

## Summary Assessment of Provincial Legislative Framework BRITISH COLUMBIA<sup>1</sup>

Overall, the strength of British Columbia’s legislative framework for protecting farmland is **very strong**. The strongest aspect of the framework is its stability, with strong ratings for integrating the public interest in protecting farmland between the province and local governments and for accommodating flexibility. The principle of minimise uncertainty has a good rating. A profile of the provincial legislative framework is provided at the end.

### Strength of Provincial Legislative Framework: Summary Assessment

|                  | Maximise stability | Integrate across jurisdictions | Minimise uncertainty | Accommodate flexibility |
|------------------|--------------------|--------------------------------|----------------------|-------------------------|
| British Columbia | *****              | ****                           | ***                  | ****                    |

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

#### Maximise stability

The *Agricultural Land Commission (ALC) Act*, enacted in 1973 with major revisions in 2002 and 2014, established the Agricultural Land Reserve (ALR) and the ALC. The Act plays a critical role in land use policies, taking precedence over other legislation, including land use bylaws of local governments. The ALR is land zoning that protects all classes of agricultural land. As of 2014, the ALR consists of two zones. Zone 1, covers the most productive agricultural lands, the primary consideration is to preserve agricultural land. In Zone 2, which covers most of the province, in addition to preserving farmland, the criteria now include social, economic, cultural, and heritage values, which are considered when deciding upon applications for subdivision and non-farm uses. The ALC is a quasi-judicial tribunal that is responsible for implementing the Act. Important elements within the legislation include a clear mandate for the ALC (s6) that is focussed specifically on protecting farmland. This primary focus has withstood the test of time over forty years in spite of changing governments. The ALC Act is supported by the *Agricultural Land Reserve Use, Subdivision, and Procedure Regulation*.

The *Local Government Act (LGA)* sets out the powers, duties, and functions necessary for local governments to carry out its responsibilities, including the authority to regulate the use and development of land (e.g., Official Community Plans (OCP) and Regional Growth Strategies (RGS)). Several sections of the LGA are directly relevant to agricultural planning. The LGA legislates development permit areas for the protection of farming (s488(1)(c)), which may include requirements for screening, landscaping, fencing and siting of buildings or structures, in order to provide buffering or separation of development from farming on adjoining or adjacent land (s491(6)).

The general purpose of the *Land Title Act* is to govern BC's land title system and includes legislation for approving new residential subdivisions. Section 86(1) is a provision that provides approving officers the power to assess impacts of new subdivisions on farmland, whereby the approving

<sup>1</sup> From: Daoust-Filiatrault, Lou-Anne, and David. J. Connell (2015). “Agricultural Land Use Planning in Canada: Case Study of the Corporation of Delta, BC.” Prince George, BC: University of Northern British Columbia.

officer can refuse an application or set conditions if the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties. The Act also governs covenants.

The *Farm Practices Protection (Right to Farm) Act* focusses on the relation between farming and non-farming neighbours and affirms the right of farmers to carry out normal practices without the threat of unwarranted nuisance complaints.

#### Integrate public priorities across jurisdictions

Strong language in the ALC Act and the LGA supports a high level of integration between provincial interests in protecting farmland and local governments. Notably, the ALC Act (s.46(4)) states, “A local government bylaw or a first nation government law that is inconsistent with this Act, the regulations or an order of the commission has, to the extent of the inconsistency, no force or effect.” Under consultation during development of an OCP, the LGA s.475(4) states, “If the development of an official community plan, or the repeal or amendment of an official community plan, might affect agricultural land, the proposing local government must consult with the Agricultural Land Commission.” Under adoption procedures for an OCP, the LGA s.477(3)(b) states, “ 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.” Section 481 deals with restrictions on zoning authority in relation to farming, with reference to the ‘right to farm’ act. A purpose of Regional Growth Strategies is “maintaining the integrity of a secure and productive resource base, including the agricultural land reserve” (LGA, Part 13 s.428(2)(e)). Also, policy statements in community plans may include policies respecting the maintenance and enhancement of farming on land in a farming area or in an area designated for agricultural use in the plan (s.474(1)(c)). LGA Part 14 s.551 allows the Minister to create standards to guide the development of bylaws in farming areas.

