

Agricultural Advisory Committee

AGENDA



Thursday, June 13, 2019
6:00 pm
Council Chamber
City Hall, 1435 Water Street

Pages

1. Call to Order

THE CHAIR WILL CALL THE MEETING TO ORDER:

(a) The purpose of this Meeting is to consider certain Development Applications as noted on this meeting Agenda.

(b) The Reports to Committee concerning the subject development applications are available on the City's website at www.kelowna.ca.

(c) All representations to the Agricultural Advisory Committee form part of the public record.

(d) As an Advisory Committee of Council, the Agricultural Advisory Committee will make a recommendation of support or non-support for each application as part of the public process. City Council will consider the application at a future date and, depending on the nature of the file, will make a decision or a recommendation to the Agricultural Land Commission.

2. Minutes

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Approve Minutes of the Meeting of May 9 , 2019.

3. Reports

3.1 Regulatory Options for Cannabis Production in the ALR

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4. ALC Decisions - Update

5. New Business

6. Next Meeting

July 11, 2019

7. Termination of Meeting

Agricultural Advisory Committee

Minutes

Date: Thursday, May 9, 2019
Time: 6:00 pm
Location: Council Chamber
City Hall, 1435 Water Street

Committee Members Present: Keith Duhaime, Yvonne Herbison, John Janmaat, Jeff Ricketts and Aura Rose*

Committee Members Absent: Avi Gill, Domenic Rampone, Derek Brown, Pete Spencer (Alternate) and Jill Worboys (Interior Health)

Staff Present: Planner Specialist, Alex Kondor; Legislative Coordinator (Confidential), Clint McKenzie

(*denotes partial attendance)

1. Call to Order

Staff:

- Called the meeting to order at 6:03 p.m.
- Outlined the requirement of the Committee to select a Chair.

John Janmaat agreed to let his name stand to be nominated for the Chair of the Committee.

Moved By Yvonne Herbison/Seconded by Jeff Ricketts

THAT Committee member John Janmaat be nominated as Chair of the Agricultural Advisory Committee.

Carried

The Chair outlined the terms the Committee needs to consider when making recommendations on applications back to Council.

2. Applications for Consideration

2.1 Hartman Rd 839, A19-0006 - Bill and Sukhi Sander

Committee member Aura Rose declared a conflict of interest as the applicant owns the neighbouring farm property and left the meeting at 6:11 p.m.

Staff:

- Displayed a PowerPoint presentation summarizing the application before the Committee.
- Responded to questions from the Committee.
- Confirmed that the applicants already exceed the number of workers they are allowed to accommodate on the site. No matter the number of workers being applied for an application would therefore be required.

Prab Sander, Son of the Applicant:

- A lot of trees are still growing and coming into production over next 3 years requiring more workers.
- This property is central to all of their farm properties – allows efficiencies in getting workers to all of our sites.
- They want ensure workers have a nice facility.
- Responded to questions from the Committee.
- Confirmed over 30 properties owned in the Kelowna area.

Suki Sander, Applicant:

- Confirmed 450 seasonal workers required. Require most of the workers in the Kelowna area and the main packing plant is also close to the subject property.

Staff:

- Responded to questions from committee.
- Confirmed discussions have not taken place with the applicant regarding alternative properties in other City sectors.
- Reviewed the 10 City sectors with the committee highlighting the Rutland City sector.
- There is a minimum lot size for temporary farm worker housing of 3.8 hectares in the context of the farm unit. Housing can potentially be put on a smaller property as long as an applicant has 3.8 hectares of property or more in total.

Moved By Keith Duhaime/Seconded By Yvonne Herbison:

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A19-0006 for the property located at 830 Hartman Road to allow a non-adhering residential use permit application for Temporary Farm Worker Housing to accommodate up to 60 workers on the property.

Defeated

Opposed – Keith Duhaime, Yvonne Herbison, John Janmaat, Jeff Ricketts

ANEDOTAL COMMENTS

- The Agricultural Advisory Committee recommends that Council direct staff to work with the applicants on all housing options including existing dwellings on properties they own or manage including properties they own outside of the Rutland City Sector.
- The Committee understands there are at times exceptional causes that require making decisions that are not consistent with City policy. The Committee does not see justification in this application being an exceptional case at this time.
- The applicant should also be expected to do their due diligence to rationalize the need for the application.

