at the content of the paper so that your feedback can be effectively incorporated into the final document. We would like to receive all comments by October 26, 2014 (via mail, fax or email). Once stakeholder input has been received and incorporated into the discussion paper, the criteria will be sent to the Ministry executive and Minister for final approval. Once approval has been received, the information will be distributed to local governments and incorporated into the Ministry's "Guide for Bylaw Development in Farming Areas".

You may send your feedback by email, Canada Post, or fax.

**Email: [AgriBylaw@gov.bc.ca](mailto:AgriBylaw@gov.bc.ca)**

**Mail:**

**Medical Marihuana Production Facilities in the ALR Consultation**

**Ministry of Agriculture**

**PO Box 9120 Stn Prov Govt**

**Victoria, BC V8W 9B4**

**Fax: 250 356-0358**

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Ministry of Agriculture

Innovation and Adaptation  
Services Branch

**Mailing Address:**

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Abbotsford, BC V3G 2M3

**Telephone:** 604 556-3109

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Please direct your questions or comments to:

Gregory Bartle – ph 250 387-9687, fax 250 356-0358, [Gregory.Bartle@gov.bc.ca](mailto:Gregory.Bartle@gov.bc.ca); or

Bert van Daltsen – ph 604 556-3109, [Bert.vanDaltsen@gov.bc.ca](mailto:Bert.vanDaltsen@gov.bc.ca) ; or

Toll-free for South Coast and Vancouver Island: 1-888-221-7141

Toll-free for Interior and Northern BC: 1-800-334-3011

Yours truly,

A handwritten signature in cursive script that reads "Bert van Daltsen".

Bert van Daltsen, PEng.  
Manager, Strengthening Farming Program  
Innovation and Adaptation Services Branch

**Attachment 3**

**Ministry of Agriculture's (September 15, 2014) Discussion Paper on the Ministry's Draft Criteria Bylaws  
Regarding Medical Marihuana Production in the ALR.**



**Regulating  
MEDICAL MARIHUANA PRODUCTION FACILITIES  
in the ALR**

**DISCUSSION PAPER AND PROPOSED MINISTER'S BYLAW STANDARDS**

**September 15, 2014**

**Prepared by:  
Strengthening Farming Program  
Innovation and Adaptation Services Branch**

## Executive Summary

Canadian courts have determined that individuals who have demonstrated a medical need for marihuana must have reasonable access to a legal source of marihuana for medical purposes. In-line with this, the Federal Government has introduced the “Marihuana for Medical Purposes Regulations” (MMPR) in June 2013, to update the system in which patients access medical marihuana and how medical marihuana is produced to address issues with the previous system.

The province has considered medical marihuana and decided that it is a farm use and should not be prohibited by local governments in the Agricultural Land Reserve (ALR). This discussion paper was prepared by the BC Ministry of Agriculture (AGRI) to seek input on the establishment of a Minister’s Bylaw Standard to guide local government bylaw development regarding medical marihuana production facilities in the ALR.

The discussion paper describes the process to develop the bylaw criteria, background information, current policies and regulation, and proposed set of criteria. The draft criteria are in Part 4.3. The consultation period closes on October 26, 2014. The feedback will be compiled and analyzed and the discussion paper and criteria will be updated. The Minister of Agriculture may consider establishing the updated criteria as a Bylaw Standard and incorporating the criteria into the Ministry’s “Guide for Bylaw Development in Farming Areas”.



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## **Introduction**

This discussion paper outlines a set of criteria for regulating Medical Marihuana Production Facilities (MMPFs) in the Agricultural Land Reserve (ALR) and serves as a basis for further discussion with local governments and the agricultural industry to ensure the criteria effectively deal with the issue of MMPFs from a land use regulation perspective. The criteria that have been developed reflect analysis undertaken by Ministry of Agriculture (AGRI) staff as well as current approaches being used by local governments to accommodate MMPFs. The criteria can also be modified by local governments to be made less restrictive to meet local agricultural needs.

## 1.0 Part one – The Criteria Development Process

The intent of this process is to develop criteria that can be used by local governments to establish land use policy or regulations to address MMPFs in the ALR. Following consultation with stakeholders, these criteria, if approved by the Minister of Agriculture, may become standards and be incorporated into the “Guide for Bylaw Development in Farming Areas” (Bylaw Guide).<sup>1</sup>

### *Purpose and Goals*

The purpose of establishing the criteria is to address local government concerns regarding MMPFs while recognizing that MMPFs are considered a permitted use within the ALR. These criteria will:

1. Meet the needs of the agriculture industry;
2. Minimize the impact of MMPFs in the agricultural area; and
3. Minimize the risk of MMPFs being used for non-farm purposes

### *Scope*

The land use regulation criteria considered in this Discussion Paper were developed by considering MMPFs as being similar to other types of agricultural buildings in the ALR and by identifying other potential issues pertaining to MMPFs that should also be addressed. While consideration of the health, safety and welfare of the general public are acknowledged, the proposed set of criteria is not intended to replicate Health Canada regulations, policing authority, and the BC Building Code.

### *Stakeholders*

It is anticipated that the medical marijuana stakeholders involved in developing these bylaw standards will include:

- a) Local governments and their Agricultural Advisory Committees;
- b) The BC Agriculture Council;
- c) Agricultural Land Commission staff;
- d) The Canadian National Medical Marijuana Association;
- e) The Canadian Medical Cannabis Industry Association;
- f) Health Canada;
- g) Community, Sport and Cultural Development Ministry staff; and
- h) Ministry of Health

### *Objectives of the Process*

The objectives of the development process are to:

1. Create a set of criteria for review by stakeholders;
2. Consult with stakeholders; and
3. Develop standards that local governments can adapt and apply as policy or regulation.

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<sup>1</sup> Under the *Local Government Act* (Part 26, Division 8, Section 916), the Minister responsible for the *Farm Practices Protection (Right to Farm) Act* can develop bylaw standards to guide the development of zoning and farm bylaws. Development of provincial standards is intended to promote consistency in the regulation of, and planning for, farming. However, provision has been made under Section 916(3) to allow the standards to differ, if necessary, to respond to BC’s diverse farming industry and land base.

### *Key Steps*

There are five key steps in creating the Minister's bylaw standards. AGRI staff will:

1. develop draft criteria;
2. consult with internal and external stakeholders and receive feedback on the draft criteria;
3. revise criteria for consideration by the Minister;
4. seek Minister's approval ; and
5. encourage local governments to adopt and apply criteria.

### *Process to Date*

AGRI staff reviewed the Health Canada regulations, BC policy and regulations applying to the ALR and BC local government land use bylaws relating to MMPFs. The literature was also reviewed on the regulation of medical marihuana production in other Canadian jurisdictions and the American States of Colorado and Washington. The existing criteria in the Bylaw Guide were assessed as to how they could apply to MMPFs. A committee of AGRI staff prepared a draft set of criteria for review by AGRI, Agricultural Land Commission and BC Farm Industry Review Board staff.

The Discussion Paper is now ready for public consultation.

### *Context*

AGRI has taken the initiative to establish bylaw standards for two significant agricultural topics in recent years. Both have been approved by the Minister and staff encourage local governments to adopt them. The two subjects are "Combined Heat and Power Generation at Greenhouses in the ALR" (2013) and "Residential Uses in the ALR" (2011). Both can be found in the Ministry's Bylaw Guide with additional information at <http://www.al.gov.bc.ca/resmgmt/sf/index.htm>

## 2.0 Part two – Background information

### *Context*

Canadian courts have determined that individuals who have demonstrated a medical need for marihuana must have reasonable access to a legal source of marihuana for medical purposes. In-line with this, the Federal Government in 2001 introduced the “Marihuana Medical Access Regulations” (MMAR), authorized under the Controlled Drugs and Substances Act, establishing a framework to implement access to this product. Due to subsequent court challenges and a number of other concerns, a second set of regulations, “Marihuana for Medical Purposes Regulations” (MMPR), were created which came into force on June 7, 2013 and ran concurrently with the MMAR until it was repealed on March 31, 2014. These new regulations changed the manner in which patients could access medical marihuana and how medical marihuana can be produced.

As a result of ongoing litigation and uncertainty arising from court decisions, Health Canada will treat the Authorizations to Possess, Personal-Use Production Licences, and Designated-Person Production Licences issued under MMAR as extending beyond March 31, 2014 until a decision is made. There are certain criteria to be met for these extensions.

*“Dried marijuana is not an approved drug or medicine in Canada. The Government of Canada does not endorse the use of marijuana, but the courts have required reasonable access to a legal source of marijuana when authorized by a physician.” – Health Canada*

### *Medical Marihuana Production Regulations*

The MMPR change the parameters for medical marihuana production in Canada from a system of home-based or other location production licenses for personal use, which have been associated with various law enforcement and public safety concerns, to a system of more tightly regulated, commercial scale production licenses supplying authorized medical marihuana patients. MMPR require applicants for a commercial license to notify the local government, fire and police officials of the location of their facilities, and to comply with all federal, provincial and local government laws and bylaws, including zoning bylaws. As of April 22, 2014, five licenses have been issued in BC; in Saanich, Maple Ridge, Whistler, Nanaimo, and the Okanagan. Thirteen licenses have been issued in Canada. As of September 1, 2014 there have been no revisions since April.

The MMPR define a site as follows:

*“Site” means (a) a building or a place in a building used by a licensed producer; or (b) an area occupied exclusively by buildings used by a licensed producer. - MMPR*

For clarity and ease of use, this Discussion Paper will also refer to “Medical Marihuana Production Facilities” (MMPF) as the de facto meaning of “site”.

