

BRITISH COLUMBIA WINE AUTHORITY

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Recommendation to the Minister of Agriculture Regarding the Potential Designation of a “Golden Mile Bench” Sub-Geographical Indication

October 15, 2014

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Executive Summary

Under section 28 of the *Wines of Marked Quality Regulation* (the “**Regulation**”) six specific geographical indications (“**GIs**”) have been prescribed for use as appellations of origin on BC wines of distinction (including all BC VQA wines). These GIs include “British Columbia”, “Similkameen Valley” and “Okanagan Valley”. Sections 27, 53 and 54 of the Regulation then provide certain rules regarding the permitted and required uses of these prescribed GIs. In particular, only qualifying BC wines of distinction are permitted to utilize any of the prescribed GIs as appellations of origin, and all BC VQA wines must display one of the prescribed GIs.

It was not intended that the list of prescribed GIs be restricted for all time. Rather, under section 29, the Regulation provides that the Authority is to develop a process for recognizing and prescribing entirely new GIs, as well as sub-divisions of the existing prescribed GI (subdivisions of existing prescribed GIs are referred to in the Regulation as Sub-Geographical Indications or “**Sub-GIs**”), and making recommendations to the Minister of Agriculture (the “**Minister**”) for appropriate amendments to the Regulation.

On May 20, 2014 the Authority received an application from a group of proponents requesting that a new Sub-GI under the name of the “Golden Mile Bench” be prescribed in the Regulation (the “**Application**”).

As is further detailed below, following its review of the Application, the Authority has concluded that the Application meets the requirements of section 29 and is recommending to the Minister that the Application, as submitted, be approved and that a new Sub-GI of “Golden Mile Bench”, with boundaries as they have been proposed in the Application, be prescribed through an amendment to section 28 of the Regulation.

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1. Requirements for Approval and the Authority's Review and Assessment of those Requirements

While subsection 29(2) of the Regulation requires the Authority to establish a process to review applications for new GIs and Sub-GIs, subsection 29(3) provides a non-exhaustive list of the criteria that the Authority must specifically consider when reviewing any such application. These required criteria are:

- (a) The proposed GI or Sub-GI must represent an area that is geographically distinct and has clearly defined boundaries;
- (b) Grape production within a proposed GI or Sub-GI must have reached commercially viable levels;
- (c) At least two thirds of the Members within the proposed GI or Sub-GI, who produce at least two thirds of the total production of wine made from grapes grown in that GI or Sub-GI must have voted, by ballot, in favour of the proposed GI or Sub-GI;
- (d) Appropriate consultations must have taken place within the region of the proposed GI or Sub-GI and there must not have been any credible objections that claim that the proposed GI or Sub-GI is not distinctive; and
- (e) Wines produced in a proposed Sub-GI must consistently demonstrate distinctive characteristics related to shared soil, topography and climate, enhanced by the adoption of specific production practices.

The Authority interprets the requirements of subsection 29(3) as not being exhaustive. The application process is application-specific and, consistent with its overall duties and functions, the Authority takes other relevant factors into account in its review of any application. These other factors include a consideration of the name being proposed for the GI/Sub-GI. The Authority will review the proposed name to ensure that it is reasonable and appropriately descriptive of the actual geographical location of the area under consideration and that it will not be confusing to consumers because of a lack of any connection to the GI/Sub-GI's actual location, or it has an unnecessary or inappropriate similarity to other geographic areas or place names with no connection to the actual location.

In interpreting and applying the requirements of subsection 29(3), the Authority is generally guided by the following considerations:

- Section 29 generally exists to provide a process to create new GIs/Sub-GIs, not to prevent their creation. Therefore the Authority considers that its requirements must be interpreted in a manner that is generally facilitative of that objective, and not should not

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be interpreted so as to create thresholds that are so high as to never be realistically attainable;

- British Columbia's wine regions are relatively new by world standards, with relatively few vines in excess of 30 years of age. Generally, vineyards tend to express greater *terrior*-related effects over time, as the vines age and producers identify distinctive characteristics and work to enhance *terrior* through adoption of specific *terrior*-enhancing production practices. In contrast, many Old World appellations have been producing wine for many decades, in some cases centuries, and consequently producers in these appellations have been able to identify, develop and demonstrate distinctive *terrior*-related characteristics through many dozens if not hundreds of vintages. That being the case, the Authority is of the view that it would not assist the overall development of the BC wine industry to apply overly rigorous "Old-World-style" appellation requirements to a relatively new and still developing industry; and
- The development of new Sub-GIs is, in fact, inhibited by the current regulatory structure in that producers are not permitted to apply any unprescribed GIs or Sub-GIs to BC VQA wines. This, in the Authority's view, clearly acts to discourage producers from developing single-Sub-GI wines prior to a Sub-GI being prescribed as they cannot be labelled as such and therefore the extra time and effort required to produce such wines often cannot be commercially justified, at least over the short and medium term. This, in turn, means that the considerable dedicated long-term effort by a group of producers to identify, enhance and then demonstrate distinctiveness, as currently required, must necessarily take place outside of normal commercial production and with only limited and speculative long-term return. The Authority therefore believes that the requirements should be interpreted in a way that does not further discourage such efforts.

These considerations are not only taken into account in the interpretation of the basic requirements of section 29, but they also affect the "level of proof" that proponents need to provide in any application. To the extent that proponents are required to demonstrate that certain requirements of subsection 29(3) are met, it is the Authority's view that such requirements must only be demonstrated "on a balance of probabilities". Absolute scientific certainty or proof beyond all reasonable doubt is not required.

Each of the elements specified in subsection 29(3) as they are applied to the Application are reviewed in turn below. As part of the discussion concerning each element, an overview of how the Authority generally interprets and applies each element is also provided.

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2. The proposed GI or Sub-GI must represent an area that is geographically distinct and has clearly defined boundaries

2.1 Overview of the Authority's Procedures

Paragraph 29(3)(a) requires that a proposed GI or Sub-GI must represent an area that is geographically distinct, with clearly defined boundaries. With regard to this requirement, the Authority will review the area of the proposed GI or Sub-GI with regards to its geographic distinctiveness for viticultural purposes. This will include a consideration of all applicable geographic elements such as soils, topography and meso-climate, along with the appropriateness and administrative feasibility of the boundaries being proposed. Underlying paragraph 29(3)(a) is the belief that geographic differences can result in subtle differences in growing conditions, which in turn affect flavour profiles in grapes and potentially produce organoleptically distinct wines.

The Authority interprets geographic distinctiveness to mean that at least some geographical aspects of the proposed area are distinct relative to the areas immediately adjacent to the proposed GI/Sub-GI. It is those aspects of geographic distinctiveness that must then be used to define the proposed boundaries – that is, the proposed boundaries cannot be arbitrary, or even approximate, but instead must definitively outline the unique geography of the proposed area of the GI/Sub-GI. Those boundaries must also be clearly delineated and practical for the Authority to administer from a regulatory compliance and audit perspective.

