TO: Jeremy Holm  
Manager of Current Planning

FROM: Robert Stover  
Planning Technician

DATE: October 31, 2013

FILES: 3900-20-500.387  
3900-20-1285.18

SUBJECT: Regulatory Amendments to Address Marihuana for Medical Purposes Regulations

PURPOSE

To present to the Regional District of Nanaimo (RDN) Board a number of proposed zoning bylaw amendments to address the Marihuana for Medical Purposes Regulations (MMPR).

BACKGROUND

In response to concerns raised by a delegation regarding odour created by licensed medical marihuana grow operations at its June 25, 2013 meeting, the Board approved the following motion:

“MOVED Director Veenhof, SECONDED Director Young, that staff be directed to prepare a report on the zoning implications as it relates to the new regulations on the licensed production of medical marihuana for the Board’s consideration.”

Following Board direction, staff prepared a background report which detailed the specifics of the Marihuana for Medical Purposes Regulations and included a number of proposed zoning bylaw amendments to accommodate medical marihuana production under the new MMPR. The report recommended amendments to Bylaws 500 and 1285 to permit medical marihuana production on lands within the Agricultural Land Reserve (ALR), to prohibit medical marihuana production as a home based business, and recommended 30.0 metre setbacks from property lines for structures used for medical marihuana production under MMPR. These proposed amendments were intended to provide immediate and clear land use regulatory direction with regard to medical marihuana production facilities operating under the new MMPR.

The Board considered the proposed zoning bylaw amendments at its meeting of September 24, 2013 and provided the following direction:

“MOVED Director Fell, SECONDED Director Young, that the regulatory amendments to address Marihuana for Medical Purposes Regulations – Bylaw No. 500.387, 2013 and Bylaw 1285.18, 2013 be referred back to staff, and that staff be directed to organize a seminar discussion for the Board on the topic.”

Following a Board seminar, which was held on October 22, 2013, staff have evaluated options for permitting medical marihuana production under the MMPR on industrial zoned properties. Options for increasing the minimum setback requirements for medical marihuana production facilities on ALR lands have also been examined.
ALTERNATIVES

1. To give first and second reading to the amendment Bylaws 500.387 and 1285.18 as presented.

2. To provide staff with alternative direction to prepare land use regulation amendments to Bylaws 500 and 1285 to address MMPR.

LAND USE IMPLICATIONS

While the new Marihuana for Medical Purposes Regulations do not permit the production of medical marihuana within residential dwellings, there are no specific provisions within the MMPR with respect to regulating the siting or scale of medical marihuana production facilities. As such, if a local government has concerns regarding the siting, scale, or location of medical marihuana production facilities, it is incumbent upon the local government to establish provisions within their respective zoning bylaws to regulate the use.

As the Agricultural Land Commission and the Provincial Ministry of Agriculture view the production of medical marihuana as being consistent with the definition of “farm use” as outlined in the Agricultural Land Commission Act, local government bylaws cannot prohibit medical marihuana production use on lands within the ALR. Notwithstanding this, local government bylaws may regulate the use on ALR land by establishing siting requirements for structures associated with the production of medical marihuana. However, a local government cannot regulate the use to the point of prohibition on ALR lands. Following discussion at the October 22, 2013 Board seminar, staff investigated the possibility of applying setbacks of greater than 30.0 metres for structures used for medical marihuana production on ALR lands.

After consulting with the Ministry of Agriculture regarding establishing setbacks of greater than 30.0 metres, Ministry staff indicated that they would not likely support establishment of setbacks that further restricts a farm use on ALR lands. The Ministry of Agriculture ‘Guide for Bylaw Development in Farm Areas’ establishes a range of property line setback options for a variety of farm activities. Medical marihuana production facilities are not explicitly detailed in this guide; however, none of the established setbacks for intensive agriculture uses exceed 30.0 metres with the exception of some forms of confined livestock operations. As the Ministry of Agriculture has indicated that it is not supportive of establishing setback restrictions of greater than 30.0 metres, staff are recommending a 30.0 metre setback requirement for medical marihuana production facilities on ALR lands as previously proposed.

