

## PUBLIC HEARING REPORT

**TO:** Regional Board of Directors

**FROM:** Bill Dickey, Electoral Area D

**HEARING DATE:** February 12, 2020

**RE:** Public Hearing on Fraser Valley Regional District Electoral Area F Zoning Amendment Bylaw No. 1548, 2019

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A Public Hearing was held for Fraser Valley Regional District Electoral Area F Zoning Amendment Bylaw 1548, 2019 on February 12, 2020 at 7:30 p.m., in the Hatzic Prairie Community Hall at 10845 Farms Road, Mission, BC.

Prior to the public hearing, Director Davidson introduced the bylaw amendment and provided context about recent legislative changes that have informed the policy direction being taken in Electoral Area F. Julie Mundy, Planner 1, gave a brief PowerPoint presentation about the purpose and intent of Bylaw No. 1548, 2019. An informal public information meeting followed the presentation.

There were approximately 60 members of the public present.

Members of the Regional Board present were:

- Bill Dickey, Director, Area D, Chairperson
- Hugh Davidson, Director, Area F
- Wendy Bales, Director, Area C

Members of the Fraser Valley Regional District staff present were:

- Graham Daneluz, Director of Planning & Development
- Julie Mundy, Planner 1

Chairperson Bill Dickey called the Public Hearing to order at 7:30. The hearing was convened pursuant to Part 14 – Division 3 of the Local Government Act in order to consider Fraser Valley Regional District Electoral Area F Zoning Amendment Bylaw 1548, 2019. In accordance with subsections 1, 2, and 3 of Section 466, the time and place of the public hearing was advertised in the January 31<sup>st</sup>, 2020 and February 7<sup>th</sup>, 2020 editions of the Mission City Record newspaper.

### **Bylaw 1548, 2019**

Chairperson Dickey stated that the purpose of Bylaw 1548, 2019 is to amend the text of Zoning Bylaw No. 559, 1992 to 1) provide definitions for Cannabis, Cannabis Dispensary, and Cannabis Production Facilities in Electoral Areas F, G and part of C, and 2) prohibit Cannabis Dispensary, Cannabis Production Facilities, and Medical Marihuana Grow Operations in Electoral Area F.

Chairperson Dickey acknowledged there was one written submission for Bylaw No. 1548 provided in advance of the meeting; the submission was in opposition to the bylaw. The Chairperson noted the written comments were available at the public hearing for viewing and would be included in the public hearing record. Written comments received prior to the Public Hearing are attached as Appendix "A".

There was one written comment provided during the Public Hearing; the comment is in favour of the bylaw. It is attached as Appendix "B".

Twenty-two oral comments were provided; thirteen distinct speakers were in favour of the bylaw and four speakers opposed to the bylaw. Five people spoke a second time. Oral comments are summarized below in the order which they were provided:

Support / Opposed to bylaw

**1) John Conroy, 12699 Stave Lake Road, Area F**

**Opposed**

Mr. Conroy stated he submitted a written submission as part of the public record. He is a lawyer who has been involved in ACMPR. He is concerned with the inclusion of the Medical Marihuana Grow Operation definition as it may impose on personal freedoms. He is also concerned that the definition of cannabis is too broad and will exclude hemp uses. Mr. Conroy states that the ALC considers cannabis production a farm use and that should be enough of a rationale to allow it. He believes the prohibition approach is problematic as regulation will help ensure good production / safety practices. Mr. Conroy states he is unclear about the reasons for limiting dispensaries, as they do not cause problems.

**2) Dick Ainsworth, 13530 Sylvester Road, Area F**

**Support**

Mr. Ainsworth stated the proposed bylaw gives us time to see what happens in other areas. He added that it is very difficult to take back permissions once they are in place, and that is it possible to relax the rules in the future.

**3) Rob Ireland, 12912 Stave Lake Road, Area F**

**Support**

Mr. Ireland stated he is in support of bylaw, as we are early in the cannabis game.

**4) Kate Albrecht, 12000 Sylvester Road, Area F**

**Support**

Ms. Albrecht stated she is in support of the bylaw and wishes to err on the side of caution. Changes can be made later on if warranted.

**5) Gord Gould, 35300 Riverside Road, Area F**

**Support**

Mr. Gould stated he is in favour of the bylaw. He adds that there needs to be enforcement and transparency about any future grow operations.

**6) Bryan Bouchir, 11741 Stave Lake Road, Area F**

**Support**

Mr. Bouchir stated he is in support of the proposal and that it is easier to change things latter rather than to move too quickly now.

**7) Elizabeth Price, 35893 Hartley Road, Area F**

**Support**

Ms. Price stated there has been many changes to the regulations surrounding cannabis, and suggests we slow down and err on the side of caution. She states it will be difficult to go back if cannabis land uses are opened up now.

**8) Sheila Ogilvie, 14770 Sylvester Road, Area F**

**Support**

Ms. Ogilvie stated she is in favour of complete prohibition of cannabis. She is concerned about legal challenges and is concerned about protecting the land.

**9) Norman Karding, 11788 Farms Road, Area F**

**Support**

Mr. Karding stated he is in favour of the bylaw.

**10) John Bouchir, 11741 Stave Lake Road, Area F**

**Support**

Mr. Bouchir stated he supports the bylaw.

**11) Justin Price, 35893 Hartley Road, Area F**

**Opposed**

Mr. Price stated that he is not in support of the bylaw. He stated that years ago he read a book and watched a movie called Dune that is about the debacle surrounding 'spice' which is similar to the cannabis of today. He comments that regulation of the industry is necessary, but that prohibition does not work. Prohibition has not worked in the past, and it will not work in the future. Mr. Price adds that prohibition will drive the industry underground and may open a Pandora's Box of issues. He adds that cannabis is one of the few cash crops that are viable.

**12) Mr. S Karting, 11786 Farms Road, Area F**

**Support**

Mr. Karting stated he is in favour of the bylaw.

**13) Elisabetta Pellizzari, 12978 Stave Lake Road, Area F**

**Opposed**

Ms. Pellizzari stated that prohibition does not work, and that greater regulations are needed.

**14) Lindsay Gould, 35300 Riverside Road, Area F**

**Support**

Ms. Gould stated she is in favour of the bylaw and comments that we need to get in front of the issue.

**15) Lynne Strange, 13969 Sylvester Road, Area F**

**Support**

Ms. Strange stated she is in favour of the bylaw.

**16) Ron Parkes, 34640 Timbercove Road, Area F**

**Support**

Mr. Parkes stated he is in favour of the bylaw

**17) Heather Morlacci, 13372 Stave Lake Road, Area F**

**Opposed**

Ms. Morlacci stated she is a 40 year resident of the area and has seen lots of illegal grow-ops. She states that she has witnessed a fire from a grow-up and that proper systems are needed to regulate the industry. Ms. Morlacci adds that she does not want to see greenhouses in Hatzic Valley in order to help keep the area dark. She states that she agrees with comments provided by Mr. J Conroy about regulating cannabis.

**18) John Conroy, 12699 Stave Lake Road, Area F**

**2<sup>nd</sup> time speaking**

Mr. Conroy asked if the intent of FVRD consolidating their bylaws is to provide a unified approach across the region. Mr. Conroy clarified that his question is to be his oral comment for the public record.

**19) John Bouchir, 11741 Stave Lake Road, Area F**

**2<sup>nd</sup> time speaking – Support**

Mr. Bouchir stated that additional enforcement capacity is needed to control the existing situation. He adds that the industry needs to be controlled so that it does not explode.

**20) Justin Price, 35893 Hartley Road, Area F**

**2<sup>nd</sup> time speaking – Opposed**

Mr. Price stated that FVRD needs to think on behalf of the public. Many of the people working / owning land in the neighbourhood do not live locally. He adds that regulations are needed to stop the bad behavior of non-residents. Mr. Price notes that existing facilities will meet demand, and that the way forward is through regulation, and not prohibition.

**21) Sheila Ogilvie, 14770 Sylvester Road, Area F**

**2<sup>nd</sup> time speaking**

Ms. Ogilvie stated that taking land out of the ALR is one way to solve the cannabis issue.

**22) Dick Ainsworth, 13530 Sylvester Road, Area F**

**2<sup>nd</sup> time speaking – Support**

Mr. Ainsworth stated he was in support of the bylaw, and that we can see how things work in other areas to understand how to effectively regulate the industry.

The Chairperson asked three times for comments. Hearing no further comments, the public hearing for Bylaw 1548, 2019 was concluded.

The Chairperson concluded the meeting at 8:10.

We, the undersigned, certify these Public Hearing minutes as correct.