Committee member Aura Rose returned to the meeting.

2.2 Leader Rd 3019, A19-0003 - Trine & Ryan Markewich

Staff:

- Displayed a PowerPoint presentation summarizing the application before the Committee.
- Confirmed how much of the property is being used for the landscaping business.

Ryan Anderson, OTG Developments, Applicant's consultant:

- Landscaping business is helping make the farm viable. Other applications in other jurisdictions for non-farm use they have made have been successful:
- Examples of Temporary Use Permits they have been granted in other municipalities: Corporation of Delta - Horse bedding recycling facility; City of Chilliwack - soil mixing, mulch landscaping materials.

- There is a plan to move the landscaping business off the site and this application would allow for that transition period.
- Clarified that a minor amount of landscape materials being stored on the site
- Building is being primarily used for agricultural activities.
- In the winter there are 6 pieces of equipment and 8 vehicles being stored.

Ryan Markewich, Land Owner:

- Spoke to the history of farming on the property and the complications of growing some of the crops.
- The current vegetable production is leased out on a remaining two year lease.
- Mushroom and worm casting production have been considered on the site given the quality of the soil.
- Confirmed that for nine months of the year there are 4 pieces of equipment stored on the property.
- Responded to questions from the Committee.

Staff:

- Responded to questions from Committee.
- Confirmed a Temporary Use Permit can be issued up to 3 years. The applicant is asking for a maximum 3-year term with the ability to be eligible for renewal for another 2 years.
- Confirmed the motion is to support a Non-Farm Use permit.

Moved By Aura Rose/Seconded By Jeff Ricketts

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A19-0003 for the property located at 3019 Leader Road for a Non-Farm Use Permit to allow a commercial landscaping business to operate on the subject property for up to a maximum of five (5) years.

Defeated

Opposed – Keith Duhaime, Yvonne Herbison, John Janmaat, Jeff Ricketts and Aura Rose

Moved By Yvonne Herbison/Seconded By Keith Duhaime

THAT the Agricultural Advisory Committee recommends that Council support a Temporary Use Permit for the property located at 3019 Leader Road for a maximum of (3) years.

Carried

Opposed – Jeff Ricketts

Moved By Aura Rose/Seconded By Keith Duhaime

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A19-0003 for the property located at 3019 Leader Road for a Non-Farm Use Permit to allow a commercial landscaping business to operate on the subject property for up to a maximum of three (3) years.

Carried

Opposed – Jeff Ricketts

ANEDOTAL COMMENTS

The Agricultural Advisory Committee strongly believes the maximum time period for the transition of the Non-Farm Use for a landscaping business should be to have it removed in less than 3 years.

The meeting recessed at 7:51 p.m.

The meeting reconvened at 8:00 p.m.

2.3 Rifle Road, 575-579, A18-0009 - Marlys Wolfe

Staff:

Displayed a PowerPoint presentation summarizing the application before the Committee.

AAC/Staff Discussion:

- Staff confirmed they have visited the site and reviewed the existing buildings. Only three dwellings on the property that staff are aware of. There is a secondary suite in the house.
- Staff Confirmed there is no building permit on record for the cabin.

Marilys Wolfe, Applicant:

- Confirmed uses in the non-dwelling buildings on the site.
- Confirmed the agricultural products being processed on site.
- Confirmed size of cabin is 12 feet by 30 feet.
- Responded to questions from the Committee.
- Confirmed BC Assessment lists all the dwellings and GEID assesses as well.
- Resent having to apply for non-farm use- believe use should be grandfathered.

Staff responded to questions from Committee:

Discussion ensued amongst the Committee regarding how to ensure the review of grandfathering the use with the ALC.

Moved By Jeff Ricketts/Seconded by Yvonne Herbison:

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A18-0009 for the property located at 575-579 Rifle Road for a second existing dwelling to be used for a farm manager and a third existing dwelling to be used to house immediate family.

