

November 29, 2013

**VIA EMAIL**

J. Collins, General Manager  
British Columbia Farm Industry Review Board  
PO Box 9129, Stn. Prov Govt  
Victoria, British Columbia  
V8W 9B5

**Re: BC Vegetable Marketing Commission Response to Initial Written Submissions Received by the BC Farm Industry Review Board from Island Vegetable Co-operative Association, V. I. P. Produce Ltd., and BC Fresh & Vancouver Island Farm Products Inc. Regarding the October 31, 2013 BC Vegetable Marketing Commission Decision and Central Vancouver Island Regulated Marketing**

Dear Mr. Collins:

Having regard to the above captioned matter on November 22, 2013 the BC Vegetable Marketing Commission (VMC) and the above captioned storage crop designated agencies licensed by the VMC and authorized to market certain regulated products provided initial written submissions to the BC Farm Industry Review Board (FIRB).

The VMC received from each of the mentioned storage designated agencies a copy of their initial written submission that was directed to FIRB.

In its November 15, 2013 correspondence FIRB asked that the above named parties provide a response to the initial written submissions and that these submissions be received by FIRB on Friday, November 29, 2013. Accompanying this transmittal letter is the VMC's written submission in response to the initial written submissions it received from the above mentioned designated agencies.

Lastly, as set out in the above referenced FIRB correspondence the VMC will circulate this transmittal letter and its written response to the above mentioned designated agencies.

Yours truly,



Tom Demma,  
General Manager

## BC VEGETABLE MARKETING COMMISSION

### Written Response Submission to the BC Farm Industry Review Board

The purpose of this document is to provide the BC Vegetable Marketing Commission's (VMC) written response to the initial written submissions submitted to the BC Farm Industry Review Board (FIRB) by Island Vegetable Co-Operative Association (IVCA); V. I. P. Produce Ltd. (VIP); and BC Fresh Vegetables Inc. (BC Fresh) & Vancouver Island Farm Products Inc. (VIFP) jointly regarding the October 31, 2013 VMC decision with written reasons to approve the application of BC Fresh & VIFP to operate in an agency-sub-agency structure.

A November 15, 2013 FIRB letter, which was directed to the VMC and the above mentioned designated agencies of the Commission, called for initial written submissions and outlined the administrative process to be followed after having received them.

This VMC response is in response to the initial written submissions. It has four sections. The first section, General, provides a VMC response to comments mentioned in more than one of the initial submissions. The other sections correspond to comments set out in each agency's initial written submission.

#### **GENERAL**

##### Orderly Marketing

Agency written submissions make reference to orderly marketing and that with BC Fresh & VIFP operating in an agency-sub-agency structure the regulatory construction and discipline necessary for maintaining orderly marketing, which is an uncontested, shared common objective among the agencies; however, commercial or business impacts to result from the agency-sub-agency operation is questioned.

The VMC concurs that the agency-sub-agency structure will in the general sense not disrupt regulated marketing. The agency-sub-agency structure will heighten cooperation and coordination for the marketing of storage and greenhouse vegetable crops involving those producers affiliated with BC Fresh and VIFP. From a regulated marketing perspective VIP and IVCA are not affected by the agency-sub-agency structure being realized. This is so because going forward IVCA will continue to operate as it did prior to the VMC October 31 decision. As for VIP the FIRB conferred December 31, 2013 termination date is a matter that must be addressed and the VMC expects that this will be one product of this phase of the Supervisory Review process.

The VMC concurs that IVCA and VIP will be affected in a business or commercial way if and when the agency-sub-agency structure comes into effect; however, these impacts are no different compared to what occurs day to day when agencies compete with one another. This is the norm and it was the norm prior to the VMC's October 31, 2013 decision.

It is a well understood part of the regulated storage crop sector that agencies compete with one another for customers and with retail consolidation occurring fewer and fewer buyers. The plethora of store banners should not be looked to for how many actual buyers there are in the BC market place. Again, as all know some of these buyers operate from central offices located in

Ontario. What is related here is also the case for designated agencies marketing greenhouse vegetables.

