

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT*
AND FOLLOW-UP TO THE JANUARY 7, 2013 SUPERVISORY REVIEW
DECISION CONCERNING THE
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION CENTRAL
VANCOUVER ISLAND AGENCY DESIGNATIONS

DECISION

December 23, 2013

DECISION SUMMARY

1. Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, the BC Farm Industry Review Board (BCFIRB) is responsible for the general supervision of all marketing boards and commissions in the province. Section 7.1(2) of the *NPMA* provides for this supervisory authority to be exercised “at any time, with or without a hearing, and in the manner [BCFIRB] considers appropriate to the circumstances”. Under s. 9 of the *NPMA*, BCFIRB “has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined by [BCFIRB] under [the *NPMA*]”. As well, under s. 8 of the *Natural Products Marketing (BC) Act Regulations*, BCFIRB has specific responsibility for prior approving agency designations recommended by marketing boards and commissions.
2. The issues currently before BCFIRB are whether the British Columbia Vegetable Marketing Commission’s (Vegetable Commission) October 31, 2013 recommendations concerning the agency designation of Vancouver Island Farm Products Inc. (VIFP) and the initial November 22, 2013 recommendations concerning the agency designation of V.I.P. Produce Inc. (VIP) were made in accordance with sound marketing policy.
3. These issues arise from an extensive history of disputes between Central Vancouver Island regulated producers, including questions regarding the governance of VIP and VIFP.¹
4. The long-standing disputes culminated in a BCFIRB January 7, 2013 supervisory decision which deferred final decisions on the agency status of VIFP and VIP until December 31, 2013. In the interim, the Vegetable Commission was to consult with Vancouver Island agencies, producers, marketers and others to assess and recommend longer-term options with respect to the production and marketing of regulated vegetables on Vancouver Island. That consultation process has yet to be completed.
5. In July, 2013, VIFP and BC Fresh Vegetables Inc. (BCFresh), an established agency located on the Lower Mainland, submitted a proposal to the Vegetable Commission. Essentially they proposed VIFP would continue marketing as an agency on Vancouver Island under its current identity, but its core operations relating to governance and reporting to the Vegetable Commission would be overseen or even conducted by BCFresh.
6. The Vegetable Commission recommended to BCFIRB in its October 31, 2013 decision that, as a transitional measure to help break the current impasse on Vancouver Island, VIFP be granted continued status as a designated agency so as to allow it to operate in conjunction BCFresh.

¹ See “Background – Procedural History”

7. A final BCFIRB submissions process was held following receipt of the Vegetable Commission's recommendations. Specific BCFIRB questions for the Vegetable Commission included the legal and policy appropriateness of the conditions the Vegetable Commission referred to as an "agency-sub-agency" structure, and what its recommendation was in regards to VIP agency designation. VIP, VIFP, BCFresh and the Island Vegetable Cooperative Association (IVCA) – another Island agency – were asked to comment on sound marketing policy in relation to the BCFresh-VIFP proposal.
8. On November 22, 2013, the Vegetable Commission made an initial recommendation that VIP's agency designation be extended to allow further review by the Vegetable Commission.
9. In their submissions, the Vegetable Commission, VIFP and BCFresh continued to support the recommendation that VIFP operate as an agency under a defined relationship with BCFresh. Very broadly, they see it as a necessary step in addressing issues related to the governance and marketing capacity of VIFP by linking it with BCFresh while still maintaining Vancouver Island production and an Island marketing identity.
10. VIP and IVCA oppose the recommendation as not being sound marketing policy, including on the grounds that the Vegetable Commission has not undertaken and completed its strategic review of the Vancouver Island regulated vegetable industry. Therefore it is premature to determine the number and type of agencies on Vancouver Island.
11. All of the parties made a number of other submissions related to the status of the agencies and the situation with respect to the production and marketing of vegetables on Vancouver Island. All of which have been reviewed by the panel in its deliberations. There are issues on which the parties generally agree, there are others on which they do not. All of the agencies raised issues with respect to the governance of the Vegetable Commission.
12. The fundamental question before the supervisory panel is - *what is sound marketing policy in the current circumstances?* These circumstances include the fact that the Vegetable Commission has yet to complete its review of the Vancouver Island vegetable industry in accordance with BCFIRB's January 7, 2013 supervisory directions. The panel must also take in to consideration: the lengthy history of the dispute between Central Vancouver Island vegetable producers and agencies; the ongoing disruption in the marketplace arising from issues related to that dispute; the prospect of this continuing for some time to come pending the Vegetable Commission's strategic recommendations; and, that there is a solution proposed by industry (VIFP and BCFresh) which is supported by the Vegetable Commission as the first instance regulator that addresses at least some of the governance and marketing issues identified by BCFIRB in its January 7, 2013 decision.