Carried

ANEDOTAL COMMENTS

The Agricultural Advisory Committee supports the application and is of the position that the application should have been evaluated as a grandfathered use as it may be consistent with the ALC regulations regarding grandfathering.

3. ALC Decisions - Update

There are no updates at this time.

4. New Business

No new business at this time.

5. Next Meeting

The next Committee meeting is scheduled for June 13, 2019.

6. Termination of Meeting

The Chair declared the meeting terminated at 8:54 p.m.

/cm

John Janmaat, Chair

COMMITTEE REPORT



Date: June 13, 2019
RIM No. 1210-21
To: Agricultural Advisory Committee (AAC)
From: Community Planning Department (LB)
Subject: Regulatory Options for Cannabis Production in the ALR

1.0 Purpose

To consider options to regulate cannabis production and related uses in the Agricultural Land Reserve.

2.0 Proposal

2.1 Background

On February 22, 2019, the Province of BC brought in new legislation governing the use of land in the Agricultural Land Reserve (ALR). On May 8, 2019, the Agricultural Land Commission (ALC) clarified that, under the new legislation, all forms of cannabis production are considered a farm use, including cannabis grown inside buildings with concrete and other non-soil based floors (see Attachment A). This is a departure from the regulations introduced in July 2018 that limited cannabis production to being grown outdoors in a field, in a structure with a base entirely of soil, or in a pre-existing structure or one under construction for the purposes of crop production. Previously, any proposed cannabis production that did not meet these conditions required a non-farm use application through the ALC. Under the new legislation, cannabis production in an industrial-type building with a concrete floor would be considered a farm use and would not need additional approval from the ALC.

This most recent change follows several years of evolving federal and provincial regulations, which have led to changes in how the City defines and regulates cannabis production and, more recently, retail sales. These changes are summarized below.

Timing	Regulatory Change	Government
July 2002	Medical cannabis legalized	Federal
January 2014	Medical cannabis production permitted in the ALR (added to Regulation in May 2015)	Provincial
April 2014	Medical cannabis regulations changed	Federal
May 2014	Medical cannabis production facilities added to the Zoning Bylaw	City
July 2018	Cannabis production designated as a farm use in the ALR in limited conditions	Provincial
October 2018	Cannabis production facility regulations amended and cannabis retail sales regulations added to the Zoning Bylaw	City
	Recreational cannabis legalized	Federal

Timing	Regulatory Change	Government
February 2019	Cannabis production considered a farm use in the ALR without conditions	Provincial

This change in legislation puts the responsibility on local governments to decide if or how to regulate cannabis production in the ALR in their communities. The City has the ability to regulate farm uses provided it is consistent with the *ALC Act* and associated regulations. Further, section 552 of the *Local Government Act* allows the City to restrict and prohibit farm operations by bylaw with approval from the Minister of Agriculture.

2.2 Current Regulations

Cannabis produced in the manner the ALC legislation defines as a farm use would be considered under the 'agriculture' use in the Zoning Bylaw. As part of the cannabis bylaw amendments in fall 2018, a property used for cannabis production in the ALR must be at least 60 m, measured from lot line to lot line, from a property outside of the ALR that has a residential use as a principal use. This is to limit possible cannabis production operation nuisances (e.g., odour, light) from affecting nearby residential uses. Further, the Zoning Bylaw prohibits the retail sale or dispensing of cannabis as part of the farm retail sales use.

Standard development regulations for setbacks, site coverage, and height of agricultural structures and processing facilities apply. This would allow for buildings used for cannabis production or processing to cover up to 35% of a property, or 75% for a greenhouse.

2.3 Considerations for Cannabis Production

Servicing & Utilities

Cannabis production facilities have significant and unique servicing requirements, particularly around energy, water, and wastewater. FortisBC indicates cannabis production facilities have requested annual energy supplies of up to 22 megawatts for electricity and up to 300,000 gigajoules for natural gas¹. This level of demand far exceeds typical industrial or agricultural uses and may require substantial upgrades to bring the necessary utilities to properties intending to produce cannabis. For reference, 45% of Denver's increase in energy demand since legalization of cannabis is for electricity to power cannabis facilities².