Given that VIP and IVCA have business and commercial concerns resulting from the coming together of the central Vancouver Island producers of regulated products in association with lower Mainland producers it is incumbent upon VIP and IVCA to find innovative solutions as did the central Vancouver Island growers. This group of producers recognized the FIRB conferred agency designation termination date of December 31, 2013 and elected to take self-determined measures sooner rather than later for finding a solution to the challenges facing them.

The VMC October 31, 2013 decision reinforces regulated marketing occurring throughout the Regulated Area. The decision is consistent with the BC Vegetable Scheme where district definitions are relied upon for VMC election purposes only and not as a means for confining or limiting the marketing of regulated products.

### BC Marketing Boards and Commissions to Reach Principles- Based Decisions

The VMC is aware of the principles based guidance document that includes six principles; namely, strategic, accountable, fair, effective, transparent, and inclusive. In its November 15, 2013 letter FIRB referred the designated agencies to where information about an accountability framework could be obtained. Among other elements key among them is for BC marketing boards and commissions to sustain a regulated marketing system with effective self-governance; a principles-based, outcomes- oriented approach to regulation; and effective, fair and independent resolution of inquiries and disputes.

One element of the available information is termed SAFETI. Each letter of the acronym corresponds to one of the above mentioned terms.

FIRB has encouraged marketing boards and commissions to take into consideration the mentioned SAFETI principles when reaching a decision. In its guidance document FIRB mentions that the principles should be considered as a group where one principle reinforces another rather than taken in isolation. The VMC interprets this to mean that a test of a decision may not include all principles and the absence of one does not cause a decision of the first instance regulator to have no validity.

All of the above goes to say that decisions of BC marketing boards and commission are to take into consideration a number of factors and their decisions are to be principles- based as opposed to relying more so on rules based approach. The VMC contends that its October 31, 2013 decision was arrived at by not relying on a rules-based approach.

The VIP initial written submission relates that the October 31, 2013 VMC decision is flawed because it is not inclusive to the extent that all Vancouver Island producers are included in the sought agency-sub-agency structure or an alternative structure as suggested by IVCA; namely, one Vancouver Island designated agency.

The VMC believes that VIP has come to an improperly drawn inference about what is meant by the SAFETI term “inclusive.” The FIRB documents show that the test to be met is whether or not the process for arriving at a decision was “inclusive”, not whether the decision itself, which can be termed the outcome, includes or involves all parties.

The VMC contends that the August 29, 2013 hearing was inclusive in all respects. This is so because the appropriate interests, including the public interest, were considered.

### Absence of Strategic Plan for Central Vancouver Island

The absence of a VMC strategic plan and the fact that consultation has yet to occur for the formulation of one that would fulfill directions set out in the FIRB Supervisory Review are comments in the received written submissions.

An argument is presented that the VMC October 31, 2013 decision has no currency because of the absence of a strategic plan. The VMC counters that the August 29, 2013 hearing pertaining to the joint application of BC Fresh & VIFP to operate in an agency-sub-agency structure in most respects substitutes for a strategic plan and the VMC should not be held to the test of 'where is the strategic plan?'

In the initial and revised notices of hearing issued pertaining to the August 29, 2013 VMC hearing what is set out below was contained in both of them – August 2 and August 16, 2013. The cited text is the same for both issued notices.

*AND FURTHER TAKE NOTICE and for the reason that a Commission decision pertaining to the BC Fresh & VIFP joint application is likely to or will find upon some or all matters set out in the January 7, 2013 FIRB Supervisory Review decision regarding Vancouver Island regulated marketing and potentially affect IVCA and VIP agency operations representatives of these agencies are considered to have standing in the Hearing; are invited to participate in the hearing on that basis; and for doing so need not make application for Intervener status for the purpose of being granted standing in the Hearing.*

The VMC believes it provided clear notice to all involved parties, including all designated agencies and all storage crop producers, about the hearing and that FIRB Supervisory Review elements would form part of the hearing process. By doing so the VMC was informing stakeholders to be prepared to take a full and wide view about the joint BC Fresh & VIFP application for operating in an agency-sub-agency structure.