The MMPR construction requirements for MMPFs focus almost exclusively on security for both production and storage. The technical details on how to comply are outlined in Health Canada’s “Guidance Document: Building and Production Security Requirements for Marihuana for Medical

Purposes”. This document provides assistance to producers but is not a one-size fits all prescription. Producers submit a security proposal to Health Canada as part of their licensing application.

- The production, packaging, labeling and storage of the product can only occur indoors at the site with restricted access to areas within the site. MMPFs must provide both site perimeter security and security for areas where marihuana is present. A physical barrier, like a fence, is expected to be part of the site security. The site perimeter must also be visually monitored by recording devices at all times. The Guidance Document also provides guidance on specific wall, roof, and glass construction details, back-up mechanisms and power supply.
- Areas where marihuana is present also require a system that filters the air to prevent the escape of odours and pollen. The Guidance Document cites a high efficiency particle air filter such as a H13 HEPA filter as an example.
- MMPFs appear to fall into a range of different licensee categories depending on their production level. Associated with this are related security levels for product storage, with specific minimum electrical detection requirements, safe requirements, ventilation security, secure environs construction specifications, and door specifications.

Security requirements for the storage of dried marihuana are established in Health Canada’s “Directive on Physical Security Requirements for Controlled Substances”. Minimum security standards for the storage of a variety of controlled substances, including marihuana, are included. These standards are intended to allow for flexibility as technology and materials change over time.

Other elements of MMPR that may be of note include provisions to import and export medical marihuana with other countries where appropriate agreements are in place. Sales of medical marihuana must be handled through bonded couriers and not directly to the consumers at the production facility. The MMPR also requires testing of the product to verify that it meets the specifications of the product and product quality. These requirements may distinguish medical marihuana from some other agricultural crops.

### *Medical Marihuana Production*

Scientific information on medical marihuana production is limited. Indoor marihuana production can be assumed to use energy, water and nutrients intensively. According to one research paper, energy use includes lighting, dehumidification, ventilation, air conditioning, heating, irrigation and generation of CO<sub>2</sub>. From another, nearly one-third of medical marihuana production costs can be energy costs. This crop, just like any other commercially produced indoor crop, is susceptible to plant pests such as insects or diseases.

Indoor production of medical marihuana is generally similar to greenhouse production of plants. In both cases the growing environment can be highly controlled. Production concerns regarding irrigation water, waste water and pesticide use for medical marihuana will also be similar to greenhouse production of other plants. Water and nutrients are generally conserved through recirculation. Also, there are very few pesticides registered for use with medical marihuana in Canada. Pesticides are considered registered for use on medical marihuana when medical marihuana is clearly listed on each pesticide label which always has a registration number on the main panel as well as pests controlled and how to use the product. Pesticide labels are considered legal documents.

From a production area perspective, the production of medical marihuana takes place on a relatively small acreage when compared to other agricultural crops produced indoors (e.g. greenhouse vegetables, nursery stock, landscaping plants) in Canada or in British Columbia. Currently a very small portion of the Canadian population (0.166%) consumes medical marihuana. The average consumption is estimated at 2 grams per day. Assuming that 75 grams of marihuana is produced per square foot of building space (excluding storage and distribution), then the combined production area required for medical marihuana in British Columbia is estimated at 0.7 ha (1.7 acres) and for Canada is 5.2 ha (12.9 acres). Even if the consumption of medical marihuana were to increase ten-fold, the production area requirements are small for this very high value crop relative to greenhouse agricultural crops.

### *The Regulations in BC*

Many local and regional governments in BC are responding to Canada's MMPR by introducing bylaw amendments to regulate medical marihuana production in their communities. Many local governments sought direction from the province regarding whether medical marihuana production would receive "farm class" status under the *Assessment Act* and whether it could be prohibited in the ALR.

On June 24 2014, the Provincial Government issued a media release<sup>2</sup> providing further clarity on its position with regards to federally licensed medical marihuana production. The statement supports the ALC's position that medical marihuana production that is in compliance with Health Canada's MMPR is an allowable farm use within the ALR. In addition, the Province states that this production "...should not be prohibited by local government bylaws".

*Local governments looking to propose a bylaw prohibiting medical marijuana [sic] may wish to seek legal counsel as enacting such a bylaw may give rise to a constitutional challenge as frustrating a lawful initiative of the federal government. – BC Government*

The BC Government's June 24, 2014 statement also clarifies that amendments to the *BC Assessment Act*<sup>3</sup> which regulates which farm uses qualify for farm classification, will exclude medical marihuana production as a farm use for property tax purposes. These changes are expected to be in effect for 2015 property taxes.

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<sup>2</sup> <http://www.newsroom.gov.bc.ca/2014/06/bc-preserves-local-governments-tax-revenues-from-medical-marijuana-growers.html>

<sup>3</sup> The BC Assessment Authority has a factsheet webpage with more information on medical marihuana production and farm class here: <http://www.bcassessment.ca/public/Fact%20Sheets/Medical%20Marihuana%20Property%20Class.aspx>

### 3.0 Part three – Current policies and regulations

This section reviews current medical marihuana production policies and regulations and how they relate specifically to agricultural land. This review includes: Health Canada’s MMPR; local and regional government bylaws from across the Province; and relevant Ministry of Agriculture’s local government Bylaw Standards already approved from its Bylaw Guide. Policies and regulations from other jurisdictions are included to provide further context for discussion.

#### 3.1 Marihuana for Medical Purposes Regulations

Health Canada’s MMPR are the primary source for current Canadian policy on medical marihuana. The most recent amendments to the regulations came into force on June 7, 2013 and ran concurrently with the MMAR until March 31, 2014 when the MMAR were rescinded. Court challenges have resulted in an extension of some of the licenses under MMAR.

The MMPR are intended to address the entire process for commercial production of medical marihuana. This discussion paper focuses on how these provisions could affect local government land use authority as provided in the *Local Government Act*, how they will interrelate with provisions found in the *Agricultural Land Commission Act* and provisions in the *Farm Practices Protection (Right to Farm) Act*. Specific MMPR requirements of interest include:

- Medical marihuana can only be produced indoors in commercial facilities by licensed operators with no residential accommodation;
- Facilities will mail the product, not dispense it from the site; and
- Notification by the licensed operator to local governments, fire and police authorities before submitting an application to Health Canada is required.

#### *Applicable provisions in the MMPR*

Provision	Local Government Bylaw significance
<b>Interpretation</b>	
“site’ means (a) a building or place in a building used by a licensed producer; or (b) an area occupied exclusively by buildings used by a licensed producer.	This allows for more than one building on the property. Some local governments restrict the number of buildings allowed to one (1).
<b>PART 1.Division 1</b>	
12. (1) Subject to subsections (2) to (7) and to the other provisions of these Regulations, a licensed producer may <ul style="list-style-type: none"> <li>• possess, produce, sell, provide, ship, deliver, transport and destroy marihuana;</li> <li>• (b) possess and produce cannabis, other than marihuana, solely for the purpose of conducting in vitro testing that is necessary to determine the percentages of cannabinoids in dried marihuana; and</li> <li>• (c) sell, provide, ship, deliver, transport and destroy cannabis, other than marihuana, that was obtained or produced solely for the purpose of conducting the in vitro testing referred to in paragraph (b). (p.9-10)</li> </ul>	This requires in vitro testing as part of the production process. The producer must be growing the plant in order for the in vitro testing to be an accessory farm use. If it is strictly a lab, it is a non-farm use and can take place outside the ALR or apply to the ALC for non-farm use in the ALR.
12. (6) A licensed producer may import marihuana if they do so in accordance with an import permit issued under section 75. (p.11)	This provides for importing of marihuana into Canada by licensed producers. The ALC USP Regulations limits the amount of selling non-farm products to 50%.
13. A licensed producer must not conduct any activity referred to in section 12 at a dwelling place. (p.11)	MMPFs are not allowed in a dwelling place.
14. A licensed producer must produce, package or label marihuana only indoors and	MMPFs must be indoors. Can they



at the producer's site. (p.11)	process crop from another producer? The ALC USP Regulations have a provision that limits the percentage of selling non-farm products to 50%.
<b>PART 1. Division 2</b>	
23 (4) An application for a producer's license must be accompanied by... (h) a document signed and dated by the a quality assurance person referred to in section 60 that includes (ii) a report establishing that the buildings, equipment and a sanitation program to be used in conducting the proposed activities referred to in Division 4 comply with the requirement of that Division; and (f) floor plans for the proposed site.	MMPF floor plans are required.
<b>PART 1. Division 3</b>	
43(1). The perimeter of the licensed producer's site must be visually monitored at all times by visual recording devices to detect any attempted or actual unauthorized access. (p.33-34)	This might affect local government provisions on vegetative buffering.
44. The perimeter of the licensed producers' site must be secured by an intrusion detection system that operates at all times and that allows for the detection of any attempted or actual unauthorized access to or movement in the site or tampering with the system. (p.34)	
50. Those areas [where cannabis is present] must be equipped with a system that filters air to prevent the escape of odours and, if present, pollen. (p.35)	MMPFs are required to have odour control.
<b>PART 1. Division 4</b>	
54. Marihuana must not be treated — before, during or after the drying process — with a pest control product unless the product is registered for use on marihuana under the Pest Control Products Act or is otherwise authorized for use under that Act. (p. 35)	

### 3.2 BC Agricultural Land Commission Act (ALCA)

Legislation guiding the activities that can take place on agricultural land in BC includes the *Agricultural Land Commission Act* (ALC Act) and the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*. The Agricultural Land Reserve (ALR) and its associated Agricultural Land Commission (ALC) are established by this legislative authority with regulations defining the types of uses and activities allowed within the Reserve. The mandate of the Commission is to preserve BC's limited agricultural land resource and encourage farm use on those lands.

