



BOARD REPORT

TO: Chair and Directors

File No: LC2566D CV20190000062
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SUBJECT: Electoral Area D: Agricultural Land Commission (ALC) Application
Section 20 (2) – Non-farm Use (Phoebus)

DESCRIPTION: Report from Jan Thingsted, Planner III, dated April 30, 2019
4860 Hoath Road, Falkland

RECOMMENDATION #1: THAT: Application LC2566D, DL 2250, Osoyoos Division, Yale District, Except Plans 15009, 35631, 38492 and KAP45742, be forwarded to the Agricultural Land Commission recommending approval this 16th day of May, 2019.

RECOMMENDATION #2: THAT: Notwithstanding CSRD Cannabis Related Business Policy A-72 and its statement "Cannabis related businesses are not supported on Land within the Agricultural Land Reserve (ALR)", the Board waive this statement for application LC2566D since the proposed facility will likely have little to no negative impact on the agricultural capability of the subject parcel and surrounding farmland this 16th day of May, 2019.

SHORT SUMMARY:

The agent is applying to the Agricultural Land Commission (ALC) for non-farm use permission to establish a federally licensed standard-cultivation cannabis production facility ("facility") at 4860 Hoath Road, Falkland, Electoral Area D. The footprint of the proposed production building is 5739 m² (61,776 sq. ft.) with a concrete-floor. The total area of land requested for non-farm use is 1.5 ha (15,000 m²).

VOTING:	Unweighted Corporate <input checked="" type="checkbox"/>	LGA Part 14 (Unweighted) <input type="checkbox"/>	Weighted Corporate <input type="checkbox"/>	Stakeholder (<i>Weighted</i>) <input type="checkbox"/>
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BACKGROUND:

REGISTERED OWNERS:
Laura Phoebus (Cleary)

APPLICANT:
Laura Phoebus (Cleary)

AGENT:
Emrys Phoebus (Greenview Acres Inc.)

ELECTORAL AREA:
D (Salmon Valley)

LEGAL DESCRIPTION:
DL 2250, Osoyoos Division, Yale District, Except Plans 15009, 35631, 38492 and KAP45742

PID:

001-628-038

CIVIC ADDRESS:

4860 Hoath Road, Falkland

SURROUNDING LAND USE PATTERN:

North: Rural (ALR)

South: Rural Holdings (forested)

East: Rural Holdings (ALR)

West: Rural Holdings (forested)

CURRENT USE:

Residential (one single-family dwelling)

PROPOSED USE:

Standard cultivation licenced medical cannabis production facility

Residential use may continue

PARCEL SIZE:

16.17 HA

DESIGNATION/ZONE:

Salmon Valley Land Use Bylaw No. 2500

RH – Rural Holdings

PROPOSED DESIGNATION/ZONE:

No proposed change

AGRICULTURAL LAND RESERVE:

100%

SOIL CAPABILITY:

The Canada Land Inventory agricultural ratings of the subject property are 7:5PT (70% Class 5 soils with stoniness and adverse topography as limiting factors) and 3:4PM (30% Class 4 soils with stoniness and moisture deficiency as limiting factors). According to the ALC's agricultural capability classification system, land in Class 5 is generally limited to the production of perennial crops or other specially adapted crops while land in Class 4 has limitations which make it suitable for only a few crops. The soils on the subject property are deemed not improvable.

The Agrologist's Inspection Report (prepared by Wayne A. Blashill, PAg), dated April 2019, concludes that for the footprint area of the proposed building that the unimproved rating for soil moisture deficiency would be 5PA (in a very gravelly sand) and that there is no improved rating for 5A or a poor 5PM, hence the combined rating for the footprint area in its original condition is:

5PA

The report asserts that the facility will improve the agricultural capability of the footprint area from 5PA to 1PA:

"The farm building is climate controlled and will improve the climatic capability for agriculture at the site. A wider range of crops can be grown. The building will have no limitations due to stoniness or soil moisture deficiency; since the soil will have 0% coarse fragments, will be irrigated and have a loam texture. The farm building will improve the original footprint capability rating to: 5PA (1PA)."

To view the Agrologist's report see: "Agrologist_report_APR-2019_LC2566D.pdf" attached.

ALR APPLICATION HISTORY:

1101 (1975) – ALC refused a proposed three-lot subdivision
1779 (1981) - ALC approved a subdivision creating one 0.4 ha lot
1736 (1982) - ALC approved subdivision creating seven 4 ha lots
1719 (1983) - ALC approved a block exclusion (1220 ha) and inclusion (16.5 ha) – application made by the CSR
1786 (1987) - ALC approved a two-lot subdivision (divided by the Salmon River)

ALC APPLICATION INFORMATION (completed by applicant/agent):
see: "Project_Description_LC2566D.pdf"

COVENANTS:

KG36982- Easement

To view applicable maps and plan see: "Maps_Plans_LC2566D.pdf" attached.

