

Rapid Assessment of Local Legislative Framework for Protecting Farmland Studholm Parish, New Brunswick

SUMMARY

Overall, the strength of the local legislative framework to protect farmland for the Studholm Parish, New Brunswick is **moderate**. There are several strong elements that refer directly to protecting farmland; however, they are hindered by the legislative framework's uncertainty around non-agricultural uses of agricultural lands and accommodating flexibility on rural agricultural lands.

Strength of Local Legislative Framework: Summary Assessment

	Maximise Stability	Integrate Across Jurisdictions	Minimise Uncertainty	Accommodate Flexibility
Studholm Parish, NB	***	***	***	**

*=Very weak; *****=Very strong

ABOUT THE SITE

The Studholm Parish Planning Area is located in Kings County, New Brunswick, just north of the Town of Sussex (Figure 1). The southern half of the Planning Area, closest to Sussex, is comprised of scattered residential development, whereas the northern portion is mainly farmland and resource lands. Several hectares of land are being farmed, and the area is well known for its dairy producing industry.

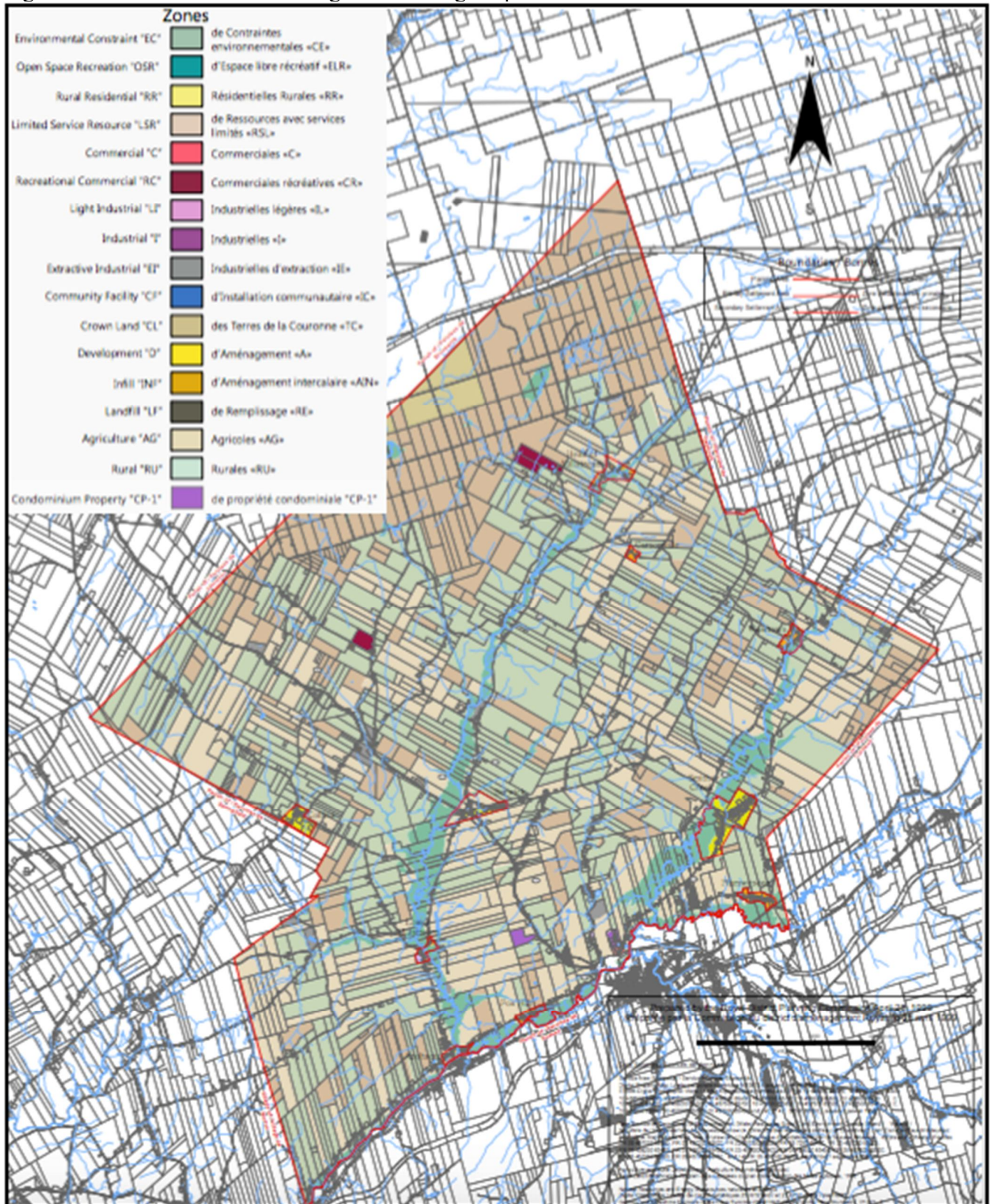
The Regional Service Commission 8 provides services to its member jurisdictions, including the Studholm Parish, by assisting with the development of rural plans, and providing and facilitating regional service delivery. The **Studholm Parish Planning Area Rural Plan Regulation** sets out both the general objectives for the Studholm Parish Planning Area and zoning provisions within the one document. The legislative framework as a whole is limited by the simplicity of the Rural Plan, as it lacks details in some sections. Being a relatively sparsely populated area, the extent of the Rural Plan is reasonable.