In January 2014, the ALC provided a bulletin in response to questions concerning medical marihuana production in the ALR. The ALC notes that while the regulation is silent on this land use, the production of licensed medical marihuana is consistent with the definition of "farm use" in the ALCA. Uses that do not involve the growing of the plant however, may require an application to the ALC for non-farm use.

*"farm use " means an occupation or use of land for farm purposes, including farming of land, plants and animals and any other similar activity designated as farm use by regulations, and includes a farm operation as defined in the Farm Practices Protection (Right to Farm) Act – ALC Act*

### 3.3 BC Farm Practices Protection (Right to Farm) Act

Under BC's *Farm Practices Protection (Right to Farm) Act (FPPA)*, farmers are provided certain legal protections related to nuisance providing they meet the following criteria:

- engaging in a farm operation conducted as part of a farm business as defined by the *FPPA*, AND

- using a “normal farm practice” as defined by the *FPPA*, AND
- operating on protected land (Agricultural Land Reserve, or land on which the local government allows farm use, or Crown land designated as a farming area), AND
- the farm practice is not in contravention of the *Health Act*, *Integrated Pest Management Act*, or *Environmental Management Act* or their regulations, AND
- is not in contravention of any land use regulation.

Under the *FPPA*, the BC Farm Industry Review Board (BCFIRB) hears nuisance complaints to determine “normal farm practice”. The complaint must relate to a farm operation conducted as part of a farm business that is in the ALR or on land on which farm use is allowed by a local government. The growing of marihuana could be considered a farm operation (growing of plants) and in some situations under the new federal regulations could be considered a farm business. BCFIRB has not received a farm practice complaint related to a medical marihuana production facility to date. Whether a complaint falls under the *FPPA* is situation dependent and would be determined by BCFIRB when a complaint is received. Even if BCFIRB determined a complaint related to a particular marihuana business did fall under the *FPPA* and subsequently determined that the farm business’s operations were following “normal farm practice”, the business must still meet all the *FPPA* criteria to be protected.

### 3.4 BC Ministry of Agriculture (AGRI)

While the AGRI is currently soliciting input for specific standards on medical marihuana production through this Discussion Paper, the Bylaw Guide addresses the following elements that are relevant to medical marihuana production in BC. Part 2 of the Bylaw Guide presents Minister’s Bylaw Standards that are already approved and which local governments are encouraged to adopt. Part 3 of the Bylaw Guide presents existing ‘Farm Bylaw’ standards for local governments that have had the ‘Right to Farm Regulation’ under the *Local Government Act* applied (they are ‘regulated’).

Many of the standards that already exist in the Bylaw Guide can be applied to MMPFs. The following table presents a list of bylaw standards and addresses their relevance to MMPFs.

#### *Applicable provisions in the Ministry’s “Guide for Bylaw Development in Farming Area”*

Section	Comment
<b>Part 2 – Minister’s Bylaw Standards</b>	
2.4.2 Permitted Uses	The Province’s policy is that medical marihuana production should not be prohibited in the ALR.
2.4.3 Off-Street Loading and Parking	MMPR requires that medical marihuana be distributed to patients only by mail. Section 2.4.3 applies for direct farm marketing sales only.
2.4.4.2 Minimum Lot Size for Specific Commodity Use	Minimum lot size requirements for specific commodities (such as medical marihuana) are discouraged. Nuisance concerns can be addressed through minimum lot line setbacks, maximum lot coverage, and normal farm practices.
2.4.5 Lot Coverage	The Bylaw Guide states that ‘Bylaws should not restrict the area of a lot which may be covered by <i>buildings</i> and <i>structures</i> for farm use, to an area less than 35% or less than 75% for greenhouses.
2.4.5.2 Stormwater and Agricultural Liquid Waste management Plans	A plan is required if the total impervious area of farm buildings and structures exceed 3700 m2 or covers more than 10% of lot a required plan.
2.4.7 Height Limitations	A 15 metre maximum building height for most agricultural buildings.
2.4.8 Setbacks	“Appropriate setback distances can help prevent nuisance conflicts, protect natural resources, and safeguard human health. On the other hand, excessive setbacks can present serious challenges to farming operations.” (p. 18) The Bylaw Guide restricts minimum lot line setbacks to a maximum of 15 to 30 metres for buildings with significant

	nuisance potential such as livestock barns.
2.4.8.4 Setbacks from Watercourses	The Bylaw Guide provides for setbacks from watercourses that vary depending on the type of building. The maximum setback requirement is 30 m for Category 1 type buildings or facilities.
<b>Part 3 – Farm Bylaw Standards and Bylaw Approval for Regulated Local Governments</b>	
‘Right to Farm’ regulated Local Governments	Part 3 of the Bylaw Guide is available only to local governments where the “Right to Farm Regulation” under the Local Government Act has been applied.
3.5.2 Mushroom Farms and On-Farm Composting	Odour is addressed in the MMPR. This Farm Bylaw Standard addresses odour from on-farm mushroom composting. A similar standard could be developed for medical marihuana if required.
3.5.3 Farm-side Edge Planning	This Farm Bylaw Standard provides for setbacks to urban/ALR boundaries of up to 100m when urban-side edge planning is also employed.

### 3.5 BC’s Local Governments

In an effort to provide bylaw requirements by April 1, 2014 when the MMPR came into effect, many local governments began drafting or adopted, zoning bylaw amendments to direct land use decisions concerning MMPFs in their communities. A wide range of provisions have now been enacted across the province, many of which are inconsistent with the Province’s position. The following table summarizes existing local governments’ regulations.

#### *Existing MMPF provisions in Local Government bylaws*

Provision	Example (either adopted or in draft)
Minimum parcel size	<ul style="list-style-type: none"> <li>A range including 2 to 40 hectare (ha) minimum parcel sizes</li> <li>1ha minimum parcel size in a smallholding zone in the ALR and 2ha minimum parcel size in a country residential zone in the ALR</li> <li>259ha (640 acres) minimum parcel size for a MMPF in the ALR</li> </ul>
Minimum MMPF building setbacks from property lines	<ul style="list-style-type: none"> <li>A range including 40, 50, or 100 metre (m) setbacks to any lot line</li> <li>60m setback to exterior lot line</li> <li>90m setback to front lot line, 30 m to other lot lines</li> </ul>
Minimum MMPF building setbacks from other land uses	<ul style="list-style-type: none"> <li>60m setback from residential zones</li> <li>300m setback from residential or mixed use zones</li> <li>100, 200m setback from schools</li> <li>150m setback from a residential zone, daycare, playground, or school</li> </ul>
Minimum MMPF building setbacks from other MMPF	<ul style="list-style-type: none"> <li>1000m setback from nearest medical marihuana facility</li> </ul>
Minimum MMPF building setbacks from watercourses	<ul style="list-style-type: none"> <li>50m setback from all watercourses</li> </ul>
Maximum building heights	<ul style="list-style-type: none"> <li>10m maximum building height</li> </ul>
Maximum building size	<ul style="list-style-type: none"> <li>2000m<sup>2</sup> in industrial and resource management zones &amp; 1000m<sup>2</sup> in agricultural zones</li> </ul>
Number of buildings per parcel	<ul style="list-style-type: none"> <li>Some local governments have provisions limiting the production facility to one (1) building</li> </ul>
Odour control	<ul style="list-style-type: none"> <li>A ventilation plan must be filed with the City and must include how the system prevents any offensive odour from leaving the building;</li> </ul>
Vegetative buffers for screening	Development Permit Area: Medical Marihuana Operation. “Landscaping and Buffering: a) Buffering of medical marihuana operations is important in order to ensure that these uses are not at odds with adjacent uses. b) Any federally required metal fencing shall be buffered with native planting. c) Top soil deep enough to allow for well-rooted planting and reduce irrigation requirements should be utilized. d) Use native species of trees or shrubs and utilize the planting of conifers to block winter winds and deciduous trees to create shade in the summer. e) Utilize cisterns to store water and provide irrigation.”
Form and character guidelines for buildings	Development Permit Area: Medical Marihuana Operation. “This Development Permit Area controls the construction on all property in the Upper Bridge River Valley for the purposes of ensuring that medical marihuana operations are developed in a way that is in keeping with the form and character of the Upper Bridge River Valley. See policies 1.4 to 1.12 in the

	Community Growth and Character section for specific guidelines.”
Light emission controls	Development Permit Area: Medical Marihuana Operation. “Lighting and Signage: a) Minimize the amount of lighting on signs. Installation of video, reader board, and neon or LED signs is discouraged. Signs should be non-illuminated from within. b) Exterior lighting, including within a parking area, should be low intensity and not cause excessive night-time glow or glare. c) Use energy efficient exterior lighting systems with timers and sensors to provide light only when required. Ambient lighting should be minimized. d) Signage should be pedestrian oriented in scale. Large vehicular-based signage should be avoided. Appropriate forms of signage include: i) Signs mounted flush with building facades; ii) Wood carved and/or hand painted hanging signs above pathways.”
Waste water controls	<ul style="list-style-type: none"> <li>• MMPFs are required to provide a description of all discharges to air, sanitary sewer, storm sewer, streams, or groundwater</li> </ul>
Waste management controls	<ul style="list-style-type: none"> <li>• The practice of diverting building-generated CO2 gas or otherwise provided CO2 gas to feed plants is prohibited.</li> </ul>
Permitted zoning	<ul style="list-style-type: none"> <li>• Permitted only in the ALR or in some rural use zones.</li> <li>• Permitted in some industrial zones, only in industrial zones, light industrial zones, heavy industrial zones, light and heavy industrial zones, general and heavy industrial zones, a special industrial zone or specific industrial zones.</li> <li>• Permitted through spot zoning, spot zoning only in ALR, spot zoning only in industrial zones, or spot zoning only in ALR and industrial zones.</li> <li>• Prohibited everywhere, everywhere except 1 parcel, or everywhere except 1 parcel that is City owned.</li> </ul>
Health and welfare	<ul style="list-style-type: none"> <li>• MMPFs will not be detrimental to the health or general welfare of the people living or working in the surrounding area or negatively affect other properties or potential development in the surrounding area.</li> </ul>
Building Permits	<ul style="list-style-type: none"> <li>• MMPFs will require a Building Permit, pursuant to a Building Bylaw.</li> </ul>
Outdoor storage	<ul style="list-style-type: none"> <li>• No outdoor storage.</li> </ul>

### Examples

Three existing Local Government zoning bylaws are provided below as examples for review. They include the City of Kamloops, District of Maple Ridge and the City of Armstrong.