Respectfully submitted,



Bill Dickey, Chairperson



Digitally signed by  
Julie Mundy  
Date: 2020.02.20  
14:36:02 -08'00'

Julie Mundy, Recorder

## Appendix A: Written Comments Received Prior to Public Hearing

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**From:** John Conroy  
**Sent:** Monday, February 10, 2020 4:42 PM  
**To:** Hugh Davidson  
**Cc:**  
**Subject:** CANNABIS - FVRD Electoral "F" Rezoning public meeting and hearing Feb 12  
Submissions by John Conroy  
**Attachments:** FVRD Submissions JC on Cannabis Policy.docx  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Hugh,

Sharie forwarded to me your first email with respect to the February 12 public meeting about rezoning impacting Electoral Area " F " in so far as Cannabis is concerned and I then received a further and more comprehensive package that you forwarded from FVRD Staff on February 4, 2020 and then a further email from Julie Munday at FVRD also advising of the public meeting, so I am copying Sharie and Julie Munday on this email and with the attached submission.

As you know from our brief discussions and from the formal "Notice" under s.7 of the **Cannabis Act** that I recently sent to Graham Danaluz at the FVRD, FVRD Fire Protection Services and the RCMP, which I copied you, notifying all of our intention through "The Conroy Project" to establish a "Micro production and processing Cannabis facility" in a portion of an old horse riding ring near a barn at the top of our property near the road that is within the Agricultural Land Reserve (ALR ). I pointed out the area when you visited that day about the 'internet hub' issue and I attached photos and specific details about the container pod system with the "Notice".

It is my opinion that because the front 10 or so acres of our property, and particularly that specific location, is within the ALR, the "structure"(containers) that we propose to place in that location falls within the definitions in s. 8(2) of the **Agricultural Land Reserve Use Regulation** as 'a structure' where (a) 'the structure' "(i) was constructed for the purpose of growing crops inside it, including but not limited to producing cannabis lawfully...." And meets the other requirements and will have the additional effect of restoring to "farm use" a part of that ALR land not currently being used for such a purpose, all of which was outlined in detail in the "Notice".

Consequently by virtue of the provisions of the **BC Agricultural Land Commission Act (ALC)** and the **Agricultural Land Reserve Use Regulations**, as well as the purposes of that legislation and the specific recognition of the paramountcy of that Provincial legislation over the proposed FVRD Zoning By Law amendments in s.403 to the effect that that Act (the ALC ) and regulations thereunder prevail in the event of any conflict with the bylaw, so our proposal, because it is in the ALR, is not specifically affected by the proposed by law amendments.

In other words, any attempt to prohibit such a defined "Farm use" by the FVRD in the ALR, except as ALC permitted, is and will be of no force and effect.

However, even though it is my opinion that the proposed amendments do not apply to our proposed project, my experience in the laws pertaining to cannabis as counsel involved in almost all of the significant cannabis cases compels me to make this submission with respect to the many defects in the proposed Zoning bylaw amendment proposals as per the attached detailed submission that hopefully is of some assistance.

Clearly we are opposed to any "prohibitionist" or "lock down" provisions and are of the view that the recent ALR amendments will prevent any further buildings such as those on the prairie and any future facilities will, unless exempt

from the FVRD building and licensing and other by laws, which is unlikely, will apply and ensure reasonable developments consistent with the other aspects of the by laws.

John

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**Submissions with respect to the FVRD proposal to amend the consolidated Zoning Bylaw No.559, for Area 'G', and portions of Areas 'C' and 'F' by Bylaw 1548, 2019 to prohibit Cannabis production and distribution within Electoral area "F" and in particular "Medical Marihuana Grow Operations" .**

It is my understanding that as a result of the establishment, including the erection of a number of buildings on Hatzic Valley Prairie, pertaining to Cannabis production under the federal Cannabis Act and regulations, that certain members of the community have complained and are seeking to prohibit any further such facilities - to lock them down – to use their terminology, so that there can be no additional 'nonconforming uses' and in the future applications will have to be made to vary the zoning on an individual basis.

This prohibitionist position is taken by the Electoral Area Directors **D (Popkum/Bridal Falls)**, **H (Cultus Lake/Columbia Valley/Lindell Beach)** and **F (McConnell Creek - Hatzic Prairie)** whereas the Directors from Electoral Areas **A (Boston Bar/North Bend/Canyon Alpine)**; **B (Yale/Choate/Dogwood Valley/Emory Creek/Laidlaw/Othello/Ruby Creek/Spuzzum/Sunshine Valley)**; **C (Sasquatch Country)**; **E (Chilliwack River Valley)** and **G (Nicomen Island/ Deroche/Dewdney/Hatzic Island)** take a contrary position and support Cannabis production and processing as land uses subject to ensuring that all negative impacts are mitigated.

Currently, the Federal legislation provides for an ability to possess, produce, process, store and sell for medical or other purposes and Provincial legislation provides for the distribution of social/recreational cannabis, with the sale of medical cannabis being reserved to the federal government. It is unclear whether the proposed amendments to the Zoning bylaw are intended to apply to all or just some of the following currently permitted uses under the federal and provincial legislation?

The proposed definition of 'cannabis' is different to that contained in both the federal and provincial legislation and is broad enough to also cover 'industrial hemp', which is simply a cannabis plant or any part of that plant in which the concentration of THC is 0.3% w/w or less in the flowering heads or leaves and which is governed by the Industrial Hemp Regulations (IHR) now also under the Cannabis Act.

**Social production, possession and use – not medical nor agricultural - A combination of ss. 9 and 12 of the Cannabis Act allow the production or cultivation of up to 4 plants of any size per household and the storage of that product and the possession of up to 30 g of that product or its equivalent when one is out and about. This can take place inside the residence/household or on its surrounding adjacent land or in an outbuilding on that land and is not a 'business or service' and one does not have to be in the ALR to do so. It needs to be made clear that the by law amendment is targeting commercial operations and does not include personal production.**

**Medical possession, production and distribution – Also, currently a person who has been "medically approved" by a medical doctor for the possession and use of cannabis for medical purposes becomes a "registered person" pursuant to the Access to Cannabis for Medical Purposes regulations contained in Part 14 of the Cannabis regulations pursuant to the Cannabis Act 2018 and either obtains a supply**

to fulfill that prescription/authorization by registering with an existing Federal licensed producer(LP) that will service them online and ship it to them by mail to their designated address or to their doctor or the address of a caregiver or other entity licensed to sell medical cannabis or they can go to an entity that is currently licensed to sell cannabis (without possession), such as Shoppers Drug Mart, where they register and have the medicine sent to them by a Licensed Producer directly or an entity licensed to sell medical cannabis (with possession), whereby the licensed producer ships to the entity, such as a not-for-profit Compassion Club Society and the members access their medicine there or the patient registers to produce the cannabis for themselves(PPL) with the number of plants, and whether indoor or outdoor, determined by their application and according to a formula in the regulations that depends upon their authorized or prescribed daily dosage or has an approved Designated Grower (DGL) produce those plants for them. A medically approved patient is entitled possess up to a maximum of 150 g person depending upon their dosage, again calculated according to a formula set out in the regulations.

Since the decision in *R v. Parker* <http://johnconroy.com/library/parker2.pdf> in the Ontario Court of Appeal, in 2001, a decision that Canada did not appeal to the Supreme Court of Canada, the government of Canada has been required to provide a medical exemption to the drug laws, designed with the purpose of protecting health, which was then the Narcotic Control Act, followed by the Controlled Drugs and Substances Act, and now the Cannabis Act, to medically approved patients.

Since *R v Smith* <https://www.canlii.org/en/ca/scc/doc/2015/2015scc34/2015scc34.html> in the Supreme Court of Canada in 2015, a medically approved patient is entitled to possess cannabis in any of its forms and consequently, in the absence of a wholesale or retail supply in forms other than dried, has been compelled to try and make their own, by themselves or through their Club, unless obtained from an unlawful source.

Since *Allard v Canada*, [http://johnconroy.com/pdf/ORDER-T-2030-13\\_20140321\\_OR\\_E\\_O\\_VAN\\_20140321110555\\_MNS\\_2014\\_FC\\_280.pdf](http://johnconroy.com/pdf/ORDER-T-2030-13_20140321_OR_E_O_VAN_20140321110555_MNS_2014_FC_280.pdf) <https://www.canlii.org/en/ca/fct/doc/2016/2016fc236/2016fc236.html> [http://johnconroy.com/pdf/Judgment-\(Final\)\(RHD\).pdf](http://johnconroy.com/pdf/Judgment-(Final)(RHD).pdf) in 2014 through 2016, also a case that the government of Canada did not appeal, it has become settled law that the government has to provide reasonable access to Cannabis as medicine to medically approved patients to prevent the violation of their constitutional rights under s. 7 of the Canadian Charter of Rights and Freedoms that forms part of the Canadian Constitution, to the security of their person and the right not to be deprived thereof except in accordance with principles of fundamental justice. To deny someone reasonable access to medicine authorized by a doctor for their health violates s.7. A violation of one's constitutional rights entitles one to an appropriate and just remedy under s.24(1).