The specific factors that may be necessary to prove geographic distinctiveness are highly variable and will be unique to each area and each application. Consequently, they can only be assessed on a case-by-case basis. However, a proposed area need not be distinct from immediately adjacent areas in all geographic aspects. In fact, such a situation of absolute distinctiveness will rarely be present in nature. It is to be expected that in most if not all cases a proposed area will have at least some geographical aspects in common with its immediately adjacent areas. For example, many appellations within the Côte d'Or in Burgundy clearly share some important geographic features with their immediate neighbours (meso-climate and growing degree days, for example) but are also geographically distinct from their immediate neighbours in other respects (such as slope, drainage, aspect or soil type) which results in subtle differences in growing conditions and which, over the course of hundreds of vintages, have been shown to produce organoleptically distinct wines.

Importantly, paragraph 29(3)(a) does not require that distinctiveness be demonstrated on a qualitative basis – that is, a proponent is specifically **not** required to demonstrate that the area of a proposed GI/Sub-GI is superior to its adjacent areas for grape growing in some respect. The Authority does not require nor undertake any such qualitative assessment of geographic factors, nor can approval of an application be taken to be, or be portrayed by a proponent to

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be, confirmation by the Authority that a proposed area is superior in some respects to other areas. “Distinct” in this context simply means “different”. It does not mean “better”.

A proponent is required to initially submit appropriate evidence that is sufficient to reasonably demonstrate the claimed geographic distinctiveness of the proposed area. Such evidence is expected to normally include expert opinion, produced and provided at the proponent’s expense. In conducting its review of the information provided by the proponent the Authority may also consult its own independent expert to review and evaluate that information if considered necessary in the circumstances, but the Authority does not initially undertake this work on a proponent’s behalf.

2.2 Details of the Application

With regard to this requirement the Application relies on the work of Mr. Scott Smith, a well-known Soil Scientist with Agriculture Canada’s Pacific Agri-Food Research Centre in Summerland (“PARC”), and the Application includes an extensive report on the area of the proposed Sub-GI and its boundaries that has been prepared by Mr. Smith.

The stated purpose of Mr. Smith’s work was to generate a set of boundaries for the proposed Sub-GI that were based on geographic features relating to landform, topography and soils, that are clearly discernible and scientifically defensible, and that capture what are considered by the proponents to be distinct growing conditions that exist on the fans and benches along the West side of Okanagan Valley in the Golden Mile area.

To summarize Mr. Smith’s report, the primary basis of the proposed Sub-GI is that meso-climatic conditions on landforms that are elevated above the valley floor are sufficiently different that they result in distinct growing conditions as compared with immediately adjacent areas, as well as other areas of the Valley. “Elevated” here refers to prominent landform features in the Golden Mile area on the West side of the Valley that rise 40 to 100 metres above the Valley floor. These specific fans and benches are sloped and shaded in ways that enhance temperature and radiation inputs and prevent the pooling of cold air over them.

In terms of the proposed boundaries, the general method used to delineate the proposed Sub-GI was to follow the boundaries of the relevant elevated landforms, bounded by the geographic extent of the Testalinden, Hester, Tinhorn and Reid Creek alluvial fans. The minimum elevation limit of the proposed area is defined by the elevation at the base of the major escarpments of Hester and Tinhorn Creek fans, with the maximum elevation being defined by the apex of the Reid Creek fan, the highest point of the alluvial fan complex at approximately 510 metres in elevation. There are a few segments of the proposed boundary where the landform is not prominent or readily observable. In these few areas elevation contours have been used as a proxy. When such contours have been used and it was practical to do so, proposed boundaries

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follow other prominent physical features such as roads (which themselves usually follow the contours of the landform).

2.3 The Authority's Assessment

The Authority undertook an extensive review and assessment of the information provided by the proponents in support of their claim to geographic distinctiveness. This included a lengthy interview of Mr. Smith wherein the Board fully examined the methodology utilized by Mr. Smith and his conclusions. In addition, the Board visited the area of the proposed Sub-GI accompanied by Mr. Smith and traced the path of almost the entire proposed boundary so as to fully understand the rationale behind all of the decisions made by Mr. Smith in establishing the proposed boundary.

Mr. Smith is an acknowledged expert in soils and soil science, particularly with respect to grape growing in the Okanagan Valley. The Board found him to be objective and credible. There is likely no better qualified individual in the Okanagan Valley to opine on these issues. The science on which he based his conclusions is considered to be sound and the Board found no reason to question his judgement or conclusions regarding the geographic distinctiveness of the proposed Sub-GI in any respect.

The proponents do not claim that the proposed Sub-GI is distinct in all geographic respects, only in regards to those elevated landforms upon which the proposal is primarily based. The proponents claim that, because of their structure, aspect and slope, the climatic conditions on those landforms are sufficiently different as compared with immediately adjacent areas as to result in distinct growing conditions. Mr. Smith fully supports that claim. As noted, it is the Authority's view that a proposed area need not be distinct from immediately adjacent areas in all geographic aspects. The Authority fully expects that in most cases a proposed area will share at least some geographical aspects with its immediately adjacent areas. Such is the case here. The proposed area does have some geographic aspects in common with its neighbours, including growing degree days, hours of sunshine, annual rainfall and, in some cases, soils. However, the geographic differences claimed by the proponents are startlingly clear and plainly support the conclusion that the proposed area is geographically distinct in spite of some shared aspects.

It is also important to note that the Authority is making no qualitative assessment here. The Authority has only concluded that, based on the evidence provided, that the proposed Sub-GI is geographically distinct from the areas adjacent to it. It offers no opinion here as to the qualitative value of those differences.

The boundaries of the proposed Sub-GI were substantially based on the claimed geographic distinctiveness except for those few areas of the boundary where it was not practical to do so. In such areas an appropriate proxy of elevation was used. The boundaries are thus clearly

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defined and appear to be practical for the Authority to administer from a regulatory compliance and audit perspective.

2.4 The Authority's Conclusion

The Authority has concluded that the Sub-GI as proposed represents an area that is geographically distinct and has clearly defined boundaries. The requirements of paragraph 29(3)(a) are thereby met.

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3. Grape production within a proposed GI or Sub-GI must have reached commercially viable levels

3.1 Overview of the Authority's Procedures

Paragraph 29(3)(b) requires that grape production within a proposed GI or Sub-GI must have reached commercially viable levels. The Authority will therefore review the current grape production within the area of a proposed GI/Sub-GI to determine if production is at a "commercially viable" level. The Authority interprets "commercially viable" to mean that vineyard(s) located within the proposed area are already under commercial production and that production levels are such as to generate commercial quantities of wine. If the only vineyard(s) located within the area have only recently been planted and are not yet producing a commercial crop, the Authority will not consider production to have reached a commercially viable level until such time as commercial-level production begins. Further, the Authority will assess the total acreage of the proposed GI/Sub-GI versus the total acreage under vines, as well as the dispersion of vineyards throughout the proposed area. Insignificant total vineyard area, as compared to the total area, or lack of significant dispersion throughout the proposed area may cause the Authority to question whether production has actually reached commercially viable levels or whether the proposed boundaries are appropriate in the circumstances. To aid in its determination of commercial viability the Authority may refer to records and information it collects for any purpose under the Regulation.