#### City of Kamloops Zoning Bylaw (Bylaw No. 5-2001 Section 311A)

- Medical Marihuana Grow Operations (MMGOs) will not be detrimental to the health or general welfare of the people living or working in the surrounding area or negatively affect other properties or potential development in the surrounding area;
- MMGOs shall be permitted in I-2 (General Industrial) and I-3 (Heavy Industrial) zones subject to the following regulations:
- MMGOs are required to provide a description of all discharges to air, sanitary sewer, storm sewer, streams, or groundwater;
- MMGOs will require a Building Permit, pursuant to City of Kamloops Building Bylaw, as amended;
- MMGOs will meet all other applicable municipal, provincial, and federal regulations;
- A ventilation plan must be filed with the City and must include how the system prevents any offensive odour from leaving the building;
- MMGOs shall be permitted in stand-alone buildings only;
- No ancillary uses shall be permitted in a building containing a MMGO.
- MMGOs shall be located no closer than 150 m from any residential zone, daycare facility, playground, community centre, school, public park, or any use catering to individuals under the age of 18;
- The practice of diverting building-generated CO2 gas or otherwise provided CO2 gas to feed plants is prohibited.
- Licensed MMGOs shall be decommissioned if inactive for more than one year and the structure/site remediated in accordance with City of Kamloops Controlled Substances Property Remediation Bylaw, as amended.
- Formerly-licensed MMGOs under the Marihuana Medical Access Program (MMAP) shall be decommissioned by the current property owner and the structure/site remediated in accordance with City of Kamloops Controlled Substances Property Remediation Bylaw, as amended.
- MMGOs will require a municipal Business Licence before operation may begin.

### District of Maple Ridge Zoning Bylaw (No. 3510-1985)

- MMPF are only permitted in Agricultural, Intensive Greenhouse District, Residential, and Agriculture-Only Zones
- Buildings and structures for Medical Marihuana, Commercial Production as authorized under Federal legislation shall be sited not less than:
  - 60 metres from front and exterior side lot lines;
  - 30 metres from rear and interior side lot lines;
  - 30 metres from all wells and streams;
  - 30 metres from all buildings used for one family residential use, accessory employee residential use or temporary residential use.
- Shall be located not less than 200 metres from an elementary or secondary school, measured from the nearest point of the lot line of the Medical Marihuana, Commercial Production use to the nearest point of the lot line of the elementary or secondary school.
- Shall be located not less than 1000 metres from the nearest point of any lot on which another Medical Marihuana, Commercial Production use is occurring, or on which such a use has been authorized under Federal legislation.

### City of Armstrong Zoning Bylaw (No. 1268)

- Medical Marihuana Production Facilities shall be located only on properties with a minimum parcel size of one (1) hectare, within the Agricultural Land Reserve.
- Buildings used for the production of Medical Marihuana shall be sited not less than:
  - 60 metres from lot lines abutting a residential zone;
  - 30 metres from lot lines abutting a zone other than residential;
  - 15 metres from all wells and streams;
- All activities associated with Medical Marihuana Production Facilities shall be housed completely within an enclosed building and there shall be no outdoor storage or display.
- Nothing shall be done which is or will become an annoyance or nuisance to the surrounding areas by reason of unsightliness, the emission of odours, liquid effluence, dust, fumes, smoke, vibration, noise or glare, nor shall anything be done which creates or causes a health, fire, or explosion hazard, electrical interference or undue traffic congestion.
- The height of buildings and structures shall not exceed the lesser of 12 metres (39.37 feet) or three (3) storeys for Medical Marihuana Production Facilities.
- Lot coverage shall be not greater than thirty five percent (35%) for all other uses including Medical Marihuana Production Facilities.

## 3.6 Regulations in other jurisdictions

BC is different from many other Canadian provinces in its regulatory landscape for farmland due to its ALR. Other Provinces and their local governments however are also experiencing medical marihuana regulatory adjustments as a result of Health Canada's new MMPR framework. The Province of Ontario appears to hold the majority of licensed operators; however regulatory changes in Manitoba, Saskatchewan, Alberta and New Brunswick have initiated regulatory changes. In the United States, Colorado and Washington are also involved in recent medical marihuana regulatory changes. The following provides a summary to provide context for BC and assist in the discussion.

### *Canada*

Currently there are eight licensed MMPFs in the rest of Canada outside of BC. They include five in Ontario, one each in Saskatchewan, Manitoba, and New Brunswick. Local governments in other Provinces have also introduced regulations. Most bylaw amendments adopted or discussed are related to distance setbacks for the production facilities from residential areas, schools, parks and/or restrict operations to industrial zones. The following provides several local government examples for review. Details from the City of Toronto and Alberta are provided.

### The City of Toronto, Ontario

Requirements for medical marihuana operations include that they:

- take place within an enclosed building;
- require a 70m setback from residential, commercial, institutional and open space zones; and
- require a 70m setback as well as from schools, day nurseries, and places of worship.

### Willow Creek Municipal District, Alberta

- Medical Marihuana Production Facilities are a discretionary use within Rural Commercial Zones.
- Development Permit conditions for MM facilities are:
  - ... The development...must be done in a manner where all of the processes and functions are fully enclosed within a stand-alone building including all loading stalls and docks, and garbage containers and waste material
  - The development shall not operate in conjunction with another approved use
  - The development shall not include an outdoor area for storage of goods, materials or supplies
  - The development must include equipment designed and intended to remove odours from the air where it is discharged from the building as part of a ventilation system
  - The development must not be within 246 feet (75.0 m) of a residential or a public institutional district, measured from the building foundation containing the use to the nearest property line of a parcel designated as a residential or a public institutional district
- The Municipal Planning Commission may require, as a condition of a development permit, a public utility waste management plan, completed by a qualified professional, that includes detail on:
  - the incineration of waste products and airborne emissions, including smell;
  - the quantity and characteristics of liquid and waste material discharged by the facility; and
  - the method and location of collection and disposal of liquid and waste material.
- The minimum number of motor vehicle parking stalls shall be based on the parking requirements found in Schedule 9.

### *Washington State*

U.S. Federal and State medical marihuana laws differ significantly from Canada, but can provide context. Under the U.S. Controlled Substances Act (CSA), with certain exceptions, manufacturing, distributing, dispensing or possessing a 'controlled substance' including marihuana is unlawful. Among other things, the Act establishes penalties for distributing or manufacturing controlled substances within 1,000 feet of areas where there are young people.

In 2013, Washington State passed a law called Initiative 502 (I-502) which directs responsibility to the Washington State Liquor Control Board (WSLCB) for the licensure and regulation of producing, distributing and possessing medical and recreational marihuana. The law removes certain criminal and civil penalties and incorporates the CSA 1,000 foot setback distance.

*Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. – Washington State Legislature*

For local governments in Washington, the regulatory landscape for medical marihuana production can be described as evolving. Options for communities appear to include: ignoring the activity; allowing it under their existing bylaws; attempting to delay it; adopting temporary amendments; and, adopting amendments to permit it or prohibit it.

### *Colorado State*

In 2000, Colorado State passed a law allowing people access to small amounts of medical marihuana. In 2010, the Colorado Medical Marijuana Code was passed to direct the State Licensing Authority and the State's Department of Revenue to regulate Medical Marijuana production. Medical marihuana production requires both State and local government approval.

The State Licensing Authority references local licensing authority regulations for medical marihuana production. A number of local governments have initiated regulations including both the County and City of Boulder.

### City of Boulder

Requirements for medical marihuana operations include that the business:

- is permitted only in a specific zone
- operate inside of an enclosed building
- not be located in a building with residences or in a residential zone
- have a lighting plan
- have a plan for ventilation
- have a statement on the anticipated electric load and certification from the landlord and utility provider
- have a zoning confirmation form from the city regarding the proximity of the property to any school or state licensed child care centers, to any other medical marijuana business, or to any residential zone district within a radius of one-quarter mile
- A description of all toxic, flammable, or other materials regulated by a federal, state, or local government that would have authority over the business if it was not a marijuana business
- not have retail sales in cultivation facilities or manufacturing of medical marijuana-infused products

## 4.0 Part four – Proposed Set of Criteria

This section of the discussion paper introduces a number of topics for consideration regarding local government bylaw standards for medical marijuana production in the ALR, provides a rationale for why certain provisions should be introduced as criteria, and summarizes a proposed list of criteria and definitions.

### 4.1 Discussion

The following questions are intended to provoke further discussion:

- Should additional bylaw criteria that do not already exist in the Bylaw Guide be required?
- Would a local government want to enforce elements of MMPR themselves? What are the risks and benefits? Which ones should they consider including in their bylaws?
- More specifically, what are the risks and benefits of proposing bylaw standards that reflect the security and construction expectations that are within Federal jurisdiction? Should the set of criteria refer to specific Federal documentation or particular regulations within the MMPR? What are the consequences of repeating Federal information verbatim and potentially interpreting it incorrectly? Could this potentially generate confusion among producers and possibly incur liability?
- If a licensed operator follows the MMPR, there should be no odour or dust escaping from the MMPF. This may be the first farm use in BC where no level of odour is acceptable. Should the proposed set of criteria include provisions to require minimal odour or dust escape as well? This is a Federal requirement, not a Provincial one.
- What are the risks and benefits of proposing criteria for vegetative buffers around an MMPF? What consequences would arise in this subsequent interaction with the required Federal security regulations?
- Some local governments have specified setback distances from particular land uses, such as schools, or places of worship, or other MMPFs. What are the risks and benefits of proposing criteria that include these types of setbacks?

