

# LIDSTONE & COMPANY

## BARRISTERS AND SOLICITORS

### MEMORANDUM

**TO:** Clients  
**FROM:** Ian Moore and Rachel Vallance  
**DATE:** August 16, 2018  
Cannabis Production in the ALR  
**RE:** Interim Committee Report re: Revitalizing the ALR and ALC

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#### 1. ALC Information Bulletin re: Cannabis Production in the ALR

On July 13, 2018, the Province amended the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* (the “Regulation”)<sup>1</sup> to designate the production of cannabis as a farm use if produced outdoors in a field or inside soil-based structures or structures that were pre-existing or under construction at the time of the amendment. Section 2(2.5) of the amended Regulation has the effect of allowing local governments to prohibit cement-based cannabis production facilities on land in the ALR, subject to certain exceptions.

Prior to the amendment, the Regulation designated “the production of marihuana in accordance with the Marihuana for Medical Purposes Regulation, SOR/2013-119 (Canada)” as a farm use. As a result, the amendment both narrows the scope of permitted cannabis production in the ALR (by only permitting production outdoors or in certain types of facilities) and expands it (by permitting the lawful production of cannabis generally, including for recreational purposes).

The amendment is not currently reflected in the version of the Regulation available on BC Laws, but the [Order in Council](#) is available online.

On August 15, 2018, the ALC released [Information Bulletin 04](#) which summarizes the legislative changes described above and clarifies that cannabis production that does not meet the description in section 2(2.5) of

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<sup>1</sup> Throughout this memo:

- “ALR” refers to the “Agricultural Land Reserve”
- “ALC” refers to the “Agricultural Land Commission”
- “Act” refers to the “*Agricultural Land Commission Act*, SBC 2002, c 36”
- “Regulation” refers to the “*Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, BC Reg 171/2002”

the amended Regulation is a non-farm use. As a result, in order to proceed with these types of facilities, producers must obtain approval for non-farm use from the ALC.

We note that in accordance with s. 18 of the Act, a local government may not permit the non-farm use of land within the ALR or permit a building to be erected on the land except for farm use. As a result, local governments that receive building permit applications for facilities that do not comply with s. 2(2.5) of the Regulation should not issue the building permit until a successful non-farm use application is made.

The Bulletin also contains interpretive guidance regarding:

- placement of fill in the ALR;
- cannabis production in soil-based structures, existing structures and structures that were under construction;
- activities and facilities related to cannabis production; and
- storing, packing, preparing or processing cannabis.

## **2. Interim Committee Report re: Revitalizing the ALR and ALC**

On August 8, 2018, the BC Minister of Agriculture's independent Advisory Committee for Revitalizing the ALR and the ALC (the "Committee") released its [interim report](#) (the "Report"). The Report includes a number of recommendations which are relevant to local governments and may result in legislative changes. A final report is expected this fall.

This Bulletin summarizes the recommendations and actions proposed by the Committee; however, Lidstone & Company takes no policy or political position on the Report.

### **Recommendations for Immediate Legislative and Regulatory Changes**

Part I of the report includes recommendations aimed at recognizing what the Committee considers to be the urgent need for a province-wide shift to an 'agriculture first' focus in the ALR and to curb speculation in the ALR. These recommendations include:

- i. strengthening the Act to prioritize agriculture by better defining the ALR, including the purposes of the ALR, and establishing 'agriculture-first' criteria for consideration in ALC in decisions;
- ii. increasing the autonomy, independence, and effectiveness of the ALC by ensuring merit-based Commission appointments are made in

consultation with the Chair and by increasing the oversight role of the Chair in the selection of both Commission members and the CEO;

- iii. ensuring province-wide decision-making that is consistent and fair with an ALC governance structure that is flexible, locally-informed, regionally-representative, and puts 'agriculture first';
- iv. safeguarding agricultural values across the province by reinstating a one-zone ALR decision-making model across BC;
- v. strengthening ALC compliance and enforcement tools, and capacity, to better protect the ALR;
- vi. protecting the ALR from residential speculation by establishing a maximum total floor area for all primary residences in the ALR; providing local governments with flexibility to zone below the maximum; and enacting new regulations for residential siting, secondary dwellings, and home plate size;
- vii. ending the impact of illegal fill on the agricultural capability of the ALR by redefining and restricting fill throughout the ALR;
- viii. addressing speculation through better land-use planning by only considering exclusion of ALR land through a joint local government-ALC land use planning process;
- ix. making the ALR application review process more efficient by prescribing acceptable non-farm use and subdivision applications;
- x. improving clarity around the two ALC reconsideration processes;
- xi. ensuring a province-wide agricultural perspective by removing the ALC's capacity to delegate subdivision and non-farm use decision-making authority to local governments;
- xii. building better planning and land-use decisions for agriculture by requiring all local government bylaws that affect the ALR to be endorsed by ALC resolution; and

- xiii. strengthening ALC administration by clarifying and updating the Act and Regulation to improve the ALC's daily operation.

### **Recommendations for Immediate Action to Protect the ALR**

Part II of the Report contains the Committee's recommendations for immediate action to protect the ALR. These recommendations are focused on the Committee's goals of mitigating the impacts of oil and gas activity in the ALR and restricting cannabis production in the ALR.

#### Oil and Gas Activity

The Committee notes the significant effect of oil and gas extraction on agricultural land and farm businesses. It also notes the inability of the current regulatory regime to adequately protect farmland and support farmers, especially in light of the extensive resources and supports in place for oil and gas development. The Committee identifies the importance of treating the agricultural productivity of land in the Northeast as a resource equivalent to other resources, including oil and gas.

The Committee makes several recommendations which it believes will assist the government in striking a balance between the needs of the agricultural and energy sectors. These recommendations include:

- The immediate creation of a Deputy Minister-level multi-agency and multi-jurisdictional taskforce to develop a strategy focused on how a balance can be achieved between agriculture and oil and gas extraction in the Peace River region; and
- Establishing an increased ALC presence in the North, in order to ensure that a "made-in-the-North" approach to these issues can be created.

#### Cannabis Production

The Committee expresses concern that the legalization of non-medical cannabis will lead to new and significant impacts in the ALR which are not yet understood. Stakeholder feedback on this issue almost unanimously supported significant restrictions, if not a complete ban, on cannabis production in the ALR.

The Committee's concerns arise largely from the fact that many cannabis production facilities are expected to be cement-bottomed and cover large areas of farm land. The Committee also noted the incompatibility of

cannabis with other agricultural uses, potential nuisance issues, and the lack of local government support for cannabis production in the ALR.

The Committee makes two recommendations with respect to cannabis production in the ALR:

- an immediate moratorium on all non-soil bound cannabis production and facilities in the ALR pending provincial analysis of impacts; and
- following a provincial-level analysis, that the ALC be enabled to establish rules for cannabis production in the ALR.

As detailed above, the Province has amended the Regulation to prohibit cement-based cannabis production facilities on land in the ALR without a successful application for non-farm use. Details regarding this legislative change can be found in [Information Bulletin 04](#).