In the same vein as above the VMC refers to the July 29, 2013 FIRB correspondence directed to D. Taylor, Chair of the BC Vegetable Marketing Commission. This letter was circulated to all VMC designated agencies. The letter informed that FIRB had received a joint proposal for agency operation and cooperation. The proponents were BC Fresh & VIFP. The referenced letter went on to communicate that the proposal is related to the BCFIRB January 7, 2013 decision as set out in the FIRB decision titled Supervisory Review of the British Columbia Vegetable Marketing Commission Central Vancouver Island Agency Designations.

Lastly, the more recent November 15, 2013 FIRB correspondence that set out a request for initial written submissions and a response process informs all parties that " Any BCFIRB decision on the agency status of VIFP does not absolve the Commission of the responsibility to fulfill the remaining January 7, 2013 directions, including building a vision and direction for Vancouver Island, reviewing and reporting on agency accountability by December 31, 2013, and seek an amendment to the *British Columbia Vegetable Scheme* to add two independent appointed members to the Commission.

As the above described documents were widely available to the involved parties and a VMC hearing was held about the joint BC Fresh & VIFP application to operate in an agency-sub-agency structure the VMC does not agree that the absence of a central Vancouver Island regulated marketing strategy or that consultation other than what occurred by way of it holding a hearing is a deficiency of some kind that would cause the October 31, 2013 decision to approve the joint BC Fresh & VIFP application invalid.

#### FIRB Supervisory Review Decision and Designated Agencies

For clarification the present day licensing of VIP and VIFP is an outcome of the January 7, 2013 FIRB Supervisory Review decision. This decision conferred continued agency designation for VIP and VIFP until December 31, 2013.

For the agency designation of the two designated agencies not to terminate the VMC, FIRB or both have to take an action that results in an amended time frame. If an amended time frame does not come forward prior to December 31, 2013 the VMC cannot find itself in a position that it is contrary to FIRB supplied direction. As such it will have no other recourse but to cancel the earlier issued annual designated agency licenses that bear the December 31, 2013 termination date.

Should the termination dates be amended in some fashion and particularly is so order by FIRB the VMC will issue valid and subsisting designated agency licenses to VIFP and VIP. The VMC reserves the right to apply certain conditions on agency licenses.

#### May 10, 2012 VMC Decision Regarding VIFP Agency Designation

More so for clarity purposes the VMC mentions that in its May 10, 2012 decision having regard to the VIFP application for agency designation (hearing was held in Nanaimo on April 25, 2012) it only approved VIFP to be a designated agency of the VMC with authority to market regulated greenhouse vegetables solely. Inherent in that decision the VMC directed central Vancouver Island potato growers to affiliate with IVCA or BC Fresh This VMC decision gave rise to two FIRB appeals.

One appeal was filed by VIFP as it was aggrieved by the VMC decision not to include authority to market storage crops and more particularly potatoes.

The other appeal was filed by VIP as it was aggrieved that the VMC had for all intents and purposes terminated its agency designation for having effect on a specified future date.

Following a herculean mediation effort under FIRB's auspices having its purpose to bring disputing central Vancouver Island producers together into a mutually acceptable resolution of the matters constituting the disputed resulted in an impasse. IVCA was not involved in the mediation.

Because of the inability of the parties to find common understanding and thereby resolution of the matters that separated them FIRB addressed the matter by taking it under its supervision mandate. This gave rise to FIRB's December 2012 Supervisory Review hearing and its January 7, 2013 decision.

## Packaging and Labelling

In sections 59 of its October 31, 2013 decision the VMC voiced its concerns regarding VIFP packaging and labelling. Chief among its concerns was the confusion likely to arise among consumers because of too similar names, logos and wording to be displayed on potato packaging in particular.

The VMC decision recognized that ordering immediate changes to packaging would be unwelcomed, prove disruptive to commerce; and be costly to growers if substitute packaging materials were to be acquired because the VMC ordered changes of some kind.