3.2 Details of the Application

The Application states that "based on the number and size of wineries within the proposed boundaries, it proves that the proposed region has commercially viable levels of grape production".

3.3 The Authority's Assessment

Paragraph 29(3)(b) requires the Authority to assess "grape production" within a proposed GI/Sub-GI and not "wine production". The number of wineries that may be located within the area of a proposed GI/Sub-GI does not provide any directly relevant information to the Authority concerning commercial grape production within the area, as wineries are often situated in locations geographically distinct from vineyards. This being the case, the Application did not provide the Authority with sufficient information to determine whether this factor was met.

The Authority therefore used other sources of information available to it. First, as was plainly evident to the Board from its site visit, the proposed Sub-GI is extensively planted with a significant number of grape vineyards currently under commercial production. Second, using information available to the Authority through its Grape Grower Registry and other sources, the

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Authority has estimated that the total area of the proposed Sub-GI is approximately 1580 acres, with approximately 790 acres currently under vineyards. Thus, vineyards occupy approximately 50% of the total area of the proposed Sub-GI and are widely dispersed throughout its entire area. Using a generally recognized production average in BC of four tons of grapes per acre, this equates to an annual grape production of approximately 3,160 tons, a quantity of grapes sufficient to generate in excess of two million bottles of wine (at 720 bottles per ton) annually. This is clearly well in excess of the “commercial viability” threshold.

3.4 The Authority’s Conclusion

The Authority has concluded that grape production within the proposed Sub-GI has reached commercially viable levels. The requirements of paragraph 29(3)(b) are thereby met.

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4. At least two thirds of the Members within the proposed GI or Sub-GI, who produce at least two thirds of the total production of wine made from grapes grown in that GI or Sub-GI must have voted, by ballot, in favour of the proposed GI or Sub-GI.

4.1 Overview of the Authority's Procedures

Paragraph 29(3)(c) requires that at least two thirds of the Members within the proposed GI or Sub-GI, who produce at least two thirds of the total production of wine made from grapes grown in that GI or Sub-GI, must have voted, by ballot, in favour of the proposed GI or Sub-GI. In order to determine if the requirements of this paragraph are met, the Authority must first determine what Members of the Authority have winery facilities located within the area of a proposed GI/Sub-GI. It is only those Members who are eligible to cast a ballot (a "voting Member") under the paragraph. The Authority must then determine the volume of wine produced by each voting Member from grapes grown within the proposed GI/Sub-GI. At least two thirds of the voting Members must be in favour of the proposed GI/Sub-GI and those voting Members voting in favour must represent at least two thirds of production of all voting Members from grapes grown within the proposed GI/Sub-GI.

The information required to conduct the required ballot and assess whether the special double-majority requirements of paragraph 29(2)(c) are met will generally not be available to proponents. It is only available to the Authority. This being the case, the Authority does not expect proponents to be able to demonstrate that the requirements of paragraph 29(2)(c) are met as part of the initial application. That assessment and balloting is done by the Authority following submission and consideration of an application, based on the boundaries for the GI/Sub-GI proposed by the applicants.

4.2 Details of the Application

The Application states that:

"[i]t is understood that the process for taking a vote by ballot will be conducted by the British Columbia Wine Authority (BCWA) staff. The BCWA is also the only group that would have access to the records to determine the production levels of the practice standard certificate holders. However, through the process of due diligence all wineries that fall within the proposed boundaries have given their support to the development of the proposed region."

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4.3 The Authority's Assessment

Using the boundaries proposed in the Application and the Authority's Membership information, the Authority concluded that the following 10 Members qualified as eligible "voting Members" for purposes of the ballot as of the date the ballot was distributed:

- CC Jentsche Cellars
- CheckMate Artisanal Winery
- Culmina Family Estate Winery
- Fairview Cellars
- Gehringer Brothers Estate Winery
- Hester Creek Estate Winery
- Inniskillin Okanagan Vineyards
- Golden Mile Cellars (dba Road 13 Vineyards)
- Tinhorn Creek Vineyards
- Willow Hill Vineyards

One additional winery, Rustico Farm & Cellars, was also one of the named proponents in the Application. However, at the time the ballot was conducted Rustico was not a Member and therefore was not permitted to participate in the ballot.

The Authority conducted the required written ballot of all voting Members during the week of September 27 to October 3, 2014. Participation in the ballot was 100%, with all eligible voting Members submitting a ballot. Normally, the Authority would then be required to determine the volume of wine produced by each such voting Member from grapes grown within the proposed GI/Sub-GI. However, the ballot was unanimous, with all eligible Members voting in favour of the proposed Sub-GI. This meant that no subsequent calculation of volumes was necessary as, in this case, 100% of eligible production is supportive of the Application, and the double-majority requirement is thereby met.

4.4 The Authority's Conclusion

The Authority has concluded that at least two thirds of the Members within the proposed Sub-GI, who produce at least two thirds of the total production of wine made from grapes grown in the Sub-GI, have voted, by ballot, in favour of the proposed Sub-GI.

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5. **Appropriate consultations must have taken place within the region of the proposed GI or Sub-GI and there must not have been any credible objections that claim that the proposed GI or Sub-GI is not distinctive.**

5.1 Overview of the Authority's Procedures

Paragraph 29(3)(d) requires the Authority to conduct appropriate consultations within the region of a proposed GI/Sub-GI. For the Authority to recommend a proposed GI/Sub-GI to the Minister, there must have been no credible objections that claim the proposed area of the GI/Sub-GI is not distinctive.

The Authority considers that appropriate consultations will normally include:

- A notification in one or more of its regular Newsletters or through one of its *ad hoc* Alerts to all Members providing the details of the proposed GI/Sub-GI, including a geographic description and the proposed name;
- Providing notification of the proposed GI/Sub-GI to the BC Grape Growers Association, BC Grape Council and to all grape growers registered with the Authority and having vineyards located in the region;
- Arranging meetings between staff and/or the Board of the Authority with any persons wishing to make oral presentations regarding the proposed GI/Sub-GI; and
- Soliciting and receiving any written submissions from any interested persons regarding the proposed GI/Sub-GI.

Paragraph 29(3)(d) makes reference to consultations occurring “within the region” of the proposed GI/Sub-GI, and not just “within the proposed GI/Sub-GI” itself. The Authority interprets this to mean that it is required to undertake consultations within an area that is broader than just the proposed Sub-GI, the purpose being, in part, to test the integrity of the boundaries being proposed. What may be the appropriate consultative “region” will always be specific to a given application and it is therefore not possible in advance of a specific application to define what the relevant consultative region may be. Following the receipt of an application the Authority will determine the scope of the consultative region based on, among other factors, the proposed boundaries and location. Bearing in mind that the relevance of any objections under paragraph 29(2)(d) is limited to the proposed GI or Sub-GI not being distinctive, the Authority sees little downside to it utilizing expansive consultations and therefore it will normally utilize very broad consultative regions.

