

APPENDIX M – FOUR (4) AGRICULTURAL USE TYPES ANALYSIS

1. The Development Officer employed four (4) agricultural use class definitions to issue the permit for the primary use on-site. See Appendix H.
2. Prior parts of this submission have already outlined the Operative and Interpretive Clauses of the Zoning By-law. See Appendix K.
3. The usual and customary meaning of **agriculture** is focused on the working of soil and other facilities to produce crops, animals and trees for human consumption or further refinement into products; the products are typically perishable and as such typically cannot be preserved for a long time, with certain exceptions. The main understanding is that the product is raw and produced from the land. Merriam-Webster defines Agriculture as, “the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products”.
4. By comparison, the usual and customary meaning of **industry** is focused more on refining and processing raw materials into products for sale and manufacturing instruments to aid in the harvesting, packaging, and producing of a finished product; industrial products, can be easily stored. Merriam-Webster defines Industry as, “manufacturing activity as a whole”.
5. Under **Agri-Business**, as defined under Appendix K, the key factor is that the operation must be a commercial establishment. Further, the word *includes* shall not limit a term to the specified examples, but is intended to extend the meaning to all instances or circumstances of the like kind or character; as such the listed uses do not create their products on-site. Machinery repair shops do not manufacture their own repair instruments in order to conduct the operation of repairing farm machinery; bulk fuel stations do not process and refine fuel on-site in order to sell fuel specialized for farm use; and the like. The Development use processes peat, however, the product is sold at an off-site commercial venue (third party seller) and is available to the general public for purchase. There are no sales of the end-product from the Subject Land. Farmers/ professional growers are not coming and going to the property to purchase their product from the Subject Land.
6. Under **Agricultural Activities**, as defined under Appendix K, the common definition of Horticulture is
7. Horticultural Industry may use the Proponent’s product, however, the activity of horticulture is the growing of plant materials. The purchase of peat for their use does not make the processing of peat an Agricultural Activity synonymous with Horticulture. Horticulture is a separate activity from the processing of raw peat into a sellable product.
8. - Under **Agricultural Product Storage**, the product is raw and stored. Future use, delivery, or processing is not described as being on-site. The Development use takes raw material, adds chemicals and other additives, processing it into a finished product for delivery to commercial markets.
 - a. **“Agricultural Product Storage** means the temporary storage of any agricultural product for future use, delivery or processing as per *The Environment Act*”.
 - b. **“Agricultural Product Storage”** is the storage of agricultural products, as per *The Environment Act*, for one of three purposes:

1. Future use,
 2. Delivery, or
 3. Processing
9. In the first instance of purpose under point 7(b), “future use” implies that the product being stored will be used at a future date on the same site; in the second instance, it implies that the product is being stored for “delivery” off-site; in the third instance, it implies that the agricultural produce being stored will undertake “processing” to prepare a sellable farm product for distribution from the farm gate.
 10. As the conjunctive is “or”, under the Zoning Bylaw (1.6.5.b), “...all the connected items, conditions, provisions or events may apply singly or in combination”. The question becomes, what is an **agricultural product** and how does the **Zoning By-law** guide us to better understand those terms?
 11. Under the **Zoning By-law**, “words, phrases and terms defined herein shall be given the defined meaning.” (1.6.1) “Words, phrases and terms neither defined herein nor defined in By-laws of the RM of Springfield shall be given their usual and customary meaning except where, in the opinion of Council, the context indicates a different meaning.” (1.6.2)
 12. As **agricultural product** is not defined under the **Zoning By-law**, the usual or customary applies. Agricultural products are those products which are a result of **agricultural operations**. Under *The Farm Practices Protection Act* and under the *Provincial Planning Regulation M.R. 81/2011*, “**agricultural operation**” means an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward, and includes
 - a. the tillage of land,
 - b. the production of agricultural crops, including hay and forages,
 - c. the production of horticultural crops, including vegetables, fruit, mushrooms, sod, trees, shrubs and greenhouse crops,
 - d. the raising of livestock, including poultry,
 - e. the production of eggs, milk and honey,
 - f. the raising of game animals, fur-bearing animals, game birds, bees and fish,
 - g. the operation of agricultural machinery and equipment,
 - h. the process necessary to prepare a farm product for distribution from the farm gate,
 - i. the application of fertilizers, manure, soil amendments and pesticides, including ground and aerial application, and
 - j. the storage, use or disposal of organic wastes for farm purposes;
 13. Therefore, **Agricultural Products** can be understood to include produce such as grains, seeds, hay, forage, vegetables, fruit, mushrooms, sod, trees, shrubs, flowers, livestock, eggs, milk, honey, fur bearing animals, game birds, bees, fish, and the like, and may include the on-farm processing and utilization of liquid and solid agricultural by-products from livestock production, such as manure and mortalities, as well as from fibre and biofuel processing.
 14. The **Zoning By-law** definition of **Agricultural Product Storage** guides the Development Officer to refer to *The Environment Act*. The intent of *The Environment Act* is “...to develop and maintain an environmental protection and management system in Manitoba which will ensure that the environment is protected and maintained in such a manner as to sustain a high quality of life,

