



**Regulating
MEDICAL MARIHUANA PRODUCTION FACILITIES
in the Agricultural Land Reserve**

DISCUSSION PAPER AND THE MINISTER'S BYLAW STANDARDS

March 2, 2015

**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 (MMPFs) in the ALR.

The discussion paper describes the process to develop the bylaw criteria, background information, current policies and regulation, and set of criteria.

The consultation period closed on October 26, 2014. The feedback has been compiled and analyzed and the discussion paper and criteria updated. The criteria are in Part 4.3 and are a combination of existing bylaw standard provisions already in the Bylaw Guide and three additional ones, two in response to feedback received during the consultation. The additional bylaw standard provisions are specific only to MMPFs in the ALR.

Table of Contents

Executive Summary..... 2

Introduction 4

1.0 Part one – The Criteria Development Process 5

2.0 Part two – Background information 7

3.0 Part three – Current policies and regulations..... 13

 3.1 Marihuana for Medical Purposes Regulations..... 13

 3.2 BC Agricultural Land Commission Act (ALCA) 14

 3.3 BC Farm Practices Protection (Right to Farm) Act 15

 3.4 BC Ministry of Agriculture 15

 3.5 BC’s Local Governments..... 16

 3.6 Regulations in other jurisdictions 19

4.0 Part four –Set of Criteria 21

 4.1 Discussion..... 21

 4.2 Rationale for Bylaw Guide criteria 21

 4.3 The provisions and definitions 23

5.0 References 25

Introduction

This discussion paper outlines a set of criteria for regulating Medical Marijuana 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).¹

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 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.

¹ 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. A copy of the Discussion Paper has been circulated to local governments with feedback received and revisions made.

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 March 2 2015, 16 fully authorized licenses have been issued in Canada with an additional nine licensed producers for cultivation only. Of these 25, six licenses have been issued in BC, including one for cultivation only, in Saanich, Maple Ridge, Whistler, Nanaimo, Ladysmith and the Okanagan.

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 MMPP 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 MMPP 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 CO₂. 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. 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. All pest control products currently registered for use on medical marihuana have been reviewed and approved for registration by Health Canada as biopesticides. These products are the only ones that can be legally used to control

pests on this crop. For a product to be classified as a biopesticide by Health Canada, it must: 1) have a very low toxicity to humans and to other non-target organisms such as birds and fish, 2) have low potential for contamination of groundwater, surface water or other valued environmental resources and 3) be highly compatible with integrated pest management.

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.

Building Code Considerations

The influence of building codes on the planning, design and construction of medical marihuana facilities is a major consideration. The two primary codes that come into play are the BC Building Code (BCBC) and the National Farm Building Code of Canada (NFBCC). In assessing whether a structure can be considered a farm building, two primary filters must be applied, the first being the definition of a farm building and the second whether the building can be considered a low human occupancy structure.

Farm building conformation to codes

The requirement and authority for ensuring that farm buildings within the province are designed and constructed to a minimum standard originates within the 2012 British Columbia Building Code (BCBC). Article 1.1.1.1. (4) of the BCBC states the following: “Farm buildings are to conform to the requirements in the National Farm Building Code of Canada 1995.” Antecedent to this authority is the legislative authority granted within the *Local Government Act* and local government bylaws in their application to building code regulations.

Farm building definitions

Articles 1.4.1.2. and 1.2.1.2. of the 2012 BC Building Code and the National Farm Building Code of Canada 1995, respectively, define farm buildings as follows: “Farm building means a building or part thereof that does not contain a residential occupancy and that is associated with and located on land devoted to the practice of farming, and used essentially for the housing of equipment or livestock, or the production, storage or processing of agricultural and horticultural produce or feeds.” The appendices within the BCBC and the NFBCC expand on the definition of a farm building as follows.

“Farm buildings include, but are not limited to, produce storage and packing facilities, livestock and poultry housing, milking centres, manure storage facilities, grain bins, silos, feed preparation centres, farm workshops, greenhouses, farm retail centres, and horse riding, exercise and training facilities. Farm buildings may be classed as low or high human occupancy, depending on the normal human occupant load. Examples of farm buildings likely to be classed as low human occupancy are livestock and poultry housing, manure and machinery storage facilities, and horse exercise and training facilities where no bleachers or viewing areas are provided.” “It is possible to have areas of both high and low human occupancy in the same building provided that the structural safety and fire separation requirements for high human occupancy are met in the part thus designated.”

