

# FARMLAND PROTECTION

## Strengthening BC's Legislation

January, 2018

POLICY BRIEF

### SUMMARY

Farmland is an indispensable resource that is protected in British Columbia (BC) by a progressive provincial legislative framework. However, the continued loss and alienation of farmland, especially prime farmland in the most productive agricultural zones in the province, is a critical concern. To address persistent pressures, the Premier's mandate letter directs the Minister of Agriculture to "revitalize" the Agriculture Land Reserve (ALR) and Agricultural Land Commission (ALC). The results of recent research and recommendations presented in this policy brief are intended as input to the Minister's review.

### RECOMMENDATIONS

The following recommendations respond to the recognized need for more emphasis on long-term land use planning to reduce impacts of population growth and non-farm developments on the ALR. The recommendations support the ALC to shift from a focus on applications towards becoming a more proactive planning organization.

- Amend the *Local Government Act* (LGA) to give the ALC authority to approve local government bylaws as they apply to land in the ALR. Presently, the LGA only requires local governments to refer bylaws to the ALC for comment.
- Amend the *Agricultural Land Commission Act* to give higher priority to regional district and municipal planning objectives as a consideration by the ALC when exercising power in Zone 2.

These recommendations are consistent with the ALC's purpose and serve to increase the level of integration of farmland protection as a planning objective across jurisdictions.

### FARMLAND IN BRITISH COLUMBIA

- ALR total hectares: 4.6 M ha
- Prime ag land (CLI 1-3): 1.10%
- Productive ag land (CLI 1-4): 2.7%
- Class 1 ag land: 0.06%
- Zone 1: 0.5 M ha (11% of ALR)
- Zone 2: 4.1 M ha (89% of ALR)
- The total amount of land in the ALR has remained steady since it was created
- The total area of prime agricultural land in the ALR has declined; the area of secondary land has increased

Sources: Smith (1998); ALC (n.d.)

### Change to ALR land base (ha), by land capability, total to 2008



Source: Auditor General (2010)

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## INTRODUCTION

### ► Farmland is an indispensable resource.

Protecting farmland is increasingly important as BC adapts to shifting domestic and global drivers, urbanization, climatic disruptions to global food supplies, and growing demand for local food and farmland amenities. Yet population growth drives non-farm developments that lead to conversion and alienation of farmland.

### ► BC is regarded widely as one of the most progressive provincial legislative frameworks for protecting its agricultural land base.

The *Agricultural Land Commission Act* (ALC Act), which established the quasi-judicial ALC and the restrictive zoning of the ALR, is the foundation of the framework.

### ► The continued loss of farmland, especially prime farmland, is a critical concern.

After more than forty years of working with the ALC Act, the past impacts and existing pressures indicate that more has to be done.

### ► BC's strong protections can be improved.

In 2017, the Premier directed the Minister to "revitalize the Agriculture Land Reserve and the Agricultural Land Commission."

### ► Long-term planning with local government is key to reducing the impact of population growth and non-farm developments on the ALR.

The Auditor General of BC (2010) found that the ALC has limited ability to preserve agricultural land through the application process and concluded that long-term planning with local government is key. The ALC (2010), through its own review, concluded that a strategic shift is needed to move away from being focussed on applications towards becoming a proactive planning organization.

## LAND USE PLANNING FOR AGRICULTURE

As a matter of policy, protecting farmland is primarily a concern of land use planning, for which responsibility is distributed among federal, provincial, and municipal governments. While Canada's provinces retain jurisdiction to establish provincial land use policy and to assert provincial interests, such as farmland protection, they confer most land use planning responsibilities to municipalities for them to manage the orderly development of their areas, including agricultural lands.

In addition to agricultural land use planning, other legislative mechanisms, such as right-to-farm legislation and preferential tax policies, are also used to support farmers and maintain the farmland base.

