BRITISH COLUMBIA

File: 0280-30
Ref: 189383

Lisa Stevens
BC Construction Association
401-655 Tyee Road, Victoria, BC V9A 6X5

Dear Lisa Stevens:

Thanks-you for email of October 30, 2018 regarding your concerns on the recent amendment to the Agricultural Land Reserve Use Subdivision and Procedure Regulation (the Regulation).

In 2013, the Province identified that cultivating medical cannabis met the definition of farm use under the *Agricultural Land Commission Act* (the Act). As such, its production facilities were permitted on land in the Agricultural Land Reserve (ALR). In 2015, the Province amended the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (the Regulation) to make medical cannabis a "designated farm use" that local governments could not prohibit. Local governments who wanted the ability to prohibit cannabis production within their jurisdictions were not satisfied with this regulatory amendment.

Federal legalization of non-medical cannabis prompted the Province to review the Regulation for medical cannabis. On July 13, 2018 the Province amended the Regulation to remove the provision that made all types of lawful medical cannabis production a designated farm use and replaced it with a new designation on medical and non-medical (recreational) cannabis production on the ALR. The amendment can be found at http://www.bclaws.ca/civix/document/id/oic/OIC_CUR/0380_2018.

The amendment strikes a balance between:

- Preserving the productive capacity of the ALR;
- Acknowledging the legalization of recreational cannabis;
- Respecting the citizen's Charter protected right to access medical cannabis;
- Recognizing the need for flexibility at the local level; and
- Recognizing existing capital investment in the cannabis industry.

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The federal *Cannabis Act* and its regulations came into force on October 17, 2018. Under the new federal *Cannabis Act*, outdoor production of both medical and non-medical cannabis will be allowed. The amendment to Section 2 of the Regulation addresses this change in federal policy and sets out specifically what local governments cannot prohibit. According to the new wording in the Regulation, cannabis production is only a "designated farm use" that local governments cannot prohibit if grown lawfully:

- in an open field;
- in a structure that has a base consisting entirely of soil; or,
- in a structure that was either fully constructed or under construction prior to the amendment.

The structure cannot be altered to increase the size of its base or change the material used as its base. This will allow for grandfathering and conversion of pre-existing structures and structures currently under construction, but not their expansion.

In making the amendment, the Province has given more authority to local and treaty First Nation governments to prohibit certain methods of cannabis production in their respective jurisdictions. Specifically, local and First Nations governments can now prohibit cannabis production in new concrete-floored structures on ALR land. It is important to note, that the regulatory amendment does not provide the authority to prohibit operation of an existing cannabis facility that pre-dates the amendment or was under construction at the time of the amendment, or the transitioning of cannabis into an existing structure.

The Agricultural Land Commission is the independent administrative tribunal that administers the Act and is also available to address questions related to the amendment to the Regulation. ALC bulletin 04-Cannabis Production in the ALR provides an interpretation of the regulatory amendment and can be found here: https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/information-bulletins/information_bulletin_04_cannabis_production_in_the_alr.pdf.

I appreciate you raising your concerns. The Province currently has no plans to undertake any further changes to the existing legislation regulating cannabis.

Sincerely,

James Mack
Assistant Deputy Minister