13. Accordingly, BCFIRB directs the following:

A. It is not clear that a conditional agency designation that would see one agency (BCFresh) take responsibility for another agency (VIFP) is the best or most appropriate business model in the longer term. However, the Vegetable Commission's recommendation for VIFP to be granted agency designation, subject to the conditions established by the Vegetable Commission regarding VIFP and the relationship between VIFP and BCFresh, is approved. Both VIFP and BCFresh are subject to these conditions and both will be otherwise subject to the terms and conditions for agencies set out in the Vegetable Commission's General Order.

The Vegetable Commission is expected to take the appropriate steps in implementing and monitoring the conditions.

B. VIP's agency status is continued and VIP will be subject to the terms and conditions for agencies set out in the Vegetable Commission's General Order.

C. The Vegetable Commission is to provide BCFIRB with a plan and schedule for completing their strategic review of the Vancouver Island regulated vegetable industry as outlined in BCFIRB's January 7, 2013 supervisory decision. This plan is to include measures by which the Vegetable Commission will assess the continued governance and accountability performance of VIP and VIFP in accordance with paragraph 73 of the supervisory decision. The plan and schedule must be provided to BCFIRB by January 31, 2014 for approval.

D. Notwithstanding A and B, the Vegetable Commission has the discretion to reconsider the status of all Vancouver Island agencies should the outcome of its strategic review warrant.

E. The Vegetable Commission is expected to ensure accountability of all agencies, in part through completing the directions in BCFIRB's January 7, 2013 supervisory decision paragraphs 74 and 75.

BCFIRB makes no further determinations with respect to the issues raised in the Vegetable Commission's October 31, 2013 decision. BCFIRB will address separately issues with respect to the governance and composition of the Vegetable Commission.

INTRODUCTION

14. In its January 7, 2013 supervisory review decision² BCFIRB committed to making a final decision regarding the agency designation of Vancouver Island Farm Products Inc. (VIFP) and V.I.P. Produce Inc. (VIP) before December 31, 2013 under s. 8 of the *Natural Products Marketing (BC) Act* Regulations.
15. Section 8 of the *NPMA* Regulations (prior approval of agency designations) is just one aspect of BCFIRB's supervisory authority. Set out in s. 7.1(1)(a) of the *NPMA*: "The Provincial board has general supervision over all marketing boards or commissions under this Act". This authority authorizes BCFIRB, as supervisor, to review and issue directions regarding specific or systemic issues arising in a regulated industry. Section 7.1(2) in turn allows the supervisory power to be exercised in a flexible way, suited to the circumstances, stating that the Provincial board "may exercise its powers under this section at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances."
16. The panel implemented a two-pronged approach in its January 7, 2013 supervisory decision: providing interim agency designation for one year to allow producers, agencies and the Vegetable Commission time to address sound marketing policy considerations, and build a longer-term solution for the benefit of the regulated vegetable industry and its stakeholders.
17. While BCFIRB has the authority to issue additional directions, the panel has concluded that it is prudent at this time to simply address the agency designation of VIFP and VIP. Given the importance to business of timely, effective and strategic decision-making by both the first instance regulator (Vegetable Commission) and the supervisory body (BCFIRB), further delay in a dispute-driven process that has lasted for several years is not in the best interests of the regulated industry and could not be considered sound marketing policy.
18. In this decision, the panel considered input from the Vegetable Commission, VIFP, VIP, BCFresh and IVCA through a final written submission process as outlined in the November 15, 2013 BCFIRB case management letter. The Vegetable Commission was specifically requested to comment on the legal and policy appropriateness of a sub-agency structure along with a recommendation as to VIP's agency designation. The agencies were specifically asked to comment on the sound marketing policy in terms of SAFETI³. BCFIRB did not receive a final strategic report from the Vegetable Commission as previously directed, nor did the Vegetable Commission submissions clearly reflect the requested strategic vision.