Figure 1: Studholm Parish, New Brunswick



Source: Studholm Parish Planning Area Rural Plan Regulation-Community Planning Act (2014)

Figure 2: Studholm Parish Planning Area Zoning Map



Source: Studholm Parish Planning Area Rural Plan Regulation-Community Planning Act (2014)

RESULTS

Maximise stability

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. A key element of stability is a clear statement of purpose regarding farmland protection among the primary goals and objectives within each enforceable document. Thus, stability is a critical measure of the strength of an agricultural land use planning framework.

The Studholm Parish legislative framework is moderate in maximising stability. The strength of the framework rests upon a general objective in Studholm's Rural Plan "to protect agricultural land for the continuation and expansion of agricultural operations in suitable locations." This clear statement is not only explicit in protecting agricultural land, but also in expanding agricultural operations. Statements to protect agricultural operations are evident throughout the Rural Plan. In the rural section, for example, "it is a policy to recognize the importance of rural lands for food production and the provision of natural resources." Further, in the economy section, "it is proposed that agricultural operations, in recognition of their important contribution to the local economy, be protected to the greatest extent possible," and in the agriculture section, "it is a policy to protect agricultural operations by separating them from uses that may hinder or conflict with agricultural operations."

Additionally, the Rural Plan has created Settlement Areas as a means to "direct future development within and around existing built-up areas that are capable of supporting growth." The Rural Plan explains that "this approach to managing growth results in safer and more efficient transportation network, fewer conflicts with traditional rural land uses, and less strain on environmentally sensitive areas." The plan also outlines characteristics of Primary and Secondary Settlement Areas, and states where they will be established generally. Establishing these Settlement Areas to concentrate growth strengthens the stability of the Studholm Parish legislative framework.

Two aspects of the legislative framework undermine the stability described, and prevent the framework from receiving a higher rating. First, included within the list of permitted uses in the Agriculture Zones of the Studholm Parish Rural Plan are forestry, logging hauler, mining operation, and park, among others. As permitted uses in the Agriculture Zones, these non-agriculture uses are protected under the policy statements mentioned above, and the local legislative framework as a whole. Thus, it is important to recognise that Agriculture Zones are being protected, rather than agricultural lands, leaving these lands open to non-agricultural development. Additionally, there are no conditions on the non-agricultural land uses that could limit their impact on agricultural land uses.

Second, the legislative framework does not support the stated goal to protect expansion of agricultural operations; instead, focusing largely on protecting current agricultural operations. A limitation within the framework arises from a focus on existing agricultural operations. Several points need to be made to explain this limitation. To begin, the definition of Agricultural land in the Rural Plan is (a) "land being used in an agricultural operation," or (b) "land that is not being used in an agricultural operation but that may be suited for use in an agricultural operation." However, the lands zoned agriculture appears to be based on existing agricultural operations, i.e., agricultural land registered under ALPDA. It does not appear that lands with agricultural potential (as based on soil capability, for example) were included in the Agriculture Zone. The proposal, "that agricultural operations, in recognition of their important contribution to the local economy, be protected to the greatest extent possible," has a similar focus on protecting existing operations. Thus, the lack of clear support for

expanding agricultural operations, which is a goal of the Rural Plan, reduces the level of stability within the legislative framework.

Integrate public priorities across jurisdictions

Integrating policies and priorities across jurisdictions is a foundation for building cohesion across provincial, regional, and local governments. One can also think of integration as a formal “linkage” that provides consistency among them. 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.

