July 11, 2019

File: 0280-30
Ref: 190423

Arjun Singh, President
Union of BC Municipalities
Email: dwelch@ubcm.ca

Dear Arjun Singh:

Thank you for your letter of May 22, 2019 addressed to the Honourable Doug Donaldson, Minister of Forests, Lands, Natural Resource Operations & Rural Development regarding changes to cannabis provisions in the Agricultural Land Reserve Use Regulation. Your letter was directed to me for response and I am happy to respond on behalf of Minister Donaldson.

In July 2018, Government announced a change to the policy framework regarding cannabis production on the Agricultural Land Reserve (ALR). This change provided local and First Nation governments with the authority to prohibit cannabis production in the ALR within their communities, unless it is grown in ways that preserve the productive capacity of agricultural land, such as soil-based cannabis. This policy has not changed.

The July 2018 regulatory change ensured that, effective immediately, local and First Nation governments had the authority to prohibit cement-based cannabis-production facilities on ALR land within their communities, while clarifying that cannabis production in the ALR cannot be prohibited if grown lawfully:

- In an open field;
- In a structure that has a soil base;
- In a structure that was either fully constructed or under construction, with required permits in place, prior to July 13, 2018, or
- In an existing licensed operation.

This approach announced last summer clearly enabled local and First Nation governments to make decisions about cannabis production that align with local planning and community priorities.

In 2015, the B.C. government of the day protected the production of medical cannabis by regulation, making it a farm use that in most circumstances could not be prohibited by local or Fist Nation governments.

…1/3

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This meant that local governments, First Nation governments, and the Agricultural Land Commission (ALC) could not prohibit cannabis production in the ALR. Many local governments were frustrated with their inability to respond to local interests and sought authority to prohibit.

The regulatory changes that came into effect on February 22, 2019 had the purpose of bringing Bill 52 into force and providing legal clarification to the Agricultural Land Reserve Use Regulation. In doing so, the updated regulations removed the reference to cannabis production as a "designated farm use". With cannabis recognized federally as a legal agricultural crop, it did not require a secondary designation as a farm use to authorize its production in the ALR. The February 22, 2019 regulatory change did not represent a shift in government policy. For this reason, the Ministry of Agriculture did not consult with local governments.

While the February 22, 2019 regulatory change did not reflect a change in Government policy, it impacted ALC's operational policy in relation to cannabis production applications in the ALR. It is unfortunate that this impact to ALC's operational policy was not identified sooner and I regret the information not being available to local governments earlier. With the change in ALC's operational policy, most cannabis-related applications to the ALC have been cancelled. A few continue to come before the ALC as soil/fill applications, as the construction of some cannabis facilities is expected to exceed fill placement thresholds.

Regulatory amendments to require ALC permission for any method of cannabis production in the ALR have not been pursued because there is no legal authority to do so. Any activity that falls within the definition of "farm use" under the *Agricultural Land Commission Act* does not require permission of the ALC. Farm uses include the farming of a plant, like cannabis, in soil or within a structure, and are authorized to occur in the ALR without permission of the ALC.

As you are likely aware, s. 46 of the *Agricultural Land Commission Act* sets out how local governments must ensure their bylaws are consistent with that Act and its regulations. Under the regulations, some farm uses in the ALR may not be prohibited by local governments, such as the methods of cannabis production referenced earlier in this letter. The obligation on local governments is to ensure that their bylaws do not prohibit those specific methods of cannabis production. There is no further requirement for local governments to provide monitoring and enforcement in terms of allowable ALR land use in relation to cannabis production.

There may be uncertainty for applicants or local governments concerning proposals that go beyond growing of cannabis in a structure. If facilities that are ancillary to cannabis production are of concern, local governments may ask the ALC or the Ministry of Agriculture for guidance.

The Minister of Agriculture's Bylaw Standards are revised periodically, and the Ministry will keep the Union of BC Municipalities (UBCM) comments and concerns in mind when revising them in the future.

…2/3

I appreciate hearing the UBCM's concerns on behalf of local governments and I agree with you that collaboration is the best means to develop policy solutions that address concerns.

Noting these concerns, we would like to work in a new way with local governments and stakeholders on the regulatory agenda for revitalizing the ALR. In particular, we would like to explore with you and the ALC how the ALC can have a decision-making role with respect to industrial-scale or accessory cement-based structures associated with cannabis production in the ALR.

I have therefore instructed Ministry staff to work together with representatives of the UBCM on this file in the future. Thank you again for raising these concerns on behalf of B.C. local governments.

Sincerely,

W.H. (Wes) Shoemaker, MBA
Deputy Minister

cc: Honourable Minister Doug Donaldson
Minister of Forests, Lands, Natural Resource Operations and Rural Development