² In the Matter of the *Natural Products Marketing (BC) Act* and a Supervisory Review of the British Columbia Vegetable Marketing Commission Central Vancouver Island Agency Designations – January 7, 2013

ISSUE AND SCOPE OF REVIEW

19. The key issues to be decided in this review are:
- a. whether the Vegetable Commission’s October 31, 2013 recommendations concerning the agency designation of VIFP were made in accordance with sound marketing policy,
 - b. and
 - c. whether the Vegetable Commission’s initial November 22, 2013 recommendations concerning the agency designation of VIP were made in accordance with sound marketing policy.
20. As first set out in the January 7, 2013 supervisory review decision, while this issue appears straight-forward, a principles-based decision -- grounded in sound marketing policy -- requires consideration of several related questions including:
- a. the legal and policy appropriateness of the conditional agency structure being proposed by the Vegetable Commission in this instance;
 - b. the direction of the BC regulated vegetable industry;
 - c. the direction of the Vancouver Island regulated vegetable industry;
 - d. the Vancouver Island regulatory structures which are most strategic and effective at this time, and into the future,
 - e. the governance and overall accountability expectations of agencies; and
 - f. the governance and overall accountability expectations of the Vegetable Commission in respect to agencies.

³ Strategic, Accountable, Fair, Effective, Transparent, Inclusive

BACKGROUND

Procedural history

21. This issue is preceded by an extensive history of disputes between Central Vancouver Island producers. These disputes eventually resulted in a Vegetable Commission hearing on April 25, 2012 on an agency application by VIFP, formed by a group of producers who had left VIP, to market storage and greenhouse crops. Following the hearing, the Vegetable Commission recommended in an April 27, 2012 decision VIFP be designated as a greenhouse agency only and at the same time revoked the agency status of VIP.
22. Several appeals of these decisions were filed with BCFIRB. The appeals were held in abeyance by agreement of all the parties to allow facilitated discussions. Although the facilitation process was successful in reaching agreement on interim marketing arrangements, it was not successful in obtaining agreement on longer term solutions. In a November 16, 2013 letter, the appeal panel Chair suggested that the appeals should be referred to BCFIRB in its supervisory capacity, noting:

The regulatory and agency structure of the British Columbia vegetable industry has been the subject of several reviews over the past number of years. The VMC also commissioned a January 30, 2012 ‘Opportunities Assessment of British Columbia’s Vegetable Sector’ that reports on marketing, regulatory, governance and other challenges and opportunities for going forward. I am not convinced that the status of these two agencies should be decided without taking this broader context into account as part of the decision-making process.