Cannabis production also has greater water demand than many agricultural uses. For example, it is estimated that a cannabis plant needs 22 litres of water per day while a wine grape plant needs 12 litres, and some communities are facing challenges with the quantity and quality of water supplies as it relates to cannabis production facilities³.

¹ FortisBC (2019). *Keeping up with new energy demand: cannabis and blockchain*. <https://www.fortisbc.com/news-events/stories-and-news-from-fortisbc/stories-news-from-fortisbc/2019/03/07/keeping-up-with-new-energy-demand-cannabis-blockchain>

² National Conference of State Legislatures (2016). *Electricity Use in Marijuana Production*. <http://www.ncsl.org/research/energy/electricity-use-in-marijuana-production.aspx>

³ McCarthy Tetrault (2018). *Spotlight on Cannabis*. <https://www.mccarthy.ca/en/insights/blogs/canadian-era-perspectives/spotlight-cannabis-part-2-taking-closer-look-environmental-costs-cannabis-cultivation>

Effluent from cannabis production may contain growth nutrients, pesticides, brine, and other contaminants. Most properties in the ALR are not connected to the City's sanitary sewer system and rely on septic systems for wastewater management.

Ancillary Uses

Processing of cannabis in the ALR falls under other farm product processing regulations defined in the ALR Use Regulation, namely that 50% of the farm product must be produced on the property or by a cooperative association to which the property owner belongs⁴. Other uses ancillary to cannabis production could include agri-tourism, gatherings for events, and farm retail sales in accordance with the ALC regulations and the Zoning Bylaw.

It should be noted that cannabis production and processing is not considered a qualifying agricultural use for the purposes of a property being classified as a farm by the BC Assessment Authority. Some uses permitted under the ALR Use Regulation, such as agri-tourism and gatherings for events, require that a property be classified as a farm, which could be achieved with other agricultural uses.

Federal Licencing

All cannabis production, processing, and sales operations must have a licence from Health Canada, in addition to the required provincial and local approvals. As of May 2019, new applicants for federal licences must now have a fully built facility prior to submitting their application. This presents a risk that fully constructed facilities may not meet licencing requirements.

Minister of Agriculture's Advisory Committee for Revitalizing the ALR and the ALC

The Minister of Agriculture formed an independent committee in 2018 to provide recommendations to the provincial government to revitalize the ALR and the ALC. In its interim and final reports, the Committee identified cannabis as an item of significant concern for the protection of land in the ALR. Committee members heard from stakeholders and the public calling for restrictions on cannabis production in the ALR. Key concerns raised by the Committee include:

- Unknown impacts of a relatively new industry;
- Speculation of ALR land, increasing costs for farmers;
- Lack of knowledge about 'normal' cannabis production practices as it relates to farming; and
- Proliferation of ancillary activities, including substantial processing facilities, agri-tourism, and farm retail sales.

The Committee's recommendation regarding cannabis in the ALR is attached for reference (Attachment B).

2.4 Regulatory Options

With the recent changes to the *ALC Act* and associated regulations, the City needs to consider its direction in regulating cannabis production in the ALR. Staff propose three options, each of which is outlined below.

⁴ ALR Use Regulation, s. 11(2)

Option 1: Allow All Forms of Cannabis Production

This option would not restrict any forms of cannabis production and would have the least oversight. Staff could consider more specific development regulations for siting, setbacks, site coverage, etc. for structures related to cannabis production and processing.

This also opens up more opportunities for cannabis-related agri-tourism activities and processing facilities in the ALR. For example, the City would have limited oversight over gatherings for events, tourist accommodations (e.g., bed and breakfasts, short-term rentals), and agri-tourism activities catering to cannabis tourism.

