

What Can and Should Local Governments do to
Protect and Enhance Local Agriculture?

**CRD Roundtable on the Environment:
Food and Agriculture Subcommittee**

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Contents

Introduction

Section 1: Review of legislation, regulations, and policies affecting local agriculture

Section 2: Which tools can be applied to selected issues?

Section 3: Recommendations for potential action by local governments.

Section 4: Appendices

Introduction

A healthy local agricultural system is necessary for sustainability in the Capital Region.

Local agriculture can supply much of the local demand for fresh nutritious food in a world with increasingly uncertain food supplies. It contributes significantly to the local economy and is an integral part of the regional environment. Local agriculture depends on ecological goods and services supplied by natural ecosystems, including cycling of water and nutrients, pollination and natural pest control and it supplements those goods and services in an increasingly urbanized region. Local farmland complements natural ecosystems in providing habitat and supporting native biodiversity. Local agriculture may help reduce greenhouse gas emissions through carbon sequestration, recycling of appropriately-processed organic wastes and via reduced transportation of locally-consumed food. Environmental challenges to local agriculture include climate change and increasing competition for land and water as population and urbanization increase in the Capital Region.

Support of sustainable local agriculture requires local policies that ensure a secure, affordable and productive agricultural land base and water supply, provide opportunities for appropriate farm-related income, help minimize the costs associated with farming, and encourage environmental stewardship. All levels of government can (and do) regulate and promote different aspects of local agriculture. Some legislation has changed within the past few years. Given the variety and complexity of legislation affecting local agriculture, it is not always clear how local and regional government policy can have the greatest impact on local agriculture. This has become apparent to us during our participation in the development of the Capital Region Food and Health Action Plan^{1 2}.

This note outlines the legislation that pertains to different aspects of agriculture and, within the context of such legislation, suggests policies that municipal and regional government can employ to encourage local agriculture in the broader context of environmental sustainability. The note is based on a more detailed report entitled *Capital Regional District Agricultural Legal & Policy Scan* and related reports (see Appendix). We recommend referring directly to those documents. We trust that these reports will provide useful references for municipal and regional government staff and elected officials and for the general public.

¹ Putting Food and Food Policy on the Table. www.crd.bc.ca/rte/documents/healthy_phase1_web.pdf

² Capital Region Food and Health Action Plan. www.crd.bc.ca/rte/documents/healthy_phase2_web.pdf

Section 1: Review of legislation, regulations, and policies affecting local agriculture.

1.1 Federal-Provincial-Local Jurisdiction

Local government includes municipalities and regional districts. Regional districts may be comprised of a collection of municipalities and rural (or unincorporated / unorganized) areas, and provide planning and services for unorganized areas. In those parts of the Capital Regional District which overlap with the Islands Trust Area, local government is one of six local trust committees established under the Islands Trust Act. Constitutionally, local government has no powers other than those delegated to it by the province.

Agriculture is a shared federal-provincial jurisdiction, while land affiliated with First Nations is subject to unique governance and planning processes. In BC, the Province delegates certain land use and other powers affecting agriculture to local governments, primarily through the *Local Government Act and the Agricultural Land Commission Act and Regulations*

1.2 Provincial Powers

Key provincial legislation affecting land use, agriculture and the food system includes the: *Agricultural Land Commission Act; Farm Practices Protection (Right to Farm) Act; Water Act; Environmental Management Act; Assessment Act; and Fish Protection Act*. Certain practices previously regulated under the *Soil Conservation and Waste Management Acts* are now regulated under the *Agricultural Land Commission and Environmental Management Acts*, respectively.

Agricultural Land Commission (ALC) Act

The ALC Act is the primary tool to protect farmland in BC and applies to land in the Agricultural Land Reserve (ALR). Regional districts were required at the time of the ALR's institution to adopt Land Reserve Plans, by bylaw, and file them with the ALC. Official Community Plans and other bylaws may not contradict the ALC Act. The Province, the ALC and local governments work closely together to ensure the consistency of bylaws with the ALC Act.

ALR applications are filed first with local governments. If the application is for exclusion, for non-farm use of ALR land, or to subdivide land where a bylaw permits farming, the local government must either approve the application in order for it to be forwarded for consideration by the ALC or forward the application without comment. For other ALR applications, the local government is encouraged to provide an opinion.