23. After receiving comments from the parties, BCFIRB referred the appeals to a supervisory review on November 21, 2012. Following the January 7, 2013 supervisory decision, the appeal panel dismissed the outstanding appeals, noting in an April 9, 2013 decision that BCFIRB had required “the Vegetable Commission to undertake a broader industry review, with ongoing BCFIRB supervision, before making long term decisions with respect to designation of agencies on Vancouver Island”.
24. BCFIRB’s January 7, 2013 supervisory decision set out specific directions, including temporary agency status for VIFP and VIP, pending final recommendations from the Vegetable Commission before November 30, 2013 on the number and type of agencies, including the regulated product to be marketed, that would best serve the Island. The Vegetable Commission was to provide substantive reasons with its recommendations.
25. Prior to recommendations being presented to BCFIRB, the Vegetable Commission received a joint proposal from BC Fresh and VIFP that VIFP be granted agency designation so that it may operate as a ‘sub-agency’ of BC Fresh. Essentially they proposed VIFP would continue marketing as an agency on Vancouver Island under its current identity, but its core operations relating to

governance and reporting to the Vegetable Commission would be overseen or even conducted by BCFresh. BCFIRB's July 29, 2013 letter in response to the joint proposal set out expectations of the Vegetable Commission, as the first instance regulator:

1. It is the Vegetable Commission's responsibility to consider, in consultation with industry stakeholders as appropriate, if and how the proposal may or may not form a transitional step in meeting BCFIRB's January Supervisory Review directions.
 2. BCFIRB appreciates the business planning and related time concerns expressed in the proposal and expect this will be a part of the Vegetable Commission considerations. As a supervisor, BCFIRB's priority remains to help the industry transition to long-term, strategic solutions while balancing immediate business concerns.
 3. If, at any juncture, a BCFIRB decision is requested by the Vegetable Commission, such as those related to agency approval, other supervisory review directions and/or a general supervisory decision, BCFIRB expects the Vegetable Commission will provide full reasoning based on SAFETI.
26. After a hearing on August 29, 2013, the Vegetable Commission released its decision on October 31, 2013. The decision recommended VIFP be designated as an agency. The decision did not fully address the agency status of VIP, nor the number and type of agencies that would best serve the strategic interests of the regulated vegetable industry on the Island in the longer term.
27. Upon receiving the Vegetable Commission's decision and associated recommendation, the supervisory review panel determined there were some outstanding concerns that needed to be addressed before issuing a decision on the agency status of VIFP, including the legal and policy appropriateness of a 'sub-agency' structure, the Vegetable Commission's recommendation regarding VIP's agency designation and the overall sound marketing policy context that would "best serve the strategic interests of the regulated vegetable industry on the Island in the longer term." A submission process was held as outlined in the BCFIRB November 15, 2013 case management letter.
28. During the final submission process, appeals of the Vegetable Commission's October 31, 2013 decision were filed by IVCA and VIP. A separate BCFIRB panel is considering whether the appeals should be held in abeyance pending the outcome of this supervisory process.
29. As noted in the January 7, 2013 supervisory review directions, BCFIRB committed to provide a final decision regarding the agency designations of VIFP and VIP by December 31, 2013

Authorities and Responsibilities

30. Under s. 11(1)(a) of the *NPMA*, boards and commissions may designate agencies through which a regulated product can be produced, packed, stored, transported or marketed. The Vegetable Commission has been granted all of the powers listed in s. 11 of the *NPMA: British Columbia Vegetable Scheme (Scheme)*, s. 4.

31. Like registered producers, agencies are subject to the terms, limitations and conditions governing their agency designation. Like producers, agencies are subject to the oversight of the Vegetable Commission and BCFIRB: see the *NPMA*, the *NPMA* Regulations and the Scheme.
32. Given the legislated powers it is granted and the responsibilities it is charged with, the Vegetable Commission must ensure it, and the agencies it supervises, operate within legal authority, in accordance with the Vegetable Commission Consolidated General Order, and with good governance to deliver sound marketing policy in the broad public interest.