## WHAT IS A LEGISLATIVE FRAMEWORK?

By legislative framework, we mean a set of laws, policies, regulations, codes of practice, guidelines, bylaws, strategies, plans, and governance structures. Many forms of government statements, at all levels of government, make up a legislative framework. A local legislative framework includes a statutory plan as well as the related regulations, policies, and strategies that frame the plan, and extend both vertically to other levels of government and horizontally to neighboring jurisdictions.

# FARMLAND PROTECTION: Strengthening BC's Legislation

## THE STRENGTH OF FARMLAND PROTECTION IN BC

### ► BC's legislative framework for protecting farmland is very strong.

Among Canadian provinces, BC's legislative framework is most similar to Québec (Table 1). BC's strength is grounded in the stability of the ALC Act, which plays a critical role in land use policies, taking precedence over other legislation, including land use bylaws of local governments.

Table 1. Provincial Legislative Frameworks in Canada: Assessment of Strength

Refer to the appendix for a description of the four principles used as criteria to measure the strength of farmland protection policies.

	Overall Strength	Maximize stability	Integrate across jurisdictions	Minimize uncertainty	Accommodate flexibility
QC	Very strong	5	5	4	3
BC (Zone 1)	Very strong	5	4	3	4
ON (PPS+)	Very strong	4	5	4	3
BC (Zone 2)	Very strong	5	3	3	3
ON (PPS)	Strong	4	3	3	3
BC (Zone 2+OGC)	Strong	4	3	2	3
MB	Moderate	4	3	2	2
SK	Moderate	2	4	3	2
NL	Moderate	2	3	2	3
NS	Moderate to Weak	3	2	2	2
AB	Weak	2	2	1	1
NB	Weak	1	2	1	2
PE	Weak	1	1		

Source: National research project, Agricultural Land Use Planning in Canada. See website ([blogs.unbc.ca/agplanning](http://blogs.unbc.ca/agplanning)) for details.

Note: New Brunswick and Prince Edward Island were reviewing their legislation at the time of the analysis.

### ► The ALC's mandate is to preserve all classes of agricultural land under two zones.

The ALR consists of two zones. In Zone 1, the primary consideration when deciding upon applications for exclusions, subdivision, and non-farm uses is to preserve agricultural land. In Zone 2, the ALC must also consider social, economic, cultural, and heritage values, which can reflect local priorities. In north-east BC, which is a part of Zone 2 under a delegation agreement with the Oil and Gas Commission (OGC), oil and gas developments are permitted, albeit temporary, uses of agricultural land. The *Local Government Act* (LGA) sets out the powers, duties, and functions necessary for local governments to carry out their responsibilities, including the authority to regulate the use and development of land through Official Community Plans (OCP), Regional Growth Strategies (RGS), and land use zoning.

## FARMLAND PROTECTION: Strengthening BC's Legislation

- ▶ **The ALC Act and the LGA have strong language that supports a high level of integration between provincial interests in protecting farmland and local governments.**

