



December 4, 2019

File: 44200-00 GOV

**DELIVERED BY EMAIL**

Debbie Etsell  
Chair  
BC Vegetable Marketing Commission

Bob Dhillon,  
Prokam Enterprises Ltd.

Murray Driediger  
President and CEO  
BC Fresh Vegetables Inc.

Dear all,

**VEGETABLE SUPERVISORY REVIEW AND PROKAM ENTERPRISES LTD.**

A panel of the BC Farm Industry Review Board (BCFIRB) deferred the hearing of an appeal by CFP Marketing Corporation (CFP) on September 10, 2019 until a supervisory review on broader and interrelated issues<sup>1</sup> is completed.

Following the start of this supervisory review, Prokam Enterprises Inc. (Prokam) appealed the BC Vegetable Marketing Commission (Vegetable Commission) November 18, 2019 reconsideration decision<sup>2</sup> that was made at the direction of the BCFIRB appeal panel in an earlier appeal by Prokam. Among other matters, Prokam does not agree with being directed to market through BC Fresh Vegetables Inc. (BCfresh) under the terms of the three-year Grower Marketing Agreement agreed to on February 15, 2018. It also has questions as to calculation of its delivery allocation. After consulting with the parties, a BCFIRB appeal panel deferred Prokam's appeal on November 29, 2019 pending the determinations of this current supervisory review process.

Given the seasonal and therefore cyclical nature of storage crop production, the supervisory panel recognizes that some interim consideration of the matters Prokam continues to raise through its

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<sup>1</sup> 2019 November 27. BCFIRB. [Vegetable Supervisory Review Scope Development Update and Next Steps.](#)

<sup>2</sup> 2019 November 18. BCVMC. [Reconsideration of 2017-12-22 Decision on Allegations of Non-Compliance by the Island Vegetable Co-Operative Association, Prokam Enterprises Ltd., and Thomas Fresh Inc.](#)

appeals and other correspondence may be appropriate. Considering these matters now could support production certainty in the short-term while the supervisory review is underway.

The panel notes that:

- Prokam indicates it needs a timely appeal decision in order to make business arrangements for the 2020/21 crop year (November 26, 2019 appeal process submission); and,
- The Vegetable Commission's observes that several of the issues under appeal relate to the extensive information produced to date via the 2017 Commission process which resulted in Prokam's appeal to BCFIRB (decided February 28, 2019)<sup>3</sup> and the subsequent November 28, 2019 Commission reconsideration decision directed by BCFIRB (November 28, 2019 appeal process submission).

In its most recent appeal submission (November 26, 2019), Prokam requested direct input into the supervisory review timeline and procedure. In the panel's view, such a process at this time would only further delay what is being reported by Prokam as the urgent need for a decision given the upcoming 2020/21 crop year. The supervisory panel will provide all industry stakeholders the opportunity to comment on the supervisory review draft terms of reference once Prokam's immediate concerns are considered.

### **Process**

In order to accommodate the immediate requests by Prokam, the supervisory panel has determined it requires specific information in response to several questions.

The Vegetable Commission, Prokam and BCfresh are to respond in writing, copying each other, on the questions listed below, by **4:30pm December 10, 2019**.

The Vegetable Commission, Prokam, and BCfresh can provide comments on the positions of the other participants in this process by **4:30pm December 16, 2019**.

Submissions will be posted to BCFIRB's supervisory review web page [here](#)<sup>4</sup> as they are received.

#### 1. Production

- a. What is Prokam's delivery allocation as set by the Commission for 2020/21, and what was included in the calculation (years and volumes)?
- b. What acreage is Prokam planning on planting to produce the delivery allocation?
- c. Is there a sound marketing policy reason for this amount of delivery allocation to be modified for 2020/21? Please explain why or why not.

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<sup>3</sup> 2019 February 28. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Appeals from Compliance Orders of the British Columbia Vegetable Marketing Commission](#).

<sup>4</sup> <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/2019-vegetable-supervisory-review>

## 2. Marketing

- a. Is the current Grower Marketing Agreement (GMA) between Prokam and BCfresh directed by the Commission to continue for 2020/21 viable? (Is this a viable marketing option?) Why or why not?
- b. Apart from BCfresh, is any other agency a viable option for use by Prokam? Why or why not?
- c. What are the risks and benefits to orderly marketing of issuing Prokam a producer-shipper licence?

The panel will consider the parties answers to the above questions and any other related documents to determine if it requires further information. Once that decision is made the panel will notify the parties as to its intentions regarding issuing any interim direction.

In closing, the panel notes it is unaware of circumstances that would preclude Prokam from undertaking its planning for planting for the 2020/21 season based on its current delivery allocation and assurance of having an agency that will market its product. While Prokam seeks alternate marketing arrangements and possibly alternate production approvals, the panel encourages Prokam to plan to the extent it is able based on the delivery allocation the Commission has approved at this time while the supervisory panel considers whether any interim direction is necessary.

If you have questions regarding this review, please contact me at [Wanda.Gorsuch@gov.bc.ca](mailto:Wanda.Gorsuch@gov.bc.ca) or 778-974-5790.

Regards,



Wanda Gorsuch  
Manager, Issues and Planning

cc: Bob Gill,  
CFP Marketing Corporation

Jason Tubman  
Thomas Fresh Inc.

BCFIRB web site

## **Summary of BCFIRB's February 28, 2019 Appeal Directions**

[In the Matter of the \*Natural Products Marketing \(BC\) Act\* and Appeals from Compliance Orders of the British Columbia Vegetable Marketing Commission.](#)

*The Vegetable Commission's November 18, 2018 reconsideration decision addressed Orders 1, 2, and 4. The reconsideration decision is available on the Vegetable Commission's web site [here](#)<sup>5</sup>.*

### **Order 1**

Commission orders 48.3 and 48.5 are referred back to the Commission to reconsider, with directions to consider all relevant facts and all relevant provisions of the General Orders, other than the asserted violation of the minimum pricing requirements in respect of the interprovincial sales.

### **Order 2**

The Commission is directed to reconsider its decision to issue order 48.1.

### **Order 3**

Prior to undertaking reconsideration pursuant to orders 1, 2 and 4, the Commission is directed to canvass the parties' views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration.

### **Order 4**

The Commission is directed to reconsider the question of whether any compliance or remedial action is necessary in relation to IVCA.

### **Order 5**

The Commission is directed to review its minimum pricing policy documentation to ensure that it is properly documented and integrated as appropriate with its General Orders.

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<sup>5</sup> <http://www.bcveg.com/news-and-notices.html>