CENTRAL VANCOUVER ISLAND AGENCIES

33. Despite the January 2013 supervisory review directions, the Vegetable Commission's August 29, 2013 hearing and BCFIRB's submission process the panel is in a similar position as on December 2012; there remain significant unanswered questions with respect to the appropriate sound marketing policy framework for Vancouver Island. The panel did not receive from the Vegetable Commission (as directed) the vision and strategic direction for the Island regulated vegetable industry, including a final recommendation regarding VIP. BCFIRB involved itself in the final submission process in an attempt to fill this information gap by soliciting input from the Vegetable Commission, VIFP, VIP, BCFresh and IVCA. This exercise was only partially successful.
34. The fundamental question before the panel is - *what is sound marketing policy in the current circumstances?* These circumstances include the fact that the Vegetable Commission has yet to complete its review of the Vancouver Island vegetable industry in accordance with BCFIRB's January 7, 2013 supervisory directions. The panel must also take in to consideration: the lengthy history of the dispute between Central Vancouver Island vegetable producers and agencies; the ongoing disruption in the marketplace arising from issues related to that dispute; the prospect of this continuing for some time to come pending the Vegetable Commission's strategic recommendations; and, that there is a solution proposed by industry (VIFP and BCFresh) which is supported by the Vegetable Commission as the first instance regulator that addresses at least some of the governance and marketing issues identified by BCFIRB in its January 7, 2013 decision.
35. All parties' submissions contained reference to various matters pre-dating the January 7, 2013 supervisory review decision, including on-going personal grievances. Given those matters were addressed in the January 2013 supervisory review decision the panel does not intend to give them further consideration here. That said, the panel appreciates those matters contribute to the questions being addressed in this decision. In relation to the personal grievances, the panel remains of the view as noted in the January 7, 2013 decision, "[w]e are not in a

position to adjudicate the “right and wrong” of one side or the other...”.

Sound Marketing Policy in Relation to BCFresh-VIFP Proposal

36. The Vegetable Commission, VIP, and BCFresh/VIFP noted the importance of maintaining a Vancouver Island identity in the market place. They also acknowledged Island producers receive higher prices than in other areas of BC, likely due in part to customer loyalty. In addition, some observed the Vancouver Island market remains somewhat protected by the cost of shipping product to the Island. We accept these observations.
37. .In terms of buyers, the Vegetable Commission and BCFresh/VIFP commented on significant consolidation. BCFresh/VIFP put forward that 90% of BC’s retail market is controlled by 5 companies and 85% of food service by 2 companies. As BCFresh/VIFP put it, there is a need for agencies to be relevant to larger accounts arising from increasing retail consolidation. One key point, from their perspective, is the importance of being able to supply sufficient product for 12 months a year.
38. This may be true but the panel observes there may also be demand for niche seasonal products.
39. Views varied on what impact the BCFresh/VIFP arrangement could have on the other Island agencies and their producers.
40. VIP said there is risk to producer returns, in part related to potential customer confusion as to Island product versus non-Island product. In terms of competition based on imported products, BCFresh specified it would first source from Island producers, then, as is its current practice, source from BC producers, followed by Western Canada and then the United States. BCFresh noted package labeling would reflect origin of the product.
41. BCFresh said there would be no disruption to current agencies, noting neither VIP nor VIFP market regulated root vegetables other than potatoes and VIP does not currently have any greenhouse producers. IVCA is marketing organic greenhouse peppers in 2013 under an interim order while VIFP greenhouse producers focus on conventional production.
42. While there may be little direct competition when viewed in this light, the panel observes that, as BCFresh/VIFP pointed out elsewhere, buyers are looking for a suite of core products. Access to a suite of core products may influence whether an agency makes a sale.
43. The Vegetable Commission put forward that business would continue as usual if the BCFresh-VIFP arrangement goes ahead, and that day-to-day agency competition is the “norm” in today’s regulated market. The Vegetable Commission also stated that making use of imported produce to meeting customer

