



June 15, 2016

File: 44200-60 VI VEG REVIEW

DELIVERED BY EMAIL

Alf Krause
Chair
BC Vegetable Marketing Commission
207 – 15252 – 32 St
Surrey BC V3S 0R7

Dear Mr. Krause:

BC FARM INDUSTRY REVIEW BOARD SUPERVISORY DECISION – THE FUTURE OF REGULATED VEGETABLE PRODUCTION ON VANCOUVER ISLAND

Following extensive consultation, on June 2, 2016 the BC Vegetable Marketing Commission (Commission) finalized its [“Supervisory Review: The Future of Regulated Marketing on Vancouver Island Decision and Recommendations”](#) (Reasons). The Commission notified its stakeholders on June 6, 2016 that it had made final decisions with respect to certain issues and had recommendations to the BC Farm Industry Review Board (BCFIRB) about others. The Commission met with BCFIRB on June 8, 2016 to present those decisions and recommendations and subsequently distributed the Reasons to its stakeholders.

The purpose of the review was to “evaluate whether vegetable production on Vancouver Island should continue to be regulated and, if continued, what that looks like”.

Background

Over the last few years, BCFIRB has seen an increase in appeals and disputes arising from Commission decisions related to Vancouver Island. These include unresolved conflicts between producers, agencies, and the Commission, and increasing industry complaints related to the regulated vegetable sector on Vancouver Island. Some of these conflicts have also affected non-Vancouver Island vegetable industry stakeholders.

**British Columbia
Farm Industry Review Board**

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BCFIRB made several unsuccessful attempts, through informal and formal processes (facilitated process and two supervisory reviews^{1,2}), to resolve ongoing issues between the Commission, producers, and agencies on Vancouver Island in a manner intended to support collaborative solutions.

Given the lack of resolution to ongoing Vancouver Island conflicts and significant issues already facing BC's vegetable industry (e.g. declining number of producers, increasing production costs, loss of processors), the Commission requested that BCFIRB initiate a final supervisory review of Vancouver Island's regulated vegetable industry.

In considering the request, BCFIRB determined it was not sound marketing policy to allow continued Vancouver Island disputes to negatively impact operation of the regulated sector. BCFIRB initiated the review of Vancouver Island regulated vegetable marketing on [October 10, 2014](#).

The initial stage of the Supervisory Review of Regulated Vegetable Marketing on Vancouver Island was led by the Commission. BCFIRB provided procedural guidance to the Commission in conducting a transparent and inclusive consultative process.

Commission Recommendations to BCFIRB

The decisions made by the Commission are outlined at para. 116 of its Reasons and include: steps to improve its governance; a storage crop survey initiative; an overhaul of its delivery allocation orders; enhancing agency accountability; addressing future growth of agencies; and more consistent enforcement of Commission regulations.

At the June 8, 2016 meeting, the Commission requested BCFIRB consider the following recommendations:

127. Our recommendation is that given the changes in the market environment on Vancouver Island and the collective interests of the industry, the agency accountability framework be used to examine each existing Vancouver Island agency. The Commission further recommends that this be accomplished by having each Island agency submit an application requesting agency status for the 2017 Crop Year. Therefore, each agency is to re-apply for an agency licence. The application process should also be made available to any group of producers wishing to submit an application for agency status. This will ensure the Commission can make an informed determination as to the exact number and identity of Vancouver Island agencies starting in the 2017 Crop Year.

128. The Commission is committed to a transparent, inclusive and fair application and review process. The process should be developed in consultation with BCFIRB and will support two concurrent decisions:

- 1) Determining the number of agencies (in light of sound marketing policy)
- 2) Determining the identity of those agency(s)

¹ [January 7, 2013 BCFIRB Supervisory Decision Concerning the BC Vegetable Marketing Commission Central Vancouver Island Agency Designations](#)

² [December 23, 2013 BCFIRB Follow Up to the January 7, 2013 Supervisory Decision Concerning the BC Vegetable Marketing Commission Central Vancouver Island Agency Designation](#)

129. Following the application and review process, the Commission's recommendations with respect to the agency structure on Vancouver Island will be submitted to BCFIRB for supervisory approval by October 2016.

130. We request that BCFIRB approve the Commission's recommendations in respect to the **continued regulation of the Vancouver Island vegetable industry and the process for confirming the Vancouver Island agency structure** [emphasis added] going forward.

Legal Authorities

In British Columbia, the production and marketing of vegetables is regulated under the *Natural Products Marketing (BC) Act (NPMA)* and the British Columbia Vegetable Scheme.

Under s. 7.1 of the *NPMA*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the Province, including the Commission. Section 7.1(2) of the *NPMA* provides for this supervisory authority to be exercised "at any time, with or without a hearing, and in the manner [BCFIRB] considers appropriate to the circumstances".