### 4.2 Rationale for Bylaw Guide criteria

#### *Existing Bylaw Standard criteria*

There are five criteria identified in the Ministry's current Bylaw Guide that align with medical marijuana production. These include minimum lot size, lot coverage, stormwater and agricultural liquid waste management plans, height limitations, and setbacks. Applying these five criteria to medical marijuana production will assist in bringing this type of farm use into a well established framework of existing standards.

Minimum Lot Size – Bylaw Guide *Section 2.4.4.2 Minimum Lot Size for Specific Commodity Use* emphasizes that a minimum lot size should not be required as concerns regarding specific commodities as they "...can be addressed by the existing lot size and by meeting criteria such as adequate setbacks,



maximum lot coverage, and adherence to normal farm practices and environmental standards established through legislation such as the Environmental Management Act, Integrated Pest Management Act, and Public Health Act.” As a specific commodity use, minimum lot sizes should not be applied to medical marijuana production.

Lot Coverage and Stormwater and Agricultural Liquid Waste Management Plans – similar to Minimum Lot Size, Bylaw Guide *Section 2.4.5 Lot Coverage* provides existing guidance that aligns in accordance with medical marijuana production. Providing a maximum 35% lot coverage for buildings involved in medical marijuana production positions this use with already existing farm uses. Furthermore, including the related criteria found in *Section 2.4.5.2* requiring Stormwater and Agricultural Liquid Waste Management Plans can also address important environmental and public infrastructure concerns.

Height Limitations and Setbacks – Bylaw Guide *Section 2.4.7 Height Limitations* recommends a maximum height of 15 metres for all agricultural buildings other than grain bins, silos, combination silo and grain storages and principal livestock buildings. Adding medical marijuana production facilities to this list will help provide consistency and standardization for local government integrating this new farm use with other agricultural activities. Similarly, maximum building setbacks from property lines and minimum watercourse setbacks (*Section 2.4.8*) can do the same.

#### *New Bylaw Standard criteria*

Local government business licenses – Municipalities have historically not required business licences for traditional farming operations in BC. As agricultural activity on ALR land continues to develop, with on-farm processing, product preparation, and cidery and winery operations becoming more prominent, local government involvement through authority provided under the Community Charter<sup>4</sup> can be expected. Given the relatively atypical history and hesitancy by many communities to embrace this sector, establishing a municipal business license requirement bylaw standard for medical marijuana production could assist in easing these concerns and provide greater confidence for local governments in accepting them into their communities.

#### *Existing Farm Bylaw Standard criteria*

Farm-Side Edge Planning – BC’s Local Government Act provides the ability for local governments to make special bylaws, or Farm Bylaws, in relation to farming areas with the Minister of Agriculture’s approval. The Act also allows for the Minister to establish Farm Bylaw standards for the guidance of local governments. One of these Farm Bylaws standards can be found in the publication “Guide to Edge Planning” and recommends setback distances for buildings on the farm-side of the ALR/urban boundary. Farm uses currently identified in the 100 metre setback distance with comparable nuisance concerns to medical marijuana production include manure storage, incinerators, and composting storage. Adding medical marijuana production facility to this list makes available another option for communities looking to implement greater restrictive authority regarding this use.

### **4.3 Proposed provisions and definitions**

Local government zoning bylaws should permit medical marijuana production facilities in the ALR. The proposed provisions and definitions listed below include nine provisions already found in the Ministry’s Bylaw Guide and one new one. These provisions form the basis for further discussion, and as the process

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<sup>4</sup> Part 2 Division 1 Section 8(6)

continues, they will potentially become, with Minister’s approval, the bylaw standard provisions and be integrated into the Bylaw Guide. Initially, the proposed criteria could include:

*Proposed provisions for MMPFs on ALR land*

Subject	Proposed provision
<b>Local Government Bylaw Standard</b>	
Minimum Lot Size	No minimum lot size
Lot Coverage	35% lot coverage maximum
Stormwater and Agricultural Liquid Waste management Plans	If the total impervious area of farm buildings and structures exceed 3700 m <sup>2</sup> (appr. 40,000 ft <sup>2</sup> ) or covers more than 10% of lot a plan is required
Height Limitations	15 metre maximum building height
Building Setbacks	15 to 30 metre maximum building setbacks from property lot lines for MMPFs
Setbacks from Watercourses	30 metre setback from any watercourse
Business license	Required to operate
<b>'Farm Bylaw' Standard</b>	
Farm-side 'Edge Planning'	100 metre maximum building setback from urban/ALR boundary

*Proposed definitions*

Subject	Proposed definition
Marihuana for Medical Purposes Regulations	Means the same as found in the MMPR.
Medical Marihuana Production Facilities	Means "Site" as defined in the MMPR.

## 5.0 References

Agricultural Land Commission, *Information Bulletin Medical Marihuana Production in the Agricultural Land Reserve, Updated January 2014*. Provincial Government of British Columbia. Last retrieved July 7, 2014 from [http://www.alc.gov.bc.ca/publications/ALC\\_Info\\_Bulletin\\_Marijuana\\_Amended\\_Jan\\_2014.pdf](http://www.alc.gov.bc.ca/publications/ALC_Info_Bulletin_Marijuana_Amended_Jan_2014.pdf)

Association of Washington Cities. *Medical Marijuana*. Association of Washington Cities. Last retrieved July 31, 2014 from <http://www.awcnet.org/portals/0/documents/legislative/medicalmarijuana0711.pdf>

Bailey, Ian. *Medical marijuana growers denied tax break reserved for agriculture*. Globe and Mail. Last retrieved July 10, 2014 from <http://www.theglobeandmail.com/news/british-columbia/medical-marijuana-growers-blocked-from-property-tax-break-meant-for-agriculture/article19314995/>

BC Assessment Authority. *Medical Marihuna and Property Class*. Government of British Columbia. Last retrieved August 6, 2014 from <http://www.bcassessment.ca/public/Fact%20Sheets/Medical%20Marihuana%20Property%20Class.aspx>

Boulder County. *Boulder County Medical Marijuana Licensing Regulations*. Boulder County. Last retrieved July 18, 2014 from <http://www.bouldercounty.org/doc/boccc/mmjregs.pdf>

Campbell, Phillip. *Analysis of production area required to produce marihuana*. Self published, 2013.

Canada Gazette. *Regulations Amending the Narcotic Control Regulations and the Marihuana for Medical Purposes Regulations (Communication of Information)*. Government of Canada. Last retrieved July 8, 2014 from <http://www.gazette.gc.ca/rp-pr/p1/2014/2014-06-14/html/reg1-eng.php>

Canada Gazette. *Regulatory Impact Analysis Statement*. Government of Canada. Last retrieved July 30, 2014 from <http://gazette.gc.ca/rp-pr/p1/2012/2012-12-15/html/reg4-eng.html>

Note: Consumption is estimated between 1--3 grams per day, thus 2 grams was taken to be the average.

Caulkins, Johathan P. *Estimated Cost of Production for Legalized Cannabis*. RAND Working Paper. July, 2010.

City of Kamloops. *Zoning Bylaw*. Last retrieved July 9 from <https://kamloops.civicweb.net/Documents/DocumentList.aspx?ID=10595>

City of Armstrong. *Zoning Bylaw*. City of Armstrong. Last retrieved July 9 from <https://armstrong.civicweb.net/Documents/DocumentList.aspx?ID=62473>

City of Boulder, Colorado. *Inquire Boulder Medical Marijuana*. City of Boulder. Last retrieved July 14, 2014 from <http://user.govoutreach.com/boulder/faq.php?cid=23218>

City of Boulder, Colorado. *Boulder Revised Code Chapter 6-14 Medical Marijuana*. City of Boulder. Last retrieved July 18, 2014 from [http://www.colocode.com/boulder2/chapter6-14.htm#section6\\_14\\_3](http://www.colocode.com/boulder2/chapter6-14.htm#section6_14_3)

City of Kamloops. *Zoning Bylaw No. 5-1-2001 General Regulations*. City of Kamloops. Last retrieved July 18, 2014 from <https://kamloops.civicweb.net/Documents/DocumentList.aspx?ID=10595>

City of Maple Ridge. *Zoning Bylaw*. Cit of Maple Ridge. Last retrieved July 9 from <http://www.mapleridge.ca/DocumentCenter/View/587>

City of Nanaimo. *Zoning Bylaw*. Last retrieved July 9 from <http://www.nanaimo.ca/UploadedFilesPath/Bylaws/BylawNo4500.pdf#nameddest=Agri>

City of Toronto. *Zoning Bylaw 403-2014*. City of Toronto. Last retrieved July 15, 2014 from <http://www.toronto.ca/legdocs/bylaws/2014/law0403.pdf>

Colorado Department of Revenue, Marijuana Enforcement Division. *Permanent Rules Related to the Colorado Medical Marijuana Code*. State of Colorado. Last retrieved July 18, 2014 from <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%3B+filename%3D%22Final+Medical+Marijuana+Rules+-+ADOPTED+090913.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251883935361&ssbinary=true>

Department of Revenue, Marijuana Enforcement Division. *Licensing Information*. State of Colorado. Last retrieved July 18, 2014 from <http://www.colorado.gov/cs/Satellite/Rev-MMJ/CBON/1251592985101>

Diplock, Jordan and Darryl Plecas. *The Increasing Problem of Electrical Consumption in Indoor Marijuana Grow Operations in British Columbia*. University of the Fraser Valley. 2011.