Paragraph 29(2)(d) does not specify who the Authority is to consult with, only that such consultations must be “appropriate”. In the Authority’s view this means that consultations

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must not be limited to only Member wineries located within the defined consultative region. Rather, the Authority interprets this as requiring broader consultations that encompass any person who may potentially be affected by or has an interest in the creation of the proposed GI or Sub-GI or its boundaries. This group will include, but is not limited to, Member wineries, non-Member wineries and grape growers with vineyards located within the consultative region. However, the Authority is also open to receiving and considering oral or written submissions from any party who believes their interests may be affected by the designation of a proposed GI/Sub-GI.

5.2 Details of the Application

The Application does not attempt to define what the appropriate consultative region should be. It does state that the proponents undertook their own consultations with producers and growers within “the region” (without defining it), as well as with other groups such as the South Okanagan Wineries Association. The Application notes that the proponents heard “some grievances” amongst an unspecified group “who have in the past used the undefined and unofficial ‘Golden Mile’ name in their marketing. These have been looked at closely but have been found to not qualify based on failing to meet one or more of the proposed criteria that make the proposed sub-region unique, namely the slope, soil, elevation or aspect.” The Application also notes that, as a further indication of the *bona fides* of the Application, a number of Members located within the proposed Sub-GI have vineyards that fall outside of the proposed boundaries or have vineyards that are bisected by the proposed boundaries.

5.3 The Authority’s Assessment

With respect to this particular Application the Authority utilized a consultative region starting at the municipal boundary of Oliver in the North, to the Canada-US border in South, and from the limits of the Okanagan Valley in the West to the Western banks of the Okanagan River and Osoyoos Lake in the East (the “**Consultative Region**”).

Utilizing contact and locational information in the Authority’s databases as well as publically available information, the Authority specifically communicating with all known Member wineries, non-Member wineries and grape growers having production facilities or vineyards located anywhere within the Consultative Region. The Authority also advised the BC Grape Growers Association and the BC Grape Council of the Application. It further advised all Members through an email “Alert”. Finally, the Application was posted on the Authority’s website and the general public was invited to provide comment. All parties were advised that they could provide comments to the Authority in writing or, if they wished, could meet with the Board in person.

The Authority received a number of emails and written submissions, a majority of which were supportive of the Application. The Board also conducted a series of in-person meetings with

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interested persons, experts and others over three days. The Authority is of the view that any person or group with an interest in the Application and wishing to make submissions to the Authority regarding it was given a full and fair opportunity to do so.

Some of the written submissions and some of the groups that the Board met with in-person were not supportive of the Application. The content of these submissions opposing the Application and the Authority's related considerations and conclusions regarding those submissions can be summarized as follows:

Submission #1 – interested Member located near, but outside of the proposed Sub-GI boundary. This Member had a number of issues relating to the Application, three of which were considered by the Board to be particularly relevant. First, the Member argued that the area of the proposed Sub-GI falls outside of what has historically been considered to be the “Golden Mile”. Second, the area of the proposed GI is not distinctive because this area has more growing parameters in common with the adjacent area than differences. The Member therefore argued that the area of the proposed Sub-GI should be expanded accordingly to include its vineyard and facility. Third, and perhaps most importantly, the Member argued that approving the Application would generally limit this Member's ability to continue to utilize the phrase “Golden Mile”.

The Member argued that, historically, the area known as the “Golden Mile” fell below the original Oliver Water Flume (now the irrigation canal). Any land above the Flume, which includes all of the area of the proposed Sub-GI, was not considered to be part of the Golden Mile. Presumably, this means that the proponents should not be permitted to refer to the relevant area by reference to the Golden Mile. While the historical origins of the term are somewhat uncertain, and the relevant Golden Mile area has never been definitively or legally defined, the Authority is of the view that through regular and consistent usage over a number of recent years, including by many of the wineries located in the area, the term “Golden Mile” is now generally considered to include a much broader area than it may have originally, and is now generally considered to at least include all of the area within the proposed Sub-GI. (In fact, a case can be made that, in wine-related usage, the area of the proposed Sub-GI is currently considered to be the core of the “Golden Mile”.) This being the case, the Authority has concluded that use of the term “Golden Mile” here (along with the moniker or modifier “Bench”) is fully consistent with current usage and therefore is not locationally inaccurate or misdescriptive and would not mislead consumers.

With respect to the Member's argument that the proposed area is not distinctive, it is the Authority's conclusion based both on the Application and extensive discussions with Mr. Smith that the boundaries of the proposed Sub-GI are based primarily on

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certain landforms (alluvial fans, terraces and benches) which are clearly visible to the human eye, and which likely create growing conditions that are *different* (not better or worse) than those in the immediately adjacent areas. In particular, differences in growing conditions result primarily because of the shape of these landforms (and resulting air flows) along with their slope or aspect towards the sun. Importantly, the Authority is of the view that the Application is not based on differences in many other parameters related to growing conditions, such as rainfall, soil type, hours of sunshine or growing degree days, which, in this case, do appear to be similar within a broader area. However, paragraph 29(2)(a) does not require that the proposed area be completely unique from adjacent areas in each and every respect, only that the proposed area be “geographically distinct” with clearly defined boundaries. The Authority fully considered the Member’s arguments in this regard and remains convinced that the proposed area of the Sub-GI, based on a series of prominent landforms, is geographically distinct and that the Member’s objections to the boundaries based other growing parameters do not undermine that geographic distinctiveness. In fact, the southern limit of the proposed Sub-GI is based on the location of the southernmost extent of the Testalinden Creek alluvial fan. Expanding the boundaries of the proposed Sub-GI beyond that alluvial fan, so as to purposefully include the Member’s vineyards, would substantially undermine the integrity of the proposed Sub-GI and the very distinctiveness upon which the Application is based. In other words, were the proposed boundaries of the Sub-GI to be extended so as to include this Member’s vineyard, the proposed area would not then meet the requirements of paragraph 29(3)(a).

With respect to the Member’s concern that approval of the Application would limit the Member’s ability to utilize “Golden Mile” generally, the Authority believes that the Member’s concerns in this regard are based on a misunderstanding of the legal context underlying prescribed GIs/Sub-GIs and appellations of origin generally. If approved by the Minister, the Application will only result in “Golden Mile Bench” being prescribed in the Regulation as an appellation of origin for grape wine – that is, the use of that term to describe the origin of grape wine in BC would henceforth be controlled pursuant the Regulation, nothing more. Importantly, it would give no intellectual property rights in the term “Golden Mile” to the proponents whatsoever and would not grant to them the exclusive right to use or control that term (such as would occur in the case of a trade-mark registration). It would not restrict the ability of any person to use “Golden Mile” in ways other than as an appellation of origin on grape wine, such as using it to describe the location of a winery or using it generally in winery promotional materials or in any other uses unrelated to wine. The Authority notes that the existing prescription of “Okanagan Valley” in section 28 of the Regulation clearly has not prevented others from generally using that term in innumerable ways other than as an appellation of origin on wine and the same would be the case for “Golden Mile Bench”.

