



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, NOVEMBER 19, 2013**

**SUBJECT *IMPLICATIONS OF NEW MARIHUANA FOR MEDICAL PURPOSES REGULATIONS
ON LAND USE PLANNING IN THE JUAN DE FUCA ELECTORAL AREA***

ISSUE

Health Canada has implemented new *Marihuana for Medical Purposes Regulations* (the Regulations) which authorize supply and distribution of medical marihuana by licensed producers. Staff has received multiple inquiries about the siting of new licensed facilities and received one notice of a medical marihuana production facility on a General Industrial (M-2) zoned parcel in Otter Point. It is therefore timely to consider the implications of medical marihuana facilities in the Juan de Fuca Electoral Area (JdF EA).

BACKGROUND

The Marihuana Medical Access Program (the Program) was established by Health Canada in 1999 which permitted authorized persons to obtain or grow medical marihuana. Due to a variety of concerns with the Program, Health Canada implemented new Regulations in June 2013 (Appendix 1). The current Program will be phased out by March 31, 2014. Health Canada will no longer produce and distribute marihuana for medical purposes.

The new Regulations create a licensing scheme for the production and distribution of medical marihuana. Licenses will be issued to commercial producers who cultivate and sell marihuana for medical purposes subject to regulatory requirements. The Regulations only permit the cultivation and processing of medical marihuana indoors, not in a dwelling unit, and will include production, processing, storage and shipping facilities. Security measures such as fencing, restricted access, visual monitoring and intrusion detection are required. Dried marihuana must be packaged, labelled and shipped directly to licensed users by courier. The Regulations require applicants to provide notice to local governments, police and fire authorities whereas, under the Program, local governments were not privy to where production licenses were issued. Local governments are therefore in a situation to regulate the siting of these facilities.

ALTERNATIVES

1. That staff be directed to consult with the community about the regulation of medical marihuana production facilities in the JdF EA.
2. That the issue be referred back to staff for additional information.

LEGISLATIVE IMPLICATIONS

The Regulations authorize the production of medical marihuana by licensed companies. The Agricultural Land Commission (ALC) considers the farming of medical marihuana consistent with the definition of 'farm use' in the *Agricultural Land Commission Act* (Appendix 2). Further, the ALC has identified accessory uses associated with the farm use to include a small business office, testing lab, processing and drying, packaging shipping areas, cloning room and anything else directly related to the growing and processing of the plant. Therefore, licensed medical marihuana production is permitted on land within the Agricultural Land Reserve (ALR). Local governments do not have the authority to prohibit this use on lands designated as ALR; however, local government does have the authority to regulate the siting of medical marihuana production facilities on ALR land through zoning.

Local Governments may avoid legal challenges on *Charter of Rights and Freedoms* grounds if their regulations are based on proper planning principals. An advisable approach is to determine where the use is appropriate and regulate it in a manner that addresses potential community concerns.

PUBLIC CONSULTATION IMPLICATIONS

Community input is required to determine if amendments are required to the JdF EA land use regulations to address licensed medical marihuana production facilities. The Advisory Planning Commissions were established to provide advice to the JdF EA Land Use Committee (LUC) on land use planning matters referred to them relating to Part 26 of the *Local Government Act (LGA)*. As the issue relates to the entire JdF EA, in lieu of Advisory Planning Commission meetings, staff recommends that a public information meeting could be held on this issue.

Should amendments to the JdF EA land use bylaws be required, draft bylaws would be prepared by staff and be considered pursuant to the rezoning process outlined in the JdF EA Development Procedures Bylaw (Bylaw No. 3110). The proposed amendments would be presented to the LUC and, through the Capital Regional District (CRD) Board, be referred to the community, and to regional, provincial and federal agencies for comment. The proposed bylaws, revised to address community and referral agency concerns, would be considered by the LUC for a recommendation to the CRD Board for first and second reading and direction to a public hearing. A public hearing pursuant to Section 890 of the *LGA* would be required subsequent to the amendments passing second reading by the CRD Board.

PLANNING ANALYSIS

Local governments across Canada are considering how to regulate medical marihuana facilities and, whereas some jurisdictions may attempt to restrict medical marihuana operations altogether, some may limit them to ALR land only, while others are considering permitting them in industrial, agricultural or rural zones or as a home-based business (Appendix 3). The use is generally not considered commercial as retail sales are not permitted by the Regulations. Further, as these are larger scale production facilities with fencing, restricted access, visual monitoring and intrusion detection, they may not be compatible with residential uses.