The *Agricultural Land Commission Act* also restricts the placement of fill on, or the removal of soil from ALR land. This was previously regulated under the Soil Conservation Act. While legislation suggests that both local government and ALC permission are required for these activities, recent practice in Central Saanich suggests that the ALC can override local government objections in this area.

Farm Practices Protection Act

The *Farm Practices Protection (Right to Farm) Act* protects farmers following “normal farm practices” from claims of nuisance. Even if a bylaw defines a practice as a nuisance, the farmer following that practice is deemed not to be in contravention of the bylaw if the practice is defined as “normal” within the FPPA.

Water Act

The *Water Act* asserts provincial control over all surface and groundwater in BC. A license for irrigation or other purposes is required to use water for farming, unless that water is collected on the land or drawn

form a well. Drainage is generally regulated by local government, under the Water Service, Drainage, and Impervious Surface bylaws. Works around streams may require permits under the *Water Act*, the provincial *Fish Protection Act*, and the federal *Fisheries Act*.

Environmental Management Act

The *Environmental Management Act* regulates several practices pertaining to agricultural operations, including open burning and handling of waste from pesticide use and agricultural waste compost production. The Organic Matter Recycling Regulation regulates the application of compost and biosolids to agricultural land.

Assessment Act

Property assessment is a provincial responsibility, whereby land and buildings are placed in classes (such as residential, light industrial or farm) and are assessed a value each year. However, local governments set the tax (or mill) rates that apply to these assessed values.

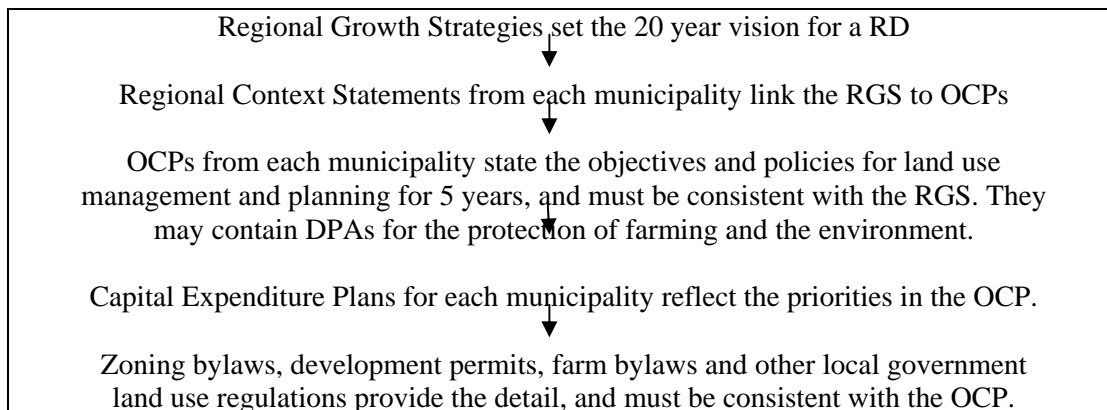
1.3 Local Government Powers

The *Local Government Act* (LGA) is the primary legislation under which the province delegates powers to local governments, including some that affect land use planning, agriculture and the food system. The LGA as well as the *Right to Farm Act* and regulations under the *Agricultural Land Commission Act* link the provincial responsibility for agriculture to the bylaw powers of local governments.

Local government responsibilities under the LGA incorporate: land use, planning, zoning, and control of building/development. These responsibilities are fulfilled using tools such as RGS, OCP community plans, regional, zoning, and farm bylaws, development permits, and temporary use permits. It is important to read these powers in light of the specific authorities granted to local governments under the Agricultural Land Reserve Use, Subdivision and Procedure Regulation of the Agricultural Land Commission Act.

The other key piece of local government legislation affecting agriculture is the *Land Titles Act* (LTA), by which claims to title on land are recorded. The LTA also enables local governments to refuse subdivisions if the development would cause unreasonable interference with farming operations.

The hierarchy of local government planning tools is as follows:



Regional Growth Strategies

RGS should include plans to:

- Maintain integrity of productive resources, including the agricultural land reserve;
- Develop inventories of suitable land and resources for future settlement.
- Establish priorities for water conservation and use

Targets to concentrate growth can also be set in the RGS (e.g. urban containment boundaries).