The main, although not exclusive, focus of the proposed amendments to the Zoning bylaw for Electoral area " F" appears to focus on the "medical marihuana grow operation" or production or distribution for medical purposes and therefore fails to take into account the developments in the law since *Parker*, and particularly *Allard*, and it is respectfully submitted that the FVRD does not have jurisdiction to prohibit or otherwise unreasonably regulate production of cannabis for medical



purposes by a patient or designated grower caregiver for that patient and the extent to which they can regulate a standard or micro commercial licensed producer, licensed to sell for medical purposes, is also questionable if it limits 'reasonable access' by the patient.

**Agricultural** - it has now been settled since July 13, 2018, as a result of the amendments to the Agricultural Land Reserve regulations pursuant to the Agricultural Land Reserve Act and in particular by s. 8 thereof, that the production of cannabis in any of its forms is a "farm use" and cannot be prohibited, but it can only be produced and processed in accordance with these regulations, namely outside in the field in soil or in a greenhouse in soil and precluding any further production inside a building that does not have a base consisting entirely of soil, unless in a facility constructed before and since July 2018 for the production of food.

The FVRD cannot authorize the production of cannabis in forms not authorized by the ALC any more than it can prohibit those forms that are authorized by the ALC. Consequently, there will be no more large instructed buildings, producing cannabis in Hatzic Valley, unless they have a base consisting entirely of soil or otherwise comply with the ALR regulations.

The prohibitionist approach in relation to Electoral Area F is inconsistent with the purposes established for the Agricultural Land Reserve, that comprises some 53% of Hatzic Valley, namely to promote agriculture and is also inconsistent with its Official Community Plan that includes the promotion of agriculture, as well as introducing an inconsistent approach to this "farm use" product between the various Electoral Areas in the FVRD instead of a unified, consistent approach throughout the Fraser Valley, one of the purposes of the FVRD.

**Commercial Production and Processing** - These types of production and processing are covered by the various licenses available under the Cannabis Act and regulations by way of standard licenses or micro licenses to cultivate, process, engage in analytical testing, sales, research and a cannabis drug license a license to sell for medical purposes is a subclass of a general license for sale. These are all federal licenses. Originally these licenses were to produce cannabis for medical purposes for patients under the original Marihuana Medical Access Regulations (MMAR) followed by the Marihuana for Medical Purposes Regulations (MMPR) and then Access to Cannabis for Medical Purposes Regulations (ACMPR) and that are now part 14 under the Cannabis regulations. Consequently, all production, processing and sales were for medical purposes. However, since October 17, 2018, the federal government delegated to the provinces, the role of distributing non - medical cannabis and all existing licenses became licenses under the Cannabis Act and in British Columbia an LP can produce for the recreational market by providing their products to the BC Liquor Distribution Branch (LDB) that in turn places the products the various provincially and local government licensed retail stores. The provincial legislation expressly provides that they are not engaged in the sale of medical cannabis.

These operations are subject to FVRD Zoning, Licensing and Building and other bylaws. A standard or micro production facility would require licensing and any processing might require an accessory farm use building. If in the ALR they are subject to those regulations as well.

**Distribution** - by virtue of the Cannabis Act October 17, 2018, the federal government delegated to the provinces and territories the power to distribute social/recreational cannabis and on October 17, 2019 added provision for extracts, edibles and topicals to that market. While each province and territory has a slightly different approach the British Columbia approach is through the LDB where license producers sell their products to the LDB that places them without preference to the various dispensaries.

These operations are subject to FVRD Zoning, Licensing and possibly building and other bylaws.

Why is the FVRD seeking to prohibit, as opposed to regulating these businesses by way of its zoning, Licensing, and other bylaws the same as any other businesses such as those dispensing alcohol and tobacco and prescribed drugs? Why shouldn't Chuck's Market and perhaps the Husky station be permitted to sell lawful cannabis in various forms along with tobacco and other legal products that they currently sell?

Why should farming/production operations be precluded from having "farm gate sales" as occurs in the wine industry? What is the basis for this prohibitionist approach now that Cannabis use is now legal?

Here is what the provincial Agricultural Land Commission Act requires and applies to 53% or more of Hatzic valley:

#### **A. AGRICULTURE LAND COMMISSION ACT (emphasis added and comments in blue)**

**1. The purposes of the Agricultural Land Commission** are set out in **section 6** of the Act as follows:

- (a) to preserve the agricultural land reserve;
- (b) **to encourage farming of land within the agricultural land reserve** in collaboration with other communities of interest;
- (c) to encourage **local governments**, first Nations, the government and its agents **to enable and accommodate farm use of land within the agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.**

**2. The Act** defines "**construct**" to mean **(b) to place on land a new structure that is fully or partially prefabricated** and defines "**farm use**" to include **(iii) a purpose designated as a farm use by regulation.**

**3. Section 18 of the Act** that deals with '**Restrictions on approving land uses and subdivision**' and provides in subsection (3) that an approving body may approve or permit a building or structure to be constructed or altered on agricultural land only if the building or structure (a) is not a residential structure **and will be used for a farm use** or a permitted non-farm use.

**4. Section 11.2 of the Act** is with respect to applications to the Executive Committee on the referral by the Commission and may be appropriate here as being of provincial importance and raising an issue that

is novel or otherwise of the for the administration of the Act and may substantially affect more than 1 panel region.

5. Otherwise, **section 25 of the Act** deals with applications by owners to the Commission for certain uses and **section 26** provides for the delegation of such powers over such applications to local governments.

6. Importantly, **s. 46** deals with Conflicts with bylaws and provides:

**46(1)** In this section, "bylaw" means

(a) **a bylaw, made by a local government, that adopts a regional growth strategy, an official settlement plan, an official community plan, an official development plan or a zoning bylaw,**

(b) any other bylaw respecting land use in a local government's jurisdiction made by a local government under any other enactment, and

(c) a law of a first nation government respecting land use within the first nation's settlement lands.

(2) A local government in respect of its bylaws and a first nation government in respect of its laws **must ensure consistency with this Act, the regulations and the orders of the commission.**

**(3) Subject to subsection (4), nothing in this Act affects or impairs the validity of a local government bylaw or a first nation government law relating to the use of land in the agricultural land reserve.**

**(4) A local government bylaw or a first nation government law that is inconsistent with this Act, the regulations or an order of the commission has, to the extent of the inconsistency, no force or effect.**

**(5) Without limiting subsection (4), a local government bylaw or a first nation government law is deemed to be inconsistent with this Act if it**

(a) allows a use of land in the agricultural land reserve that is not permitted under this Act, or

(b) contemplates a use of land that would **impair or impede the intent of this Act**, the regulations or an order of the commission, whether or not that use requires the adoption of any further bylaw or law, the giving of any consent or approval or the making of any order.

(6) A local government bylaw or a first nation government law that provides **restrictions on farm use, residential use or soil or fill use of land in the agricultural land reserve additional to those provided under this Act is not, for that reason alone, inconsistent with this Act and the regulations.**

(7) This section applies only to local government bylaws or first nation government laws made after August 26, 1994.

7. The **Regulations pursuant to the ALR Act** set out, among other provisions, the provisions with respect to **Cannabis** in **section 8**. that came into effect **July 13, 2018** as set out below in detail.

**8. Farm uses that may not be prohibited are provided for in section 4 as follows:**

- s.4.** The farm uses referred to in this Part 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.

**9. Section 5 provides with respect to “Necessary structures and ancillary services” under Part 2 Farm Uses that:**

**s.5(1)** subject to any limits and conditions set out in this Part, the use of agricultural land to **construct**, maintain or operate any of the following **is designated as a farm use and may not be prohibited**, as described in section 4:

**(a) a structure, other than a residential structure, that is necessary for a farm use;**

(b) a driveway or utility that is necessary for a farm use

(2) For greater certainty, subsection (1) (a) includes all of the following:

(a) a greenhouse;

(b) a structure for use in an intensive livestock operation or for mushroom production;

(c) and aquaculture facility.

**10. S. 8 of the Agricultural Land Reserve Use Regulation declares the production of *Cannabis* in any of its forms to be a “farm use” that cannot be prohibited if the cannabis is produced**

(1) (a) outdoors in the 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 and 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 authorization's 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.