including social and economic development, recreation and leisure for this and future generations, and in this regard, this Act

- a. *is complementary to, and support for, existing and future provincial planning and policy mechanisms;*
- b. *provides for the environmental assessment of projects which are likely to have significant effects on the environment;*
- c. *provides for the recognition and utilization of existing effective review processes that adequately address environmental issues;*
- d. *provides for public consultation in environmental decision making while recognizing the responsibility of elected government including municipal governments as decision makers; and*
- e. *prohibits the unauthorized release of pollutants having a significant adverse effect on the environment."*

15. Under **The Environment Act**, **development** is defined as, *"any project, industry, operation or activity, or any alteration or expansion of any project, industry, operation or activity which causes or is likely to cause*

- a. *the release of any pollutant into the environment, or*
- b. *an effect on any unique, rare, or endangered feature of the environment, or*
- c. *the creation of by-products, residual or waste products not regulated by The Dangerous Goods Handling and Transportation Act, or*
- d. *a substantial utilization or alteration of any natural resource in such a way as to pre-empt or interfere with the use or potential use of that resource for any other purpose, or*
- e. *a substantial utilization or alteration of any natural resource in such a way as to have an adverse impact on another resource, or*
- f. *the utilization of a technology that is concerned with resource utilization and that may induce environmental damage, or*
- g. *a significant effect on the environment or will likely lead to a further development which is likely to have a significant effect on the environment, or*
- h. *a significant effect on the social, economic, environmental health and cultural conditions that influence the lives of people or a community in so far as they are caused by environmental effects;"*

16. **The Environment Act** issues licences for a range of activities that may have adverse environmental impacts, such as, but not necessarily limited to:

- a. The burning of vegetation or the remains of vegetation in connection with agricultural activities and the release of pollutants resulting from that burning;
- b. Wastewater collection and treatment;
- c. Greywater;
- d. Livestock manure and mortalities management
- e. Emissions, such as greenhouse gases
- f. Abatement
- g. Disposal of remnant materials, such as whey
- h. Industrial and Natural Resource activities

17. *The Environmental Act* and *M.R. 163/88, Licensing Procedures Regulation* serve to issue a range of licence classes from 1 through 3 to regulate development. Under the *Classes of Development Regulation, M.R. 164/88* the following definitions relevant to **Agricultural** classification are found:

CLASS 1

"grain elevator" means a facility where grain materials are received, stored or transferred which is located 0.5 km or less from a private residence, other than the residence of the owner of the grain elevator, or from any place where the public is ordinarily permitted access;

"feedmill" means a plant operated for commercial purposes

- (a) where grains are combined with vitamins and minerals to produce animal feeds, and which is located 0.5 km or less from a private residence, other than the residence of the feedmill owner, or from any place where the public is ordinarily permitted access, but does not include a feedmill located on a farm which is used solely for purposes connected with that farm;

"seed cleaning plant" means a plant operated for commercial purposes

- (a) where seeds are cleaned, sized, packaged or otherwise processed, and
- (b) which is located 0.5 km or less from a private residence, other than the residence of the plant owner, or from any place where the public is ordinarily permitted access, but does not include a plant located on a farm which is used solely for purposes connected with that farm;

CLASS 2

"dairy plant" means a plant where milk is processed to produce dairy products;

"food processing plant" means a plant where agricultural products are processed into food;

"meat processing and slaughter plant" means a plant where livestock is slaughtered or meat products are produced or both;

"rendering plant" means a plant where dead animals and inedible animal products are rendered for use in the production of other products;