Following discussion from the Board seminar held on October 22, 2013, staff have also evaluated options for including medical marihuana production use on industrial zoned properties. The MMPR requires the cultivation, processing, packaging and shipping associated with medical marihuana production to occur wholly indoors within secure production facilities. Given the potential scope and scale of these activities, staff have determined that lands zoned for medium and heavy industrial uses are most appropriate for medical marihuana production. Medium and heavy industrial lands are intended to accommodate more intensive forms of industrial use such as processing and manufacturing of goods.

Based on Director feedback staff propose to accommodate medical marihuana production on lands zoned Industrial 2 (1-2) in Bylaw 1285, as the majority of these properties are well situated for access along the Alberni Highway, and are located away from residentially zoned lands. The I-2 zone currently accommodates manufacturing and processing uses, which are consistent with the uses associated with medical marihuana production facilities. Staff are not recommending zoning amendments to Bylaw 500
to permit medical marihuana production on industrial lands at this time. The distribution of medium and heavy industrial lands within the scope of Bylaw 500 is less concentrated than those in Bylaw 1285, with some of the parcels abutting residentially zoned lands. Additionally, the medium and heavy industrial zoned parcels in Bylaw 500 vary widely by parcel size and are not equally well served by highway access.

Regardless of the land use regulatory direction chosen by the Board to address the use at this time, interested parties will still have the option to apply to rezone individual properties to accommodate medical marihuana production. Zoning amendment applications can be assessed on a case by case basis, and would allow for a clear evaluation of community interests when considering new proposed production facilities. The rezoning process would also allow the Board to consider factors such as the potential impacts on surrounding properties, servicing implications, and the form and character of these facilities through the course of the application. This would give the Board opportunity to assess each application to rezone on its individual merits.

In light of the recent influx in notices of intent to the RDN to pursue a Producer’s License under MMPR, and the lack of clear regulation currently in place to accommodate the use, staff are proposing a series of amendments to RDN Zoning Bylaws to regulate the siting of medical marihuana production facilities ahead of the full implementation of MMPR in April of 2014.

**Zoning Considerations**

The new MMPR is intended to treat medical marihuana production in a similar manner to the manufacture of prescription drugs and prohibit the production of medical marihuana within residential dwellings. In order to be consistent with both the intent of the new MMPR and recognize the authority of the Agricultural Land Commission Act, staff are recommending the Board consider the following amendments to “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987” and “Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285, 2002”:

**Bylaw 500 (see Attachment 1 for draft Bylaw 500.387):**

- Define **Medical Marihuana Production**: means the cultivation and production of medicinal marihuana wholly within a facility as permitted under the Marihuana for Medical Purposes Regulations (MMPR), and any subsequent regulations or acts which may be enacted henceforth;
- Amend the Home Based Business Guidelines to clarify that medical marihuana production is prohibited as a home based business use;
- Amend the definition of “Agriculture” to exclude medical marihuana production on lands not within the Agricultural Land Reserve;
- Amend Section 14 of the General Regulations to include medical marihuana production under farm use regulations;
- Establish a 30.0 metre setback from property lines for structures used for medical marihuana production use to be consistent with the Ministry of Agriculture’s guide for bylaw development in farming areas with regard to intensive agriculture.
Bylaw 1285 (see Attachment 2 for draft Bylaw 1285.18):

- Define Medical Marihuana Production: means the cultivation and production of medicinal marihuana wholly within a facility as permitted under the Marihuana for Medical Purposes Regulations (MMPR), and any subsequent regulations or acts which may be enacted henceforth;
- Amend the definition of “Farm Use” to exclude medical marihuana production;
- Amend the Home Based Business Guidelines to clarify that medical marihuana production is prohibited as a home based business use;
- Amend the General Regulations of Bylaw 1285 to prohibit medical marihuana production use on all lands except where expressly permitted;
- Amend the General Regulations of Bylaw 1285 to establish a 30.0 metre setback from property lines for structures associated with medical marihuana production use in the A-1 zone (existing setbacks within the I-2 zone would apply);
- Amend the A-1 zone to permit medical marihuana production use;
- Amend the I-2 zone to permit medical marihuana production use.

In order to ensure RDN regulations address the MMPR in a timely manner that will be clear to those interested in applying for production licenses under MMPR, staff have prepared draft amendment bylaws for the Board’s consideration.