THIS MEANS THAT UNLESS THE 'STRUCTURE' FALLS WITHIN THE EXEMPTION IN S.8(2) THERE CAN BE NO MORE PRODUCTION OF CANNABIS INSIDE A STRUCTURE UNLESS IT HAS A BASE CONSISTING ENTIRELY OF SOIL BUT IT'S PRODUCTION IN ANY FORM IS A 'FARM USE' AND CANNOT OTHERWISE BE PROHIBITED.

IT ALSO MEANS THAT THE FVRD CANNOT PROHIBIT CANNABIS PRODUCTION IN ACCORDANCE WITH THE ALC ACT NOR CAN IT AUTHORIZE SUCH PRODUCTION IN A MANNER NOT AUTHORIZED BY THE ALC ACT.

THERE CAN BE NO MORE BUILDINGS WITHOUT A SOIL BASE PRODUCING CANNABIS IN THE ALR, UNLESS CONSTRUCTED FOR THE PURPOSE OF PRODUCING FOOD, SINCE JULY 2018.

Here is what our Official Community Plan currently provides:

**B. Fraser Valley Regional District Official Community Plan for Hatzic Valley, Electoral Area "F" Bylaw No. 0999, 2010 SCHEDULE 0999-B**

**OFFICIAL COMMUNITY PLAN (emphasis added in green)**

**3.1 Vision for Hatzic Valley**

This Official Community Plan is guided by the following vision for the future of Hatzic Valley:

**3.2 Plan Objectives**

The following seven objectives have guided the policies of this Plan:

1. protect ground and surface water and maintain hydrological functions;
2. responsibly steward the environment;
3. respect geological and hydrological processes, reduce hazards where feasible, and avoid unacceptable risks to people and property;
4. enhance sustainable agriculture by reserving agricultural lands for farming,

minimizing conflicts between farm and non-farm uses; and, supporting the viability and sustainability of the agricultural sector;

5. accommodate housing needs primarily through infill development on rural and residential lands;

6. enhance community liveability and rural landscape aesthetics; and,

7. encourage a range of rural land uses, supported by appropriate servicing levels, that sustain the community and environment.

### 3.3 Regional Context

The Plan objectives and policies of the Hatzic Valley, Electoral Area “F” Official Community Plan must respond not only to local circumstances, but also to the regional context. The Fraser Valley Regional District *Choices for Our Future: Regional Growth Strategy*, adopted in 2004, outlines a broad framework for achieving sustainable, socially responsible, and environmentally sound communities which protect agricultural and rural areas and make efficient use of public facilities, services, land and other resources.<sup>7</sup>

Official community plans (OCPs) are a primary means of implementing the Regional Growth Strategy (RGS). OCPs apply the broad goals of the Regional Growth Strategy to local communities and provide detailed policies for achieving those goals. Section 865 of the Local Government Act requires that all bylaws adopted by the Regional District be consistent with the Regional Growth Strategy. A discussion of the regional context and the compatibility of this Plan with the RGS follows.

FVRD is nearly 14,000 square kilometres in area, yet over 90% of the population resides on less than 1% of the land base. Only a small portion of the Region, mostly located in the fertile Fraser Valley floor, is considered habitable. Most development pressure is directed to this small area. However, growth on the valley floor is greatly constrained by the Agricultural Land Reserve and the floodplain of the Fraser River and its tributaries. As a result, growth in the Region will generally be accommodated by redeveloping urban centres at higher densities and by new development in upland areas within the Urban Growth Boundaries established in the RGS.

The rate of population growth in the Fraser Valley is expected to slow down in relation to the past decade. Still, the population is anticipated to double over the next twenty to thirty years to approximately 450,000. RGS policies direct the development necessary to accommodate this population growth to municipalities. For example, the District of Mission – located immediately west of the Plan area – is expected to grow from 34,505 peoples about 70,000 by 2031<sup>9</sup>, an increase of 90%. This growth is expected in the southwest and downtown parts of the community. Nonetheless, it remains that Hatzic Valley will be subject to development pressures.

The value placed on the natural areas and agricultural lands – and their perceived contribution to the regional environment and landscape – will increase over time as the Region develops and the population increases. The Plan area provides visual qualities; sustains fish and wildlife populations; affords opportunities for recreation and nature

study; and, gives a sense of proximity to wilderness. All of these are central to the idea many residents have of the liveability and appeal of the Region. And certainly, the upland and riparian habitats of the Plan area make a significant contribution to the biodiversity of the Region.

<sup>7</sup> Fraser Valley Regional District. *Choices for our Future: Regional Growth Strategy*. 2004.

<sup>8</sup> Canada Census, 2006.

<sup>9</sup> Urban Futures Institute. *Population Growth and the Context for Managing Change*. January, 2005.

The Official Community Plan for Hatzic Valley shares the growth management goals of the Regional Growth Strategy (RGS), particularly the RGS goals to:

- ☐ support and enhance the agricultural sector;
- ☐ protect the natural environment and promote environmental stewardship;
- ☐ protect and manage rural and recreational lands;
- ☐ achieve sustainable economic growth;
- ☐ minimize development costs to communities and the risks associated with geotechnical and environmental constraints; and,
- ☐ manage water, energy resources and waste responsibly.

This community plan is consistent and complementary with *Choices for our Future, Regional Growth Strategy for the Fraser Valley Regional District*

#### 4.4 Agricultural Uses

Approximately 2,235 hectares of land within the Plan area is in the Agricultural Land Reserve (ALR). This amounts to a little over one third of the entire Plan area and about 58% of the total area of private lands. One half of all private properties within the Plan are at least partly within the ALR. Clearly, agriculture and the Agricultural Land Reserve are vital in every way to Hatzic Valley.

ALR lands are identified on *Map 1*.

Lands designated AGRICULTURAL are shown on *Schedule 2 –Designations*.

In recent years, agricultural uses in Hatzic Valley have, in some locations, intensified with the transition to blueberry and nursery plant production. However, traditional farm uses in Hatzic Valley – forage and dairy – remain important as does Christmas tree production. Residential uses and hobby farms are common on smaller parcels in McConnell Creek.

Hatzic Valley is a part of the Fraser Valley agricultural region - one of the most productive places to farm in the world due to its soil conditions, long growing season, abundant water resources, and proximity to urban areas and transportation. Not surprisingly, agricultural land in the Fraser Valley is both in demand and in short supply.<sup>13</sup>

Hatzic Valley has a number of advantages for farming. It has abundant, good quality water, large parcel sizes, lands available for farming and, a cohesive, well-defined community of agricultural lands generally free from encroachment by incompatible uses. Soil conditions vary, but Class 2 and 3 soils with water and terrain limitations are most common.<sup>14</sup> Inadequate drainage and flooding are significant problems for agriculture on Hatzic Prairie. The Ministry of Agriculture estimates that about 212 hectares of agricultural land in Hatzic Valley is marginalized by flooding. Loss of productivity due to poor drainage and flooding is estimated to be between \$832,000 and \$2,230,000 per year.<sup>15</sup> Flooding is described in Section 8.0 of this Plan.

Drainage challenges are related to the highwater table of Hatzic Prairie; the low elevation and low gradient of streams; and, sedimentation in agricultural watercourses and drainages which reduces conveyance capacity. The responsibility for maintenance of highway ditches lies with the Ministry of Transportation & Infrastructure. Farmers are responsible for maintaining on-farm ditches.

In response to flooding and drainage problems, a portion of Lagace Creek was straightened in the 1940's to improve conveyance. However, property lines were not changed to respond to the new stream alignment and they continue to follow its former path and, in some locations, the former stream bed remains Crown land. As a result, a number of parcels in this area are divided by the stream and have portions that are inaccessible and likely unusable to the property owners. This situation is shown in Figure 4-A.

Rationalizing property boundaries in this area would support more efficient agricultural use of the land and may also provide opportunities to secure access and sites for flood reduction infrastructure (such as sediment traps) and other community benefits. On the other hand, the existing strips of Crown land that follow the former stream bed (shown in white in Figure 4-A) could, as they stand, provide opportunities for enhancing stream functions, managing sediment and providing community amenities that may be lost if property boundaries change. In any case, replotting schemes are complex, involve significant costs, and require broad landowner support. Fraser Valley Regional District currently has no plans to undertake one.

This Plan only documents the issue and raises the potential of replotting for future consideration if circumstances warrant it.