Low human occupancy definition

The second filter which constitutes whether a structure can be considered a farm building after assessing the purposes for which a building is being utilized is an examination of the building's occupant load. If it is subjected to a low human occupancy load, it can be viewed as a farm building and may therefore be permitted under the governing Codes to be constructed to reduced design loads. Low human occupancy is defined in the National Farm Building Code of Canada 1995 as one where occupant load is not more than one person per 40 square metres (430 square feet) of floor area during normal use.

Farm building design loads

By virtue of the fact that one of a farm building's typical attributes is that it experiences low human occupancy, engineers and contractors are permitted to relax the standards normally applied to residential, commercial and industrial buildings using wood, steel or concrete as the primary building material. The importance factor (a measure of a factor of safety) in limit states design applied to live loads such as snow, rain, and wind can be reduced by 20%, for example.

Greenhouses are generally viewed differently from other farm buildings from the perspective of applicable design loads. Article 2.2.2.4. of the National Farm Building Code states that "where a heating and drainage system is installed to prevent the accumulation of snow and water, the supporting structure for the light-transmitting roof areas of greenhouses of low human occupancy shall be designed for a uniform snow load of not less than 0.7 kPa." From the point of view of reducing construction costs, growers would likely consider greenhouse construction as a strong option for medical marijuana facilities. If a more secure building is desired, a grower may consider a wood or steel building along the lines of a mushroom or livestock barn if the definition of a farm building can be satisfied.

Fire safety considerations

In some local government consultations, it has been suggested that medical marijuana facilities should be constructed to non-combustible standards. From the BC Building Code, the definition of a combustible material is one that fails to meet the acceptance criteria of the CAN/ULC-S114 standard entitled *Test for Determination of Non-Combustibility in Building Materials*. For facilities containing such materials, it is obvious that designs can be incorporated to satisfy this standard. It should be noted, however, that if a given medical marijuana facility is classified as a farm building, conformance with respect to fire safety or egress can be addressed as outlined in the National Farm Building Code of Canada. The NFBC makes reference to a number of subject areas on this front insofar as they apply to floor areas, spatial separations, fire stopping, fuel storage tanks, fire separations, exposed foamed plastic insulation, electrical installations, lightning protection, exits, and ladders. Several of these considerations are more applicable than others in a medical marijuana setting and are expanded upon as follows.

Floor Area

The NFBC makes two references to floor area. Article 3.1.1.2. (1) states that when farm buildings of low human occupancy other than greenhouses exceed the floor areas shown in Table 3.1.1.2 on any one storey, they shall be separated into fire compartments by vertical fire separations, having a fire-resistance rating of at least one hour, so that each portion so separated has a floor area on any one storey conforming to Table 3.1.1.2. A variation of the table is shown below.

Maximum Floor Areas for Farm Buildings of Low Human Occupancy

Maximum Number of Storeys	Maximum Floor Area per Storey
1	4800 m ² (51,670 ft ²)
2	2400 m ² (25,830 ft ²)
3	1600 m ² (17,220 ft ²)

On the subject of spatial separation, the NFBC states that, except for greenhouses, where exposing building faces of a farm building of low human occupancy are located less than 30 metres from a property line, the centreline of a public thoroughfare, a residence or a farm building of *other* than low human occupancy on the farm property, the appropriate requirements in Subsection 9.10.14. of the National Building Code of Canada 1995 for *medium hazard industrial occupancies* shall apply to those faces. Because the NFBC refers to the 1995 National Building Code, designers must ensure that fire and spatial separation requirements in the latest editions of the National Building Code or the BC Building Code are referred to.

Combustibility of Contents

In the BC Building Code, separate definition is given to the use of materials as they apply to operations in and around a building. In this context, the term *combustible fibres* is used, and means finely divided, combustible vegetation or animal fibres and thin sheets or flakes of such materials which, in a loose, unbaled condition, present a flash fire hazard, including cotton, wool, hemp, sisal, jute, kapok, paper and cloth. Stringent fire safety requirements are not necessarily imposed on farm buildings by the National Farm Building Code simply because combustible materials are part of a farm enterprise. The use of dry bedding materials for livestock and poultry barns are examples of combustible materials which if exposed to flame or an ignition source can result in a rapidly spreading fire. Moisture contents of sawdust and kiln-dried shavings for floors, stalls and pens can be as low as 15%, for example. Common sense in the use of welding equipment, heat lamps, heaters and other potential fire sources must be considered at all times.