Government of Canada. *Marihuana for Medical Purposes Regulations. Current to June 12, 2014*. Minister of Justice. Last retrieved July 8, 2014 from <http://www.laws-lois.justice.gc.ca/PDF/SOR-2013-119.pdf>

Government of Canada. *Pest Control Products Act (S.C. 2002, c.28)*. Justice Laws Website. Last retrieved September 4, 2014 from <http://www.laws-lois.justice.gc.ca/eng/acts/P-9.01/>

Health Canada. *Directive On Physical Security Requirements For Controlled Substances (Licensed Dealers Security Requirements For The Storage Of Controlled Substances)*. Government of Canada. Last retrieved July 18, 2014 from [http://www.hc-sc.gc.ca/hc-ps/pubs/precurc/dealers-distrib/phys\\_securit\\_directive/index-eng.php](http://www.hc-sc.gc.ca/hc-ps/pubs/precurc/dealers-distrib/phys_securit_directive/index-eng.php)

Health Canada. *Guidance Document - Building and Production Security Requirements for Marihuana for Medical Purposes*. Government of Canada. Last retrieved July 10, 2014 from <http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/bp-securit-eng.php>

Health Canada. *Medical use of Marijuana*. Government of Canada. Last retrieved July 7, 2014 from <http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php>

Mills, Evan. *Energy Up In Smoke, the Carbon Footprint of Indoor Cannabis Production*. Self published. April, 2011.

Ministry of Agriculture. *Guide to Edge Planning*. Province of BC. Last retrieved August 6, 2014 from [http://www.al.gov.bc.ca/resmgmt/sf/publications/823100-2\\_Guide\\_to\\_Edge\\_Planning.pdf](http://www.al.gov.bc.ca/resmgmt/sf/publications/823100-2_Guide_to_Edge_Planning.pdf)

Ministry of Community, Sport and Cultural Development. *B.C. preserves local governments' tax revenues from medical marijuana growers*. Province of British Columbia. Last retrieved July 8, 2014 from <http://www.newsroom.gov.bc.ca/2014/06/bc-preserves-local-governments-tax-revenues-from-medical-marijuana-growers.html>

MRSC Local Government Success. *Recreational Marijuana: A Guide for Local Government*. Municipal Research and Services Center. Last retrieved July 31, 2014 from <http://www.mrsc.org/subjects/legal/502/recmarijuana.aspx#table>

MRSC Local Government Success. *Marijuana Land Use Issues*. Municipal Research and Services Center. Last retrieved July 31, 2014 from <http://www.mrsc.org/subjects/legal/502/landuse502.aspx>

MRSC Insight. *Marijuana Producers, Processors, and Retailers – Where Will They Be Setting Up Shop?* Municipal Research and Services Center. Last retrieved August 1, 2014 from <http://insight.mrsc.org/2013/03/05/marijuana-producers-processors-and-retailers-where-will-they-be-setting-up-shop/>

Office of Diversion. *Distribution or manufacturing in or near schools and colleges*. U.S. Department of Justice. Last retrieved August 1, 2014 from <http://www.deadiversion.usdoj.gov/21cfr/21usc/860.htm>

O'Hare, Michael, Daniel L. Sanchez and Peter Alstone. *Environmental Risks and Opportunities in Cannabis Cultivation*. BOTEC Analysis Corp. June, 2013.

Oldman River Regional Services Commission. *Proposed change to Land Use Bylaw No. 1616*. Municipal District of Willow Creek No. 26 in the Province of Alberta. June 2014 Last retrieved August 1, 2014 from [http://www.mdwillowcreek.com/devfiles/Changes\\_LUB1616\\_June2014.pdf](http://www.mdwillowcreek.com/devfiles/Changes_LUB1616_June2014.pdf)

Provincial Agricultural Land Commission, *Agricultural Land Commission Act*. Government of British Columbia. Last retrieved July 8, 2014 from [http://www.bclaws.ca/civix/document/id/complete/statreg/02036\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/02036_01)

Province of British Columbia. *Farm Practices Protection (Right to Farm) Act*. Province of British Columbia. Last retrieved August 1, 2014 from [http://www.bclaws.ca/civix/document/id/complete/statreg/96131\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96131_01)

Province of BC. *Community Charter*. Province of BC. Last retrieved August 4, 2014 from [http://www.bclaws.ca/civix/document/id/complete/statreg/03026\\_02](http://www.bclaws.ca/civix/document/id/complete/statreg/03026_02)

Squamish-Lillooet Regional District. *Medical Marijuana Regulations*. Squamish-Lillooet Regional District. Last retrieved July 8/14 from <http://www.slrd.bc.ca/siteengine/activepage.asp?PageID=222>

Statistics Canada. *Population by year, by province and territory (Proportion)*. Government of Canada. Last retrieved July 30, 2014 from <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02d-eng.htm>

Yeh, N. and J.P. Chung. *High-brightness LEDs – Energy efficient lighting sources and their potential in indoor plant cultivation*. Renewable and Sustainable Energy Reviews. 13(8): 2175-2180. 2009.

Electoral Area Directors Committee Meeting January 13, 2014. *Request for Decision Bylaw Amendments to address the Marijuana for Medical Purposes Regulations*. Squamish-Lillooet Regional District. Last retrieved July 31, 2014 from <https://slrd.civicweb.net/Documents/DocumentDisplay.aspx?ID=42104>

Washington State Liquor Control Board. *Greenhouse Marijuana Producer Fact Sheet*. State of Washington. Last retrieved July 31, 2014 from <http://liq.wa.gov/publications/Marijuana/I-502/GreenhouseMarijuanaProducer-FactSheet.pdf>

Washington State Liquor Control Board. *I-502 Implementation*. State of Washington. Last retrieved July 31, 2014 from <http://lcb.wa.gov/marijuana/I-502>

Washington State Liquor Control Board. *Adopted Rules Highlights*. State of Washington. Last retrieved July 31, 2014 from [http://lcb.wa.gov/publications/Marijuana/I-502/I-502\\_Draft\\_Rule\\_Summary\\_IIIX\\_02-27-14.pdf](http://lcb.wa.gov/publications/Marijuana/I-502/I-502_Draft_Rule_Summary_IIIX_02-27-14.pdf)

Washington State Liquor Control Board. *Initiative 502's impact on the Washington State Liquor Control Board*. State of Washington. Last retrieved July 31, 2014 from <http://lcb.wa.gov/publications/Marijuana/I-502/Fact-Sheet-I-502-REVISED-11-19-12.pdf>

Clark County Community Planning. *I-502 Marijuana facilities*. Clark County Washington. Last retrieved July 31, 2014 from [http://www.clark.wa.gov/planning/land\\_use/marijuana\\_facilities.html](http://www.clark.wa.gov/planning/land_use/marijuana_facilities.html)

Association of Washington Cities. *Legislative Advocacy Legalization of marijuana*. Association of Washington Cities. Last retrieved July 31, 2014 from <http://www.awcnet.org/LegislativeAdvocacy/Legislativeissues/Legalizationofmarijuana.aspx>

Washington State Liquor Control Board. *Medical Marijuana Recommendations*. State of Washington. Last retrieved July 31, 2014 from <https://lcb.app.box.com/MMJ-Final-Rec>

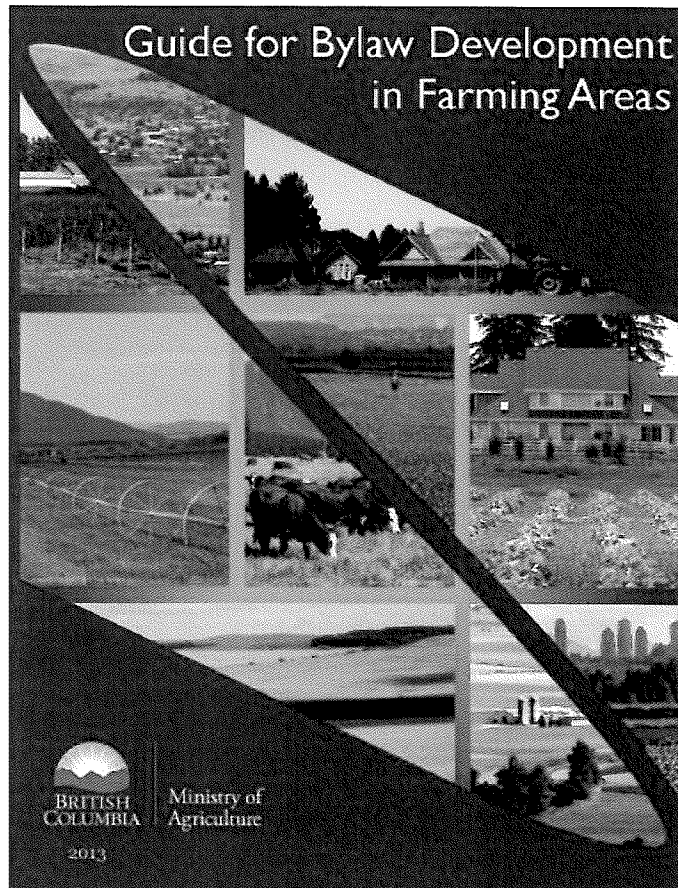
Washington State Department of Health. *Medical Marihuana (Cannabis)*. Washington State. Last retrieved July 31, 2014 from <http://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuanaCannabis/GeneralFrequentlyAskedQuestions.aspx#d>

Washington State Legislature. *WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?* State of Washington. Last retrieved August 1, 2014 from <http://apps.leg.wa.gov/wac/default.aspx?cite=314-55-075>