Option 2: Limit Cannabis Production to Soil-Based as per the ALR Use Regulation

This option would generally restrict cannabis production in the ALR to those identified in section 8 of the ALR Use Regulation: soil-based production outdoors in a field, in a structure with a base entirely of soil, or in a pre-existing structure constructed for the purposes of crop production. Associated development regulations could be developed to determine appropriate setbacks, site coverage, siting, and other considerations.

This option comes with several challenges around defining soil-based structures and determining the appropriate regulations. Few structures meet the requirement to have a base consisting entirely of soil, as this includes both footings and foundation. Further, a soil-based structure does not mean the crop is being grown in native soil, and staff are aware of several proposals for cannabis to be grown in planters or other means that are outside of the regulatory intent for soil-based cannabis production to take place on productive agricultural land.

Option 3: Require Council Approval for all Cannabis Production in the ALR

This option would require that all proposed cannabis production and processing facilities apply for a site-specific rezoning to be considered by Council. This approach would give the City the opportunity to review the merits of applications for cannabis production in the ALR and provide a greater level of oversight to this process. Applicants may be required to provide detailed plans for items such as servicing (e.g., hydro, water, wastewater), scale of production, ancillary uses, parking, and site context to be considered. The specific details of a proposal could be reviewed against City policies, guidelines, and regulations.

3.0 Current Development Policies

3.1 Official Community Plan

Objective 5.33 Protect and enhance local agriculture

Policy .1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .2 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

3.2 Agriculture Plan

Theme 1: Strengthening local policies and actions to protect agriculture.

Theme 2: Stewarding natural resources and the environment for food production.

Theme 3: Improving awareness of local agriculture and access to local food.

Theme 4: Fostering and sustaining farm business and farmland.

4.0 Community Planning

Staff have concerns that without a level of oversight, cannabis production in the ALR may have adverse impacts on the local agricultural community. Ancillary uses (e.g., processing, tourism, farm retail sales, etc.) present a risk to the City's policies to have agriculture as the primary use on a property, and speculation and servicing needs may further increase the cost of farmland in Kelowna.

As with any bylaw regulating farm uses in Kelowna, a Zoning Bylaw amendment regulating cannabis production in the ALR would require approval of the Minister of Agriculture. The current bylaw standards for cannabis production in the ALR were developed in 2015 based on the previous regulations for medical cannabis production facilities. City staff would work with Ministry and ALC staff to develop appropriate regulations for Kelowna.

Staff are seeking a recommendation from the Agricultural Advisory Committee to present options to Council regarding the regulation of cannabis production in the ALR.

Report prepared by: Laura Bentley, Community Planning Supervisor

Reviewed by: Terry Barton, Development Planning Department Manager

Attachments:

Attachment A – ALC Info Bulletin 04: Cannabis Production in the ALR

Attachment B – Minister of Agriculture's Advisory Committee for Revitalizing the ALR and the ALC Final Report [excerpt]



ATTACHMENT **A**

This forms part of application # _____

Planner Initials



City of **Kelowna**
COMMUNITY PLANNING

INFORMATION BULLETIN 04

CANNABIS PRODUCTION IN THE ALR

Revised: May 8, 2019
 Issued: August 15, 2018

1. SCOPE OF THIS INFORMATION BULLETIN

This information bulletin provides guidance to assist in interpreting the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (**ALCA**) and regulations in relation to cannabis production in the Agricultural Land Reserve (**ALR**). The ALCA and regulations will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA and regulations. Compliance with the ALCA and regulations in relation to cannabis does not relieve persons from the need to comply with all other applicable laws, regulations and bylaws at the federal, provincial and local government levels.

2. RECENT CHANGES TO STATUTE AND REGULATIONS

Effective February 22, 2019, the ALCA and the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (now the **ALR General Regulation**) were amended and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**) was created. Though many concepts contained in the ALCA and regulations remain unchanged, there have been changes related to the use of ALR land for cannabis production. All references in this information bulletin to the ALCA and regulations are as of February 22, 2019, unless otherwise stated.