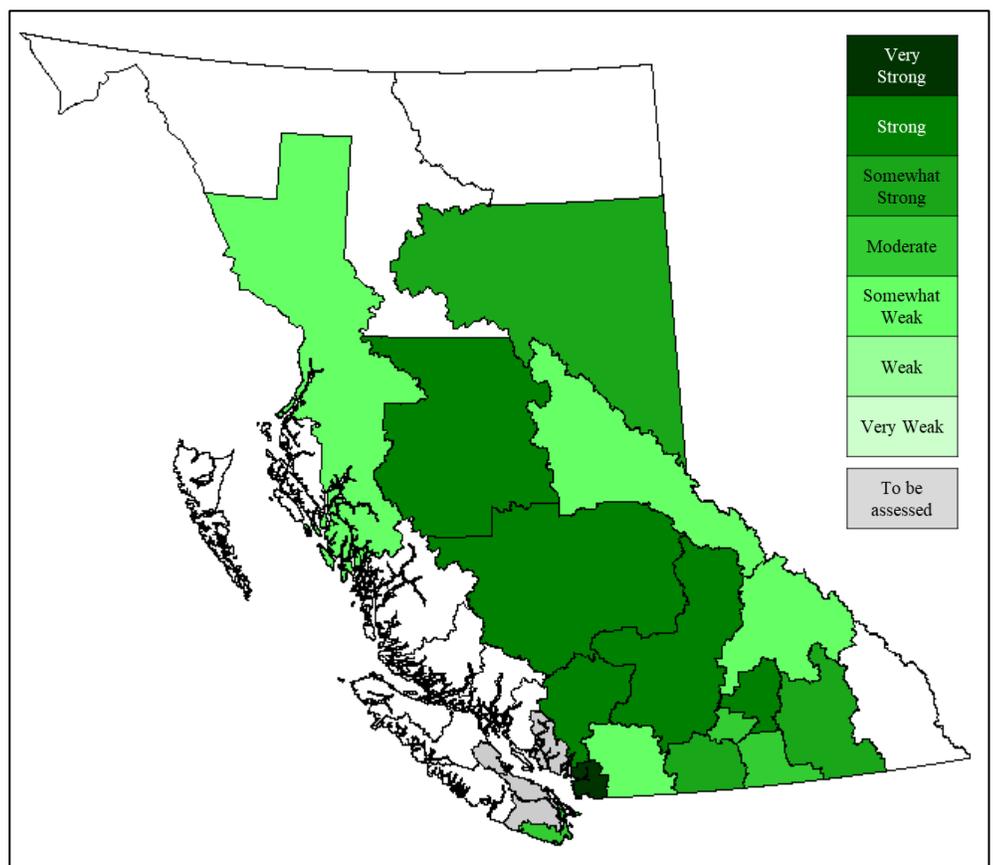
When developing an OCP, the LGA requires local governments to consult with the ALC (s. 475(4)) and, as part of the adoption procedure, refer to the ALC for comment after first reading (s. 477(3)(b)). Additional legislation governs integration within RGSs, requirements in OCPs, and establishing farm bylaws. An OCP, RGS, or zoning bylaw that is inconsistent with the Act has, to the extent of the inconsistency, no force or effect (ALC Act s. 46(4)).

- ▶ **The strength of local legislative frameworks for farmland protection vary from very strong to somewhat weak.**

Although the level of integration between provincial and local interests is strong, the language could be stronger. Local governments are required only to consult with and refer a statutory plan to the ALC. In the absence of having authority for approval, the ALC has taken an incremental approach to working with local governments to strengthen protection for agricultural land.

Although OCPs and RGSs are required to be consistent with the ALC Act to preserve agricultural land, the results of recent analyses demonstrate that the strength of local legislative frameworks for farmland protection vary significantly. The results for assessed regional districts are shown in Figure 1. More detailed tables for regional districts and municipalities are included in the appendix.

Figure 1. Map showing strength of legislative frameworks to protect farmland for assessed regional districts