The Studholm Parish legislative framework is moderate at integrating across jurisdictions. The Rural Plan references the *Agricultural Land Protection and Development Act (ALPDA)* at numerous locations throughout the agriculture section, mainly pertaining to tax relief for agricultural land. The eligibility of this tax relief depends on registering this land under the ALPDA and therefore placing it within an appropriate agricultural zone. The ALPDA also “enables the adoption of regulations to the separation of agricultural and non-agricultural uses.” Consistent with regulations set out by the ALPDA, the Studholm Rural Plan proposes “adequate separation be maintained between agricultural and other uses,” and “that land registered under ALPDA be zoned ‘Agriculture’.” The ALPDA, however, was weakened in regards to protecting agriculture land when sections 10, 21, and 22 were not enacted, which would have worked to further protect agricultural lands. More information about the provincial legislative framework can be found in the Summary Assessment of Provincial Legislative Framework, New Brunswick, available on the project website. Thus, while the local legislative framework is integrated with provincial legislation, the weak provincial framework presents a constraint.

Minimise uncertainty

The presence of uncertainty, typically introduced via ambiguous language, exceptions or gaps, is a critical measure of the weakness of an agricultural land use planning framework. Thus, in addition to maximising the stability of a legislative framework through enforceable policies, people want to know they can rely on these rules and regulations to be applied consistently under different circumstances.

Overall, the Studholm Parish legislative framework is moderate in minimising uncertainty. Defining the boundaries of designated Primary and Secondary Settlement Areas reduces uncertainty. Correspondingly, designating Development Zones and Infill Zones to implement these Settlement Areas also reduces uncertainty. In addition, there are several proposals in the Studholm Rural Plan that provide a sense of security for agricultural land. It is proposed, for example, “that requests to rezone lands zoned ‘Agriculture’ lying outside Settlement Areas be prohibited.” Further, “it is proposed that the creation of lots unrelated to an agricultural use on lands zoned ‘Agriculture’ be discouraged,” and that “requests to rezone lands zoned ‘Agriculture’ lying within a Settlement Area be discouraged.” Contributing to uncertainty is the lack of consistent language throughout the Rural Plan. Phrases and words like “protecting agricultural land” and “prohibit” are strong in their intent but implemented through weaker language, such as “discourage.”

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 maximising stability and minimizing uncertainty. The means to accommodate flexibility is typically done through governance mechanisms.

The Studholm Parish legislative framework is somewhat weak in accommodating flexibility. A strong aspect of the framework is associated with proposals in the agriculture section of the Rural Plan, which accommodate flexibility by adding conditions to statements prohibiting the rezoning of “Agriculture” lands outside Settlement Areas, such as “unless the proposed land use change would not result in a net loss of viable agricultural land on the property,” and “unless the subject land could revert to an agricultural use once the proposed use ceases.” The legislative framework merits credit for these “unless” statement, though other aspects of the framework significantly limit its ability to accommodate flexibility. Similarly, the boundaries of the Settlement Areas will incorporate a buffer with surrounding agricultural uses as well as discourage ribbon or strip development on the periphery of a Settlement Area. However, the list of permitted uses under the “Agriculture” zoning designation leave agricultural land open to non-agricultural uses. The legislative framework would be strengthened if non-agricultural land uses were not included in the “Agriculture” zoning provision. At the very least, the legislative framework would be better designed to accommodate flexibility if the Rural Plan included conditions on non-agriculture permitted uses that more clearly limited their impacts on agricultural land and operations. Lastly, the Studholm Rural Plan does little to recognise the proximity of the Town of Sussex to the Parish. In this context, the proposal to manage lot creation in order to preserve rural character and reduce land use conflicts in Rural areas seems weak. More explicit measures to accommodate development pressures that come with this close relationship would help to accommodate flexibility.

Table 1: Studholm Parish, New Brunswick Legislative Framework

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	Agriculture Strategy	<i>Community Planning Act</i> <i>Agricultural Land Protection and Development Act</i> <i>Agricultural Operation Practices Act</i>	Assessment and Planning Appeal Board
REQUIRED INTEGRATION	CPA 4.1(3) A regional plan, municipal plan, rural plan, basic planning statement or a by-law or regulation under this Act that is enacted or adopted after the coming into force of the provincial planning policy shall conform with the provincial planning policy, and in the case of a conflict, the provincial planning policy prevails.		
REGIONAL	Regional Service Commission 8 Brochure: Using land use planning to preserve our agricultural heritage		Regional Service Commission 8 Board Planning Review Adjustment Committee
LOCAL		Studholm Parish Planning Area Rural Plan Regulation	Local Service District Advisory Committee

Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]

Enforceable policy, regulations pursuant to acts [bold]

Aspirational policy at all levels [plain text]