Accordingly, the VMC accepted that during the 2013-2014 crop, which ends May 30, 2014, packaging and labelling would be an issue of concern and that for practicability reasons meaningful changes about packaging would be addressed for being applicable during the 2014-2015 crop year.

The VMC intends to first consult with affected designated agencies with the intended purpose to reach a solution among the affected parties without having to provide direction stemming from a hearing or issuance of an order of some kind.

## Inclusion of Vancouver Island Kennebec Potato Production in the October 31, 2013 VMC Decision

The inclusion in the VMC's October 31, 2013 decision affecting Kennebec potato producers farming on Vancouver Island has drawn comment. This is section 50 of the decision.

The VMC included the provision it did in its decision because of its awareness of inter-agency competition that holds the potential to increase if a steady state of some sort is not achieved regarding Vancouver Island Kennebec potato supply. The VMC expects producers to plant storage crops, including potatoes, commensurate with assigned Delivery Allocation. As yields are not finite it is producers' practice to plant a reasonable excess number of acres so as to achieve Delivery Allocation targets. The provision of the VMC decision serves as an incentive for Vancouver Island Kennebec potato producers to maintain the current practice of planting a number of acres commensurate with assigned Delivery allocation.

## **V. I. P. PRODUCE LTD.**

VIP lists a number of observations in its initial written submission. This VMC response follows the sequence of that submission.

### Strategic

VIP lays at the feet of VIFP the changing landscape of central Vancouver Island potato production. It assigns fault to VIFP for the individual business decisions of two producers to cease potato production. The VMC does not agree with the VIP assertion.

It is commonly known that the Woodward farm property comprising approximately 350 acres of land (all of which cannot be devoted to annual potato production) has changed hands a number of times over the past few years. In the instance of ownership change prior to the most recent one the purchaser was not an experienced farmer or potato grower. This inexperience translated into

production difficulties and in turn financial challenges to where a business decision to sell was the elected course. As we know today, the Woodward farm property is now in the control of a United States investor and this outcome was because he outbid interested and skilled farmers having the interest to acquire the property for agricultural production purposes. It is reported that the current owner has no plans to use the land for agricultural production purposes nor to rent or lease it to those having that interest. Consequently, a land base that formerly contributed to Vancouver Island grown potato output will no longer be available for doing so. Will this change in the near term? In the future?

The Woodward farm property sale prior to the one described above involved a person who had farm experience; however, the intended use was blueberry production. With a softening blueberry price this person sold the farm property.

All of the above is to say that a strategic direction for central Vancouver Island will have to focus on land availability; land tenure and parcel size. Commercial scale potato production requires proper soil rotation; consequently, it does not lend itself to small scale farming pursuits. Also, commercial scale potato production requires a significant investment beyond having available land. The requisite production requirements included power equipment, seeding and harvesting equipment and a suitable storage with the ability to modify temperature and humidity. With a limited and restricted land base available to support new commercial potato production enterprises the volume of Island grown potatoes is not expected to increase in a significant way over the short term. As such the volume of potato production poised to enter into mainstream Vancouver Island marketing channels is not expect to increase significantly during the near term.

Having regard to expanding potato output on Vancouver Island altogether the potato production quarantine area in the greater Victoria – Saanichton area due to golden nematode infestation, which is enforced by the Canadian Food Inspection Agency, significantly limits commercial scale potato production in southern Vancouver Island.

### Accountable

The VMC has a different view of what VIP relates in this section.

The VMC would have to be told otherwise, but the conditions to be place on the VIFP designated agency license has the effect that BC Fresh management will be the lead for the sought agency-sub-agency structure. The VMC has every confidence that BC Fresh governors and management will see to proper operating and reporting to the VMC.

The VMC October 31, 2013 decision informs that it will look to BC Fresh for being responsible and accountable for remedying non-compliance matters and any VMC sanctions will be placed upon the BC Fresh agency.

### Fair

VIP comments that present day and future VIP and IVCA regulated product producers will not have a say in the decisions made by BC Fresh & VIFP when operating in an agency-sub-agency structure and as such this is not fair.