Official Community Plans (OCPs)

OCPs must contain map designations and policy statements on agricultural land uses and the use of land that is environmentally sensitive to development. This must include the amount and type of present and proposed agricultural land and its uses. OCPs may address additional issues, including the maintenance and enhancement of farming.

The RGS has no direct impact on land use development rights – it is only through setting parameters around what OCPs and subsequent bylaws can do that the RGS has an effect. *Bylaws are the key here, as they translate the policy in RGS and OCP into hard rules, or law.* It is therefore important to have clear policies and precise language in an RGS and an OCP, and to translate these into clear bylaws. The LGA does not suggest how to achieve consistency between the RGS, the OCP and subsequent bylaws. Existing OCPs do not have to be amended to give effect to the RGS. For a bylaw to be deemed ‘inconsistent’, it must be determined to be in “direct conflict” with the RGS or OCP.

Zoning Bylaws

Zoning bylaws classify land into zones in which different uses are allowed. Zoning may also determine factors such as density, siting and size of buildings and the use of signs. Zoning provisions that support agriculture include:

- Larger minimum lot sizes;
- Contiguous areas of farm land on individual lots and over larger areas;
- Commercial land to accommodate agricultural service industries;
- Regulation of non-farm uses;
- Edge planning;
- Rainwater management;
- Direct farm marketing; and
- Agri-tourism accommodation.

On ALR land, local governments may use zoning to regulate but not prohibit farm uses specified under the *ALC Act*. Any OCP that deals with land in the ALR must be referred to the ALC for comment.

Zoning bylaws also affect agriculture in other ways, including composting regulations, farm worker accommodation and agricultural product processing.

Farm Bylaws

Local governments can develop Farm Bylaws, which must be approved by the Minister of Agriculture. Farm bylaws deal with areas not within the scope of zoning bylaws, such as: farm operations, environmental practices, buffers, waste storage, and farm buildings.

Guide for Bylaw Development in Farming

The Ministry of Agriculture’s *Guide for Bylaw Development in Farming* contains flexible bylaw standards for local governments to follow in developing bylaws affecting agriculture on land in the ALR. Local governments are also encouraged to apply those standards to farming areas outside the ALR. The standards include (but are not limited to) direction on the permitted uses of farmland (as per the *ALC Act*),

minimum lot sizes and the percentage of a lot that may be covered by buildings, set-backs and edge lot lines. The Guide states that when a local government wants to vary from the standards, they should consider the impact on current and future farm operations (see Appendices).

Development Permit Areas (DPAs)

Development Permit Areas limit development in a designated area until a Development Permit is obtained. DPAs may have special stipulations around land use and buildings, for example. They may be used to protect farming by requiring set-backs, or buffers between farm and non-farm land. They can also be used to protect specific ecological figures, including riparian areas.

Covenants

The BC Land Titles Act enables local government to register a covenant on the title to land to protect characteristics of farmland, such as no-subdivision clauses. The ALC does not register covenants that restrict farming in any way, such as environmental clauses.

Agricultural Area Plans (AAPs)

Local governments may develop Agricultural Area Plans, which recommend strategies to encourage and enhance agriculture. Agriculture Advisory Committees may be established to formulate AAPs.

Specifically, AAPs can:

- Report on the status of the industry and land base;
- Identify the opportunities and constraints facing agriculture;
- Create land use designations and policies;
- Consider the interaction of agriculture, resource management and environmentally sensitive areas;
- Specify economic development strategies;
- Detail an implementation plan for the AAP with specific staff and budgets;
- Recommend zoning amendments and Farm Bylaws; and
- Provide linkages to the OCP.

Section 2: Policy tools which can be applied to selected issues.

2.1 Farmland protection

Subdivision Approving officers may decline an application for subdivision based on the impact on agriculture.

Edge Planning Can be approached via OCPs, zoning bylaws and DPAs,

2.2 Farm activities

Agri-Tourism Local government may regulate agri-tourism activities and may prohibit agri-tourism accommodation, through OCPs, zoning and DPAs.

