



INFORMATION BULLETIN 04

CANNABIS PRODUCTION IN THE ALR

Revised: May 8, 2019
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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On February 22, 2019, s. 2(2.5) of the former regulation was repealed and the ALR Use Regulation was created.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).