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Finally, approving this one Application for “Golden Mile Bench” would not preclude the subsequent recognition of one or more additional Sub-GIs within the broader Golden Mile area (that could include this Member’s vineyard) provided the proponents of any such subsequent application are also able to meet the requirements of subsection 29(3) and utilized a different and appropriate moniker or modifier so as to distinguish any such subsequent Sub-GI from “Golden Mile Bench”. Without prejudging any such possible subsequent application, other monikers such as “Lower”, “Flats” or “Slope” (that is, “Golden Mile Slope” or “Lower Golden Mile”) are some potentially appropriate alternatives. Similarly named adjacent wine appellations are common throughout the wine world and, with appropriate modifiers, are not considered to be confusingly similar to consumers and serve to enhance the reputation and raise the profile of the entire area for the mutual benefit of all. For example, in Burgundy seven separate but adjacent appellations all use “Montrachet” in their names.

While the Authority fully understands this Member’s passionately expressed concerns regarding the legal effect of approving the Application on other uses of “Golden Mile”, it believes those concerns are not justified in the circumstances. As it is the Authority that will administer and oversee use of the Sub-GI if approved by the Minister, it can express its views in this regard with a high degree of certainty.

Submission #2 – group of interested Members/non-Member wineries and grape and fruit growers located near, but outside of the proposed Sub-GI boundary. This group shared some of the concerns expressed by the Member in Submission #1 – in particular, that the proposed area was not historically part of the “Golden Mile”; that the proposed area was not unique versus immediately adjacent areas; and that it was not appropriate to grant the proponents exclusive use of the term. In addition, this group also raised issues relating to the overall requirements of section 29.

With regard to this group’s first three concerns, the Board fully considered each of those concerns and its conclusions regarding those concerns are the same as discussed above under Submission #1.

With respect to this group’s issues regarding section 29, the group expressed the view that the entire GI/Sub-GI process and criteria should be revised and, in particular, that independent grape growers should have the right to vote on the proposal. In this regard, the Authority notes that it played no role whatsoever in the drafting of section 29 as it currently exists. Those requirements were established and implemented by industry and the Provincial Government, and were further approved by industry through an industry plebiscite, well before the independent Authority was organized and current Board put in place. In addition, these are not rules created by the Authority through delegated authority (such as is the case with the Authority’s Grape

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Grower Registry and Laboratory Certification process). Rather, they are direct regulatory requirements, specifically imposed on the Authority through Provincial regulation. The Authority has no legal ability to unilaterally change, alter or ignore these requirements as they currently exist. Any change to the existing section 29 would require a regulatory amendment, which would need to be preceded by, first, a successful industry plebiscite and second, Ministerial approval. As the Authority has received an application for a new Sub-GI under section 29, as it currently exists, all the Authority is able to do is consider that Application in light of these existing requirements. While changes to section 29 may be possible over the longer term, such potential future changes are simply not relevant to the Authority's consideration of this particular Application.

With regard to the group's comments regarding input from grape growers, the Authority notes that it interprets paragraph 29(3)(d) broadly, as already requiring the Authority to consult broadly with grape growers located within the relevant consultative region. In this case the Authority notified the BC Grape Growers Association, BC Grape Council and all grape growers registered with the Authority as having vineyards located within the region of the Application, and the Authority was fully receptive to submissions from any of them regarding the Application. Consequently, in the Authority's view, grape growers have been accorded a full opportunity participate in the consultative process and provide input to the Authority that was identical to that accorded to all our other Member wineries located outside of the boundaries of the proposed Sub-GI (who also had no right to participate in the ballot conducted under paragraph 29(3)(c)). Other than this one group, which indicated that it represented some grape growers in the region, the Authority received no submissions from any individual grape grower regarding the Application.

Submission #3 – interested Member located some distance for the proposed Sub-GI. The Authority received a third submission from a Member whose vineyard is located several kilometers south of the proposed boundary. This Member argued that its vineyard shared many similarities with the area of the proposed Sub-GI, and therefore the boundaries of the Sub-GI should be significantly expanded so as to include this Member's vineyard.

In effect, the Authority took this Member to be arguing that the Sub-GI as proposed is not geographically distinct. As noted above, it is the Authority's conclusion based both on the Application and extensive discussions with Mr. Smith that the Sub-GI is based primarily on certain landforms which likely create growing conditions that are different than those in other areas. In particular, differences in growing conditions result primarily because of the shape of these landforms (and resulting air flows) along with their slope or aspect towards the sun. Importantly, the Authority is of the view that

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the Application is not based on differences in many other parameters that can potentially affect growing conditions, such as rainfall, soil type or growing degree days, which may be similar to those present in this other Member's vineyard. However, paragraph 29(3)(a) does not require that the proposed area be completely unique from other areas, whether adjacent or not, in every parameter, only that the proposed area be "geographically distinct" with clearly defined boundaries. Similar to our comment above regarding Submission #1, the southern limit of the proposed Sub-GI is based on the location of the southernmost extent of the Testalinden Creek alluvial fan. Expanding the boundaries of the proposed Sub-GI beyond that alluvial fan, so as to purposefully include this Member's vineyard, would substantially undermine the integrity of the proposed Sub-GI and the very distinctiveness upon which the Application is based.

In addition, as more fully discussed below in the Authority's consideration of paragraph 29(3)(e), this Member provided no evidence to the Authority that wines produced from grapes grown in its vineyard share the same distinctive characteristics that are claimed by the proponents to be present in wines produced from grapes grown within the proposed sub-GI.

Finally, this Member's vineyard is located much nearer to the town of Osoyoos, some distance from the southern end of the Golden Mile, regardless of how expansively one might consider the Golden Mile to currently be. As this vineyard location has no connection whatsoever to the Golden Mile, in the Authority's view, expanding the boundaries of the proposed Sub-GI to include this Member's vineyards would clearly serve to confuse consumers and fundamentally undermine one of the primary purposes of creating such a Golden Mile Bench appellation – that of connecting wines with a very specific place of origin. Had the proponents been a more regionally dispersed group and proposed a broader more generic name, such as "South-West Okanagan", this would not be a concern. However, that is not the Application that was submitted.

The Authority fully considered the Member's arguments and it remains convinced that the proposed area of the Sub-GI is appropriate and should not be expanded to include this Member's vineyard. It remains open to this Member to advance its own application for a separate Sub-GI that would include its vineyard, with a name that is appropriate and directly related to the actual geographic location of its vineyard.

Other Comments – The Authority also received a number of other comments not directly related to the distinctiveness of the proposed Sub-GI. Those comments and the Authority's conclusions regarding them are discussed below in Parts 7 and 8.

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5.4 The Authority's Conclusion

The Authority has undertaken what it has determined to be appropriate consultations within the region of the proposed Sub-GI and has concluded that the objections it has received regarding the distinctiveness of the proposed Sub-GI are not credible. The requirements of paragraph 29(3)(d) are thereby considered to be met.