The policies below complement those of the **AGRICULTURAL designation in Section 5.1 of this Plan to support agriculture in Hatzic Valley and ensure its long-term viability.**

It is the policy of the Regional Board that:

**4.4.1 The Regional Board will work with the Agricultural Land Commission to provide for a broader range of agricultural opportunities and uses which:**



- ☐ are supplementary and ancillary to farm use;
- ☐ support value-added activities that improve farm viability;
- ☐ are consistent with the environmental policies of this plan; and,
- ☐ will not jeopardize the long term productivity of farmland.

4.4.2 The Regional Board should consider the development of a plan or policy to guide the provision of seasonal farm labour accommodations.

4.4.3 The Regional Board should seek funding and partnerships with the Ministry of Agriculture and others for the development of an Agriculture Plan for Hatzic Valley to establish a guiding vision for local agriculture and a series of strategies that will ensure its long-term viability.

4.4.4 The Regional Board particularly encourages soil-based agricultural uses that emphasize sustainable farm practices, do not impact ground and surface water quality, and implement environmental farm plans.

4.4.5 The Regional Board supports the continued development of safe and efficient drainage control works following environmentally sound engineering practices.

4.4.6 The Regional District will liaise with the Ministry of Transportation & Infrastructure, the Ministry of Agriculture, Fisheries & Oceans Canada, and Hatzic Valley farmers regarding the maintenance of road-side ditches that impact agricultural drainage.

4.4.7 The Regional District will encourage partnership with the agricultural community, senior governments and private enterprise to promote the development of the agricultural sector in Hatzic Valley.

4.4.8 The Regional Board may consider the feasibility and desirability of a replotting scheme to rationalize property boundaries along Lagace Creek approximately between Stave Lake and Dale Roads, particularly if it is desired by affected landowners and if it would reduce flooding, manage sedimentation, improve the use of agricultural land, or provide community amenities.

<sup>13</sup> Kim Sutherland, Regional Agrologist, Ministry of Agriculture & Lands. *Agriculture in Electoral Area F in the Context of the Fraser Valley*. Presentation to the Electoral Area "F" Advisory Planning Commission. Sept 24, 2009.

<sup>14</sup> Province of British Columbia, Ministry of Environment. *Land Capability for Agriculture, Langley-Vancouver Map Area, Dewdney*. 1985. Class 2 soils have minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both. Class 3 soils have limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.

<sup>15</sup> Ministry of Agriculture & Lands. *Economic Impact of Flooding on Hatzic Prairie and Economic Potential of the Area*. Draft. July, 2005.

## 5.1 AGRICULTURAL (A)

About 58% of private land within the Plan area is in the Agricultural Land Reserve (ALR), including a significant number of large, intact agricultural parcels. Some agricultural parcels are also in the 1:200 year floodplain of the Fraser River, a

contributing factor to the high quality soils found in the area. Plan policies aim to preserve farm land within the Official Community Plan area. Designating farm lands as AGRICULTURAL will ensure that only agricultural uses and uses associated with and complementary to agriculture are permitted.

Generally, land within the AGRICULTURAL designation is also within the ALR, but not in all cases. The Agricultural Land Commission Act, regulations thereto, and Orders of the Commission take precedence on matters of land use and subdivision in the ALR.

The Regional Board assists in the administration of ALR land by commenting on applications for subdivision, non-farm use, and exclusion of land from the ALR. The policies established in this Plan will provide guidance for future Regional Board comments on these applications.

It is the policy of the Regional Board that:

### General Policies

5.1.1 Agricultural land shall be preserved by preventing the fragmentation of farm parcels, retaining large agricultural parcels, and avoiding the introduction of incompatible uses.

5.1.2 The agricultural economy and land base should be protected and enhanced by providing for a variety of uses that are supplementary and ancillary to a farm use which support farm incomes without jeopardizing the long term viability of farm land.

### Designation Policies

5.1.3 This Plan designates land with some or all of the following characteristics as AGRICULTURAL:

- ☐ within the Agricultural Land Reserve;
- ☐ suitable for farming; and,
- ☐ within flood hazard area.

5.1.4 AGRICULTURAL areas may be extended or created through Plan amendment where additional areas suited to farm production are identified through an application process or pursuant to the Agricultural Land Commission Act.

5.1.5 Where land presently within the Agricultural Land Reserve is, pursuant to the Agricultural Land Commission Act, excluded from the Agricultural Land Reserve; exempted by the Agricultural Land Commission Act; or exempted by Regulations or an Order of the Commission; the provisions of the Official Community Plan shall be binding and

the land shall remain in the AGRICULTURAL designation unless and until the land is re-designated by bylaw amendment.

## Use Policies

5.1.6 AGRICULTURAL areas shall be used for only

- ☐ **agricultural;**
- ☐ **conservation;**
- ☐ **park and park reserve;**
- ☐ **recreation;**
- ☐ silviculture;
- ☐ **single family residential;**
- ☐ **accessory residential;** and,
- ☐ **associated rural residential** uses.

5.1.7 AGRICULTURAL areas in the Agricultural Land Reserve are subject to the provisions of the Agricultural Land Commission Act and the regulations and orders of the Agricultural Land Commission. The Act and the regulations generally prohibit or restrict non-farm use, unless otherwise permitted or exempted by the Commission.

5.1.8 Where a non-farm use is in place, and a non-farm use is approved by the Agricultural Land Commission, the Fraser Valley Regional District Board may consider rezoning to permit the non-farm use as approved by the Agricultural Land Commission. In these cases the land shall remain designated AGRICULTURAL.

5.1.9 In keeping with the variety of uses associated with agricultural lands, accessory farm uses shall be permitted provided that all uses of Agricultural Land Reserve lands are in accordance with the provisions of the Agricultural Land Commission Act, regulations thereto, and Orders of the Commission.

5.1.10 The Regional Board may consider site-specific zoning amendments to permit seasonal farm labour accommodations on agricultural parcels where all of the following conditions apply:

- a. the land is within the Agricultural Land Reserve;
- b. the parcel is classified as “Farm” under the British Columbia Assessment Act; and,
- c. the seasonal farm labour accommodation use is incidental to and necessary for a farm operation on the same farm unit.

5.1.11 The removal of soil or placing of fill on land in AGRICULTURAL areas shall be undertaken only in accordance with the Agricultural Land Reserve Use, Subdivision and Procedure Regulation and, where applicable, FVRD Soil

Removal and Deposit Bylaw No. 0729, 2006.

5.1.12 Pursuant to Section 21 of the Private Managed Forest Land Act, forest management activities shall be permitted on lands classified as private managed forest land.

5.1.13 Agri-tourism uses which are ancillary or supplementary to a farm use may be supported provided that parking and other servicing needs can be met on-site and the operation is compatible with surrounding agricultural uses.

5.1.14 Potential conflicts between intensive agricultural operations and other land uses should be minimized by establishing minimum separation distances between incompatible uses and by edge planning to avoid land use conflicts.

5.1.15 Preservation and enhancement of existing agricultural operations in the AGRICULTURAL designation shall have priority over newly proposed nonfarm uses.

5.1.16 While the matter of intensive agricultural uses within the Agricultural Land Reserve is not within the jurisdiction of the Regional District, the objectives of the Regional Board concerning intensive agricultural uses within AGRICULTURAL areas are:

- a. intensive agricultural uses should not occur on parcels with less than four (4) hectares of arable land;
- b. intensive agricultural uses should be sited with consideration to adjoining properties, adjacent land uses and riparian areas; and,
- c. intensive agricultural uses should be proportionate to the capability of the land and the receiving environment to sustain the use.

5.1.19 New parcels created by subdivision within the AGRICULTURAL areas shall be configured to maximize agricultural suitability and minimize potential conflicts between farm and non-farm uses.

The ALC has declared that cannabis production in any of its forms is a “farm use” and as such, at least within the Agricultural Land Reserve and other zones designated ‘agricultural’, comprising more than 50% of Hatzic Valley, cannot be prohibited by the FVRD so long as it’s in accordance with the ALR regulations and to take a prohibitionist approach is inconsistent with the purposes of the ALR Act and the Hatzic Valley Official Community Plan to promote agricultural production. Furthermore, for a minority of directors to take a prohibitionist approach is incompatible with the intentions of the FVRD to harmonize and develop consistency in the regulations between the various Electoral areas.