Buildings National Farm Building Code, BC Building Code and local government zoning apply.

Fill *ALC Act* applies to land in ALR. Otherwise, local government bylaws may apply.

Feed/Seed Federal government regulates standards and sale.

Transport Provincial government regulates farm equipment on public roads.

Waste Provincial government regulates; local government can regulate open burning.

Composting Province regulates. Within the bounds of the provincial regulations, local government may regulate (but not prohibit):

- the production, storage and application of farm compost;
- the application of compost and biosolids;
- the production, storage and application of Class A compost.

2.3 Crop productivity and protection

Fertilization Federal and Provincial governments regulate.

Pest and weed control:

Federal and Provincial governments regulate. Local government may enact watercourse protection bylaws that impose requirements relating to pollution of watercourses, but likely only within the bounds of the federal/provincial regulations.

Damage from wildlife: Province regulates. The *Farm Practices Protection Act* and *Pesticide Control Act* apply to deterrence of wildlife which damage crops. The *Wildlife Act* regulates hunting of most wildlife species; the federal Migratory Birds Convention Act regulates hunting of many migratory waterfowl, including Canada geese. Local government may impose requirements to control designated species.

2.4 Water management:

The provincial *Water Act* asserts jurisdiction over surface and ground water. Rainwater management and drainage is regulated by local government. Rates of potable water supply for farm use are set by local government.

2.5 Marketing

Federal and provincial government regulations apply, including certification of farm products as being organically produced. Local government can regulate (but not prohibit) certain aspects of: (1) farm retail sales (2) licensed wineries and cideries and (3) sorting, grading, packing and processing on farm.

Zoning can be used to regulate marketing activities (e.g., parking, site coverage).

2.6 Workers: Federal and provincial governments regulate, though local government has some jurisdiction over accommodation.

2.7 Tax assessment:

Provincial government regulates classification, but local governments set the mil rate within each class.

2.8 Environmental issues

Greenhouse gas emissions (GHG)

Provincial government legislation affects GHG emissions from farm practices but may also benefit local agriculture. Local governments can influence GHG emissions and relieve development pressure on farmland through Smart Growth land use principles.

Ecological goods and services

Local governments enhance the contribution of local agriculture to ecological goods and services through tools such as DPAs, watercourse and riparian area management, and appropriate regulation of tree cutting.

Section 3: Recommendations for potential action by local governments to protect and enhance agriculture.

- Set clear policies in the RGS and OCP to protect and enhance agriculture and, most importantly, give these policies force through bylaws.
- Establish Agricultural Advisory Committees and develop Agriculture Area Plans
- Develop an inventory of agricultural land (present and potential) and associated assets.
- State in the RGS and OCP that applications for ALR exclusion will, in most cases, not be supported.

- State in the RGS and OCP that agricultural land will remain free from development.
- Establish Development Permit Areas around agricultural land.
- Establish minimum lot sizes for agricultural land.
- Minimize the subdivision of agricultural land.
- Conduct Agricultural Impact Assessments for developments adjacent to agricultural land.
- Ensure edge planning on lots adjacent to agricultural land.
- Avoid road endings that point to adjacent farmland
- Limit number of dwellings on agricultural land unless legitimately required. Minimize the home plate of residences on agricultural land and regulate location of residences and accessory uses to maximize the amount of farmable land.
- Recommend land for inclusion in the ALR
- Ensure that RGS and OCP water management plans, wildlife management plans and environmental protection plans consider the needs of agriculture.
- Minimize non-farm uses, but allow reasonable level of on-farm processing/value-added.
- Zone land for farm infrastructure, such as feed mills and abattoirs.
- Lease available municipal lands for agriculture
- Develop regional/municipal land trusts
- Require new development to donate land for agriculture or to pay an agriculture amenity fee.
- Institute a permissive tax exemption for ecologically sensitive areas on or adjacent to agricultural land.
- Establish regional fill dumping regulations. Consider establishing regional dump site for fill materials which may otherwise be deposited on and degrade farmland.
- Provide zoning and possibly land for a permanent farmers market, for community gardens and for a community farm.
- Include a Food Strategy in the RGS and OCP.
- Adopt a Food Charter.
- Support development of a regional/municipal Food Directory
- Institute local food purchasing policies for local/regional governments.