The common understanding in the regulated vegetable sector, including greenhouse vegetables, is that designated agencies are to govern themselves in accordance with General Order provisions and natural justice. Today, designated agencies operate in isolation from one another and indeed compete with one another in the market place. To say it is unfair that BC Fresh & VIFP will make decisions absent VIP and IVCA involvement is not an expectation of today's regulated marketing environment and there is little reason to expect this would be different going forward.

When matters that are common to the regulated vegetable sector arise and consultation is required the VMC undertakes consultation. In certain instances, particularly having regard to applications or compliance matters, the VMC holds a hearing and invites interested parties to participate.

### Effective

VIP advances that the VMC October 31, 2013 decision does not meet the test of being effective.

In the FIRB SAFETI guidance document 'effective' means whether or not a clearly defined outcome resulted and were appropriate processes and measures employed.

In the VMC's view SAFETI principles are to be looked to for assessing the performance of BC marketing boards or commissions when reaching decisions on matters that come before them.

Here a more apt measure of effective is whether or not the VMC makes efficient use of resources available to it for reaching a decision on matters that have come before it and was an appropriate process employed for doing so.

### Transparent

VIP informs that all the necessary information regarding the joint BC Fresh & VIFP application was not present at the time the VMC hearing was held and as such the hearing was not transparent.

The VMC prepared what is termed a hearing binder containing information considered important for all parties granted standing in the hearing to have in advance of the hearing. The binder was circulated to Interveners one of whom was VIP.

For the purpose of gaining a thorough understanding of the matter that is the subject of a VMC hearing it is incumbent upon an Intervener to question the applicant to where they are satisfied they have the information they feel is important for them.

Time was provided during the hearing for the applicant to present its information and its representatives were subject to questions (cross examination) posed by Interveners and members of the Panel of the Commission. As such the VMC holds the view that transparency was evident

### Inclusive

Relying on what is set out in the section about regarding the term 'effective' the VMC submits that VIP is operating with an incorrectly drawn inference of what is meant by the SAFETI term 'inclusive'.

The VMC addresses this VIP comment about the SAFETI term 'inclusive' in the general section of this written submission.

The definition of 'inclusive' in the SAFETI guidance document is whether or not the VMC took measures to ensure that the parties to be affected by a decision were informed that a hearing was to be held; was appropriate input sought; and was the public interest considered. Given the foregoing the VMC is of the view that the process used for reaching the decision it did regarding the BC Fresh & VIFP agency-sub-agency application was inclusive because all key stakeholders were in attendance at the hearing.

Further, the VMC contends that the public interest was considered in its decision as it serves to de-escalate grower tensions by virtue of them not being assembled under the roof of one agency; all agencies with VMC authority to market storage crops would do so to the best of their abilities; and the portent of Vancouver Island grown product not being available on the shelves of Vancouver Island grocery stores is averted.

### **ISLAND VEGETABLE CO-OPERATIVE ASSOCIATION**

IVCA set out a number of comments in its initial written submission. This VMC response follows the sequence of that submission.

#### **Strategic**

The response set out in the General section of this document pertaining to a VMC strategic plan for central Vancouver Island and more notably its absence is addressed in the general section of this document. Readers are referred to it - Absence of Strategic Plan for Central Vancouver Island

#### **Accountable**

IVCA comments that the measures taken by FIRB by way of its supervisory mandate for attempting to bring resolution to central and greater Vancouver Island regulated marketing matters are ill advised, and that the process for finding resolution to these long standing and complex matters should not have been evolutionary in nature.

Should the VMC have adhered to a rigid rules-based approach, which is what IVCA contends ought to have been be the case in the instance of the joint BC Fresh & VIFP application for operating in an agency-sub-agency structure, the IVCA application to the VMC for allocation of new greenhouse vegetable production allocation would not have been addressed in the manner that it was.

The above described matter was addressed by the VMC holding a hearing by way of written submissions. The decision it reached was that IVCA be temporarily authorized to market greenhouse bell peppers. As set out in the VMC written decision issued May 31, 2013 this authorization terminates December 31, 2013. Also, set out in the VMC decision was that continuation of the described marketing authority was subject to IVCA remaining in good standing the VMC.