POLICY:

Salmon Valley Land Use Bylaw No. 2500

Relevant Objectives and Policies:

1.7 Rural and Agricultural Character

Objective

1.7.1 An objective of the Regional Board is to generally preserve the rural and agricultural character of the area and ensure the continued viability of economic activities based on agriculture and forestry resources.

Policy

1.7.2 The policies of the Regional Board are as follows:

.1 On Schedule A, the OCP Designation Maps, the rural and agricultural areas are designated as R (Rural)

1.8 Land Resource Capability

Objective

1.8.1 An objective of the Regional Board is to generally encourage a pattern of land use that respects the capability of the land-based resources to support various uses.

Policies

1.8.2 The policies of the Regional Board are as follows:

.1 Agricultural activities shall be encouraged on land with moderate to excellent agricultural capability in the valley bottoms;

.2 Agricultural activities shall also be encouraged to locate away from streams. If agricultural activities were located adjacent to streams, a buffer should be provided between streams and agricultural activities;

2.5 RH Rural Holdings

Permitted Uses

2.5.1 The following uses and no others are permitted in the area zoned as RH:

- .1 agriculture;*
- .2 church;*
- .3 equestrian centre;*
- .4 fish farms;*
- .5 home occupation;*
- .6 kennel;*
- .7 single family dwelling;*
- .8 accessory use.*

"agriculture" means (a) the growing, rearing, producing or harvesting of agricultural crops, fur bearing animals, poultry or other livestock; and includes (b) the storage sale and processing of primary agricultural products harvested, reared or produced by the farming operation; and (c) the storage and repair of farm machinery, implements and supplies.

Refer to Salmon Valley Land Use Bylaw No. 2500 for all Objectives, Policies, and Zoning information.

Cannabis Related Business Policy A-71

Relevant excerpts from the Policy:

Part Two: Criteria for Reviewing Licence Applications

1. Location of Cannabis Related Businesses

b. Cannabis related businesses are not supported on:

- Residential properties*
- Land within the Agricultural Land Reserve (ALR)*

c. A minimum separation distance of 300 m is recommended between a cannabis related business and the following locations (the minimum distance is calculated as a straight line from the edge of each parcel):

- Day Cares*
- Health Care Facilities*
- Libraries*
- Parks*
- Playgrounds*
- Schools*
- Other cannabis related businesses*

d. Minimum cannabis production facility (includes all buildings and structures) setbacks from property lines:

- 60 m setback to exterior lot line*
- 90 m setback to front lot line*

- 30 m to other lot lines

e. Minimum cannabis production facility (includes all buildings and structures) setbacks from watercourses:

- 30 m

Refer to: "Cannabis_Related_Business_Policy_A-71.pdf" for the complete Policy.

Agricultural Land Commission Act

Relevant excerpts from ALC Act:

Section 20

Non-farm use of land within agricultural land reserve

(1) A person must not use agricultural land for a non-farm use unless permitted under section 25 or 45 or the regulations.

(2) A person may apply to the commission for permission under section 25 for a non-farm use of agricultural land if the person

(a) is an owner of the agricultural land, or

(b) has a right of entry, granted under an enactment, to the agricultural land

Agricultural Land Reserve Regulation

Relevant excerpts from ALR Regulation:

Section 2(2.5)

Cannabis

8 (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.

FINANCIAL:

There are no financial implications to the CSRD with regard to this application.

KEY ISSUES/CONCEPTS:

The applicant is requesting non-farm use permission from the ALC to operate a standard-licensed medical cannabis production facility on ALR land in a proposed 61,776 sq. ft. (5739 m²) building, with a concrete floor. The total area of land requested for non-farm use is 1.5 ha (15,000 m²), which will include the building and a parking-lot.

The following timeline summarizes the history of the applicant's proposal and ALC application:

- November 7, 2017 - Agent discusses the proposal with CSRD Planning staff. Staff inform the agent of the ALC's January 2014 Information Bulletin on cannabis production which stated that "... if a land owner is lawfully sanctioned to produce marihuana for medical purposes, the farming of said plant in the Agricultural Land Reserve (ALR) is allowed and would be interpreted by the Agricultural Land Commission as being consistent with the definition of "farm use" under the ALC Act." Staff also provides the agent the name and contact information for the ALC's Okanagan planner.
- March 26, 2018 - Agent discusses the proposal again with CSRD Planning staff. Staff verifies CSRD land use regulations and the ALC's January 2014 Information Bulletin.
- June 7, 2018 - Agent applies to Health Canada to become a Licensed Producer of medical marihuana under the ACMPR. CSRD receives a copy of the notification letter. The proposal complies with CSRD land use regulations and policies, and also ALR regulations.
- June 21, 2018 - CSRD Board adopts "Cannabis Related Business Policy A-71" which does not support cannabis production facilities on ALR land.
- July 13, 2018 - ALR regulations are amended to specify that only cannabis grown outdoors in a field, or inside a structure with a base consisting of entirely of soil is to be considered farm-use. An exception is made for facilities that were "under construction" before July 13, 2018. For a structure to have been "under construction" before July 13, 2018, ground disturbance (such as excavation for laying foundation) must have commenced before that date.