It is arguable whether a medical marijuana facility presents a high fire hazard. Factors that come into play are modes of construction and the types of other combustible materials that may be utilized. During the growing phase, the plants and growing media are considerably less combustible than other materials often used in other types of farm buildings.

General Requirements for Industrial Types of Buildings

It has been suggested by a number of local governments that medical marijuana facilities should be considered under a category different from farm buildings for a variety of reasons, among them being the expected requirement for additional security. It has been proposed that standards similar to those for industrial kinds of buildings should be applied. The 2012 BC Building Code dictates an extensive and comprehensive variety of requirements for a host of different types of buildings, many of them defined by the type and degree of human occupancy expected. If marijuana facilities are to be considered as non-farm buildings, an appropriate designation could be what the BC Building Code refers to as an industrial occupancy. The BC Building Code identifies these types of buildings as Group F buildings and lists three categories of such occupancies: high hazard, medium hazard and low hazard. If medical marijuana production facilities, for the sake of argument, were to be designated as industrial facilities, it is likely that they would fit under the one-storey; low hazard definition for a Group F, Division 3 building. Requirements for different classifications of low hazard industrial occupancies also exist within the BC Building Code and these vary considerably, depending on whether, for example, fire suppression sprinkling systems are incorporated.

Carbon Dioxide enrichment in growing facilities

Concerns have been expressed in a variety of local government responses about the practice of diverting building-generated carbon dioxide gas (CO₂) to optimize plant growth in medical marijuana production facilities, and the potential hazard higher concentrations of the gas pose to emergency personnel. Carbon dioxide enrichment involves increasing the concentrations of CO₂ to 4–5 times the normal atmospheric levels, to concentrations in the order of 1200–1500 parts per million (ppm) in an enclosed space. Enrichment has been shown to promote faster growth, higher yields, and stronger, healthier plants. Levels higher than 2000 ppm have been shown to retard plant growth. Low levels of CO₂ (below 200 ppm) have been shown to halt vigorous growth, even when all other conditions are ideal. Because of this, any enclosed space requires replenishment of the internal CO₂ as it is used by plants, either through ventilation or by way of CO₂ supplementation.

For medical marijuana production facilities that may incorporate some means by which to increase carbon dioxide concentrations to levels higher than the atmospheric concentration of 340 ppm, danger from human exposure is not a factor. It is common practice for workers to spend the entire working day in CO₂-enriched vegetable-growing greenhouse facilities throughout the province. Section 5.48 of the British Columbia Occupational Health and Safety (OHS) Regulation provides established limits for a worker's exposure to hazardous chemical substances. WorkSafeBC publishes an exposure limit table in accordance with its mandate under the *Workers Compensation Act* to provide information and promote public awareness. For carbon dioxide, the TWA exposure limit is 5000 ppm and the STEL/ceiling limit is 15,000 ppm, well above the elevated concentrations typical in greenhouse growing environments. TWA is an acronym for time weighted average, and typically refers to an eight-hour-day period. STEL stands for short-term exposure limit.

The Regulations in BC

Many local and regional governments in BC are responding to Canada's MMPR by introducing bylaw amendments to regulate medical marijuana production in their communities. Many local governments sought direction from the Province regarding whether medical marijuana 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 release² providing further clarity on its position with regards to federally licensed medical marijuana production. The statement supports the ALC's position that medical marijuana 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

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

The BC Government’s June 24, 2014 statement also clarifies that amendments to *the BC Assessment Act*³ 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.

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 AGRI’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. For clarity, the Province does not have a role in managing existing facilities under the Federal Medical Marihuana Access Regulations.

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
Interpretation	
“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).
PART 1.Division 1	
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"> • possess, produce, sell, provide, ship, deliver, transport and destroy marihuana; • (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 • (c) sell, provide, ship, deliver, transport and destroy cannabis, other than 	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

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

marihuana, that was obtained or produced solely for the purpose of conducting the in vitro testing referred to in paragraph (b). (p.9-10)	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 at the producer's site. (p.11)	MMPFs must be indoors. Can they process crop from another producer? The ALC USP Regulations have a provision that limits the percentage of selling non-farm products to 50%.
PART 1. Division 2	
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.
PART 1. Division 3	
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.
PART 1. Division 4	
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)	

Health Canada has advised AGRI that Health Canada staff are actively inspecting MMPFs and enforcing the MMPPR. They have also stated that BC local governments can inspect and enforce MMPFs in matters relating to their own local government bylaws. Local governments should be aware, however, that MMPF operators may challenge local government enforcement of such bylaws that do not demonstrative a clear line to legislative authority.