# FARMLAND PROTECTION: Strengthening BC's Legislation

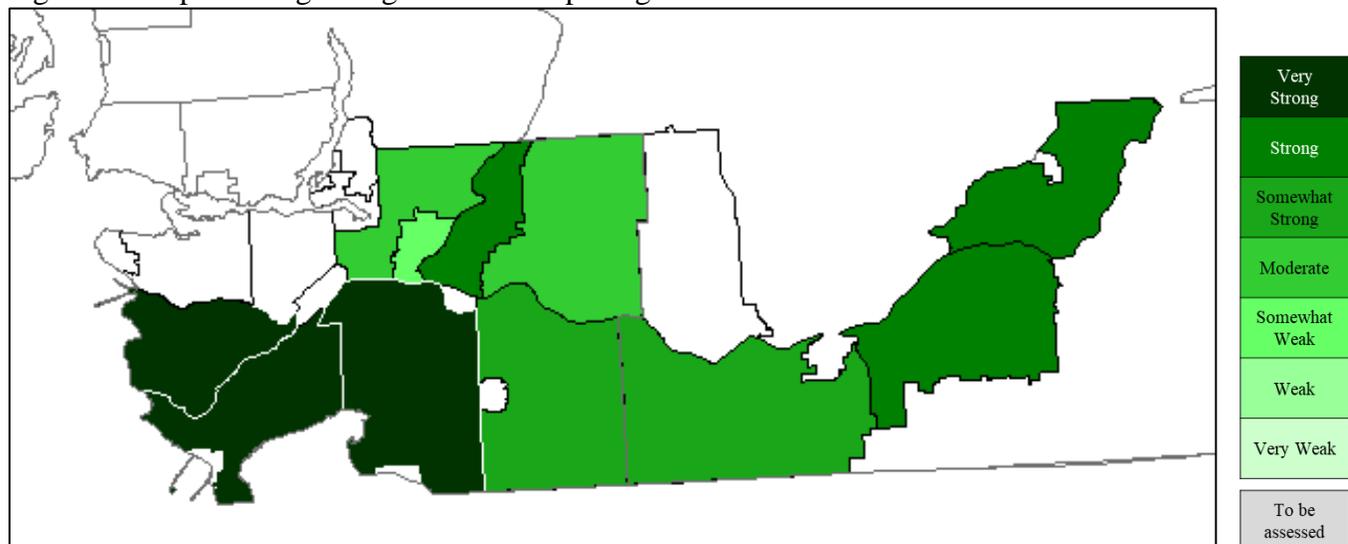
- The strength of legislative frameworks for protecting farmland are not consistent between regional districts and member municipalities.

The lower mainland of BC is home to productive agricultural lands and very high pressure from urban development. The results in Table 2 (and Figure 2) show that the strength of the legislative frameworks for the two regional districts are different, as are the strengths of frameworks among its member municipalities. These inconsistencies highlight the need for a greater level of required integration across jurisdictions.

Table 2. Strength of legislative framework: Metro Vancouver and Fraser Valley Regional Districts

SITE	Overall strength	Integrate across jurisd.			
		Maximise stability	Minimise uncertainty	Accomm. flexibility	
<b>Metro Vancouver RD, BC</b>	Very Strong	5	4	5	3
Delta, BC	Very Strong	5	5	4	4
Surrey, BC	Very Strong	5	4	4	5
Richmond, BC	Very Strong	5	4	4	4
Pitt Meadows, BC	Strong	4	4	4	3
Township of Langley, BC	Somewhat Strong	3	4	2	3
Coquitlam, BC	Moderate	3	3	3	2
Maple Ridge, BC	Moderate	3	3	2	3
Port Coquitlam, BC	Somewhat Weak	2	2	2	2
<b>Fraser Valley RD, BC</b>	Somewhat Weak	2	2	2	2
Chilliwack, BC	Strong	5	4	2	3
District of Kent, BC	Strong	5	4	3	3
Abbotsford, BC	Somewhat Strong	4	2	3	5
FVRD Area G	Moderate	3	3	3	3

Figure 2. Map showing strengths of municipal legislative frameworks: lower mainland



## RECOMMENDATIONS

The strength of BC's legislative framework is its stability, which is grounded in concise language and a direct commitment to preserving all agricultural land. BC's provincial legislative framework can be made stronger by leveraging this high level of stability through tighter requirements for lower-level governments to be consistent with the provincial mandate to preserve all farmland. Integrating policies and priorities across jurisdictions is a foundation for building cohesion across provincial, regional, and municipal governments. This principle of integration can be viewed as a "policy thread" that weaves together traditional areas of responsibility. The aim of such vertical mechanisms is to ensure that lower-level policies are set within the context of broader public priorities.

Under s. 6(c) of the ALC Act, the purpose of the ALC is "to *encourage* local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies" (emphasis added). The first two recommendations promote greater emphasis on long-term planning, effectively moving beyond "encouraging" agricultural land use planning toward making this a requirement. Specifically, both recommendations, if adopted, would increase the level of required integration of public interests across jurisdictions to ensure that bylaws of lower-level governments are consistent with provincial priorities to protect all farmland.