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6. Wines produced in a proposed Sub-GI must consistently demonstrate distinctive characteristics related to shared soil, topography and climate, enhanced by the adoption of specific production practices.

6.1 Overview of the Authority's Procedures

Paragraph 29(3)(e) requires that wines produced in a proposed Sub-GI must consistently demonstrate distinctive characteristics related to shared soil, topography and climate, enhanced by the adoption of specific production practices. With regard to this paragraph it is first important to note that subsection 29(3) makes a distinction between “proposed geographical indications” on the one hand and “subdivisions” of existing prescribed indications on the other. Paragraphs 29(3)(a) through (d) all make reference to both “proposed geographical indications” and “subdivisions”, while paragraph 29(3)(e) refers only to “subdivisions”. This important difference in wording must be given meaning. While it is recognized that the creation of any new GI is effectively a sub-division of the existing GI of “British Columbia”, the Authority interprets this difference in wording as intending to mean that the requirements of paragraph 29(3)(e) are only to apply to applications to subdivide existing GIs other than “British Columbia”. In other words, **paragraph 29(3)(e) therefore does not apply to any application to designate entirely new GIs.**

Paragraph 29(3)(e) contains two separate but related requirements. First, it requires that wine from a proposed Sub-GI must consistently display a *terrior*-related uniqueness. The Authority expects that these “distinctive characteristics” will normally be demonstrated by proponents by providing the results of appropriate and objective chemical and sensory analyses. There is no express reference in paragraph (e) back to the “geographical distinctiveness” being claimed under paragraph 29(3)(a). This being the case, there is no requirement that proponents demonstrate that the distinct characteristics being claimed under paragraph (e) directly result from the geographic distinctiveness claimed under paragraph (a), although the Authority expects that this will usually be the case.

The Authority interprets the “distinctive” element as requiring that the resulting wines must show distinctive differences relative to wines originating in other areas of the GI that the proponents are applying to sub-divide. This distinction need not necessarily be proven relative to the Sub-GI’s immediately adjacent neighbours, although this may well be possible in some cases. As immediately adjacent areas will normally share a number of growing parameters (soil, topography or climate) with a proposed Sub-GI it is to be expected that differences between immediately adjacent areas will be less pronounced than other more distant areas of the GI with fewer shared parameters. In the Authority’s view, to require such a fine level of distinctiveness would not be consistent with the overall requirements of subsection 29(3) nor facilitative of the process of creating new Sub-GIs.

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Paragraph 29(3)(e) requires that the wines must “consistently” demonstrate distinctive characteristics. The Authority interprets this to mean that distinctiveness must be shown to exist over more than one vintage, preferably several. However, it is clearly possible for *terrior* effects to be more prominently expressed in some vintages than others, for reasons that are not yet fully understood. The Authority will take such vintage variation into account when considering evidence of consistent distinctiveness.

The paragraph is silent regarding both required volumes and varieties. The Authority does not consider it reasonable to require proponents to demonstrate that all wine produced from grapes growing in the Sub-GI display the same distinctive characteristics. That would not be appropriate given the fact that, unlike French appellation d’origine contrôlée regions where varieties and production practices are highly regulated and often very narrowly prescribed so as to enhance distinctiveness, almost all areas in BC grow numerous different varieties and each variety will express *terrior* differently and will vary considerably across vintages. To require proponents to demonstrate that all varieties grown within a proposed Sub-GI display a similar level of distinctiveness is, in the Authority’s view, simply far too onerous and unrealistic a standard to apply in the circumstances. No Sub-GI would ever be approved under such an “all or nothing” standard.

Likewise, it would not be appropriate to apply a threshold that is too low – for example, by utilizing results related to only one minor variety that accounted for a very small proportion of overall production within the proposed Sub-GI and then simply extrapolating such results to the Sub-GI’s entire production. This being the case, the Authority will expect proponents to demonstrate distinctiveness related to at least a significant proportion of overall production within the proposed Sub-GI. It is difficult to establish specific percentages in advance. What is “significant” will depend on circumstances specific to the application, the Sub-GI being proposed, the varieties grown in the Sub-GI and their various proportions. However, bearing in the mind the considerable long-term efforts required under paragraph (e) to demonstrate distinctiveness, the Authority considers that “significant proportion” can fall somewhere in the range of 20% to 40% of overall production (based on either acreage or tonnage). The Authority will review the mix of varieties grown in the proposed Sub-GI and their respective proportions of production. If several varieties are present the Authority will expect the proponents to demonstrate distinctiveness through at least one of the major varieties comprising a significant proportion of production. If no single variety accounts for a significant proportion of production then the Authority expects that distinctiveness would be demonstrated across more than one variety so that the significant proportion threshold is met. From such results the Authority will then consider it reasonable to extrapolate distinctiveness to at least some of the other varieties grown within the proposed Sub-GI.

The second requirement of paragraph 29(3)(e) is that the claimed distinctive characteristics are being enhanced by producers through the utilization of specific production practices. It is

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widely recognized that many individual decisions and processes can lessen or heighten the expression of distinctive *terrior*-related characteristics in wine. These include a wide range of decisions and practices undertaken in both the vineyard and the winery, such as variety and clonal selection, methods of pruning, type and timing of irrigation, time of harvest, the use of oak, yeast type, maceration times, lees contact and fermentation temperature, as well as other processes such micro-oxygenation, acidification and chaptalization. Proponents must provide some evidence that specific production practices are being utilized to enhance distinctiveness. There are no rigid requirements in this regard, in part because of the vast range of potential practices that can be individually or collectively employed. Any production practice that is, at least in part, being utilized by producers so as to heighten distinctive expression and that is widely recognized as having such a potential effect is acceptable for this purpose.

Also, there is nothing in subparagraph 29(3)(e) that requires all producers within a proposed Sub-GI to utilize identical production practice(s) to heighten distinctiveness, although this is certainly one method by which the requirements of the paragraph can be met. For example, similar to French appellation d'origine contrôlée requirements, producers within a proposed Sub-GI can agree amongst themselves to utilize the very same specific *terrior*-enhancing production practices, such as pruning and training systems, cropping requirements or chaptalization limitations. In the alternative, substantially all producers can individually adopt they own practices and those practices can vary broadly amongst producers. In such a case the Authority will consider this requirement to be met if the proponents can demonstrate that most producers within the proposed area are utilizing one or more production practices that are, at least in part, intended to enhance distinctiveness.

6.2 Details of the Application

In order to demonstrate the distinctiveness required under paragraph 29(3)(e), the proponents have relied on a lengthy and ongoing study being conducted by scientists at PARC (the “*Study*”) to determine whether wine sensory quality (specifically flavour and aroma) is influenced by the environmental differences (or *terrior*) among certain delineated wine growing regions in the Okanagan and Similkameen valleys. The Golden Mile area is one of the delineated regions being studied. The Study has utilized Merlot, the widest planted variety in the Okanagan and Similkameen valleys. In the initial phase of the Study, 31 single-vineyard wines from the 2004 and 2005 vintages were tasted blindly, two years after each vintage, by 31 experienced tasters. The proponents claim that the Study demonstrates that conditions on the Golden Mile Bench produce wines of similar character and, in one of the two years in particular, Golden Mile Bench wines were clearly distinct from other Okanagan wines. The proponents further claim that the Study also shows that Similkameen wines are distinguishable from Okanagan wines, and Kelowna region wines were distinguishable from more southern wines, demonstrating the ability of the technique being employed in the Study to detect *terrior* influences generally, thus further validating the results.