18. *Licensing Procedures Regulation, M.R. 164/88*

Submission of a proposal 1(1) For the purposes of subsections 10(3), 11(7) and 12(3) of the Act, a proposal for a Class 1, Class 2 or Class 3 development shall contain the following information:

...(j) a description of the potential impacts of the development on the environment, including, but not necessarily limited to the following:

- a. type, quantity and concentration of pollutants to be released into the air, water or land,
- b. impact on wildlife,
- c. impact on fisheries,
- d. impact on surface water and groundwater,
- e. forestry related impacts,
- f. impact on heritage resources,
- g. socio-economic implications resulting from the environmental impacts;

...(k) a description of the proposed environmental management practices to be employed to prevent or mitigate adverse implications from the impacts identified in clause (j) having regard to, where applicable: containment, handling, monitoring, storage, treatment and final disposal of pollutants; conservation and protection of natural or heritage resources; environmental restoration and rehabilitation of the site upon decommissioning; and protection of environmental health;

19. Under *The Environmental Act*, peat harvesting is specifically referred to as follows:

a. **12.2 Peat harvesting licence to be obtained before development licence**

A licence, or an alteration to a licence issued under section 11, in respect of a development to harvest peat must not be issued unless the applicant has first obtained a peat harvesting licence under *The Peatlands Stewardship Act*.

20. There is no harvesting being conducted on-site.

21. The Processing and Packaging of peat moss where no harvesting is done on-site is not specifically addressed under *The Environment Act Regulation 164/88*.

22. As per correspondence obtained through a FIPPA request, Michelle Erb, an Agricultural Specialist with Manitoba Agriculture dated May 13, 2019, the licencing requirements for a peat processing plant typically fell under “**manufacturing and industrial plant**”, which under *M.R. 164/88* is defined as, “a plant which manufactures, handles or processes a product and which causes the discharge of a pollutant into the air, water or soil;”, and would also need a Class 2 Development Licence. See Addendum N.

23. A Regulation under *The Environment Act*: the *Classes of Development Regulation MR 164/88*, lists “mineral” to mean “all non-living substances formed by the processes of nature which occur on or under the surface of the ground irrespective of chemical or physical state, and includes peat and peat moss, but does not include agricultural soil, surface water or ground water”.

24. Under *the Peatlands Stewardship Act* “peat harvesting” means “to remove peat from land for commercial purposes and includes any activity undertaken on or in respect of the peatland to facilitate the removal of peat”. Peat, therefore, is harvested for “commercial purposes”, not “agricultural purposes”. Even if harvesting does not occur on-site, peat becomes a commercial medium once harvested.

- a. *The Peatlands Stewardship Act* acknowledges Peat is harvested for Commercial purposes;

- b. *The Classes of Development Regulation MR 164/88* identifies peat as a mineral.
25. The Province issued the Environmental Licence under a "**bulk materials handling facility**" as a Class 1 Manufacturing. See Addendum O.
26. Per *M.R. 164/88*, **Bulk Materials Handling Facility** means a facility operated for commercial purposes for the blending, handling, sorting, storage, treatment, transfer or sale of bulk materials such as sand, gravel, crushed rock, top soil, fertilizer, pesticides or other crop protection products, but does not include a pit or quarry or bulk materials handling on a farm for the sole purpose of serving that farm.
27. As the Zoning By-law directs the Development Officer to refer to *The Environment Act*, and as that Act deems the use to fall under a Manufacturing Class (not an Agricultural Class), and as the definition refers to commercial purposes and specifically excludes "...bulk materials handling on a farm for the sole purpose of serving that farm", the understanding should be that the Environmental Licence is not being issued for Agricultural purposes, therefore, the Horticultural Mix Plant does not fit within the definition of **Agricultural Product Storage**.
28. Under **Agriculture Support Industry**, the key factor is that the use is deemed an industry, commercial service or retail business **and** (emphasis mine) the main consumer should be farmers. Bags of processed peat are sold widely to non-farmers (also called "non-professional growers") through national chains, such as Home Depot, Lowe's, and the like, and through gardening centres. *Includes* shall not limit a term to the specified examples, but is intended to extend the meaning to all instances or circumstances of the like kind or character; as such, the processing of peat moss is not similar in kind or character. Non-professional growers do not employ the services of aerial spraying companies, use the services of grain elevators, feed mills and / or seed plants; only farmers do so. The examples provided within the definition are all very clearly for farm and farm-related use; they are not equal to public consumption and use of the processed product.