- November 6, 2018 – CSRD staff speak with agent about the change to ALR regulations and the recently adopted Policy A-71. Agent informs staff that an application to the ALC for non-farm use may be necessary. CSRD staff confirm with the agent that building permits are not currently required in Electoral Area D.
- December 18, 2018 - A letter from the ALC is sent to the agent stating: *"ALC staff does not consider the state of progress you have described to meet the test of being "under construction" as referenced in the Regulation... ALC staff consider that a non-farm use application must be submitted."*
- February 22, 2019 - A follow-up letter from the ALC is sent to the agent stating: *"ALC staff continue to hold the view that the facility was not "under construction" and that, therefore, it is not a designated farm use under s. 2(2.5) of the Regulation. As such, it is also ALC staff's view that proceeding with the facility without making a non-farm use application and obtaining Commission approval for the use would contravene the ALC Act."*
- March 6, 2019 - Agent submits a non-farm use application.

The timeline above shows that when the agent first contacted the CSRD in November 2017 and subsequently submitted his application to Health Canada on June 7, 2018, the proposal appeared to be in compliance with both ALR regulations and CSRD land use regulations and policies. However, the June 21, 2018 adoption of CSRD Policy A-71 and the July 13, 2018 change to ALR regulations caused the proposed facility to no longer be in compliance with CSRD Policy and ALC Regulations.

It is the agent's view that the Greenview Acres Inc. facility was under construction prior to July 13, 2018 and should therefore be allowed to continue building and development proceed. He argues with the ALC that the test under section 2(2.5) of the ALR Regulation has been met and a non-farm use application should not be required. Notwithstanding, the agent has decided to submit a non-farm use application.

Salmon Valley Land Use Bylaw No. 2500

The subject parcel is zoned and designated Rural Holdings in Salmon Valley Land Use Bylaw No. 2500. The Rural Holdings zone permits "Agriculture" on the subject property which allows the growing, producing and harvesting of agricultural crops, plus the processing of primary agricultural products harvested and produced by the farming operation. Cannabis production fits this definition since cannabis it is an agricultural crop processed on site as part of a farming operation. Bylaw No. 2500 does not contain policies or regulations which specifically exclude cannabis production.

Objective 1.7.1 of Bylaw No. 2500 states that the: *"Regional Board is to generally preserve the rural and agricultural character of the area and ensure the continued viability of economic activities based on agriculture and forestry resources."*

Cannabis Related Business Policy A-71

When reviewing applications for cannabis production facilities staff look to the Cannabis Policy. The Cannabis Policy outlines the criteria for reviewing applications for cannabis license applications. This includes the location of the proposed business in terms of the type of property it is proposed to be

located on. Cannabis related businesses are not supported on residential properties or land in the ALR, and where zoning exists cannabis production facilities may only be permitted in Industrial zones. The distance of the proposed business from other uses considered to be incompatible with cannabis related businesses including schools, playgrounds, day cares, health care facilities, libraries, parks, and any other public space are outlined in the policy. Minimum setbacks from property lines and watercourses for all buildings and structures associated with cannabis production facilities are also included.

The proposed facility meets all location criteria in Policy A-71 except that it is located on ALR land. It should be noted that the adoption of Policy A-71 on June 21, 2018 came after the initial contact with the agent and the subsequent licence application to Health Canada.

The table below shows the relevant Cannabis Related Business policies and whether or not the proposed facility meets the Policy's criteria.

Cannabis Policy	Yes/No?	Comments
Land Use Regulations:		
Is the property subject to zoning?	yes	Property is zoned Rural Holdings
Property is zoned Industrial	n/a	no
Property is zoned Residential	n/a	no
Property is in the ALR	yes*	100% in the ALR (*Policy does not support cannabis related business in the ALR)
Is the proposed facility located within 300 m of the following land uses:		
Parks	no	Nearest park in Falkland
Schools	no	Nearest school Falkland
Health Care Facilities	no	Nearest facility in Falkland
Libraries	no	Nearest library in Falkland
Day Cares	no	Nearest facility in Falkland
Playgrounds	no	Nearest playground in Falkland
Other Cannabis Related Business	no	6 km from nearest business (5450 Hwy 97, Falkland)
Does the proposed facility meet the minimum building setbacks?		Actual Setbacks:
60 m to Exterior lot line	yes	95 m
90 m to Front lot line	yes	> 200 m
30 m to Other lot lines	yes	>60 m
30 m to Watercourses	yes	n/a

Other considerations and information submitted by the agent

The Agrologist's report explains that the proposed facility will be located in a closed building (not a greenhouse) and as such will have minimal light, smell and noise pollution. The facility is to also be located on an elevated bench with a treed buffer to provide screening and noise dampening.