- requirements is representative of how designated agencies ought to operate to service customers when local supply ends.
44. Given that agency marketing is no longer restricted to districts, the panel considers the Vegetable Commission's assessment that agency competition is the 'norm' today to be accurate, alongside the importance of servicing a changing customer base. However the panel does not have a firm conclusion as to the potential consequences to VIP, IVCA and their associated producers.
 45. It was difficult for the panel to determine the amount of production and the number of producers that would be involved in relation to the Island. The Vegetable Commission presented a table of numbers but text references were confusing as to what was being compared – registered producers, farms, farm licenses etc. VIP and IVCA argued that the Vegetable Commission numbers were incorrect. BCFresh found the numbers misleading and provided its assessment as to the potato acreage impacted, but made no mention of greenhouse production. As such, the panel is unable to comment on the amount of production and number of producers that would be impacted by the BCFresh-VIFP arrangement.
 46. In terms of potato production on Vancouver Island, the Vegetable Commission stated any strategic direction will need to focus on land availability, land tenure and parcel size. Commercial potato production does not lend itself to small-scale farming. The Commission does not expect to see commercial potato production grow significantly on the Island in the short term.
 47. Given the consolidation of buyers, this point emphasises the importance for agencies to work together to meet demands, alongside offering a suite of core products and/or niche seasonal products. IVCA has taken the proactive step of contracting with a mainland potato producer. Long-term success will likely require a diversity of producers (on and off Island) working together to maintain viable Island food production.
 48. Unfortunately no such analysis of greenhouse production on the Island was offered by any of the parties hence the panel has no comment on this point.
 49. All the agencies agreed that the Island production and market base is limited, and is only able to support -- at best -- 2 agencies. How many agencies should operate on Vancouver Island in the longer term is an important question in the panel's view, but not one to be answered here. Both VIP and IVCA suggested one agency for the Island. The Vegetable Commission concurred that one agency might be ideal, but that on-going tensions between VIP and VIFP are a significant barrier at this time to moving to a one-agency structure. The Commission added that there does not appear to be a barrier to IVCA and VIP discussing a potential alliance.
 50. It is not appropriate for BCFIRB to set the number of Vancouver Island agencies in this process or in the first instance. Sound marketing policy is to let the market

indicate the number of agencies required, with regulatory decisions based on whether it appears the market is not being met or if there are other significant industry problems.

51. As the overall supervisor of a commodity board operating within the regulated system, the panel is of the view that the best outcome is a well-governed agency(s) meeting market needs for the benefit of producers and the public.

VIFP Agency Designation

52. The Vegetable Commission recommended to BCFIRB in its October 31, 2013 decision that VIFP be designated as an agency and that “...any further action by the Commission regarding VIFP agency designation termination will be conducted in a manner set out in the General Order”.
53. In the same October decision the Vegetable Commission indicated VIFP, if approved as an agency, would operate under specific conditions set out in that decision. These conditions included actions and responsibilities of both VIFP and BCFresh. In the panels view, the powers conferred on the Vegetable Commission in the *NPMA* and Scheme are sufficiently broad to allow an agency designation with conditions where those conditions can be demonstrated to be consistent with sound marketing policy.
54. The conditions provided by the Vegetable Commission in its October decision included BCFresh. BCFresh would have a number of responsibilities, including oversight of pricing, collection of levies, responsibility for inter-agency sales, renewal of VIFP designated agency license, marketing plan development, responsibility for any marketing infractions of VIFP, ensuring VIFP compliance with the General Orders, and signing where the Vegetable Commission requires a signature from a representative of a designated agency.
55. The panel observes BCFresh would take on considerable responsibility, and that BCFresh has stated it is in agreement with the conditions set by the Vegetable Commission. The panel also observes this is a very complex and detailed set of conditions that may require considerable resources to implement and manage by both of the agencies and the Vegetable Commission. It may also add significant complexity if any dispute arises as to these conditions and VIFP’s agency status. Despite these concerns, the panel recognizes these conditions will help address VIFP governance concerns.
56. BCFresh/VIFP report that VIFP will continue to market under a VI Grown label, maintain current marketing approach and keep a sales office in Courtney. VIFP would continue with a 5 member elected board. BCFresh would develop monthly financial statements and operating reports for VIFP as well as develop and