#### Minimise uncertainty

Detailed regulations about excluding ALR lands and non-farm uses help to minimise uncertainty. The Agricultural Land Reserve Use, Subdivision, and Procedure Regulation established permitted uses of farmland and permitted subdivisions, as well as the procedures for making applications.

Other provisions under the LGA govern use of land for agricultural operations (Part 14 Div., s.551-556) and help to minimise uncertainty by documenting permitted uses of land, which includes the creation of farm bylaws that can set specific planning standards for agricultural operations (s.552).

Historically, the use of regional panels has contributed to uncertainty due to the shifts in practice between more or less centralised decision-making. The amendments to the ALC in 2014 stabilised the panels in legislation; the regional panels are now required, as opposed to being at the discretion of the ALC Chair. However, the change itself contributes to uncertainty given that people are not sure about the extent to which the panels will enforce the ALC mandate to preserve farmland. Further, the new considerations in Zone 2 add significantly to this uncertainty; this change undermined the stability of the legislative framework and introduced uncertainty about how the new criteria will be applied in Zone 2.

Presently, BC has no restrictions on foreign ownership of agricultural land, regardless of whether it is in the ALR or not. Foreign ownership increases the possibility that farmland will be alienated.

#### Accommodate flexibility

The primary governance structure that accommodates flexibility is the regional panels of the ALC. Each panel consists of three members from the respective region, thereby providing direct consideration for regional differences when making agricultural land use decisions under the ALC Act. Although there is no specific policy that treats each local government differently, the ALC’s practice of working with local governments to develop land use plans is based on the principle of flexibility. That is, the ALC

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recognises that the geography of the province is very diverse and that local government plans can be developed to accommodate this diversity. However, this practice of flexible planning leads to significant differences among local government plans with regard to the level of commitment to protecting farmland, with some plans being inconsistent with the mandate of the ALC Act.

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Legislative Framework for British Columbia

|                             | <b>POLICY</b>  | <b>LEGISLATION</b>   | <b>GOVERNANCE</b>   |
|-----------------------------|--|--|---|
| <b>PROVINCIAL</b>           | <p>[ALC] <u>Annual Service Plans</u></p> <p>[MAL] <u>Strengthening Farming</u></p> <p>[ALC] ALR and Community Planning Guidelines</p> <p>[Smith] “Planning for Agriculture”</p>  | <p><i>Agricultural Land Commission Act</i></p> <p><i>Local Government Act</i></p> <p><i>Farm Practices Protection (Right to Farm) Act</i></p> <p><i>Land Title Act</i></p> <p><b>Agricultural Land Reserve Use, Subdivision, and Procedure Regulation (2002)</b></p> <p><b>Right to Farm Regulation-Section 918 (1997)</b></p> | <p>Agricultural Land Commission</p> <p>[ALC Act]</p> <p><i>Administrative Tribunals Act</i></p> <p>Governance Policy for the Agricultural Land Commission</p> |
| <b>REQUIRED INTEGRATION</b> | <p><i>ALC Act 46(4) Conflict with Bylaws</i><br/>A local government bylaw or a first nation government law that is inconsistent with this Act, the regulations or an order of the commission has, to the extent of the inconsistency, no force or effect.</p> <p><i>LGA Part 13 s.428(2)(e) Purpose of regional growth strategy</i><br/>Maintaining the integrity of a secure and productive resource base, including the agricultural land reserve</p> <p><i>LGA Part 13 s.475(4) consultation during development of an OCP</i><br/>If the development of an official community plan, or the repeal or amendment of an official community plan, might affect agricultural land, the proposing local government must consult with the Agricultural Land Commission.</p> <p><i>LGA Part 13 477(3)(b) Adoption procedures for an OCP</i><br/>If the proposed official community plan applies to land in an agricultural land reserve established under the ALC Act , refer the plan to the ALC for comment</p> <p><i>ALC Act 13 Dispute resolution on community issues</i></p> |  |   |
| <b>REGIONAL</b>             |  | <p><i>Regional Growth Strategy</i></p>   | <p>Agricultural Land Commission (Regional Panel)</p>  |
| <b>LOCAL</b>                |  | <p><i>Official Community Plans</i></p> <p><b>Zoning Bylaws</b></p>   | <p>Agricultural Advisory Committee</p> <p>Planning Advisory Committee</p>   |

*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]