**Attachment 4  
Ministry of Agriculture (2013) Guide for Bylaw Development in Farming Areas.**

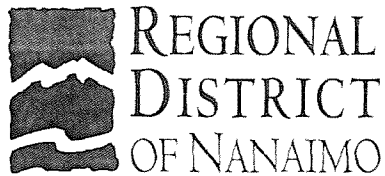
Attachment 4

[http://www.al.gov.bc.ca/resmgmt/sf/guide to bylaw development/Guide to ByLaw Dev index.htm](http://www.al.gov.bc.ca/resmgmt/sf/guide%20to%20bylaw%20development/Guide%20to%20ByLaw%20Dev%20index.htm)



**Attachment 5  
Report to November 2013 EAPC Regarding Draft Regulatory Amendments to Address Marihuana for  
Medical Purposes Regulations.**





RDN REPORT	
CAO APPROVAL	
EAP	<input checked="" type="checkbox"/>
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RHD	<input type="checkbox"/>
BOARD	<input type="checkbox"/>

**MEMORANDUM**

**TO:** Jeremy Holm  
Manager of Current Planning

**DATE:** October 31, 2013

**FROM:** Robert Stover  
Planning Technician

**FILES:** 3900-20-500.387  
3900-20-1285.18

**SUBJECT:** Regulatory Amendments to Address Marihuana for Medical Purposes Regulations

**PURPOSE**

To present to the Regional District of Nanaimo (RDN) Board a number of proposed zoning bylaw amendments to address the Marihuana for Medical Purposes Regulations (MMPR).

**BACKGROUND**

In response to concerns raised by a delegation regarding odour created by licensed medical marihuana grow operations at its June 25, 2013 meeting, the Board approved the following motion:

*“MOVED Director Veenhof, SECONDED Director Young, that staff be directed to prepare a report on the zoning implications as it relates to the new regulations on the licensed production of medical marihuana for the Board’s consideration.”*

Following Board direction, staff prepared a background report which detailed the specifics of the Marihuana for Medical Purposes Regulations and included a number of proposed zoning bylaw amendments to accommodate medical marihuana production under the new MMPR. The report recommended amendments to Bylaws 500 and 1285 to permit medical marihuana production on lands within the Agricultural Land Reserve (ALR), to prohibit medical marihuana production as a home based business, and recommended 30.0 metre setbacks from property lines for structures used for medical marihuana production under MMPR. These proposed amendments were intended to provide immediate and clear land use regulatory direction with regard to medical marihuana production facilities operating under the new MMPR.

The Board considered the proposed zoning bylaw amendments at its meeting of September 24, 2013 and provided the following direction:

*“MOVED Director Fell, SECONDED Director Young, that the regulatory amendments to address Marihuana for Medical Purposes Regulations – Bylaw No. 500.387, 2013 and Bylaw 1285.18, 2013 be referred back to staff, and that staff be directed to organize a seminar discussion for the Board on the topic.”*

Following a Board seminar, which was held on October 22, 2013, staff have evaluated options for permitting medical marihuana production under the MMPR on industrial zoned properties. Options for increasing the minimum setback requirements for medical marihuana production facilities on ALR lands have also been examined.

## ALTERNATIVES

1. To give first and second reading to the amendment Bylaws 500.387 and 1285.18 as presented.
2. To provide staff with alternative direction to prepare land use regulation amendments to Bylaws 500 and 1285 to address MMPR.

## LAND USE IMPLICATIONS

While the new Marihuana for Medical Purposes Regulations do not permit the production of medical marihuana within residential dwellings, there are no specific provisions within the MMPR with respect to regulating the siting or scale of medical marihuana production facilities. As such, if a local government has concerns regarding the siting, scale, or location of medical marihuana production facilities, it is incumbent upon the local government to establish provisions within their respective zoning bylaws to regulate the use.

As the Agricultural Land Commission and the Provincial Ministry of Agriculture view the production of medical marihuana as being consistent with the definition of “farm use” as outlined in the *Agricultural Land Commission Act*, local government bylaws cannot prohibit medical marihuana production use on lands within the ALR. Notwithstanding this, local government bylaws may regulate the use on ALR land by establishing siting requirements for structures associated with the production of medical marihuana. However, a local government cannot regulate the use to the point of prohibition on ALR lands. Following discussion at the October 22, 2013 Board seminar, staff investigated the possibility of applying setbacks of greater than 30.0 metres for structures used for medical marihuana production on ALR lands.

After consulting with the Ministry of Agriculture regarding establishing setbacks of greater than 30.0 metres, Ministry staff indicated that they would not likely support establishment of setbacks that further restricts a farm use on ALR lands. The Ministry of Agriculture ‘Guide for Bylaw Development in Farm Areas’ establishes a range of property line setback options for a variety of farm activities. Medical marihuana production facilities are not explicitly detailed in this guide; however, none of the established setbacks for intensive agriculture uses exceed 30.0 metres with the exception of some forms of confined livestock operations. As the Ministry of Agriculture has indicated that it is not supportive of establishing setback restrictions of greater than 30.0 metres, staff are recommending a 30.0 metre setback requirement for medical marihuana production facilities on ALR lands as previously proposed.

Following discussion from the Board seminar held on October 22, 2013, staff have also evaluated options for including medical marihuana production use on industrial zoned properties. The MMPR requires the cultivation, processing, packaging and shipping associated with medical marihuana production to occur wholly indoors within secure production facilities. Given the potential scope and scale of these activities, staff have determined that lands zoned for medium and heavy industrial uses are most appropriate for medical marihuana production. Medium and heavy industrial lands are intended to accommodate more intensive forms of industrial use such as processing and manufacturing of goods.

Based on Director feedback staff propose to accommodate medical marihuana production on lands zoned Industrial 2 (I-2) in Bylaw 1285, as the majority of these properties are well situated for access along the Alberni Highway, and are located away from residentially zoned lands. The I-2 zone currently accommodates manufacturing and processing uses, which are consistent with the uses associated with medical marihuana production facilities. Staff are not recommending zoning amendments to Bylaw 500

to permit medical marihuana production on industrial lands at this time. The distribution of medium and heavy industrial lands within the scope of Bylaw 500 is less concentrated than those in Bylaw 1285, with some of the parcels abutting residentially zoned lands. Additionally, the medium and heavy industrial zoned parcels in Bylaw 500 vary widely by parcel size and are not equally well served by highway access.

Regardless of the land use regulatory direction chosen by the Board to address the use at this time, interested parties will still have the option to apply to rezone individual properties to accommodate medical marihuana production. Zoning amendment applications can be assessed on a case by case basis, and would allow for a clear evaluation of community interests when considering new proposed production facilities. The rezoning process would also allow the Board to consider factors such as the potential impacts on surrounding properties, servicing implications, and the form and character of these facilities through the course of the application. This would give the Board opportunity to assess each application to rezone on its individual merits.

In light of the recent influx in notices of intent to the RDN to pursue a Producer's License under MMPR, and the lack of clear regulation currently in place to accommodate the use, staff are proposing a series of amendments to RDN Zoning Bylaws to regulate the siting of medical marihuana production facilities ahead of the full implementation of MMPR in April of 2014.

### ***Zoning Considerations***

The new MMPR is intended to treat medical marihuana production in a similar manner to the manufacture of prescription drugs and prohibit the production of medical marihuana within residential dwellings. In order to be consistent with both the intent of the new MMPR and recognize the authority of the *Agricultural Land Commission Act*, staff are recommending the Board consider the following amendments to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" and "Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002":

#### **Bylaw 500 (see Attachment 1 for draft Bylaw 500.387):**

- Define **Medical Marihuana Production**: *means the cultivation and production of medicinal marihuana wholly within a facility as permitted under the **Marihuana for Medical Purposes Regulations (MMPR)**, and any subsequent regulations or acts which may be enacted henceforth;*
- Amend the Home Based Business Guidelines to clarify that medical marihuana production is prohibited as a home based business use;
- Amend the definition of "Agriculture" to exclude medical marihuana production on lands not within the Agricultural Land Reserve;
- Amend Section 14 of the General Regulations to include medical marihuana production under farm use regulations;
- Establish a 30.0 metre setback from property lines for structures used for medical marihuana production use to be consistent with the Ministry of Agriculture's guide for bylaw development in farming areas with regard to intensive agriculture.

**Bylaw 1285 (see Attachment 2 for draft Bylaw 1285.18):**

- Define **Medical Marihuana Production**; means the cultivation and production of medicinal marihuana wholly within a facility as permitted under the **Marihuana for Medical Purposes Regulations (MMPR)**, and any subsequent regulations or acts which may be enacted henceforth;
- Amend the definition of “Farm Use” to exclude medical marihuana production;
- Amend the Home Based Business Guidelines to clarify that medical marihuana production is prohibited as a home based business use;
- Amend the General Regulations of Bylaw 1285 to prohibit medical marihuana production use on all lands except where expressly permitted;
- Amend the General Regulations of Bylaw 1285 to establish a 30.0 metre setback from property lines for structures associated with medical marihuana production use in the A-1 zone (existing setbacks within the I-2 zone would apply);
- Amend the A-1 zone to permit medical marihuana production use;
- Amend the I-2 zone to permit medical marihuana production use.

In order to ensure RDN regulations address the MMPR in a timely manner that will be clear to those interested in applying for production licenses under MMPR, staff have prepared draft amendment bylaws for the Board’s consideration.

***Policy Implications***

While medical marihuana production as proposed under the MMPR does not fit the traditional idea of agriculture, it is acknowledged by the ALC as a “Farm Use” and serves to meet a legitimate commercial demand for a Federally recognized controlled substance. The Regional District of Nanaimo Agricultural Area Plan, Regional Growth Strategy, and Board Strategic Plans all support the creation of a diverse and vibrant economy and include specific policy support for the agricultural economy of the region.