While a local government could restrict medical marihuana production facilities outright, this restriction would be vulnerable to legal challenge. Further, as these facilities will be permitted on ALR lands, staff recommends consideration of where these facilities could locate based on the issues and concerns raised by the community.

JdF EA Regulations

Licensed medical marihuana is a 'farm use' under the ALR Regulations. As there are 2,832 ha of ALR land in the JdF EA, there is considerable opportunity for these facilities to locate in the area; however, much of this land may be remote, lack services or be better suited to other agricultural uses. There are no ALR lands in Malahat, and only one parcel in both Willis Point and Port Renfrew. The ALR lands are zoned Agriculture in Bylaw No. 2040 (East Sooke, Otter Point, Shirley/Jordan River), Bylaw No. 3109 (Port Renfrew) and Bylaw No. 3602 (Rural Resource Lands).

Marihuana cultivation is considered consistent with the definition of Agriculture which is a permitted use in the majority of Rural and Rural Residential zones (Bylaw No. 2040), the Greenbelt 2 and 3 zones (Bylaw No. 980), and the Resource Land, Rural Resource Lands (Bylaw No. 3602). However, as the Agriculture definitions do not permit processing activities, licensed medical marihuana production facilities may not be a permitted in zones that permit Agriculture. The definitions of Intensive Agriculture in the JdF EA bylaws do permit a commercial enterprise, which could include licensed medical marihuana production facilities. If these facilities are deemed intensive agriculture buildings by bylaw, such structures are generally required to be set back at least 30m from the front, side and rear parcel boundaries. Only larger properties could accommodate these setbacks.

Staff recommends holding a public information meeting to outline the new Health Canada *Marihuana for Medical Purposes Regulations*, present the various land use bylaw implications, and identify community issues and concerns regarding this proposed land use. Depending upon the comments received, staff would then prepare appropriate bylaw amendments.

CONCLUSION

Under the new *Marihuana for Medical Purposes Regulations*, local governments are in a position to regulate medical marihuana production facilities through zoning. Licensed medical marihuana facilities

are considered a farm use by the ALC. These facilities may be consistent with the definition of Intensive Agriculture as defined in JdF land use bylaws. Therefore, staff is requesting the LUC direct that a public information meeting be scheduled to identify community issues and concerns related to medical marihuana production facilities in the JdF EA and that staff report back with any required bylaw amendments.

RECOMMENDATION

That the Juan de Fuca Land Use Committee recommends:

1. That staff be directed to consult with the community about the regulation of medical marihuana production facilities in the JdF EA.

****ORIGINAL SIGNED****

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Concurrence

Appendices:

- 1) Health Canada News Release
- 2) ALC Bulletin
- 3) Local Government Approaches

Harper Government Announces New Medical Marihuana Regulations

June 10, 2013

For immediate release

[Backgrounder: Marihuana for Medical Purposes Regulations](#)

[Backgrounder: Transitioning to the New System](#)

OTTAWA - Today, the Honourable Leona Aglukkaq, Minister of Health, announced new regulations that will change the way Canadians access marihuana for medical purposes. The new *Marihuana for Medical Purposes Regulations* (MMPR) will be published in the *Canada Gazette*, Part II, on June 19, 2013.

"While the courts have said that there must be reasonable access to a legal source of marihuana for medical purposes, we believe that this must be done in a controlled fashion in order to protect public safety," said Minister Aglukkaq. "These changes will strengthen the safety of Canadian communities, while making sure patients can access what they need to treat serious illnesses."

Since its introduction in 2001, Health Canada's Marihuana Medical Access Program (MMAP) has grown exponentially, from under 500 authorized persons to over 30,000 today. This rapid increase has had unintended consequences for public health, safety and security as a result of allowing individuals to produce marihuana in their homes. Under the new regulations, production will no longer take place in homes and municipal zoning laws will need to be respected, which will further enhance public safety.

The new *Marihuana for Medical Purposes Regulations* aim to treat marihuana as much as possible like other narcotics used for medical purposes. The regulations will provide access to quality-controlled marihuana for medical purposes, produced under secure and sanitary conditions, to those Canadians who need it.

The regulations will also streamline the process for applicants and health care practitioners. Under the new regime, individuals will not be required to provide personal medical information to Health Canada. Health care practitioners will be able to sign a medical document enabling patients to purchase the appropriate amount related to their conditions directly from a Licensed Producer approved by Health Canada.