Under s. 9 of the *NPMA*, BCFIRB "has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined by [BCFIRB] under [the *NPMA*]".

BCFIRB Decisions

BCFIRB accepts the Commission's recommendation that regulation of the Vancouver Island vegetable industry continues to represent sound marketing policy, with no further review required.

BCFIRB has determined that a timely and final resolution of the agency structure on Vancouver Island is a matter of sound marketing policy and BCFIRB will therefore address that matter in its supervisory capacity.

BCFIRB directs the Commission to conduct a transparent, inclusive, and fair application and review process, for the Commission to determine in the first instance as a matter of sound marketing policy:

- 1) the appropriate number of Vancouver Island agencies;
- 2) the identity of the Vancouver Island agency or agencies; and,
- 3) whether any existing Vancouver Island agency licences should be revoked.

Schedule

BCFIRB will work with the Commission to develop a SAFETI³-based review process to evaluate the Vancouver Island agency structure, as follows:

June 2016: BCFIRB ratifies, with the Commission, forward looking criteria that will be used in reaching these determinations.

³ SAFETI principles: Strategic, Accountable, Fair, Effective, Transparent, and Inclusive

July 2016: Commission initiates its review based on the criteria.

July-August 2016: Existing and proposed Vancouver Island agencies make submissions to the Commission, copy to BCFIRB, based on the criteria.

September 2016: Commission presents its final recommendations and rationale to BCFIRB with respect to the number, identity and status of agencies on Vancouver Island.

October 2016: BCFIRB makes a supervisory decision(s) following its own review and assessment of the Commission's recommendations and stakeholder submissions.

It is anticipated that this schedule will allow for the conclusion of the 2016 season and sufficient time to plan for the 2017 growing season.

Rationale

BCFIRB used a principles-based approach, including consideration of the SAFETI principles, in coming to this decision. BCFIRB reviewed the Commission's Reasons and considered the history and rationale behind the Supervisory Review. BCFIRB held an information meeting with the Commission on June 8, 2016, where the Commission presented its final decisions and recommendations and answered BCFIRB's questions.

Process

BCFIRB is satisfied that the Commission used a SAFETI-based process to reach its recommendations. The Review process and substantive supporting background materials were shared with stakeholders and posted on its web site in a timely manner. Several opportunities for stakeholder input were provided, including written submissions and third-party facilitated workshop sessions. Overall, the Commission process was transparent, inclusive, and suitable to the scope and nature of the issues being considered.

Outcome

Based on the rationale provided by the Commission, BCFIRB agrees that continued regulation of vegetable production on Vancouver Island remains sound marketing policy as required under the NPMA, s. 9(2)(a). As reflected in the Commission's Reasons, there is growing demand for local food, now and in the foreseeable future, including on Vancouver Island. However, Island (and BC) producers face increasing land and input prices alongside retail consolidation and competition with imports. The regulated system helps support local production and marketing in BC in a manner that benefits producers and consumers.

The Commission's Reasons clearly reflect that agencies are an important part of delivering the benefits of the regulated system for producers and consumers. Agencies must be accountable to the Commission for the regulatory authorities and responsibilities delegated to them. BCFIRB agrees with these assessments. Legislation and regulations allow for the creation of agencies to support the BC regulated vegetable sector. With this regulatory benefit comes the responsibility to be accountable to the Commission, and ultimately, BCFIRB.

The Commission recommended a transparent, inclusive, and fair application and review process to first determine what number of agencies would be effective and strategic for Vancouver Island in terms of sound marketing policy and to also identify the agency or agencies that could fulfill the Commission's regulatory objectives in an accountable manner.⁴

Given the long standing disputes on Vancouver Island that are not only impacting Vancouver Island producers and agencies, but also the whole BC regulated vegetable industry, the Commission further recommended submitting its conclusions from the above-mentioned process to BCFIRB for a final supervisory decision.

BCFIRB has determined that the Commission's recommendations provide a sound means of reaching a final, effective resolution on outstanding issues and supporting the industry in moving forward.

Closing

BCFIRB commends the Commission for identifying governance issues in its submission and for making a public written commitment to leading positive change.

The Commission is to communicate this BCFIRB decision to Vancouver Island producers and agencies, as well as other stakeholders that may be affected.

In accordance with s. 57 of the *Administrative Tribunals Act*, "an application for judicial review of a final decision of (BCFIRB) must be commenced within 60 days of the date the decision is issued."

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

A handwritten signature in black ink, appearing to read "John Les". The signature is fluid and cursive, with a large loop at the beginning and a long tail that loops back under the main body of the signature.

John Les
Chair

cc: BCFIRB web site

⁴ For example, marketing focus, services, and governance structure