The majority of the waste from the facility will consist of an "organic nutrient rich Health Canada approved fertilizer" that is reported to provide great opportunities to farmers within the ALR.

The water recycling and growing process is deemed to be very efficient and will be incorporated into the building design. It should be noted that the water supply system that services the facility may be subject to the approval and permitting requirements of the BC Drinking Water Protection Act and Regulation.

The agent anticipates that the facility could employ approximately 65 full-time staff.

The Ministry of Transportation and Infrastructure issued a Highways Access permit for the facility on Nov 29, 2018.

SUMMARY:

The agent is applying to the ALC to obtain non-farm use permission for a proposed cannabis production facility on ALR land. The footprint of the proposed production building is 5739 m² (61,776 sq. ft.) with a concrete-floor. The total area of land requested for non-farm use is 1.5 ha (15,000 m²). Staff is recommending approval of this non-farm use in the ALR for the following reasons:

- The subject property is designated "Rural Holdings" in Salmon Valley Land Use Bylaw No. 2500 which lists "Agriculture" as a permitted use;
- The proposed production building accounts for 3.5% of the total parcel area. The total non-farm use request entails 9.3% of the total parcel area;
- The ACMPR application to Health Canada was submitted prior to the adoption of CSRD Policy A-71 and ALC's regulatory change regarding cannabis production on ALR land, and met both ALC and CSRD regulations at that time;
- The Agrologist's Inspection Report concludes that the footprint area of the proposed building has an unimproved agricultural rating of 5PA and asserts that the facility will improve the agricultural capability of the building footprint area from 5PA to 1PA; and
- The Report also anticipates that the operation will have a negligible impact on the rest of the farm and surrounding farmland.

IMPLEMENTATION:

CSRD staff will forward the application, together with the resolution from the Board, and this staff report to the ALC for consideration.

If the owners are successful in obtaining this permission, it is expected that they will apply to Health Canada for a micro-cultivation licence. At that time it will be required that the CSRD, Fire Chief, and RCMP be formally notified of the licence application. Cannabis Related Business Referrals Procedure PR-32 outlines the process for reviewing cannabis retail and production facility notifications.

Refer to: "Cannabis_Related_Business_Referrals_Procedure_PR-32.pdf" for the complete Procedure.

DESIRED OUTCOMES:

That the Board endorse staff recommendations.

BOARD'S OPTIONS:

1. *Endorse the Recommendation(s).*
2. *Deny the Recommendation(s).*
3. *Defer.*
4. *Any other action deemed appropriate by the Board.*

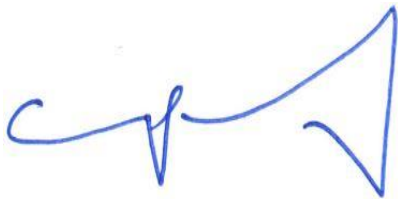
LIST NAME OF REPORT(S) / DOCUMENT(S) AVAILABLE FROM STAFF:

1. Salmon Valley Land Use Bylaw No. 2500
2. ALC Act and ALR Regulations
3. BC Drinking Water Protection Act and Regulation

Report Approval Details

Document Title:	2019-05-16_Board_DS_LC2566D_Phoebus.docx
Attachments:	- Project_description_APR-2019_LC2566D.pdf - Agrologist_Report_APR-2019_LC2566D.pdf - Cannabis_Related_Business_Policy_A-71.pdf - Cannabis_Related_Business_Referrals_Procedure_PR-32.pdf - Maps_Plans_LC2566D.pdf
Final Approval Date:	May 6, 2019

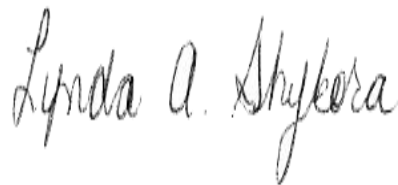
This report and all of its attachments were approved and signed as outlined below:



Corey Paiement - May 6, 2019 - 12:16 PM



Gerald Christie - May 6, 2019 - 12:56 PM



Lynda Shykora - May 6, 2019 - 1:43 PM



Charles Hamilton - May 6, 2019 - 2:15 PM