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 ALC 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.

The FPPA does not provide any immunity to farmers from the Federal MMPR whereas it does provide protection from neighbour’s lawsuits in nuisance and certain local government bylaws. If BCFIRB were to receive an odour complaint, the “normal farm practice” test would be what similar farm businesses are doing in similar circumstances. If Health Canada rigorously enforces MMPR, the assumption is that most farms, if not all, will not be emitting odour from their facilities. For clarity; there is no conflict between the Federal MMPR and the Provincial FPPA. Farmers must follow both enactments and the FPPA does not protect farmers from the provisions of the MMPR.

3.4 BC Ministry of Agriculture

The Ministry’s Guide for Bylaw Development in Farming Areas (Bylaw Guide) addresses the following elements that are relevant to medical marihuana production in the ALR. 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 Areas”

Section	Comment
Part 2 – Minister’s Bylaw Standards	
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) “Local government zoning or development permit area criteria usually stipulate the “minimum setback” distance – which is the closest to the object a building or structure may be situated. An applicant may choose to locate his feature farther back. In order to minimize the effects on farming, these guidelines give the MAXIMUM setback distance that a local government should use in its bylaws. The dimensions are referred to as – “the setback distance””. (p21)
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.
Part 3 – Farm Bylaw Standards and Bylaw Approval for Regulated Local Governments	
‘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"> • A range including 2 to 40 hectare (ha) minimum parcel sizes • 1ha minimum parcel size in a smallholding zone in the ALR and 2ha minimum parcel size in a country residential zone in the ALR • 259ha (640 acres) minimum parcel size for a MMPF in the ALR
Minimum MMPF building setbacks from property lines	<ul style="list-style-type: none"> • A range including 40, 50, or 100 metre (m) setbacks to any lot line • 60m setback to exterior lot line • 90m setback to front lot line, 30 m to other lot lines
Minimum MMPF building setbacks from other land uses	<ul style="list-style-type: none"> • 60m setback from residential zones • 300m setback from residential or mixed use zones • 100, 200m setback from schools • 150m setback from a residential zone, daycare, playground, or school
Minimum MMPF building setbacks from other MMPF	<ul style="list-style-type: none"> • 1000m setback from nearest medical marihuana facility
Minimum MMPF building setbacks from watercourses	<ul style="list-style-type: none"> • 50m setback from all watercourses
Maximum building heights	<ul style="list-style-type: none"> • 10m maximum building height
Maximum building size	<ul style="list-style-type: none"> • 2000m² in industrial and resource management zones & 1000m² in agricultural zones
Number of buildings per parcel	<ul style="list-style-type: none"> • Some local governments have provisions limiting the production facility to one (1) building
Odour control	<ul style="list-style-type: none"> • A ventilation plan must be filed with the City and must include how the system prevents any offensive odour from leaving the building;
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"> • MMPFs are required to provide a description of all discharges to air, sanitary sewer, storm sewer, streams, or groundwater
Waste management controls	<ul style="list-style-type: none"> • The practice of diverting building-generated CO₂ gas or otherwise provided CO₂ gas to feed plants is prohibited.
Permitted zoning	<ul style="list-style-type: none"> • Permitted only in the ALR or in some rural use zones. • 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. • Permitted through spot zoning, spot zoning only in ALR, spot zoning only in industrial zones, or spot zoning only in ALR and industrial zones. • Prohibited everywhere, everywhere except 1 parcel, or everywhere except 1 parcel that is City owned.
Health and welfare	<ul style="list-style-type: none"> • 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.
Building Permits	<ul style="list-style-type: none"> • MMPFs will require a Building Permit, pursuant to a Building Bylaw.
Outdoor storage	<ul style="list-style-type: none"> • No outdoor storage.

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 marijuana 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 marijuana 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 marijuana. 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 marijuana 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 marijuana. 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 marijuana production requires both State and local government approval.

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

City of Boulder

Requirements for medical marijuana 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 –Set of Criteria

This section of the discussion paper introduces a number of topics for consideration regarding local government bylaw standards for medical marihuana production in the ALR, provides a rationale for why certain provisions should be introduced as criteria, and summarizes a 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 AGRI's current Bylaw Guide that align with medical marihuana 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 marihuana production will assist in bringing this type of farm use into a well established framework of existing standards.