## Fair

IVCA advances that the May 10, 2012 VMC decision was the result of unfairness and questions why VIFP was approved to be a designated agency of the VMC with authority limited to market greenhouse vegetables solely. It is noted that IVCA did not appeal this VMC decision yet it now raises a number of concerns that do not flow from the referenced decision, but flow from the FIRB Supervisory Review decision regarding central Vancouver Island regulated marketing and the two designated agencies located there.

IVCA also comments about a recent request for Intervener status by VIP regarding a matter that is the subject of a VMC decision and a FIRB appeal. The VMC understands that reference to what transpired is looked to as an indicator of VMC unfairness; however, the VMC does not agree with this characterization. This is so because as the result of a review of agency business records pursuant to Part II of the General Order VIP was found to be in compliance with the General Order regarding the marketing of regulated products. Its sought Intervention in a non-compliance matter was not seen as being able to add more to the matter under appeal nor was it directly affected by the VMC decision to apply sanctions to the agency that was found to be not in compliance with the General Order.

## Effective

IVCA points to the use of the term 'interim' the VMC used in section 67 of its October 31, 2013 decision. The VMC is aware that earlier issued FIRB documents used the term 'transitional' when providing supervisory direction regarding the central Vancouver Island regulated marketing matter that is the subject of its Supervisory Review decision.

The VMC contends that its October 31, 2013 decision takes into account a number of variables and factors that in large measure conclude that in the longer term the joint BC Fresh & VIFP application brings about a break through to the impasse that overhangs the central Vancouver Island producers and energizes a solution, albeit it transitional in nature and one that in the future does not look as it does today.

## Transparent

IVCA comments that obtaining a copy of the August 29, 2013 hearing transcript was somehow a deliberate VMC attempt not to provide it to interested parties. Below is an excerpt from the hearing transcript:

*As you are aware ..... The transcript will be made available 7 to 10 days from now for those who are interest in seeing it.*

The VMC reads this portion of the hearing transcript to mean that on receiving a request to obtain a copy of it one would be provided. When VIP requested a hearing transcript the VMC notified all other involved parties that it had received such a request and in the interest of administrative fairness it would provide one to those making a similar request. When IVCA requested a copy of the hearing transcript one was provided.

## Inclusive

The response that is set out in the general section of this document should be referenced regarding IVCA's comments about inclusive.

### **BC FRESH VEGETABLES INC. & VANCOUVER ISLAND FARM PRODUCTS INC.**

The joint BC Fresh & VIFP initial written submission is set out in point fashion and parts of it reiterates elements of its application that was the subject of the Augusts 29, 2013 VMC hearing.

The VMC concurs with a number of comments put forward in the above referenced submission, including among others the following:

- the observation referencing the January 7, 2013 FIRB Supervisory Review decision where the tension among the central Vancouver Island regulated product producers is such that it is "unrealistic to attempt to force all the previous growers back into one agency;"
- that orderly marketing as compared to commercial aspects of agency operations will not be disrupted;
- that the Vancouver Island price advantage is primarily attributable to transportation economics in the form that Vancouver Island prices capture the cost of freight to position a product into the Vancouver Island market place; and
- that the BC Fresh business model, which when warranted includes the marketing of imported produce for meeting customer requirements, is representative of how VMC designated agencies ought to operate where servicing customers continues when local supply comes to an end.

The BC Fresh & VIFP initial written submission questions the section 50 portion of the VMC's October 31, 2013 decision. This has regard to the planting of Kennebec potatoes during the 2014-2015 crop year by Vancouver Island growers only. The VMC's intention is to put in place a disincentive whereby Vancouver Island Kennebec potato producers are motivated not to over plant relative to their assigned Delivery Allocation and as such not bring forward supply that is surplus to aggregate Vancouver Island demand. As the described method is to be in place for one crop year the VMC anticipates that going forward Vancouver Island producers will adjust their potato crop mix in conjunction with their designated agency's marketing plans.

More comment about this matter can be found in the general section of this document.