***Public Consultation Implications***

Should the Board approve first and second reading of the proposed amendment bylaws a public hearing will be scheduled prior to the Board’s consideration of third reading.

***Inter-Governmental Implications***

As noted previously the Ministry of Agriculture has advised that it is not supportive of establishing setbacks of greater than 30.0 metres for ‘farm uses’ as outlined in the Ministry’s guidelines.

**SUMMARY/CONCLUSIONS**

Recent changes to Federal legislation surrounding the production and distribution of medical marihuana will have implications for local government from a land use perspective. The new regulation, Marihuana for Medical Purposes Regulations (MMPR), aims to address public health and safety concerns by moving medical marihuana production out of private dwellings and into more secure production facilities.

Following Board direction, staff held an information seminar on the new Marihuana for Medical Purposes Regulations on October 22, 2013. Following the seminar, staff reviewed options for increasing the minimum required setback for structures used for medical marihuana production on ALR lands, and considered options for accommodating the use on lands zoned for medium and heavy industrial uses.

With respect to setbacks, Ministry of Agriculture staff have indicated that they would not likely support the establishment of setbacks of greater than 30.0 metres for medical marihuana production facilities. As such, staff are recommending zoning bylaw amendments that will define medical marihuana production, prohibit the use as a home based business, and permit it as a use exclusively on lands within the Agricultural Land Reserve with Bylaw 500 and on lands zoned A-1 and I-2 within Bylaw 1285. Structures necessary for medicinal marihuana production would be subject to a 30.0 metre setback which is consistent with Ministry of Agriculture guidelines for establishment of bylaws for intensive agriculture.

With respect to permitting medical marihuana production on industrial zoned lands, staff are proposing amendments to Bylaw 1285 to permit medical marihuana production on Industrial 2 (I-2) zoned lands. The majority of I-2 zoned lands are situated away from residential properties and have good access to the Alberni Highway. The I-2 zoning currently permits product manufacturing and processing uses, which are generally consistent with the activities associated with medical marihuana production facilities under the MMPR. Staff are not recommending amendments to Bylaw 500 to permit medical marihuana production facilities on industrial lands at this time, as the distribution of these lands potentially places them within close proximity to developed residentially zoned properties. Additionally, the medium and heavy industrial zoned parcels in Bylaw 500 vary widely by parcel size and are not equally well served by highway access.

Interested parties that wish to establish a medical marihuana production facility on lands not zoned for the use can pursue a zoning amendment application. Zoning amendment applications would provide the Board and community with an opportunity to consider the individual merits of each proposal through public consultation and impact assessments.

In reviewing the proposed bylaw amendments, staff have determined that the recommended amendments are consistent with RDN policy. As such, staff support the proposed bylaw amendments as presented. Staff recommend the Board support the proposed bylaw amendments in order to address the MMPR in a timely manner which will provide clarity and certainty where medical marihuana production facilities are permitted. Should the Board choose to adopt zoning regulations related to MMPR, staff further recommend that a review be undertaken one year following the adoption of the regulation to allow the Board to consider whether further regulatory amendments are required following full transition to the MMPR from the current regime after March 31, 2014.


## **RECOMMENDATIONS**

1. That the Board direct staff to prepare land use regulation amendments to address the Marihuana for Medical Purposes Regulations in order to limit the location of medical marihuana production facilities to parcels in the Agricultural Land Reserve (ALR) for Bylaw 500.
2. That the Board direct staff to prepare land use regulation amendments to address the Marihuana for Medical Purposes Regulations in order to limit the location of medical marihuana production facilities to parcels within the A-1 and I-2 zones for Bylaw 1285.
3. That "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.387, 2013", be introduced and read two times.
4. That the Public Hearing on "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.387, 2013", be chaired by Chairperson Stanhope or his alternate.

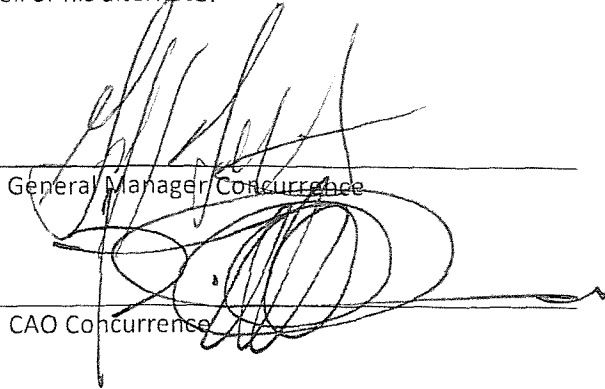
5. That "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285.18, 2013", be introduced and read two times.
6. That the Public Hearing on "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285.18, 2013", be chaired by Director Fell or his alternate.



Report Writer



Manager Concurrence



General Manager Concurrence

CAO Concurrence

Attachment 1

REGIONAL DISTRICT OF NANAIMO  
BYLAW NO. 500.387

A Bylaw to Amend Regional District of Nanaimo  
Land Use and Subdivision Bylaw No. 500, 1987

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

A. This Bylaw may be cited as "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.387, 2013".

B. The "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987", is hereby amended as follows:

1. Under **PART 2, INTERPRETATION, DEFINITIONS** by inserting the following into the sixth line of the first paragraph of the definition of "agriculture" after "but excludes animal care":

" , medical marihuana production except on lands located within the agricultural land reserve,"

2. By adding the following definition after the definition of "medical health officer":

"**medical marihuana production** means the cultivation and production of medical marihuana wholly within a facility as permitted under the *Marihuana for Medical Purposes Regulations (MMPR)*, and any subsequent regulations or acts which may be enacted henceforth."

3. Under **PART 3, LAND USE REGULATIONS, SECTION 3.3 GENERAL REGULATIONS** by adding the following new text to Section 3.3.12 b) xxviii):

"xxix) medical marihuana production"

4. Under **PART 3, LAND USE REGULATIONS, SECTION 3.3 GENERAL REGULATIONS** by adding the following new text to Section 3.3.14:

**"14) Farm Use Regulations**

On lands located within the Agricultural Land Reserve the following activities are permitted farm uses in accordance with the Agricultural Land Reserve Use, Subdivision and Procedure Regulation and are subject to the following regulations:

c) Medical Marihuana Production

Medical Marihuana Production is permitted on land located within the Agricultural Land Reserve if:

i) The production of medical marihuana is contained wholly within licensed facilities as permitted by the Marihuana for Medical Purposes Regulation (MMPR).

- ii) The minimum setback for all structures associated with medical marihuana production is 30.0 metres from all property lines. “

Introduced and read two times this \_\_\_ day of \_\_\_\_\_ 20XX.

Public Hearing held this \_\_\_ day of \_\_\_\_\_ 20XX.

Read a third time this \_\_\_ day of \_\_\_\_\_ 20XX.

Approved by the Minister of Transportation and Infrastructure pursuant to the *Transportation Act* this \_\_\_ day of \_\_\_\_\_ 20XX.

Adopted this \_\_\_ day of \_\_\_\_\_ 20XX.

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Chairperson

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Corporate Officer



**Attachment 2**

**REGIONAL DISTRICT OF NANAIMO  
BYLAW NO. 1285.18**

**A Bylaw to Amend Regional District of Nanaimo  
Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002**

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

A. This Bylaw may be cited as "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Amendment Bylaw No. 1285.18, 2013".

B. The "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002", is hereby amended as follows:

1. Under **SECTION 2, GENERAL REGULATIONS, 2.4 Prohibited Uses** by adding the following text after Section 2.4 s):

"t) medical marihuana production."

2. Under **SECTION 2, GENERAL REGULATIONS, 2.9 Setbacks** by adding the following text after Section 2.9 c):

"d) All buildings and structures used for medical marihuana production on lands within the A-1 zone shall be setback a minimum of 30 metres from all lot lines."

3. Under **SECTION 2, GENERAL REGULATIONS, 2.15 Home Based Business – Regulations** by adding the following text after Section 5 p):

"q) medical marihuana production."

4. Under **SECTION 4, ESTABLISHMENT OF ZONES, 4.1 A-1 – Agriculture 1** by adding the following text after Section 4.1.1 b) Farm Use:

"c) Medical Marihuana Production"

5. Under **SECTION 4, ESTABLISHMENT OF ZONES, 4.1 A-1 – Agriculture 1** by inserting the following into Section 4.1.3 Regulation Table after "g) Minimum Setback of all buildings or structures":

"used for medical marihuana production"

6. Under **Section 4, ESTABLISHMENT OF ZONES, 4.8 I-2 – Industrial 2** by inserting the following text after Section 4.8.1 o) Mini-storage:

"p) Medical Marihuana Production"

7. Under **SECTION 5, DEFINITIONS** by inserting the following text at the end of the definition of "farm use":

"and excludes medical marihuana production;"

8. Under **SECTION 5, DEFINITIONS** by adding the following definition after the definition of "Marshalling Yard":

"**Medical Marihuana Production** means the cultivation and production of medical marihuana wholly within a facility as permitted under the *Marihuana for Medical Purposes Regulations (MMPR)*, and any subsequent regulations or acts which may be enacted henceforth."

Introduced and read two times this \_\_\_ day of \_\_\_\_\_ 20XX.

Public Hearing held this \_\_\_ day of \_\_\_\_\_ 20XX.

Read a third time this \_\_\_ day of \_\_\_\_\_ 20XX.

Approved by the Minister of Transportation and Infrastructure pursuant to the *Transportation Act* this \_\_\_ day of \_\_\_\_\_ 20XX.

Adopted this \_\_\_ day of \_\_\_\_\_ 20XX.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Corporate Officer