Section 4: Appendices

- *CRD Agricultural Land and Legal Scan*; Deborah Curran; March 15 2009
- A Seat at the Table: Resource Guide for Local Governments to Promote Food Secure Communities; Provincial Health Services Authority.
<http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/441047/PHSAreportaseatthetable4.pdf>
- Green Bylaws Toolkit for Conserving Sensitive Ecosystems and Green Infrastructure; Deborah Curran; 2007. <http://www.greenbylaws.ca>
- Protecting the Working Landscape of Agriculture: A Smart Growth Direction for Municipalities in B.C.; Deborah Curran; 2005; <http://www.wcel.org/wcelpub/2005/14233.pdf>
- Report from the Farm Land Economic Viability Review Committee, Corporation of the District of Central Saanich.
- <http://www.centralsaanich.ca/Assets/Central+Saanich/District+Projects/Farm+Land+Report.pdf>
- Guide for Bylaw Development in Farming Areas; BC Ministry of Agriculture and Lands.
<http://www.agf.gov.bc.ca/resmgmt/publist/800series/840000-1.pdf>

Capital Regional District Agricultural Legal & Policy Scan

Prepared For:
Capital Regional District Roundtable on the Environment
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Prepared By:
Deborah Curran
Lawyer
Deborah Curran & Company

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Table of Contents

1.	Introduction.....	1
1.1	Project Context & Scope.....	1
1.2	Methodology.....	1
1.3	Disclaimer.....	1
1.4	Jurisdiction.....	1
1.5	Summary Table.....	3
2.	Planning for Agriculture.....	8
2.1	Federal Framework Agreement.....	8
2.2	Provincial Agriculture Plan.....	8
2.3	Regional Growth Strategies.....	8
2.4	Official Community Plans.....	9
2.5	Agricultural Area Plans.....	10
3.	Agricultural Land.....	12
3.1	Agricultural Land Reserve.....	12
3.2	Zoning.....	12
3.3	Subdivision.....	13
3.4	Farmland Outside of the Agricultural Land Reserve.....	14
3.5	Development Permit Areas for the Protection of Farming.....	14
3.6	Edge Planning.....	14
3.7	Covenants.....	15
3.8	Land Cost.....	15
4.	Farm Activities.....	16
4.1	Farm Practices Overview & Nuisance.....	16
4.2	Animals.....	17
4.3	Agritourism.....	17
4.4	Farm Bylaws.....	18
4.5	Buildings.....	18
4.6	Placement of Fill.....	18
4.7	Feeds & Seeds.....	19
4.8	Transportation.....	19
4.9	Waste Management.....	19
4.10	Composting.....	19
4.11	Agricultural Advisory Committees.....	20
5.	Crop Productivity.....	21
5.1	Fertilization.....	21
5.2	Pest & Weed Control.....	22
5.3	Wildlife.....	23
5.4	Organic Certification.....	23
6.	Water Management.....	25
6.1	Rainwater (Stormwater) Management & Drainage.....	25

6.2 Water Supply	25
7. Processing Infrastructure	27
8. Marketing.....	28
9. Farm Workers	30
9.1 Labour Standards	30
9.2 Transportation.....	30
9.3 Accommodation.....	31
10. Property Assessment.....	32
11. Greenhouse Gas Reduction.....	33
11.1 British Columbia Agriculture Plan	33
11.2 Greenhouse Gas Reduction Legislation.....	33
11.3 Smart Growth.....	34
12. Ecological Goods & Services	35
12.1 Development Permit Areas For Protection of the Environment.....	35
12.2 Watercourses and Riparian Areas	35
12.3 Environmental Farm Plan	36
12.4 Other	36
Appendix A – Legislation and Regulations	37
Appendix B - References	40

1. Introduction

1.1 Project Context & Scope

This document sets out the regulatory framework of the key legislation and policies affecting local agriculture at the municipal, regional, provincial and federal levels of government, with some focus on the potential for local agriculture to reduce greenhouse gas emissions and providing other ecological goods and services.