### ► RECOMMENDATION 1

**Amend the *Local Government Act* to require local government bylaws, as they concern land in the ALR, to be approved by the ALC.**

Part 14 Section 477 of the LGA currently states (underline added for emphasis),

- (1) An official community plan must be adopted by bylaw in accordance with this section.
- (3) After first reading of a bylaw under subsection (1), the local government must do the following in the indicated order:
  - (b) next, if the proposed official community plan applies to land in an agricultural land reserve established under the *Agricultural Land Commission Act* , refer the plan to the Provincial Agricultural Land Commission for comment;

The recommendation is to change (b) to read: "...refer the plan to the Provincial Agricultural Land Commission for approval." The intention of this recommendation is to give the ALC authority to approve, or the equivalent thereof, local government bylaws as they apply to land in the ALR.

Other provinces employ mechanisms that explicitly ensure consistency between provincial interests in farmland protection and local government land use planning. In Québec, which is most similar to BC, their commission has control over the agricultural zone. The agricultural land use planning function falls under the domain of the provincial government. The responsible minister has authority to change local land use and development plans to ensure consistency with provincial interest. The above recommendation will help ensure consistency with the ALC Act prior to adoption by the local government, such that a minister should not need to intervene to protect farmland after a bylaw is approved.

### ► RECOMMENDATION 2

**Amend the *Agricultural Land Commission Act* to give higher priority to land use planning objectives as a consideration by the ALC when exercising power in Zone 2.**

The ALC Act, under s. 4.3, currently states,

Exercising a power in Zone 2

4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;
- (b) economic, cultural and social values;
- (c) regional and community planning objectives;
- (d) other prescribed considerations.

The recommendation is to revise the order of the four considerations, as follows:

- (a) the purposes of the commission set out in section 6;
- (b) regional and community planning objectives;
- (c) economic, cultural and social values;
- (d) other prescribed considerations.

The revised order means that the ALC first considers the purposes of the commission followed by regional and municipal planning objectives. Only after these considerations, the ALC would consider economic, cultural and social values, and then other prescribed considerations. The effect of this change is to increase the importance of land use planning objectives as the basis for agricultural land use decisions. This recommended change, in conjunction with Recommendation 1, serves to increase the level of integration of farmland protection as a planning objective across jurisdictions.

Giving higher priority to regional and municipal planning objectives also serves to minimize uncertainty. To this end, governments can minimize uncertainty through consistent interpretations and applications of the legislative framework. Increasing the priority of land use planning as the basis for land use decisions improves the level of consistency by affirming a commitment to public priorities that were identified and legally adopted through formal planning processes.

The above two recommendations are consistent with the ALC's purpose to work with local governments, first nations, the government, and its agents in their plans, bylaws and policies. Together, these recommendations respond to the recognized need for more emphasis on long-term land use planning to reduce impacts of population growth and non-farm developments on the ALR. The recommendations also support a strategic shift within the ALC to move away from a focus on applications towards becoming a proactive organization.

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# FARMLAND PROTECTION: Strengthening BC's Legislation

## APPENDIX

Table 2. Strength of legislative framework to protect farmland: Regional Districts

ZONE 1	Overall strength	Maximise stability	Integrate across jurisd.	Minimise uncertainty	Accomm. flexibility
Metro Vancouver RD	Very Strong	5	4	5	3
Squamish-Lillooet RD Area C	Strong	4	4	3	4
RD North Okanagan	Strong	4	4	4	3
RD Okanagan-Similkameen	Somewhat Strong	4	3	4	3
RD Central Okanagan	Moderate	3	3	3	3
Capital RD	Moderate	3	2	4	2
Fraser Valley RD	Somewhat Weak	3	2	2	2
Columbia Shuswap RD	Somewhat Weak	3	2	2	2
ZONE 2					
Thompson-Nicola RD	Strong	4	4	4	4
Cariboo RD	Strong	4	4	3	3
RD Bulkley-Nechako	Strong	4	4	3	2
RD Central Kootenay	Somewhat Strong	4	4	2	3
Peace River RD	Somewhat Strong	4	3	2	4
RD Kootenay Boundary	Moderate	3	3	2	2
RD Fraser-Fort George	Somewhat Weak	2	2	3	4
Kitimat-Stikine RD	Somewhat Weak	3	1	2	2