3. WHETHER CANNABIS PRODUCTION IS A FARM USE

In the past, certain forms of cannabis production, but not others, had been “designated” as farm use by regulation. This was the practice followed when s. 2(2.5) of the former regulation was introduced in July 2018. The fact that certain production required “designation” to be a farm use suggested that non-designated forms of cannabis production:

- were not a farm use; and
- as such, could only be engaged in if the Agricultural Land Commission (the **Commission**) approved a non-farm use application specific to that use.

On February 22, 2019, s. 2(2.5) of the former regulation was repealed and the ALR Use Regulation was created. The ALR Use Regulation addresses cannabis production in s. 8, in a part of the ALR Use Regulation that is entitled “Farm Uses”, and no longer “designates” a

subset of cannabis production as farm use. This regulatory change clarifies that all forms of cannabis production are a “farm use”.

Because all forms of cannabis production are a “farm use”, cannabis production in the ALR does not contravene the ALCA even if engaged in without the Commission’s approval.

However:

- the ALR Use Regulation specifically allows local governments to prohibit cannabis production in certain forms (see section A of this bulletin); **AND**
- certain other activities associated with cannabis production, such as fill placement or soil removal, may still require proponents to engage with the Commission (see section B of this bulletin).

A. Local Government Authority To Prohibit

Local governments play a significant role in determining what kind of cannabis production occurs in their community.

Local governments may regulate or prohibit certain kinds of cannabis production, though may not prohibit all forms of cannabis production.

Section 8 of the ALR Use Regulation provides:

- (1) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced
 - (a) outdoors in a field, or
 - (b) inside a structure that, subject to subsection (2), has a base consisting entirely of soil.
- (2) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced inside a structure that meets both of the following conditions:
 - (a) the structure was, before July 13, 2018,
 - (i) constructed for the purpose of growing crops inside it, including but not limited to producing cannabis lawfully, or
 - (ii) under construction for the purpose referred to in subparagraph (i), if that construction
 - (A) was being conducted in accordance with all applicable authorizations and enactments, and

(B) continues without interruption from the date it began until the date the structure is completed, other than work stoppages considered reasonable in the building industry;

(b) the structure has not been altered since July 13, 2018 to increase the size of its base or to change the material used as its base.

Section 4 of the ALR Use Regulation provides:

The farm uses referred to in this Part [which includes s. 8] may not be prohibited

- (a) by a local government enactment except a bylaw under section 552 [*farming area bylaws*] of the *Local Government Act*, or
- (b) by a first nation government law, if the activity is conducted on settlement lands.

B. Placing Fill In, And Removing Soil From, The ALR

There are strict rules regarding placement of fill in the ALR and removal of soil from the ALR, **even when necessary for a farm use**, unless limited exceptions are met.

Q. Do the rules on placement of fill in the ALR and removal of soil from the ALR apply to the construction of structures intended to be used for the production of cannabis?

A. Yes. These rules are found in ss. 35-36 of the ALR Use Regulation and apply generally, to the construction of structures for the production of cannabis, subject only to the limited exceptions summarized below.

Typically even where the fill placement or soil removal is for cannabis production, successful completion of a notice of intent and/or use application process is required before the activity can proceed. This is so unless all of the following conditions are met:

- the fill placement or soil removal are for the purpose of constructing a structure for farm use; AND
- the total area from which the soil is removed or on which fill is placed is 1,000 m² or less; AND
- if the area from which the soil is removed or on which the fill is placed is in a floodplain, the resulting elevation level is consistent with the minimum elevation level established under all applicable local government enactments and first nation government laws, if any, respecting flood protection in the floodplain; AND
- the fill **is not, and does not contain**, construction or demolition waste (including masonry rubble, concrete, cement, rebar, drywall and wood waste), asphalt, glass,

synthetic polymers, treated wood, or unchipped lumber, as none of these may be used as fill in the ALR: ALR Use Regulation, ss. 35-36.

See the Commission's Information Bulletin #7 – Soil or Fill Use in the ALR for more information.

4. CONSTRUCTION, MAINTENANCE AND OPERATION OF STRUCTURES NECESSARY FOR FARM USE

Subject to any limits and conditions set out in Part 2 of the ALR Use Regulation, the use of land in the ALR to construct, maintain or operate a structure (including a greenhouse), driveway or utility that is necessary for a farm use is designated as a farm use: ALR Use Regulation, s. 5. A designated farm use may be undertaken without making a use application to the Commission.