The purpose of this project is to provide an introductory overview of law and policy affecting agriculture to municipal and regional elected officials, staff and the public to enable these sectors to better support farming in the Capital Region. A summary table of this analysis is contained in section 1.5. Sections 2 to 11 provide short explanations of each area of jurisdiction or policy. This scan is intended to lay the foundation for a more detailed analysis in the future.

1.2 Methodology

Responsibility for agriculture rests with all levels of government, including local governments. Where one government's jurisdiction ends and another's begins is often unclear. This scan focuses on identifying which government has jurisdiction for a subject area affecting agriculture, and the potential or actual conflict of laws between levels of government. Particular attention is paid to clarifying local government jurisdiction. The term "local government" is used where both regional districts and municipalities are included in the discussion. In those parts of the Capital Regional District that overlap with the Islands Trust Area, local trust committees have jurisdiction over land use planning and regulation, granted by section 29(1) of the *Islands Trust Act*. Where jurisdiction is different, a distinction is made between municipalities and regional districts.

It is important to note that this scan is not a survey of what local governments are doing in the Capital Region. It is an overview of the regulatory framework for agriculture; it is a snapshot to clarify what is possible for local governments.

1.3 Disclaimer

The intent of this scan is to present an overview of the regulatory framework for agriculture. However, its scope enabled only a cursory treatment of each subject that may have failed to address some areas of jurisdiction. This scan provides educational information only and should not be relied upon as legal or professional advice. The purpose is to alert readers to issues related to jurisdiction for agriculture. It is essential that local governments and others considering law and policy development consult with legal advisers at the earliest opportunity.

1.4 Jurisdiction

The Canadian Constitution allocates jurisdiction for agriculture to both the federal and provincial governments.³ The federal government has responsibility for:

³ *Constitution Act, 1867*, ss.91 and 92.

- Trade and commerce, including interprovincial and international trade and commerce;
- Seacoast and inland fisheries;
- Some residual jurisdiction for the peace, order and good government of Canada.

The provincial governments are responsible for:

- Municipal institutions;
- Local works and undertakings;
- Property and civil rights; and
- Matters of a merely local or private nature.

Section 95 grants concurrent jurisdiction to both the federal and provincial governments for agriculture. Provincial laws may address agriculture in the province, whereas federal laws may relate to agriculture in all or any of the provinces.

The provincial government allocates some jurisdiction for agriculture to local government. Local governments may enact regulations within their own jurisdiction as set out by provincial legislation. This generally relates to land use planning and some regulatory bylaws relating to the environment. All three levels of government may regulate a specific topic area if they have jurisdiction. For example, the federal government regulates what pesticides are used in Canada, the provincial government regulates those who apply pesticides, and municipalities may regulate the application of pesticides for cosmetic purposes on residential properties.

There are two main caveats on local government jurisdiction. Local government regulation may not have an impact on provincial or federal jurisdiction such that compliance with a local government bylaw would be contrary to senior government requirements.⁴ Second, all local government land use bylaws such as regional growth strategies, official community plans and zoning bylaws must be consistent with the *Agricultural Land Commission Act*, its regulations, and orders of the Agricultural Land Commission (the Commission).⁵ If a bylaw is inconsistent, it has no force and effect.⁶ The *Agricultural Land Commission Act* takes precedent over other provincial legislation, except the *Environmental Management Act* and *Environment and Land Use Act*, and the *Interpretation Act*.⁷

⁴ This is the intent of the general conflict of law principles set out in the case *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; 1982 CanLII 28 (S.C.C.).

⁵ *Agricultural Land Commission Act*, S.B.C. 2002, c.36, s.46(2).

⁶ *Ibid*, s.46(3).

⁷ *Environmental Management Act*, S.B.C. 2003, c.53 ; *Environment and Land Use Act*, R.S.B.C. 1996, c.117; *Interpretation Act*, R.S.B.C. 1996, c.238.