- circulate VIFP Delivery Allocation Reports. Finally BCFresh stated they would provide all regulatory oversight as directed by the Vegetable Commission.
57. The panel is pleased to see producers and agencies working together to find solutions to challenges they are facing. The panel recognizes IVCA and VIP are suggesting they may also have some solutions. However, at this time there is only one proposal on the table for the Vegetable Commission, and now BCFIRB, to address after a year.
 58. In the January 2013 supervisory review decision, BCFIRB accepted the Vegetable Commission's assessment that VIFP and VIP did not have the capacity to manage the Delivery Allocation system. There was general agreement that both agencies had governance challenges. VIFP proposed that BCFresh's governance capacity would be of benefit to it.
 59. The panel does not have the benefit of a report from the Vegetable Commission, originally due December 31, 2013 in accordance with paragraph 74 of BCFIRB's January decision, concerning agency accountability requirements. However, at this point the panel is prepared to accept there may be some benefit being offered by BCFresh in terms of better agency governance based solely on their apparent success in the market place and the Vegetable Commissions support.
 60. Under the proposed conditions, BCFresh appears to have full responsibility for VIFP and its supporting operations. Is there a significant difference between this proposed arrangement and another where VIFP producers simply move to BCFresh? One potential difference could be maintenance of a Vancouver Island identity. But as noted earlier, the Vegetable Commission does not restrict agencies ability to market in any area of the province. As BCFresh/VIFP pointed out, BCFresh is in a position to provide core products to Island buyers on a year around basis under a label promoting Island production either on its own or through VIFP. This also goes back to the previous discussion regarding agency competition on Vancouver Island.
 61. The panel gives considerable weight to an industry proposal led by a successful agency, and supported by producers, as well as the Vegetable Commission as the first instance regulator. The panel agrees with the Vegetable Commission that this proactive proposal helps break the current impasse in the Vancouver Island regulated industry. However, while the BCFresh/VIFP proposal may maintain the Vancouver Island identity as it has been known over the last year, and addresses agency governance concerns, the panel observed the solution may not be the most efficient and strategic model in the longer term, from business, industry and regulatory perspectives.
 62. The panel is not prepared to approve VIFP agency designation without the conditions proposed by the Vegetable Commission.

VIP

63. In the panel's view, it is consistent with sound marketing policy, to continue to consider VIP's agency designation at the same time as VIFP agency designation, given the geographic and historical context outlined in our January 7, 2013 reasons.
64. In January 2013, VIP was granted interim agency status until December 31, 2013. Originally the Vegetable Commission removed VIP's agency designation, which VIP appealed. To help ensure a Central Vancouver Island identity was maintained over the short term, and in recognition of the fact that VIP and VIFP had co-existed over several months BCFIRB provided a year grace period to allow for the Commission to monitor and assess VIP and VIFP (para 71(b)), alongside the opportunity for producers and agencies to seek an industry solution.
65. The Vegetable Commission provided an initial recommendation in its November 22, 2013 submission that VIP agency designation be extended to June 30, 2014 to coincide with the conclusion of the 2012/13 crop year. The Commission's initial recommendation was based on the condition of VIFP receiving agency designation. While we give weight to the recommendation of the Vegetable Commission, any decision we make regarding VIP is not solely dependent on the Commission's condition or recommendation.
66. The Vegetable Commission committed to a review process with a decision by mid-May 2014 in its initial recommendation regarding VIP. VIP expressed concern that a delay in a Vegetable Commission review and decision may mean its producer (one farm) could make production decisions then find itself without an agency. It may not be productive to further delay a decision with respect to VIP's agency status given a year has already passed. The panel is not prepared to direct the Vegetable Commission to review the status of VIP separately but notes that the status of all Island agencies remains subject to the outcome of the Vegetable Commission's strategic and governance review required at paragraph 13 of this decision.