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The proponents relied entirely on the Study to support their claims of distinctiveness under paragraph 29(3)(e). No further evidence or chemical analyses were initially provided.

6.3 The Authority's Assessment

In addition to reviewing the results of the Study, the Board also conducted a lengthy interview with Dr. Pat Bowen, one of the authors of the Study. It is clear to the Authority that the Study was not conducted specifically for purposes of paragraph 29(3)(e), to demonstrate the distinctiveness of wines from the Golden Mile Bench. Its purpose is much broader. That said, the Authority sees no reason why broader studies such as this cannot be relied upon by proponents if they serve to provide evidence of distinctiveness.

Through its interview with Dr. Bowen the Board was able to verify and elaborate on various aspects of the Study, including the specific origin of the wines used and testing methods utilized. In particular, while not disclosing specific producers to the Board Dr. Bowen did confirm that the wines from the Golden Mile area used in the Study were all single-vineyard wines made by producers located on the Golden Mile Bench exclusively from grapes grown on the Golden Mile Bench. (In other words, while the Study refers to the "Golden Mile area" as one of the areas under study, the area under study was in fact specifically limited to the "Golden Mile Bench".) In most cases the wines used were not and are not commercially available but were produced specifically for purposes of the Study.

The Authority heard some parties criticize the Report as being "outdated" as it had been commenced approximately 10 years ago. While the Authority could see no defect whatsoever in a study of *terrior* based solely on the age of the study, this issue was further addressed by a subsequent development. While not publicly released at the time the proponents submitted the Application to the Authority, Dr. Bowen provided the Board with an update on the Study. That update was subsequently publically released. Recent findings have further confirmed the Study's initial findings relating to distinctiveness. In other words, the results over three vintages spread over a number of years are substantially the same, at least with regards to wines from the Golden Mile Bench. In addition to confirming distinctiveness, this update also adequately addresses any issues there may have been relating to the age of the Study.

With regard to varieties, the Authority has concluded that the proponents' reliance on one single variety – Merlot – is acceptable in the circumstances. Merlot is the widest planted variety across all regions used in the Study, thus providing the most suitable basis for comparison across regions. In addition, the Authority has confirmed that Merlot is the widest planted variety on the Golden Mile Bench, accounting for approximately 25% of all acreage on the Bench. This meets the Authority's requirement that results be provided that demonstrate distinctiveness across a "significant portion" of production.

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Based on the Study and the further information and update provided by Dr. Bowen, the Board is satisfied that the Study provides sufficient evidence that wines produced from grapes grown within the proposed Sub-GI consistently demonstrate distinctive characteristics related to *terrior*.

The Study's discriminant analysis for regional effects shows a clear and distinct "clustering" of tasting results for Golden Mile Bench wines within a very small range and relative to wines from the other regions under study, and in each of the three vintages under study. Most of these other regions are located within the Okanagan Valley GI. The Study's authors have generally described these results as showing "striking" regional differences in wine sensory quality and the Authority agrees with that assessment. Consequently, the Golden Mile Bench wines were determined by the Authority to demonstrate the required "distinctive characteristics" on a "consistent basis".

With respect to the requirement that those distinctive characteristics are being enhanced through the utilization of specific production practices, the proponents had simply stated in the Application that the specific production practices for the proposed Sub-GI would be to follow the practices set out in the Regulation. This level of generality was not sufficient for the Authority to determine if the requirements of the paragraph are currently being met. Therefore, the Authority proceeded to gather further information in that regard. In particular, as part of the ballot process required under paragraph 29(3)(c), the Authority asked each Member voting in favour of the proposed Sub-GI to provide further information concerning the specific production practices currently being utilized by the Member to enhance regional characteristics. Most Members responded with a number of specific production practices which are currently being utilized, at least in part, to enhance the Sub-GI's distinctive characteristics. The Authority also subsequently gathered additional information from some Members. The specific production practices that were identified included row orientation, canopy management, balanced fruit cropping and low cropping, drip irrigation, use of integrated pest management, extended hang-time and gravity flow processing, temperature-controlled fermentation and careful barrel management, all processes which are widely recognized as having a positive impact on fruit expression and *terrior*-related characteristics. Additionally, some Members referred to "low intervention" or "non-intervention" winemaking, which are also widely recognized as being a collection of specific practices aimed at reducing human influence and allowing *terrior* to be more fully expressed in a wine. This being the case, the Authority has concluded that the area's distinctive characteristics are currently being enhanced through the wide utilization of numerous different specific production practices.

6.4 The Authority's Conclusion

The Authority has concluded that the proponents have demonstrated that wines produced within the proposed Sub-GI consistently demonstrate distinctive characteristics related to

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shared soil, topography and climate. Separately, the Authority has determined that producers within the area of the proposed Sub-GI are working to enhance that distinctiveness through the utilization of numerous specific production practices. The requirements of paragraph 29(3)(e) are thereby considered to be met.

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7. Consideration of Issues Related to the Proposed Name

7.1 Overview of the Authority's Procedures

As part of any application the Authority expects proponents to propose a name for the new GI/Sub-GI. It is the Authority's view that the proposed name must be directly related to the area of the proposed GI/Sub-GI and the application should explain and demonstrate the relationship between the proposed name and the proposed area. All of the area within a proposed GI/Sub-GI must be known locally or more broadly by the proposed name, although use of that name may extend beyond the boundaries of proposed GI/Sub-GI. The sources of evidence considered acceptable to demonstrate the required relationship can include maps, magazine articles, books, websites and web-based articles, business names and road signs. Proponents should seek to avoid proposing names that are widely used or used in more than one location because use of such generic names for wine appellations can cause consumer confusion, the direct opposite of what is intended. If a widely used name is considered to be the most appropriate in the circumstances, then the use of an additional modifier may address potential confusion.

7.2 Details of the Application

The proponents have proposed "Golden Mile Bench" but have provided no specific evidence that the proposed name is directly related to the area of the proposed Sub-GI. (The Authority does not fault the proponents in that regard because issues relating to the proposed name are not specifically noted in subsection 29(3).)

7.3 The Authority's Assessment

As was discussed above under the Authority's consideration of paragraph 29(3)(d), some have argued that, historically, the area known as the "Golden Mile" fell entirely below the original Oliver Water Flume (now the irrigation canal). Any land above the Flume (which includes the entire Bench) was not considered part of the Golden Mile. While the historical origins of the term "Golden Mile" are somewhat uncertain with various explanations being advanced, and the relevant Golden Mile area has never been definitively or legally defined, the Authority is of the view that through regular and consistent usage over a number of recent years, including by many wineries located within the proposed Sub-GI, the term "Golden Mile" is now generally considered to include a much broader area than it may have been historically, and is now seen as at least including all of the area within the proposed Sub-GI. This broader usage has been confirmed by the Authority through a review of various magazine articles, web articles and books which consistently refer to the area where the proponents are located as being within the Golden Mile. The Authority could find no wine-related resource that expressed an opposing view.