1.5 Summary Table

Topic Area	Municipal	CRD	Provincial	Federal
Agriculture – General	Community Charter Local Government Act	Local Government Act	Constitution Act ss.92 & 95	Constitution Act ss.91 & 95
Planning for Agriculture	Regional Growth Strategy Regional Context Statement Official Community Plans Agricultural Area Plans	Regional Growth Strategy Official Community Plans Agricultural Area Plans	Framework Agreement B.C. Agriculture Plan: Growing a Healthy Future for B.C. Families	Framework Agreement Topic-based strategies
Agricultural Land (including edge planning & land cost)	Zoning Subdivision Development permit areas for protection of farming Approving Officer - Land Title Act Covenants	Zoning (electoral areas) Development permit areas for protection of farming Covenants	Agricultural Land Reserve Agricultural Land Commission Act & Regulations Subdivision Approving Officer - Land Title Act	Fisheries Act
Farm Activities Nuisance Animals Agritourism Farm Bylaws	Farm Bylaws Zoning Animal Bylaw Zoning Sign Bylaw Business Bylaw Farm Bylaws	Zoning Animal Bylaw Zoning Sign Bylaw Farm Bylaws	Farm Practices Protection (Right to Farm) Act Health Act Integrated Pest Management Act Environmental Management Act & Regulations Water Act Prevention of Cruelty to Animals Act Livestock Act Trespass Act Community Charter Local Government Act Agricultural Land Commission Act & Regulation Local Government Act & Community Charter Local Government Act	Fisheries Act Health of Animals Act Migratory Birds Convention Act, 1994 Codes of Practice for the Care and Handling of Farm Animals

Topic Area	Municipal	CRD	Provincial	Federal
Buildings	Building Bylaw	Building Bylaw	B.C. Building Code Community Charter	National Farm Building Code of Canada
Placement of Fill	Soil Removal & Deposit Bylaw	Soil Removal & Deposit Bylaw	Agricultural Land Commission Act & Regulation	Seeds Act Canadian Wheat Board Act Feeds Act
Feeds & Seeds				
Transportation				
Waste Management	Farm Bylaws	Farm Bylaws	Environmental Management Act & Regulations	Fertilizer Act
Composting	Zoning	Zoning	Environmental Management Act & Regulations Health Act Local Government Act	
Advisory Committee	Agricultural Advisory Committees	Agricultural Advisory Committees	Agricultural Advisory Committees	
Crop Productivity Fertilization	Farm Bylaws		Environmental Management Act & Regulations Agricultural Land Commission Act & Regulations	Fertilizer Act
Pest & Weed Control	Watercourse Protection Bylaw Weed Control Bylaw		Integrated Pest Management Act & Regulation Environmental Management Act & Regulations B.C. Fire Code Weed Control Act Workers Compensation Act & Regulations	Pesticide Control Products Act Plant Protection Act National Farm Building Code of Canada Fisheries Act Migratory Birds Convention Act Transportation of

Topic Area	Municipal	CRD	Provincial	Federal
Wildlife Organic Certification	Dangerous Wildlife Bylaw		Wildlife Act Community Charter & Regulations Agri-Food Choice and Quality Act	Dangerous Goods Act
Water Management Rainwater & Drainage Water Supply	Drainage Bylaw Impervious Surface Bylaw Zoning Water Service Bylaw	Drainage Bylaw Impervious Surface Bylaw Zoning Water Service Bylaw	Local Government Act Community Charter Water Act & Regulations Environmental Management Act & Regulations Agricultural Land Commission Act & Regulation Water Act & Regulations Agricultural Land Commission Act & Regulation	Fisheries Act
Processing Infrastructure	Zoning Parking & Sign Bylaws Agricultural Land Commission Act Agricultural Land Reserve Use, Subdivision and Procedure Regulation	Zoning Parking & Sign Bylaws Agricultural Land Commission Act Agricultural Land Reserve Use, Subdivision and Procedure Regulation	Agricultural Land Commission Act & Regulation Environmental Management Act & Regulations Agricultural Produce Grading Act British Columbia Wine Act Food Products Standards Act Meat Inspection Act Natural Products Marketing (BC) Act	Canada Agricultural Products Act Consumer Packaging & Labeling Act Food & Drugs Act
Marketing	Zoning Business Licence Bylaw Noise Bylaw	Zoning Noise Bylaw	Natural Products Marketing (BC) Act Agricultural Produce Grading Act Liquor Control and Licencing Act Agri-Food Choice and Quality Act Local Government Act Community Charter Agricultural Land Commission Act & Regulation	Canada Agricultural Products Act