Here is a draft of the existing Bylaw and with proposed amendments in **red**, other statutory references in **green** and comments in **blue**)

## **DEWDNEY-ALOUETTE REGIONAL DISTRICT LAND USE AND SUBDIVISION REGULATION ESTABLISHING BYLAW NO. 559-1992**

Fraser Valley Regional District Page 1 Consolidated Zoning Bylaw No. 559, Area “G” Portions of “C” and “F” DEWDNEY-ALOUETTE REGIONAL DISTRICT LAND USE AND SUBDIVISION REGULATION BYLAW NO. 559-1992

A Bylaw to Make Effective Regulations for The Management of Development Within Portions of Electoral Areas B, C, D and E of The Dewdney-Alouette Regional District

WHEREAS pursuant to Part 29 of the Municipal Act, R.S.B.C. 1979, c.290, the Dewdney Alouette Regional District has the power to make regulations for the management of development within the Regional District;

NOW THEREFORE the Board of the Dewdney-Alouette Regional District in open meeting assembled enacts as follows:

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PART 200 – DEFINITIONS

### **Existing definition**

MEDICAL MARIHUANA GROW OPERATION means the cultivation, growth, storage or distribution, testing or research of marihuana for medical purposes as lawfully permitted and authorized under the applicable federal or provincial law. [Byl # 1257, 2014]

This definition is clearly out of date as the term “marihuana” no longer exists as a matter of law and has been replaced by the term “cannabis”.

Further, it appears to be an old the definition that existed prior to the conclusion of the litigation (from Parker 2001 to Smith 2015 and Allard 2016 set out above) surrounding the right of medically approved patients to reasonable access to their medicine to prevent the violation of the security of their person in a manner inconsistent with principles of fundamental justice, contrary to section 7 of the Canadian Charter of Rights and Freedoms that forms part of our Constitution.

It follows that any attempts by the FVRD to unreasonably limit the production of Cannabis by a medically approved patient for their own medical purposes, or by a designated grower for medically approved patients pursuant to permits issued under part 12 of the Cannabis Act regulations or grandfathered under the prior federal Medical Marihuana Access regulations (MMAR) pursuant to the final injunction granted in Allard v Canada 2016 FC 236 (FCTD) of February 4, 2016 by Justice Phelan, would violate the section 7 Charter constitutional rights of such patients and entitle them to an appropriate and just remedy pursuant to s. 24 Charter that could include monetary damages and costs.

### Proposed amendments

**“CANNABIS means all species and genus of the flowering plant in the family cannabaceae, whether growing or not, including the seed and clone of such plants”**

This definition is inconsistent with the definitions in the Federal Cannabis Act and regulations, as well as provincial cannabis legislation and is broad enough to include within it not only the production of cannabis in any of its forms, but also industrial hemp.

**“CANNABIS DISPENSARY means a business or service used for dispensing, selling or distributing CANNABIS or any product or thing containing CANNABIS, for any purpose including medical use.”**

This definition is broad enough to include a ‘designated grower’ under part 12, the Access to Cannabis for Medical Purposes provisions of the Cannabis regulations, as well as those grandfathered under the former MMAR and it fails to take into account the distinction between provincial social/recreational dispensaries in relation to which the provincial legislation expressly says do not apply to medical cannabis and the federal “license to sell medical cannabis” either without possession, such as Shoppers Drug Mart or with possession such as the pending application, of the BC Compassion Club Society.

**“CANNABIS PRODUCTION FACILITY means a business or service growing, cultivating, germinating, producing, storing, warehousing or packaging any product or thing containing CANNABIS.”**

This definition is broad enough to include a personal producer or designated grower under the former MMAR or the current ACMPR under part 12 of the Cannabis Act who are authorized to produce for medical purposes as well as a standard or micro licensed producer under the Cannabis Act. To unreasonably limit the reasonable access to which medically approved patients are entitled to prevent the violation of their constitutional rights may result in constitutional litigation seeking damages and similarly limiting a licensed producer that is licensed to sell for medical purposes may also run afoul of the Charter.

This does not mean that such producers are exempt from all bylaws. They are subject to all reasonable bylaws, such as requiring electrical and fire inspections, preventing noxious odors or lights etc.

By virtue of section 8 (possession up to 30 g when out and about) and section 12 (production) of the Cannabis Act, an adult is permitted to cultivate, propagate, store and harvest up to 4 cannabis plants of any size at any one time in their dwelling house (4 per household not per person) and the definition of “dwelling house” for purposes of section 12 includes any land that is adjacent to the residence and immediately contiguous land that is attributable to it, including a yard, garden, or any similar land and any building or structure on any such land.

Presumably, it is not the intention of the FVRD to interfere in any unreasonable way with a ‘residents’ ability to produce 4 plants of any size and to harvest and process, including storing such product, subject only to the 30 g limitation when out and about, nor similarly to unreasonably interfere with the

right of a medically approved patient to produce for themselves or a designated grower to produce for them and other provisions of the ACMPR with respect to numbers of permits at any one location and the amount that medical patients Assessment of up to a maximum 150 g.

**For ease of reference**

**Cannabis Act (since October 17,2019)**

**cannabis** means a cannabis plant and anything referred to in Schedule 1 but does not include anything referred to in Schedule 2. (*cannabis*)

**SCHEDULE 1(Subsections 2(1) and 151(1))**

- 1 Any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in Schedule 2
- 2 Any substance or mixture of substances that contains or has on it any part of such a plant
- 3 Any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained

**SCHEDULE 2(Subsections 2(1) and 151(1) and Schedule 1)**

- 1 A non-viable seed of a cannabis plant
- 2 A mature stalk, without any leaf, flower, seed or branch, of such a plant
- 3 Fibre derived from a stalk referred to in item 2
- 4 The root or any part of the root of such a plant

**cannabis accessory** means

- **(a)** a thing, including rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers, that is represented to be used in the consumption of cannabis; or
- **(b)** a thing that is deemed under subsection (3) to be represented to be used in the consumption of cannabis. (*accessoire*)

**cannabis plant** means a plant that belongs to the genus *Cannabis*. (*plante de cannabis*)

**distribute** includes administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, and offering to distribute. (*distribuer*)

**produce**, in respect of cannabis, means to obtain it by any method or process, including by

- **(a)** manufacturing;
- **(b)** synthesis;

- **(c)** altering its chemical or physical properties by any means; or
- **(d)** cultivating, propagating or harvesting it or any living thing from which it may be extracted or otherwise obtained. (*production*)

**sell** includes offer for sale, expose for sale and have in possession for sale. (*vente*)

See also the **Cannabis Regulations** and the separate **Industrial Hemp Regulations (IHR)** that are now also pursuant to the **Cannabis Act** and in particular the definition of “**industrial hemp**” in s.1(2) of those regulations, as follows:

**(2)** For the purposes of the Act and these Regulations, **Industrial hemp** means a cannabis plant - or any part of that plant- in which the concentration of THC is 0.3%w/w or less in the flowering heads and leaves.

The provincial **Cannabis Control and Licensing Act** defines “**cannabis**”, “**cannabis accessory**” and “**cannabis plant**” as having the same meaning as the **Cannabis Act (Canada)** subject to any prescribed modifications. Section 2 of the Act provides that, unless the Act or regulations provide otherwise Parts 3 (General Rules) and 4 (Licenses) the Act do not apply to ‘**medical cannabis**’ and none of the provisions of the Act apply to ‘**industrial hemp**’.

## PART 300 - ADMINISTRATION

### 301 IMPLEMENTATION AND TITLE

### 302 ENFORCEMENT

## PART 400 - GENERAL PROVISIONS

### 401 ESTABLISHMENT OF ZONES

### 402 PROHIBITED USES

**(1) Except where expressly permitted in a zone, each use of land is prohibited in that zone.**

(2) The keeping of more than three (3) dogs per parcel is prohibited, except where the zone specifically permits a dog kennel use. (See regulations in Section 408)

(3) The keeping of any carnivorous animal (other than a domestic dog) weighing over 24 kilograms or any poisonous reptile, regardless of its size, is prohibited in all zones.

**“(4) Within Electoral Area F as shown on Schedule D to Bylaw No. 559, 1992, CANNABIS PRODUCTION FACILITY, CANNABIS DISPENSARY and MEDICAL MARIHUANA GROW OPERATION are Prohibited Uses.”**

This attempted prohibition of everything by the FVRD as tantamount to an attempt to exercise a “criminal law power” which is reserved to the federal government and one which it still exercises pursuant to the Cannabis Act and regulations.



As indicated above, it is in violation of the Canadian Constitution, and specifically section 7 of the **Canadian Charter of Rights and Freedoms** insofar as it purports to apply to the possession and production and possible sale of cannabis for medical purposes’

It is also inconsistent with provincial legislation such as the **Agricultural Land Reserve Act** based on the Agricultural Land Commission having declared all forms of cannabis production to be “a farm use” and having set out the parameters for its production consistent with the purposes of the ALR, which applies to in excess of 50% of the Hatzic Valley.