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In addition, while “Golden Mile” is generally considered to refer to an area that is larger than the proposed Sub-GI, the proponents have addressed any concern in that regard by adopting the limiting moniker “Bench” which directly acts to restrict the scope of the Sub-GI name to a smaller area of the Golden Mile. Use of that moniker will also permit the adoption of one or more additional Sub-GIs in the remaining area of the Golden Mile with other appropriately differentiating monikers.

As also discussed above in the Authority’s consideration of paragraph 29(3)(d), one Member with a vineyard located near the town of Osoyoos had requested that the area of the proposed Sub-GI be expanded so as to include its vineyard. This vineyard is located some distance from the southern end of the Golden Mile, regardless of how expansively one might consider the Golden Mile to currently be. As this vineyard location has no connection whatsoever to the proposed name of “Golden Mile Bench”, in the Authority’s view, expanding the boundaries of the proposed Sub-GI to include this Member’s vineyards would clearly serve to confuse consumers and would fundamentally undermine one of the primary purposes of creating this Sub-GI – that of connecting wines with a very specific well-known place of origin.

The Authority received a further comment from one Member regarding use of the moniker “Bench” in the proposed name. This Member, located on the Naramata Bench, disagreed with use of “Bench” in the Sub-GI’s name because:

“...geographically the Golden Mile is not a Bench feature and because we have a long marketing history with the use [of] Bench. In fact, our marketing efforts have been so successful that many consumers exposed to Bench assume it refers to Naramata Bench, and the quality associations with that wording. We feel that the Golden Mile Sub-DVA is using the success of our marketing efforts to launch their sub-DVA. Our belief is that the use of Bench by the Golden Mile sub-DVA will only lead to consumer confusion and will [not] lead to unique differentiation, one of the key objectives of the sub-DVA registration.”

The Authority is of the view that use of “Bench” in the proposed name is fully appropriate and not misleading in the circumstances. First, clearly, the area of proposed Sub-GI is, in fact, located on a “bench” as term is applied for geographic purposes. The term is therefore clearly not misdescriptive in a geographic sense.

Second, rather than being confusing, use of “Bench” here acts to distinguish the area of the proposed Sub-GI from the larger Golden Mile area, and thus will assist both consumers in locating the Sub-GI, as well as other Members outside of the Sub-GI who may wish to apply for a different Golden Mile Sub-GI.

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Third, the Authority does not believe that one group can claim an exclusive right to use the generic geographical term of reference “bench” any more than it could claim the right to exclusively use any other generic geographic term like “mountain”, “valley” or “hill”, and thereby preclude others from utilizing such a term.

Finally, there is widely considered to be a number of “benches” in the Okanagan Valley with significant operating vineyards in addition to Naramata Bench, including at least Golden Mile Bench, Skaha Bench and Black Sage Bench, amongst others. (Similarly, Ontario has four prescribed appellations that utilize “Bench” in their names – Beamsville Bench, Short Hills Bench, St. David’s Bench and Twenty Mile Bench.) Prohibiting the use of “Bench” here would also act to preclude the potential use of “Bench” in any subsequent Sub-GI application for these other benches. The Authority considers such an outcome to be far too restrictive and inappropriate in the circumstances.

The Authority also received a couple of comments from interested parties to the effect that the name “Golden Mile Bench” should not be approved because it would limit the ability of others to utilize the term “Golden Mile” more generally. These concerns are similar to those discussed above under the Authority’s consideration of paragraph 29(3)(d). The Authority believes that these concerns are based on a misunderstanding of the legal context underlying prescribed GIs/Sub-GIs and appellations of origin generally.

If approved by the Minister, the Application will only result in “Golden Mile Bench” being prescribed in the Regulation as an appellation of origin for grape wine – that is, the use of that term to describe the origin of BC grape wine would henceforth be controlled pursuant the Regulation, nothing more. It would give no intellectual property rights in the term “Golden Mile” to the proponents and would not grant to them the exclusive right to use or control “Golden Mile”. It would not restrict the ability of any person to subsequently use “Golden Mile” in ways other than as an appellation of origin on grape wine, such as using it to describe the location of a winery or using it in promotional or marketing materials or, more generally, in any other way unrelated to grape wine. The Authority sees little basis for concern in this regard.

7.4 The Authority’s Conclusion

The Authority has concluded that the proposed name of “Golden Mile Bench” is directly related to the area of the proposed Sub-GI, is fully consistent with current usage, is not locationally misleading or misdescriptive and would not be misleading to consumers.

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8. One Final Issue of Note

In addition to comments and submissions directly relating to the Application, the Authority also received a number of comments related to subsection 29(3) more generally, how uncertain and vague the language used in the subsection is and how difficult it is for proponents to meet the specified requirements. These issues are thought to be impeding the development of new GIs/Sub-GIs and the industry more generally.

With specific regard to paragraph 29(3)(e), by fortunate happenstance, the proponents were able to rely on a long-term study being conducted by PARC undertaken for other broader purposes. To have produced a study of the same nature over the same period of time would have been exceedingly difficult, time consuming and expensive for the proponents. Other proponents are unlikely to be as lucky and it appears to the Authority that the PARC Study is not likely to provide a suitable basis for applications for any other potential Sub-GI within the Okanagan Valley. While paragraph (e) may be an appropriate after-the-fact description of the basis for many (but not all) Old World appellations that already exist and which were developed and refined over decades or even centuries of wine production, it clearly imposes an extraordinary burden on aspiring Sub-GI proponents in BC. In the Authority's view, it has to be considered whether that burden is simply too onerous to be appropriate in the circumstances, bearing in mind the primary rationale behind the designation of new Sub-GIs.

With regard to the vagueness and uncertainty in the drafting of the subsection, the Authority fully concurs with such views, but hopes that the extensive discussion included in this Report will serve to clarify the application of subsection 29(3) for Members in many respects. However, there is no doubt that in the course of its review of this Application the Authority was confronted with numerous deficiencies and lack of clarity inherent in the subsection. The Authority's ability to address these inherent deficiencies is clearly limited. It played no role whatsoever in the drafting of the subsection. It can interpret it but it cannot amend it, nor can it simply ignore its requirements. Many of the issues with the subsection raised by Members are substantive in nature, not interpretive, and they would require an amendment in order to adequately address them. Any such amendment would need to be approved first through industry plebiscite and then by the Minister.

While the Authority cannot amend the subsection, it can initiate a reconsideration of it. In light of the above, the Authority will be raising issues regarding subsection 29(3) with our Wine Industry Advisory Committee with the suggestion that the Committee review the requirements and application of the subsection and consider whether amendment(s) may be appropriate in light of our experience with the subsection to date.