In order to facilitate the transition from the current program to the new regime, both will operate concurrently until March 31, 2014. Effective April 1, 2014, Health Canada will no longer produce and distribute marihuana for medical purposes. The current *Marihuana Medical Access Regulations* (MMAR) will be repealed on March 31, 2014, when the new regime is fully implemented. Additional information on key dates will be provided to program participants and other stakeholders throughout the transition period.

For a copy of the new regulations in advance of the June 19 publication date, please email: mmap-pamm@hc-sc.gc.ca.

Appendix 2: Agricultural Land Commission Information Bulletin



**INFORMATION BULLETIN
MEDICAL MARIHUANA PRODUCTION
IN THE AGRICULTURAL LAND RESERVE**

Updated October 2013

Health Canada has proposed the Marihuana for Medical Purposes Regulation (MMPR). It is expected that the current system of personal use licenses and designated person licenses will be phased out by April 1, 2014. In its place, new Federal licenses are anticipated, geared to larger scale production facilities. For further information about the proposed changes see the following websites <http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php> and <http://gazette.gc.ca/rp-pr/p1/2012/2012-12-15/html/reg4-eng.html>.

Various local governments in British Columbia are looking at their zoning bylaws to determine where these larger scale commercial production facilities should be directed. A number of local governments are considering industrial, commercial and agricultural zones, within purpose built structures and with siting regulations from property lines and residential uses.

The Agricultural Land Commission Act and regulations determine land use in the Agricultural Land Reserve (ALR). Due to the number of inquiries from local governments and Medical Marihuana production proponents, the ALC provides this information bulletin with regard to Medical Marihuana production in the ALR.

Section 1 of the *Agricultural Land Commission Act* defines "farm use" as:

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 regulation, and includes a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*.

Based on the above definition, 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 permitted and would be interpreted by the Agricultural Land Commission as being consistent with the definition of "farm use" under the *ALC Act*.

Notwithstanding the farming of land for the production of medical marihuana, not all activities associated with its production would necessarily be given the same "farm use" consideration. Accessory uses associated with the farm use include a small business office, testing lab, processing and drying, packaging shipping areas, cloning room and anything else directly related to the growing and processing of the plant. Determining an accessory use is contingent on the use being necessary and commensurate with the primary function of the property/building to produce an agricultural product. If a land use activity is proposed that is not specifically related to the growing of an agricultural product including a stand-alone research and development facility, an application to the ALC for non-farm use would be required.

The ALC has reviewed several proposed facilities and is satisfied that the majority of proposed sites focus on the activity of growing the plant and thus no longer requires proponents to submit a proposal for review. However, proponents of medical marihuana production facilities should contact local government to determine the applicability of zoning bylaws.

Appendix 3: Local Government Approaches

Jurisdiction	Approach	Process
District of Sooke	Add definition and limit to industrial, agricultural and rural zones. Consider DP requirements.	Requesting direction from council in fall 2013.
Metchosin	Agriculture definition excludes processing therefore medical marihuana production not permitted.	Requesting clarification from council in fall 2013.
North Saanich	Restrict everywhere.	Obtaining legal advice.
Langford	Agricultural, intensive agriculture or industrial use.	Obtaining legal advice.
View Royal	No industrial zoned land that would permit manufacturing.	Applicants would apply for rezoning.
Victoria	Permitted use in industrial zones.	No rezoning required.
Cowichan Valley Regional District	Limit to industrial zones.	Report to Electoral Area Services Committee September 2013.
Regional District of North Okanagan	Regulate setbacks similar to intensive agriculture uses. General or light industrial use. Home occupation use.	Establishing an operational procedure. Consider Industrial form & character development permit.
Sunshine Coast Regional District	Agricultural use. Home-based business. Not explicitly permitted in industrial zones. Definition of horticulture could be amended to include medical marihuana facilities.	Planning & Development Committee, APCs and Board are considering the issue. Comments from APCs forthcoming.
District of Sechelt	Industrial use only.	Received public comment. Draft Bylaw No. 25-246, 2012.
Coquitlam	Definition of agriculture excludes medical marihuana grow operations; Added definitions for medical marihuana facilities; permitted use in industrial zones.	Bylaw No. 4328 adopted July 2012.
District of Maple Ridge	Permit on ALR only.	Bylaw No. 7011-2013 received 1 st and 2 nd reading, forwarded to ALC for comment.
City of Chilliwack	Permit in Special Industrial zone only.	Public hearing held in August, 2013.
Regional District of Central Kootenay	Permitted in agricultural zones and potentially as home based business. Review underway to consider industrial and commercial zones.	Zoning Bylaw 1675.
Municipality of North Cowichan	Permit in industrial zones only.	Public hearing on zoning amendment Bylaw 3512.