It is also inconsistent with its own **Official Community Plan** in relation to the promotion of agricultural uses and fails to recognize cannabis production as a legitimate farm agricultural use in comparison to other crops.

It is also inconsistent with the **objectives of the FVRD** to consolidate and provide consistency in bylaws throughout the entire region as between the different Electoral Area’s and other local governments region by creating three somewhat isolated Electoral areas taking a prohibitionist approach and the majority of five, including those adjacent to Electoral Area F, taking a more reasonable individual case-by-case approach to future applications.

As currently worded, this provision would appear to apply to those MMAR medically approved patients protected by **2016 Allard injunction** and medical producers, whether personal or designated as well as those currently permitted under **Part 14 of the Cannabis Act regulations**, the **Access to Cannabis for Medical Purposes** provisions and fails to take into account the distinctions between the provincial recreational/social dispensaries and then license producers, license to sell medical cannabis that is so primarily online and through the mail.

The prohibition with respect to medical marihuana production facilities is particularly out of date and problematic and will result in unreasonably limiting reasonable access by medically approved patients resulting in a violation of their s. 7 Charter rights to the security of their person in obtaining medicine prescribed for their doctor for their health condition and the right not to have such arbitrarily taken away or removed.

#### 403 AGRICULTURAL USES

##### **Agricultural Land Reserve**

- (1) Notwithstanding this Bylaw, all lands within an Agricultural Land Reserve are subject to the provisions of the Agricultural Land Commission Act, R. S. B. C. 1979, c. 9 regulations thereto and orders of the Commission.

In PART 400 – GENERAL PROVISIONS, Section 403 Agricultural Uses, by deleting Section 403 (1) in its entirety and replacing it with the following:

##### **Agricultural Land Reserve**

- (1) Notwithstanding this bylaw, all lands within an Agricultural Land Reserve are subject to the provisions of the Agricultural Land Commission Act, S.B.C. 2002, c. 36, and the regulations thereto. Where land within the Agricultural Land Reserve is also within a zone established under this bylaw, the bylaw shall be binding only insofar as it is not contrary to the Agricultural Land Commission Act and regulations thereto.”

This reaffirms the paramountcy of the provincial legislation in the form of the Agricultural Land Commission Act, over any FVRD or local government bylaws. Of course, the Canadian Charter of Rights and Freedoms is the supreme law of the land and is binding on all levels of government.

### **Intensive Agricultural Use**

- (2) An Intensive Agricultural Use:

(a) except as restricted by the Agricultural Land Commission Act, shall be permitted only within the A-1 and A-2 zones; and

### **General Agricultural Use**

- (3) A General Agricultural Use:

(a) shall be permitted in the R-1, R-2, R-3 R-6 and P-5 [Byl # 0725, 2006] zones; and

(b) except as restricted by the Agricultural Land Commission Act, shall be permitted within the A-1 and A-2 zones; and

(c) involving the keeping of animals, other than household pets, shall not be permitted on a parcel less than 1.0 hectare in area within the R-1, R-2, R-3, RS-1 and RS-2 zones.

(4) Within the RS-1 and RS-2 zones the keeping of livestock shall be limited to four animals per hectare provided the parcel is greater than 1.0 hectare in area.

### **Accessory Agricultural Market Use**

- (5) An Accessory Agricultural Market Use:

(a) shall be permitted in the A-3 zone;

(b) shall be in accordance with all regulations and orders of the Agricultural Land Commission Act, including any order pertaining to farm retail sales in the agricultural land reserve;

(c) shall involve the retail sale of agricultural products grown on the parcel upon which the accessory agricultural market use is located and/or grown on other parcels within the Regional District that form and are managed as part of the same farm operation;

(d) may involve the retail sale of agricultural products that are not grown on the parcel upon which the accessory agricultural market use is located or on other parcels within the Regional District managed as

part of the same farm operation, provided that the sale of these off-farm grown products shall be in accordance with the regulations and orders of the Agricultural Land Commission Act;

(e) may involve the retail sale of non-agricultural products, but limited to the following products:

(i) snacks and drinks;

(ii) baked goods;

(iii) souvenirs, maps, postcards, booklets, newspapers, or similar materials for tourists and the travelling public;

(iv) tobacco products;

(v) handicrafts; or

(vi) gardening materials or supplies; provided that the sale of these non-farm products shall be in accordance with the regulations and orders of the Agricultural Land Commission Act;

(f) shall be limited to the extent that the area of the market used for the sale of non-agricultural products plus off-farm grown products shall not exceed 1/3 of the total area of the market used for the retail sale of all products, or 75 square metres, whichever is less;

(g) shall be limited to an overall retail area of 225 square metres;

(h) may have a sign or signs located on the same parcel upon which the accessory agricultural market use is located, up to a maximum sign area (including any signage located upon the market building itself) of 10 square metres;

(i) shall have on-site parking provided in accordance with Section 409 of this Bylaw;

(j) shall be sited in accordance with Section 412 of this Bylaw.

#### 404 TRADE AND COMMERCIAL

#### 405 RESIDENTIAL USES

#### 406 ACCESSORY COTTAGE INDUSTRY USE

#### 407 ACCESSORY HOME OCCUPATION USE

#### 408 DOG KENNEL USE

#### 409 ACCESSORY OFF-STREET PARKING USE

#### 410 ACCESSORY OUTDOOR STORAGE USE

#### 411 SCREENING

#### 412 SITING FOR BUILDINGS, STRUCTURES AND USES

#### 413 SUBDIVISION AND DEVELOPMENT CONTROL

iv. In PART 400 – GENERAL PROVISIONS, by deleting Section 414 in its entirety and replacing it with the following:

##### “414 MEDICAL MARIHUANA GROW OPERATION Application

##### (1) A Medical Marihuana Grow Operation:

(a) Shall be permitted in the A-1, A-2, A-3, M-1, and M-2 zones, except within Electoral Area F as shown on Schedule D to Bylaw No. 559, 1992; and

(b) Shall be permitted in the R-1, R-2, R-3, R-4, R-5, and R-6 zones, except within Electoral Area F as shown on Schedule D to Bylaw No. 559, 1992.”

As indicated above, any unreasonable limitation on a medically approved patients right to reasonable access to their medicine that results in a violation of security their person in an arbitrary manner in violation of section 7 of the Charter is unconstitutional and will entitle them to an appropriate and just remedy under section 24 of the Charter. Furthermore, this provision fails to distinguish between commercial standard or micro production, even if for medical purposes and personal or designated grower production under the ACMPR or Allard injunction.

#### PART 500 - AGRICULTURAL ZONES

#### 501 UPLAND AGRICULTURE (A-1)

v. In PART 500-**UPLAND AGRICULTURE**, by deleting Section 501(1) in its entirety and replacing it with the following:

##### “Permitted Uses

(1) Subject to the provisions of this bylaw and the Agricultural Land Commission Act, the following uses and no others are permitted in the A-1 zone:

Permitted Uses Reference

Residential Use Section 405

General Agricultural Use Section 403

Intensive Agricultural Use Section 403

Accessory Boarding Use Section 405

Accessory Cottage Industry Section 406

Accessory Employee Residential Use Section 405

Accessory Family Residential Use Section 405

Accessory Home Occupation Use Section 407

Dog Kennel Use Section 408

Accessory Off-Street Parking Use Section 409

Accessory Outdoor Storage Use Section 410

Accessory Produce Sales Use Section 412

Public Use Section 200

Medical Marihuana Grow Operation

Section 414 1(b) Notwithstanding Section 501(1a) of this bylaw, where a parcel is zoned UPLAND AGRICULTURE (A-1) within the boundaries of Electoral Area F, as shown on the map included as Schedule D to Bylaw No. 559, 1992, Medical Marihuana Grow Operation is not a permitted use.”

See the comments above with respect to this section that appears after each specific use and appears to violate the rights of medically approved patients arising out of decisions from Parker to Allard to reasonable access to their medicine to prevent a violation of their constitutional rights.

## 502 FLOODPLAIN AGRICULTURE (A-2)

vi. In PART 502 – **FLOODPLAIN AGRICULTURE**, by deleting Section 502(1) in its entirety and replacing it with the following:

“Permitted Uses (1) Subject to the provisions of this bylaw and the Agricultural Land Commission Act, the following uses and no others are permitted in the **A-2 zone**:

Permitted Uses Reference

Residential Use Section 405

General Agricultural Use Section 403

Intensive Agricultural Use Section 403

Accessory Boarding Use Section 405

Accessory Cottage Industry Section 406

Accessory Employee Residential Use Section 405

Accessory Family Residential Use Section 405

Accessory Home Occupation Use Section 407

Dog Kennel Use Section 408

Accessory Off-Street Parking Use Section 409

Accessory Outdoor Storage Use Section 410

Accessory Produce Sales Use Section 412

Public Use Section 200

Medical Marihuana Grow Operation

Section 414 1(b) Notwithstanding Section 502(1a) of this Bylaw, where a parcel is zoned FLOODPLAIN AGRICULTURE (A-2) within the boundaries of Electoral Area F, as shown on the map included as Schedule D to Bylaw No. 559, 1992, Medical Marihuana Grow Operation is not a permitted use.”