Table 3. Strength of legislative framework to protect farmland: Municipalities

SITE	Overall strength	Maximise stability	Integrate across jurisd.	Minimise uncertainty	Accomm. flexibility
Delta	Very Strong	5	5	4	4
Surrey	Very Strong	5	4	4	5
Central Saanich	Very Strong	5	4	5	4
Richmond	Very Strong	5	4	4	4
Kent	Strong	5	4	3	3
Pitt Meadows	Strong	4	4	4	3
Chilliwack	Strong	5	4	2	3
Kelowna	Somewhat Strong	4	3	4	4
Saanich	Somewhat Strong	4	3	4	4
Township of Langley	Somewhat Strong	3	4	2	3
Pemberton	Somewhat Strong	4	3	3	4
Abbotsford	Somewhat Strong	4	2	3	5
Coquitlam	Moderate	3	3	3	2
Maple Ridge	Moderate	3	3	2	3
Port Coquitlam	Somewhat Weak	2	2	2	2

## PRINCIPLES OF LAND USE PLANNING

### *Maximize stability*

Something that is stable is difficult to topple; it stands strong and cannot be easily moved. Likewise, a stable legislative framework for protecting farmland is one that is not easily changed at the whim of shifting political interests; it is well-entrenched in acts of legislation, policy, and governance structures that are based on clear, concise language, and can hold up to court challenge. It is something that people can count on to secure the land base for agriculture and to know what the rules are. In this sense, a measure of stability is a measure of the thing itself – the legislative framework – as it is written in its present form. Thus, stability is a critical measure of the strength of an agricultural land use planning framework.

### *Integrate public priorities across jurisdictions*

Integrating policies and priorities across jurisdictions is a foundation for building cohesion across provincial, regional, and local governments. This principle of integration can be viewed as a “policy thread” that weaves together traditional areas of responsibility<sup>13</sup>. One can also think of integration as a formal “linkage” between policies that provides consistency among them. Such formal linkages can come in the form of a provincial policy that requires a lower-level policy “to be consistent with” provincial statements. The aim of such vertical mechanisms is to ensure that lower-level policies are set within the context of broader public priorities. The same principle of integration applies horizontally, too, so that plans and strategies are co-ordinated and consistent across local governments. In order to successfully integrate policies across jurisdictions there must be sufficient details about the legislative context that guides and constrains local government plans and strategies.

### *Minimize uncertainty*

In addition to maximizing the stability of a legislative framework through clear rules and regulations we must also consider how the framework will be implemented and applied to land use decisions. People want to know they can rely on these rules and regulations to be applied consistently and to know how it will be applied under different circumstances. In this sense, people want not only a stable land base for agriculture but also a legislative framework that provides some certainty about how it will be used to make agricultural land use decisions. However, what we do not know is boundless so we must accept that we cannot eliminate uncertainty. What governments can do is to minimize uncertainty by eliminating loop-holes, ambiguous language, and open-ended conditions. Perhaps more importantly, uncertainty can be minimized through consistent interpretations and applications of the legislative framework. In this sense, a measure of uncertainty is a future-oriented measure of expectations about how the legislative framework will be applied to land use decisions. Thus, the presence of uncertainty is a critical measure of the weakness of an agricultural land use planning framework.

### *Accommodate flexibility*

Creating an effective legislative framework is an act of balance without being too stable so that it cannot be changed when needed or too strict so that it cannot be applied in a range of circumstances. Thus, flexibility is necessary in order to moderate the restrictive effects of maximizing stability and minimizing uncertainty. The principle is to enable decision-makers to accommodate a controlled level of flexibility without compromising the primary functions of the legislative framework to provide stability and reduce uncertainty. The means to accommodate flexibility is typically done through governance mechanisms, such as quasi-judicial provincial commissions, advisory committees, and application processes.

Source: Connell and Daoust-Filiatrault (2017)