Minimum Lot Size – A provision often employed by local governments to regulate subdivision is a minimum lot size requirement. Local governments may also be motivated to apply it to a specific farm commodity use such as MMPFs. AGRI, however, has explored this particular tool in the past, and does not support a bylaw standard for this provision. As stated in Section 2.4.4.2 of the Bylaw Guide,

Minimum lots size requirements for a specific commodity in the ALR should not be required. Concerns regarding specific commodities can be addressed by the existing lot size and by meting 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. In that way, a wider range of options for agricultural activities is possible. – Bylaw Guide

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 marihuana production. Providing a maximum 35% lot coverage for buildings involved in medical marihuana 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 from Property Lines and Watercourses – 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 marihuana 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 distance 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 Charter⁴ 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 marihuana production could assist in easing these concerns and provide greater confidence for local governments in accepting them into their communities.

Setbacks from Parks and Schools - Local governments during the consultation process indicated a strong intent to separate MMPFs in the ALR from parks and schools. A review of proposed and existing bylaws resulted in a calculated distance setback range from 100 to 250 metres with an average measurement being close to a 150 metre setback for each of these land uses. Analysis by AGRI staff of a large agricultural dominate community indicates that a very small percentage of ALR land would be removed from MMPF placement with these setbacks. Establishing a new bylaw standard criteria setback with this measurement for these land uses would address local government concerns. Local governments would not be required to regulate to this maximum distance setback.

⁴ Part 2 Division 1 Section 8(6)

Setbacks from Non-ALR Residential Uses

Local governments during the consultation process also indicated a strong intent to separate MMPFs in the ALR from residential uses. A 30 metre setback from non-ALR residential uses with a buffer as defined in the Bylaw Guide, or a 60 metre setback if no buffer is employed, is identified. Establishing these new bylaw standard provisions will assist to address local government concerns. Local governments would not be required to regulate to this maximum distance setback.

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 marihuana production include manure storage, incinerators, and composting storage. Adding medical marihuana production facility to this list makes available another option for communities looking to implement greater restrictive authority regarding this use.

4.3 The provisions and definitions

Local government zoning bylaws should permit medical marihuana production facilities in the ALR. The provisions and definitions listed below include seven provisions already found in the Ministry’s Bylaw Guide and three new ones. These provisions will potentially become, with Minister’s approval, the bylaw standard provisions and be integrated into the Bylaw Guide., The criteria include:

Provisions for MMPFs on ALR land

Subject	Provision
Local Government Bylaw Standard	
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 m2 (appr. 40,000 ft) 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
Setbacks from Parks and Schools	150 metre maximum setback from MMPFs to Parks and Schools
Setbacks from non-ALR Residential Uses	30 metre maximum setback from MMPFs to non-ALR Residential Uses with a buffer, or 60 metre maximum setback if a buffer is not employed.
‘Farm Bylaw’ Standard	
Farm-side ‘Edge Planning’	100 metre maximum building setback from urban/ALR boundary

Definitions

Subject	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.

The additional bylaw standard criteria are specific only to MMPFs in the ALR. If a local government is considering adopting specific provisions from the MMPR into their own bylaws, citing which section of

Provincial legislation provides for that authority is recommended. For clarity, please be aware that the bylaw standard criteria are for MMPFs operating under the existing Federal MMPR provisions. If future regulations are adopted, such that they allow recreational marihuana facilities to dispense directly from a production site, new and potentially more restrictive Minister's bylaw standards may be explored and adopted.

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
- 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 Marihuana 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/bocc/mmiregs.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
- 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&blobheadname1=Content-Disposition&blobheadname2=Content-Type&blobheadvalue1=inline%3B+filename%3D%22Final+Medical+Marijuana+Rules+-+ADOPTE+090913.pdf%22&blobheadvalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251883935361&ssbinar y=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/precurs/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

Ministry of Community, Sport and Cultural Development. *B.C. preserves local governments' tax revenues from medical marihuana 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 Marihuana: 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*. BOTEK 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

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

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

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

Squamish-Lillooet Regional District. *Medical Marihuana 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 Marihuana 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/l-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_IIIIX_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

Association of Washington Cities. *Legislative Advocacy Legalization of marihuana*. 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>