



April 25, 2017

DELIVERED BY EMAIL

Ann MacDonald, MCIP, RPP
General Manager of Planning and Development
Services Branch Comox Valley Regional District
600 Comox Road, Courtenay, BC V9N 3P6

File: 0320 FPPA

Dear Ms. McDonald:

Re: Role of BCFIRB with respect to farming on First Nations Land

I am writing in response to your April 5, 2017 email to the BC Farm Industry Review Board (BCFIRB) seeking clarification of the application of the *Farm Practices Protection (Right to Farm) Act (FPPA)* to reserve land held by a First Nation. You indicate that the K'ómoks First Nation has an aquaculture operation and ask whether such an operation would be exempt from the *FPPA*.

To date, BCFIRB has not had a complaint arising out of a disturbance from a farm operation carried out by a farm business on First Nation land. Our understanding of the legal position is that it is not as simple as saying that First Nation land is exempt from the application of the *FPPA*. The law has been evolving in the area of provincial jurisdiction over First Nation lands over the past number of years and if a complaint was filed, any potential constitutional issues would need to be addressed in the context of the facts of that complaint. The nature of the farm, the type of farm practice and disturbance, the identity of the farmer, and the location of the neighbour (on or off reserve land) may all be important factors in determining BCFIRB's jurisdiction.

As a local government, if such a complaint arises, you may wish to consider intervening in the complaint to provide the hearing panel with your perspective on the jurisdiction issue and/or the particular complaint within your community ([Westcoast Instant Lawns](#) and [Daybreak Farms](#)). The parties to the complaint and the panel would have the benefit of hearing from local government and asking questions in the public hearing process.

As you are no doubt aware, the question of whether and when provincial laws of general application apply to what the Constitution describes as "Indians, and Land Reserved for the Indians" can be complex. As such, I would encourage you to seek independent legal advice as I am unable either to provide you with legal advice or to offer any further clarification until such time as a complaint arises, is heard and ultimately adjudicated upon.

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As I mentioned in our telephone conversation, I would be pleased to discuss this or any other issue relating to BCFIRB's mandate under the *FPPA* with you in more detail now or at a future meeting.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Kirsten Pedersen', with a long, sweeping flourish extending upwards and to the right.

Kirsten Pedersen
Executive Director
BC Farm Industry Review Board