Q. What does “subject to any limits and conditions set out in Part 2 of the ALR Use Regulation” mean for the construction of structures intended to be used for cannabis production?

A. The construction of structures for cannabis production are limited by the specific limitations for cannabis production set out at s. 8 of the ALR Use Regulation.

In determining whether an activity is “necessary” for a farm use, consideration must be given to whether the nature and size of the activity is proportionate to the farm use. If a landowner claims that an activity is “necessary” for a farm use that has not yet commenced, issues may arise in respect of whether the proposed use is in fact going to occur, and whether the nature and size of activity characterized as “necessary” will in fact be necessary to that use.

5. STORING, PACKING, PREPARING AND PROCESSING FARM PRODUCTS

The ALR Use Regulation refers to certain other activities potentially related to cannabis that local governments may not prohibit, but may regulate, as described in s. 4 of the ALR Use Regulation, such as certain storing, packing, preparing and processing uses set out in s. 11.

The use of land in the ALR for storing, packing, preparing and processing farm products is designated as a farm use, and as such may be undertaken without application to the Commission, if at least 50% of the farm product is (a) produced either on that agricultural land or by an association (as that term is used in the *Cooperative Association Act*) to which the owner of the agricultural land belongs, or (b) feed required for farm use on that agricultural land: ALR Use Regulation, s. 11(2).

REVITALIZING THE Agricultural Land Reserve AND THE Agricultural Land Commission

Final Committee Report to the Minister of Agriculture:
Recommendations for Revitalization

ATTACHMENT **B**

This forms part of application

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Planner
Initials

LB





RECOMMENDATION 15:

Protect the ALR from anticipated significant impacts of federal cannabis legalization:

1. Establish an immediate provincial moratorium on all non-soil bound cannabis production facilities in the ALR
2. Provide the ALC with authority to consider all cannabis-related applications and to establish criteria for limits throughout the ALR
3. Review and clarify the recently adopted regulation for cannabis production in the ALR.

Issue/Rationale:

The Committee did not include cannabis facilities in the ALR as part of their public engagement exercise, nor was cannabis production facility location identified as a question during the provincial government's 2017 public engagement on cannabis. The Committee recognizes that the Minister of Agriculture recused herself from provincial cannabis-related decisions. The Committee, however, is committed to bringing this key ALR-related concern to the Province's attention.

The Committee heard strong support from stakeholders and the public for significant restrictions - including an outright ban - on cannabis production in the ALR. Further, in early July 2018, the Union of BC Municipalities (UBCM) requested that the provincial government establish a moratorium on the use of agricultural land to grow cannabis until there is a comprehensive review and consultation with local governments.

The Committee's interim recommendations on cannabis production in the ALR (Interim Committee Report, July 31, 2018) reflected unsolicited and significant concerns raised during its consultations. The Interim Report recommended steps to regulate cannabis production in the ALR. These steps included: a moratorium on all non-soil bound cannabis production facilities in the ALR pending a provincial level analysis of impacts; following the analysis, enabling the ALC to establish

rules/criteria for cannabis production in the ALR; and permitting production of cannabis only through an application to the ALC.

On July 13, 2018, just prior to the receipt of the Committee's Interim Report, Government adopted regulations that permitted the production of soil bound cannabis in the ALR. The known and unknown impacts of this new use in the ALR continue to be a concern and the Committee continues to recommend that the new regulation requires significant review.

Cannabis is a new and relatively unknown industry supported by substantial capital investment. The potential impacts of the cannabis industry on the ALR are likely to be significant and are not yet fully understood. The projected impacts of the recreational cannabis industry on the ALR may be substantial due to the number and scale of the industrial structures (often in excess of 1,000,000 ft²) both in place and proposed. Additionally, cannabis companies may experience an initial boom and bust cycle, which could result in large industrial structures being abandoned in the ALR, thus alienating the use of the land for soil based agriculture and potentially being re-purposed for generic industrial uses.

