



BC FARM INDUSTRY
REVIEW BOARD

April 23, 2026

Files: N2501

DELIVERED BY E-MAIL

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Dear Parties:

**RE: Greenhouse Grown Foods Inc. & Windset Farms (Canada) Ltd. v BC
Vegetable Marketing Commission**

Introduction and Procedural Background

The British Columbia Farm Industry Review Board (**BCFIRB**) received this appeal on February 7, 2025 from Greenhouse Grown Foods Inc. (**GGFI**) and Windset Farms (Canada) Ltd. (**Windset**) with respect to the January 22, 2025 decision of the BC Vegetable Marketing Commission (the **Commission**). In that decision, the Commission designated MPL British Columbia Distributors Inc. (**MPL**) as an agency and granted Jem-D International Inc. dba Red Sun Farms (**Red Sun**) a conditional agency designation under section 8 of the *Natural Products Marketing (BC) Act* (**NPMA**) Regulations.

Both agency designations required prior written approval from BCFIRB in the exercise of its supervisory authority. On February 21, 2025, BCFIRB deferred this appeal pending completion of that supervisory process as further described below. A process letter dated December 29, 2025 later sought submissions from the parties on whether any live issues remained in this appeal, and specifically requested that GGFI and Windset address:

1. What, if any, issues remain that were not addressed by BCFIRB in its supervisory decision, and
2. To provide their positions on whether this appeal can proceed prior to the conclusion of the BC Court of Appeal (BCCA) proceeding¹.

¹ *Windset Farms (Canada) Ltd. and Greenhouse Grown Foods Inc. v. British Columbia Farm Industry Review Board et al*; BCCA Court File No. CA50396

The procedural history relevant to those questions is straightforward. With respect to MPL, BCFIRB issued an interim decision on May 22, 2025 and a final supervisory decision on July 11, 2025 confirming approval of MPL's designation. GGFI and Windset did not apply for judicial review of that decision.

With respect to Red Sun, the supervisory panel determined that the Commission's request for prior approval was premature and directed the Commission to complete its agency designation process. The Commission then undertook what it described as "Phase II" and, on August 20, 2025, issued a final decision rescinding Red Sun's conditional agency designation on the basis that Red Sun failed to satisfy the secured production conditions which were required pursuant to the Phase I decision granting conditional agency status. Red Sun subsequently appealed that August 20, 2025 decision, and that appeal remains active before BCFIRB.

It is against that background that the Panel must decide whether there remain any live issues in this appeal that require determination.

Summary of Submissions

GGFI and Windset

In their January 16, 2026 submissions, GGFI and Windset acknowledge that they did not judicially review the July 11, 2025 decision confirming approval of MPL's agency designation, and that no issues remain in this appeal with respect to MPL. They submit that the only issues that remain on the appeal are those concerning Red Sun's conditional designation.

In their submission, those issues were not resolved by the Commission's August 20, 2025 Phase II decision because that decision did not address the underlying process concerns raised in this appeal. More particularly, GGFI and Windset submit that the Commission's conditional designation of Red Sun was arbitrary, inconsistent with prior Commission decisions, and non-compliant with the governing statutory scheme, including sections 8 and 9 of the Commission's Agency Order, later replaced by the relevant provisions of the Commission's General Order. They further submit that Red Sun's application was deficient from the outset because it did not include the producer commitment material that the applicable order required.

GGFI and Windset further state that the Commission failed to explain why Red Sun's 2024 application was permitted to proceed on a conditional basis when an earlier Red Sun application had been summarily dismissed for substantially the same deficiency. In that respect, GGFI and Windset submit that the Commission's Phase II decision did not provide clarity as to when the Commission will treat producer commitments as "essential prerequisites", when it may permit an applicant to satisfy requirements over time, and on what principled basis it may waive or defer strict compliance with the requirements for designation.

GGFI and Windset also argue that this appeal can proceed before the conclusion of the BCCA proceeding because, in their submission, the two matters concern different

decision-makers, different exercises of authority, and different legal issues. They state that the BCCA matter concerns the scope of BCFIRB's supervisory jurisdiction, whereas this appeal concerns the Commission's process for assessing agency applications and, in particular, whether conditional agency designation was lawfully available in the circumstances of Red Sun's application.

The Commission

In its January 21, 2026 submissions, the Commission takes the position that no live issues remain in this appeal. The Commission submits that the August 20, 2025 Phase II decision rescinded Red Sun's conditional agency designation after the Commission found that Red Sun had failed to satisfy the secured production conditions. In the Commission's submission, that rescission means there is no longer any subsisting designation or operative decision respecting Red Sun for this Panel to review in this appeal. The Commission therefore says that the dispute over Red Sun's suitability as an agency has been resolved and that any determination by BCFIRB in this appeal would have no practical effect on the rights of the parties.

The Commission characterizes the appeal as moot and submits that the BCFIRB should decline to provide what would amount to an advisory opinion on hypothetical future regulatory processes. The Commission states that GGFI and Windset have, in substance, already obtained the result they sought in relation to Red Sun, namely the rescission of the conditional designation. As such, the issues that GGFI and Windset now seek to pursue are abstract questions about future policy, process, or guidance, rather than live issues on appeal arising from an existing operative order.