Vegetable Commission Governance

67. VIP, VIFP, BCFresh and IVCA all agreed that there were issues with Vegetable Commission governance. A detailed account of the panel's view on Vegetable Commission decision-making and governance during the process of attempting to resolve the agency status of VIP and VIFP can be found in the January 7, 2013 supervisory review decision.

68. BCFIRB will be following up with the Vegetable Commission in regards to governance, including expectations regarding a vision and strategic direction for the regulated industry on Vancouver Island.
69. While Vegetable Commission process and governance have contributed to the current situation, BCFIRB finds that they do not dictate whether the Vegetable Commission made the proper decisions regarding VIFP and VIP as a matter of sound marketing policy.

CONCLUSIONS AND DIRECTION

70. Despite not having the full scope of information the panel expected to have to make final decisions regarding VIFP and VIP agency designation, it is the panel's responsibility as a supervisory body to ensure that the industry can move forward. Since spring 2012 there have been Vegetable Commission hearings, facilitations, initial appeals to BCFIRB and a BCFIRB supervisory review. Further delay of a decision regarding VIFP and VIP agency designation is not in the best interests of the regulated industry and could not be considered sound marketing policy.
71. The best outcome for the Vancouver Island regulated industry overall is well-governed agency(s) meeting market needs for the benefit of both producers and the public. The current challenge is the on-going absence of a vision and strategic direction for Vancouver Island; no solid information as to agency accountability/governance; on-going animosity between some parties; and concerns regarding Vegetable Commission governance. The only reasonable solution at this point is to allow business to move forward.
72. At this time, granting VIFP's agency designation under the conditions set by the Vegetable Commission in their October 31, 2013 decision breaks the current impasse in the regulated industry on Vancouver Island while maintaining an Island identity, offers the potential of improved agency governance and opportunity for better meeting changing customer demands.
73. Granting VIP continued agency designation addresses the historical issue of the Vegetable Commission removal of that designation without due process.
74. The issues raised by VIFP and VIP in their 2012 appeals regarding their status as agencies as a result of the Vegetable Commissions' April 27, 2012 decision remain moot.

75. Accordingly, BCFIRB directs the following:

- A. It is not clear that a conditional agency designation that would see one agency (BCFresh) take responsibility for another agency (VIFP) is the best or most appropriate business model in the longer term. However, the Vegetable Commission's recommendation for VIFP to be granted agency designation, subject to the conditions established by the Vegetable Commission regarding VIFP and the relationship between VIFP and BCFresh, is approved. Both VIFP and BCFresh are subject to these conditions and both will be otherwise subject to the terms and conditions for agencies set out in the Vegetable Commission's General Order.

The Vegetable Commission is expected to take the appropriate steps in implementing and monitoring the conditions.

- B. VIP's agency status is continued and VIP will be subject to the terms and conditions for agencies set out in the Vegetable Commission's General Order.
- C. The Vegetable Commission is to provide BCFIRB with a plan and schedule for completing their strategic review of the Vancouver Island regulated vegetable industry as outlined in BCFIRB's January 7, 2013 supervisory decision. This plan is to include measures by which the Vegetable Commission will assess the continued governance and accountability performance of VIP and VIFP in accordance with paragraph 73 of the supervisory decision. The plan and schedule must be provided to BCFIRB by February 1, 2014 for approval.
- D. Notwithstanding A and B, the Vegetable Commission has the discretion to reconsider the status of all Vancouver Island agencies should the outcome of its strategic review warrant.
- E. The Vegetable Commission is expected to ensure accountability of all agencies, in part through completing the directions in BCFIRB's January 7, 2013 supervisory decision paragraphs 74 and 75.

BCFIRB makes no further determinations with respect to the issues raised in the Vegetable Commission's October 31, 2013 decision. BCFIRB will address separately issues with respect to the governance and composition of the Vegetable Commission.

Dated at Victoria, British Columbia, this 23rd day of December, 2013.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



**Ron Kilmury,
Panel Chair**



**Ron Bertrand,
Vice Chair**



**Corey Van't Haaff,
Member**