[See comments above the constitutionality of this provision](#)

### 503 AGRICULTURAL MARKET (A-3)

vii. In PART 503 – **AGRICULTURAL MARKET**, by deleting Section 503(1) in its entirety and replacing it with the following:

“Permitted Uses (1) Subject to the provisions of this bylaw and the Agricultural Land Commission Act, the following uses and no others are permitted in the A-3 zone:

Permitted Uses Reference

Residential Use Section 405

General Agricultural Use Section 403

Intensive Agricultural Use Section 403

Accessory Agricultural Market Use Section 403

Accessory Cottage Industry Section 406

Accessory Employee Residential Use Section 405

Accessory Family Residential Use Section 405

Accessory Home Occupation Use Section 407

Accessory Off-Street Parking Use Section 409

Accessory Outdoor Storage Use Section 410

Accessory Produce Sales Use Section 412

Public Use Section 200

Medical Marihuana Grow Operation

Section 414 1(b) Notwithstanding Section 503(1a) of this bylaw, where a parcel is zoned AGRICULTURAL MARKET (A-3) within the boundaries of Electoral Area F, as shown on the map included as Schedule D to Bylaw No. 559, 1992, Medical Marihuana Grow Operation is not a permitted use.”

See comments above with respect to the constitutionality of this provision.

#### PART 600 - RURAL ZONES

601 RURAL 1 (R-1)

602 RURAL 2 (R-2)

603 RURAL 3 (R-3)

604 RURAL 4 (R-4)

605 RURAL 5 (R-5)

606 RURAL 6 (R-6)

#### PART 700 - RURAL RESIDENTIAL ZONES

701 RURAL RESIDENTIAL 1 (RS-1)

702 RURAL RESIDENTIAL 2 (RS-2)

703 RESORT RESIDENTIAL 1 (RST-1)

704 RESORT RESIDENTIAL 2 (RST-2)

#### PART 800 - TRADE AND COMMERCIAL SERVICE ZONES

801 NEIGHBOURHOOD COMMERCIAL (C-1)

802 PUBLIC HOUSE COMMERCIAL (C-2)

803 OUTDOOR RECREATION (OR)

804 MOTEL CAMPGROUND (MC)

805 TOURIST CAMPSITE (TC)

## PART 900 - INDUSTRIAL PROCESSING AND MANUFACTURING ZONES

### 901 GENERAL INDUSTRIAL (M-1)

viii. In PART 901 – **GENERAL INDUSTRIAL**, by deleting Section 901(1) in its entirety and replacing it with the following:

“Permitted Uses (1) Subject to the provisions of this bylaw, the following uses and no others are permitted in the M-1 zone:

Permitted Uses Reference

Residential Use Section 405

General Industrial Use Section 200

Resource Use Section 200

Accessory Off-Street Parking Use Section 409

Accessory Outdoor Storage Use Section 410

Medical Marihuana Grow Operation

Section 414 1(b) Notwithstanding Section 901(1a) of this bylaw, where a parcel is zoned GENERAL INDUSTRIAL (M-1) within the boundaries of Electoral Area F, as shown on the map included as Schedule D to Bylaw No. 559, 1992, Medical Marihuana Grow Operation is not a permitted use.”

[See comments above respect to the constitutionality of this provision](#)

### 902 HEAVY INDUSTRIAL (M-2)

ix. In PART 902 – **HEAVY INDUSTRIAL**, by deleting Section 902(1) in its entirety and replacing it with the following:

“Permitted Uses (1) Subject to the provisions of this bylaw, the following uses and no others are permitted in the M-2 zone:

Permitted Uses Reference

Residential Use Section 405

Heavy Industrial Use Section 200

General Industrial Use Section 200

Resource Use Section 200

Accessory Off-Street Parking Use Section 409



Accessory Outdoor Storage Use Section 410

Accessory Retail Use Section 200

Medical Marihuana Grow Operation

Section 414 1(b) Notwithstanding Section 901(1a) of this bylaw, where a parcel is zoned HEAVY INDUSTRIAL (M-2) within the boundaries of Electoral Area F, as shown on the map included as Schedule D to Bylaw No. 559, 1992, Medical Marihuana Grow Operation is not a permitted use.”

See comments above with respect to the constitutionality of this provision

#### PART 1000 - INSTITUTIONAL SERVICE ZONES

1001 CIVIC ASSEMBLY (P-1)

1002 CIVIC INSTITUTIONAL (P-2)

1003 PERSONAL CARE INSTITUTIONAL (P-3)

1004 CEMETERIES

1005 RESTRICTED USE (P-5)

1006 PRIVATE RESORT (P-6)

#### SCHEDULES ATTACHED B1 – PARALLEL AND 90o PARKING LAYOUT AND DIMENSIONS

B2 – ANGLE PARKING LAYOUT AND DIMENSIONS SCHEDULES UNDER SEPARATE COVER

C1 – C18 MAPS OF ZONE BOUNDARIES

D – BOUNDARIES OF ELECTORAL AREA “F”

#### Comments regarding the Corporate Report of October 8, 2019 File No. 0340-30-EA Planning Policies

This report sets out the Alternatives being proposed by Electoral areas D,H and F compared to Electoral areas, A B,C,E and G generally that are discussed above and attaches as Appendix A a ‘Policy and Procedure’ document with respect to “Land Use Policy for Cannabis Production, Processing and Retail Sales in the Electoral areas and goes on to provide what is referred to as “direction and intent” as detailed in a Chart that appears to set out in more specific detail the differing policies between the differing Electoral areas and can be summarized as follows:

1. **Retail Sales** - not supported by any Electoral areas, and all proposals to be reviewed on a site by site basis, including public consultation;

Why are all of the Electoral areas opposed to any retail sales as are permitted for alcohol and tobacco other drugs? Why should the residence of the FVRD be required to go elsewhere to purchase cannabis? Some medical dispensaries been around for over 25 years without any problems at least five years without any demonstrable significant problems. The history of “prohibition” demonstrates that to apply that policy in the face of public demand simply results in the matter underground continues in an unregulated stead of the preferable regulated environment.

2. **Cannabis Growing** - supported by five Electoral areas - A, B, C, E and G, subject to ensuring all negative impacts are mitigated but not supported by three namely D, H and F, except where permitted by Federal and Provincial legislation;  
Submissions with respect to this are indicated in detail above – prohibition didn’t work in the past and most local government inspectors in my experience do not want to return to the past, having come to learn that the use of civil local government procedures are much more effective at ensuring compliance than the use of the criminal law.
3. **Cannabis Processing (as a standalone land-use or accessory to cannabis growing or other uses)** - supported by five electoral areas - A, B, C, E and G, subject to ensuring all negative impacts are mitigated but not supported by three, namely Electoral areas D, H,F, except where permitted by Federal or Provincial legislation.  
It is submitted that processing of farm or any agricultural products should be permitted on site subject to mitigating negative impacts in the same way that such are permitted for other agricultural products.

The document, then sets out another Chart with respect to impacts to be mitigated in all Electoral Areas, such as minimizing odors, light spill, impacts on aquifer and water use, minimizing waste, minimizing impacts to environments such as creeks, limiting use of buildings to cannabis and farm uses limiting nonagricultural uses, as well as aesthetics and public safety, all of which are perfectly understandable and reasonable.

However, references also made to “avoid Rural communities,” which requires some explanation.

**Notwithstanding my view that proposed amendments, it clearly and are of the view that Most importantly the document refers to “prohibit cannabis use within a residence” that requires definition and clarification. Perhaps a representative of the FVRD can explain what lawful jurisdiction they might have to legislate with respect to what goes on in a person’s private residence in relation to the consumption and use of cannabis in any of its many forms, for both medical and social purposes.**

All of which is respectfully submitted,

**John W. Conroy QC, Barrister, residing since 1973, with Sharie Conroy at 12699 Stave Lake Rd in McConnell Creek, BC**

My name is Lynne Fry I live at  
13916 Steve Lake Rd Mission  
I support your bylaw of Prohibition  
on Cannabis.

Thank You!

February 12 2020. Lynne Fry