Policy Implications

While medical marihuana production as proposed under the MMPR does not fit the traditional idea of agriculture, it is acknowledged by the ALC as a “Farm Use” and serves to meet a legitimate commercial demand for a Federally recognized controlled substance. The Regional District of Nanaimo Agricultural Area Plan, Regional Growth Strategy, and Board Strategic Plans all support the creation of a diverse and vibrant economy and include specific policy support for the agricultural economy of the region.

Public Consultation Implications

Should the Board approve first and second reading of the proposed amendment bylaws a public hearing will be scheduled prior to the Board’s consideration of third reading.

Inter-Governmental Implications

As noted previously the Ministry of Agriculture has advised that it is not supportive of establishing setbacks of greater than 30.0 metres for ‘farm uses’ as outlined in the Ministry’s guidelines.

SUMMARY/CONCLUSIONS

Recent changes to Federal legislation surrounding the production and distribution of medical marihuana will have implications for local government from a land use perspective. The new regulation, Marihuana for Medical Purposes Regulations (MMPR), aims to address public health and safety concerns by moving medical marihuana production out of private dwellings and into more secure production facilities.

Following Board direction, staff held an information seminar on the new Marihuana for Medical Purposes Regulations on October 22, 2013. Following the seminar, staff reviewed options for increasing the minimum required setback for structures used for medical marihuana production on ALR lands, and considered options for accommodating the use on lands zoned for medium and heavy industrial uses.
With respect to setbacks, Ministry of Agriculture staff have indicated that they would not likely support the establishment of setbacks of greater than 30.0 metres for medical marihuana production facilities. As such, staff are recommending zoning bylaw amendments that will define medical marihuana production, prohibit the use as a home based business, and permit it as a use exclusively on lands within the Agricultural Land Reserve with Bylaw 500 and on lands zoned A-1 and I-2 within Bylaw 1285. Structures necessary for medicinal marihuana production would be subject to a 30.0 metre setback which is consistent with Ministry of Agriculture guidelines for establishment of bylaws for intensive agriculture.

With respect to permitting medical marihuana production on industrial zoned lands, staff are proposing amendments to Bylaw 1285 to permit medical marihuana production on Industrial 2 (I-2) zoned lands. The majority of I-2 zoned lands are situated away from residential properties and have good access to the Alberni Highway. The I-2 zoning currently permits product manufacturing and processing uses, which are generally consistent with the activities associated with medical marihuana production facilities under the MMPR. Staff are not recommending amendments to Bylaw 500 to permit medical marihuana production facilities on industrial lands at this time, as the distribution of these lands potentially places them within close proximity to developed residually zoned properties. Additionally, the medium and heavy industrial zoned parcels in Bylaw 500 vary widely by parcel size and are not equally well served by highway access.

Interested parties that wish to establish a medical marihuana production facility on lands not zoned for the use can pursue a zoning amendment application. Zoning amendment applications would provide the Board and community with an opportunity to consider the individual merits of each proposal through public consultation and impact assessments.

In reviewing the proposed bylaw amendments, staff have determined that the recommended amendments are consistent with RDN policy. As such, staff support the proposed bylaw amendments as presented. Staff recommend the Board support the proposed bylaw amendments in order to address the MMPR in a timely manner which will provide clarity and certainty where medical marihuana production facilities are permitted. Should the Board choose to adopt zoning regulations related to MMPR, staff further recommend that a review be undertaken one year following the adoption of the regulation to allow the Board to consider whether further regulatory amendments are required following full transition to the MMPR from the current regime after March 31, 2014.

RECOMMENDATIONS

1. That the Board direct staff to prepare land use regulation amendments to address the Marihuana for Medical Purposes Regulations in order to limit the location of medical marihuana production facilities to parcels in the Agricultural Land Reserve (ALR) for Bylaw 500.

2. That the Board direct staff to prepare land use regulation amendments to address the Marihuana for Medical Purposes Regulations in order to limit the location of medical marihuana production facilities to parcels within the A-1 and I-2 zones for Bylaw 1285.

3. That “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.387, 2013”, be introduced and read two times.

4. That the Public Hearing on “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.387, 2013”, be chaired by Chairperson Stanhope or his alternate.
5. That “Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285.18, 2013”, be introduced and read two times.

6. That the Public Hearing on “Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285.18, 2013”, be chaired by Director Fell or his alternate.