Advertisements for the sale of ALR land, and general inquiries made to local governments, suggest there is significant speculation surrounding cannabis production in the ALR. ALR land is generally less expensive than industrial zoned land and is therefore a target for this well-funded industry. The Committee believes the purpose of the ALR is not to provide cheap land in order for cannabis-producing, multi-national company headquarters to establish large industrial scale processing and manufacturing facilities, with associated infrastructure (e.g., large parking areas).

The Committee is recommending a precautionary approach to the construction of large scale, highly specialized cannabis facilities in the ALR. The approach is vital to ensuring the ALR is not dominated by very large industrial structures – growing a high value crop in a potentially volatile market – to the detriment of other agricultural commodities that could well be priced out of the land market. Provincial-level analysis is important to understand the nature of emerging and anticipated risk. A precautionary approach, especially while the industry is establishing itself and which utilizes the ALC application process, will assist in protecting the future of the ALR. The Committee is concerned that large areas of high capability farmland could be permanently converted to industrial scale cannabis operations, operations which are essentially industrial uses and which could be located anywhere outside the ALR.

The current Regulation under the Act, amended to address cannabis production, restricts cannabis production in the ALR to “soil based” facilities. It is important to note, however, that the amendments were enacted prior to the publication of supporting government policy and guidelines, and the interpretation of what constitutes a “soil based” facility presents many challenges for the ALC and local governments and this continues to be the case today (Fall, 2018). As the industry is so new and the federal legislation is actively evolving, there is not enough established knowledge about normal cannabis farm practices, scale of operations, appropriate ancillary activities (e.g., agri-tourism and gathering for events), processing requirements, etc. in order for ALC staff to adequately assess whether a proposed facility meets the intent of the regulation. The regulation speaks specifically to production and makes no reference to limits on the amount of land covered for the storing, packing, preparing or processing of cannabis. In addition, there seems to be an interest by some aspects of the industry to go beyond primary production and processing and eventually develop a cannabis retreat and spa infrastructure. This type of ancillary development, while not (to the knowledge of the Committee) currently contemplated by the federal and provincial legislation, is an aspect of the industry that could have a large impact on the ALR, and should proactively be addressed in an ALR regulation.

The Committee further understands that the industry may be considering approaches that will avoid the intent of the amended regulations. If successful, these efforts may in fact undermine the original intent of the amendments of July 13, 2018.

While the Committee considers Government's current Regulation to be well-intended, the lack of detail, unintended consequences, and limited analysis related to the potential response to this Regulation has placed the ALC in a difficult position. The Committee believes the Regulation must be further refined to achieve Government's intended policy. We recommend the ALC and Government collaborate to clarify the type and scale of cannabis production structures deemed appropriate within the ALR. The ALC is an administrative tribunal whose Commissioners are selected by Government to make land use decisions based on their general expertise in agriculture. As such, the Committee suggests the ALC is the most appropriate adjudicative body to ascertain the appropriate location and scale of cannabis production in the ALR.

Actions:

- 1. Direct facilities for lawful cannabis not grown in a field to seek approval through the ALC application process to allow greater understanding and analysis of the impacts of the industry**
 - 2. Require notification to the ALC when an application for a federal cannabis production license is submitted for lands in the ALR**
 - 3. In consultation with the ALC, ensure the Regulation, to the extent possible, does not enable opportunities for avoiding the intent of the Government**
 - 4. Prepare policy related direction regarding the difference between processing and manufacturing to the eventual expansion of the cannabis industry to include tertiary products infused with cannabis compounds**
 - 5. Provide direction on meeting the federal Health Canada requirements while meeting the intent of the provincial Regulation with respect to processing**
 - 6. Identify which other permitted uses lawful cannabis producers may avail themselves of and to what scale if considered a 'farm use' under the Regulation, e.g., retail sales, agri-tourism, gathering for events, etc.**
 - 7. Include lawful cannabis storing, packing, preparing and processing in the recommended 2% site coverage threshold (Maximum Cumulative Footprint) in Recommendation 14.**
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