In the alternative, the Commission submits that if the Panel concludes that a live issue does remain, the appeal should remain in abeyance pending the outcome of the BCCA proceeding because the legality and status of conditional or probationary regulatory tools are under consideration in that court.

Reply

In their February 4, 2026 reply, GGFI and Windset further submit that the appeal is not moot notwithstanding the Commission's August 20, 2025 Phase II decision. They argue that Red Sun's separate appeal of the Phase II decision places the validity of the Phase I conditional designation back in issue and therefore preserves a live controversy. In the alternative, they submit that even if the appeal is technically moot, BCFIRB should exercise its discretion to hear it, relying on the continuing adversarial context, judicial economy, and the public interest in clarifying the lawful scope and exercise of conditional agency designations.

Decision

Remaining Live Issues

The Panel agrees with the Commission that there are no live issues remaining between the parties in this appeal.

First, as acknowledged by the parties, there are no remaining live issues with respect to MPL. BCFIRB issued its final decision on July 11, 2025 confirming approval of MPL's designation and no appeal was taken from that decision. GGFI and Windset expressly accept that no issue concerning MPL remains before BCFIRB. That aspect of the appeal is therefore spent.

Second, with respect to Red Sun, the decision that was the subject of this appeal no longer has any present operative effect. Whatever controversy existed when the appeal was commenced arose from the Commission's January 22, 2025 decision to grant Red Sun a conditional agency designation. The Commission has since completed the further process directed by BCFIRB and, on August 20, 2025, rescinded that conditional designation after determining that Red Sun failed to satisfy the secured production conditions. As matters presently stand, Red Sun is not a designated agency and there is no extant conditional designation in force.

In these circumstances, this appeal no longer engages a present controversy that affects the legal rights of the parties. A decision in this appeal would not alter MPL's status, which has already been confirmed, and it would not alter Red Sun's status, because the conditional designation under challenge has been rescinded. The practical dispute raised by the appeal has therefore disappeared.

The Panel does not accept that the existence of Red Sun's separate appeal of the August 20, 2025 Phase II decision is sufficient to preserve a live controversy in this appeal. That separate proceeding may raise its own issues and may, depending on its outcome, affect the status of Red Sun in the future. However, the fact that another appeal is pending does not change the present state of affairs in this matter. In this appeal, the Panel is concerned with whether there remains an operative decision whose adjudication will presently affect the rights of the parties. There is not. The possibility that Red Sun's separate appeal may later produce some different outcome does not convert this appeal into a presently live dispute.

The Panel also does not accept GGFI and Windset's submission that this appeal should continue in order to provide clarity about the Commission's process, including when producer commitments are essential prerequisites, when an applicant may be permitted to meet requirements over time, or when the Commission may depart from prior practice. Those questions are framed at a level of generality that extends beyond the disposition of any presently operative order in this appeal. In substance, the relief now sought is guidance on future applications and future exercises of regulatory discretion. That is not the function of an appeal where the underlying decision no longer has operative effect.

Discretionary Considerations

GGFI and Windset rely on the authorities provided concerning mootness to submit that, even if the original controversy has become academic, BCFIRB should nevertheless exercise its discretion to hear the appeal. The Panel is not persuaded that such a course is warranted here.

The Panel accepts that the parties remain adverse to one another in a broader sense and that issues concerning agency designation may continue to arise in the greenhouse vegetable sector. However, those considerations do not justify proceeding to determine an appeal that no longer bears on any operative designation or present legal relationship between these parties in this file. The more concrete dispute respecting Red Sun now lies, if anywhere, in Red Sun's separate appeal of the August 20, 2025 Phase II decision. To continue with this appeal notwithstanding the rescission of the decision under challenge would risk duplicative proceedings and would invite the Panel to pronounce on issues in the abstract or on issues that may be addressed, if necessary, in that separate appeal or in future matters where they arise on a live factual record.

Nor does judicial economy favour continuation of this appeal. In the circumstances now before the Panel, proceeding further would not resolve an extant controversy. Rather, it would require the Panel to determine questions of general guidance detached from any presently operative order. That is not an efficient or appropriate use of BCFIRB's appellate function.

Given the Panel's conclusion that there are no live issues remaining, it is unnecessary to determine the parties' alternative positions regarding whether this appeal should proceed before the conclusion of the BCCA proceeding. However, we note that, as argued by GGFI and Windset, the question in the BCCA proceeding is whether BCFIRB is required to follow the Commission's general orders. That issue would not arise in this appeal to BCFIRB, which is concerned with the Commission's compliance with the general orders.

Conclusion

For all of the foregoing reasons, the Panel concludes that no live issues remain between the parties in this appeal. The appeal is therefore dismissed.

Dated at Victoria, British Columbia this 23rd day of April 2026.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



David Zirnheld, Presiding Member

cc: Wes Shoemaker, Chair, BC Vegetable Marketing Commission