Report Writer

Manager Concurrence

General Manager Concurrence

CAO Concurrence
The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

A. This Bylaw may be cited as “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.387, 2013”.

B. The “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”, is hereby amended as follows:

1. Under PART 2, INTERPRETATION, DEFINITIONS by inserting the following into the sixth line of the first paragraph of the definition of “agriculture” after “but excludes animal care”:

“, medical marihuana production except on lands located within the agricultural land reserve,”

2. By adding the following definition after the definition of “medical health officer”:

“medical marihuana production means the cultivation and production of medical marihuana wholly within a facility as permitted under the Marihuana for Medical Purposes Regulations (MMPR), and any subsequent regulations or acts which may be enacted henceforth.”

3. Under PART 3, LAND USE REGULATIONS, SECTION 3.3 GENERAL REGULATIONS by adding the following new text to Section 3.3.12 b) xxviii):

“xxix) medical marihuana production”

4. Under PART 3, LAND USE REGULATIONS, SECTION 3.3 GENERAL REGULATIONS by adding the following new text to Section 3.3.14:

“14) Farm Use Regulations

On lands located within the Agricultural Land Reserve the following activities are permitted farm uses in accordance with the Agricultural Land Reserve Use, Subdivision and Procedure Regulation and are subject to the following regulations:

c) Medical Marihuana Production

Medical Marihuana Production is permitted on land located within the Agricultural Land Reserve if:

i) The production of medical marihuana is contained wholly within licensed facilities as permitted by the Marihuana for Medical Purposes Regulation (MMPR).
ii) The minimum setback for all structures associated with medical marihuana production is 30.0 metres from all property lines.

Introduced and read two times this ___ day of ______ 20XX.
Public Hearing held this ___ day of ______ 20XX.
Read a third time this ___ day of ______ 20XX.
Approved by the Minister of Transportation and Infrastructure pursuant to the Transportation Act this ___ day of ______ 20XX.
Adopted this___ day of ______ 20XX.

______________________________  ______________________________
Chairperson                     Corporate Officer
The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

A. This Bylaw may be cited as “Regional District of Nanaimo Electoral Area ‘F’ Zoning and Subdivision Amendment Bylaw No. 1285.18, 2013”.

B. The “Regional District of Nanaimo Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285, 2002”, is hereby amended as follows:

1. Under SECTION 2, GENERAL REGULATIONS, 2.4 Prohibited Uses by adding the following text after Section 2.4 s):

   “t) medical marihuana production.”

2. Under SECTION 2, GENERAL REGULATIONS, 2.9 Setbacks by adding the following text after Section 2.9 c):

   “d) All buildings and structures used for medical marihuana production on lands within the A-1 zone shall be setback a minimum of 30 metres from all lot lines.”

3. Under SECTION 2, GENERAL REGULATIONS, 2.15 Home Based Business – Regulations by adding the following text after Section 5 p):

   “q) medical marihuana production.”

4. Under SECTION 4, ESTABLISHMENT OF ZONES, 4.1 A-1 – Agriculture 1 by adding the following text after Section 4.1.1 b) Farm Use:

   “c) Medical Marihuana Production”

5. Under SECTION 4, ESTABLISHMENT OF ZONES, 4.1 A-1 – Agriculture 1 by inserting the following into Section 4.1.3 Regulation Table after “g) Minimum Setback of all buildings or structures”:

   “used for medical marihuana production”

6. Under Section 4, ESTABLISHMENT OF ZONES, 4.8 I-2 – Industrial 2 by inserting the following text after Section 4.8.1 o) Mini-storage:

   “p) Medical Marihuana Production”
7. Under SECTION 5, DEFINITIONS by inserting the following text at the end of the definition of “farm use”:

“and excludes medical marihuana production;”

8. Under SECTION 5, DEFINITIONS by adding the following definition after the definition of “Marshalling Yard”:

“Medical Marihuana Production means the cultivation and production of medical marihuana wholly within a facility as permitted under the Marihuana for Medical Purposes Regulations (MMPR), and any subsequent regulations or acts which may be enacted henceforth.”

Introduced and read two times this ___ day of ______ 20XX.

Public Hearing held this ___ day of ______ 20XX.

Read a third time this ___ day of ______ 20XX.

Approved by the Minister of Transportation and Infrastructure pursuant to the Transportation Act this ___ day of ______ 20XX.

Adopted this___ day of ______ 20XX.

__________________________________________  ________________________________
Chairperson                                      Corporate Officer