Topic Area	Municipal	CRD	Provincial	Federal
Farm Labour Labour Standards Transportation Accommodation	Zoning	Zoning	Workers Compensation Act & Regulations Employment Standards Act & Regulations Commercial Transport Act Transportation Act Motor Vehicle Act & Regulations Transport of Dangerous Goods Act Integrated Pest Management Act Agricultural Land Commission Act & Regulation	Migrant Farm Labour Program
Tax Assessment	Property Tax Bylaw	Property Tax Bylaw	Assessment Act Local Government Act Community Charter	
Greenhouse Gas Reduction BC Farm Plan New B.C. Legislation Smart Growth	OCP Zoning	OCP Zoning	B.C. Agriculture Plan: Growing a Healthy Future for B.C. Families Greenhouse Gas Reductions Targets Act 2007 Carbon Tax Act 2008 Greenhouse Gas Reduction (Cap & Trade) Act 2008 Greenhouse Gas Reduction (Vehicle Emissions Standards) Act Greenhouse Gas Reduction (Emissions Standards) Statutes Amendments Act 2008	
Ecological Goods & Services Development Permit Areas (DPA)	DPA for protection of the environment	DPA for protection of the environment	Local Government Act	

Topic Area	Municipal	CRD	Provincial	Federal
Riparian Areas	Watercourse Protection Bylaw Zoning	Zoning	Environmental Management Act & Regulations Fish Protection Act & Regulations	Fisheries Act Migratory Birds Convention Act
Environmental Farm Plan			Environmental Farm Plan Program	Environmental Farm Plan Program
Other	Tree Cutting Bylaw Conservation Covenants	Tree Cutting Bylaw Conservation Covenants	Land Title Act	

2. Planning for Agriculture

General strategic policy and planning documents often set the stage for policy and legislative reform. These documents are found at all levels of government and usually address topic areas within the jurisdiction of the government developing the document and expressions of intent to work with other governments to address multi-jurisdictional issues.

2.1 Federal Framework Agreement

The Growing Forward Framework Agreement is the basis for federal-provincial coordination on agriculture from 2008 to 2012.⁸ It includes cost-sharing initiatives and a new business risk management program in furtherance of the three strategic goals of a competitive and innovative sector, a sector that contributes to society's priorities, and a sector that is proactive in managing risks. Agriculture and Agri-Food Canada has also developed or is developing topic-specific strategies, such as for drought, science and innovation, and sustainable farming.⁹

2.2 Provincial Agriculture Plan

In addition to the federal-provincial Growth Forward Framework Agreement (described in section 2.1 above), the Government of British Columbia released the *British Columbia Agriculture Plan: Growing a Healthy Future for B.C. Families* in 2008.¹⁰ It provides direction for families in agriculture and a vision for decreasing greenhouse gas emissions in the farm sector. The vision is the continued development and growth of an economically viable and resilient agriculture and food sector which contributes significantly to the health of British Columbians, climate change mitigation, environmental sustainability and a growing B.C. economy. The 23 strategies are grouped into five themes of:

- Producing local food in a changing world;
- Meeting environmental and climate challenges;
- Building innovative and profitable family farm businesses;
- Building First Nations agriculture capacity; and
- Bridging the urban/agriculture divide.

2.3 Regional Growth Strategies

Regional growth strategies (RGS) are an agreement between a regional district and its member municipalities to guide decisions about growth and development over a 20 year time frame by coordinating local government action on a range of issues that include housing, transportation, urban containment, the green infrastructure, and economic development.¹¹ The purpose is to promote human settlement that is socially, economically and environmentally healthy that makes efficient use of public facilities and services, land and other resources. Section 849(2)(e) of the *Local*

⁸ <http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1217941012105&lang=eng>

⁹ See, for example, Agriculture and Agri-Food Canada, Comments on the National Strategy for Agriculture Science and Innovation Materials <http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1175257909463&lang=e>, and Framework for a National Agriculture and Agri-Food Canada (AAFC) Drought Strategy – Draft <http://c-ciarl.mcgill.ca/AAFC%20Drought%20Strategy%20Framework%20Draft.pdf>.

¹⁰ http://www.al.gov.bc.ca/Agriculture_Plan/

¹¹ *Local Government Act*, R.S.B.C. 1996, c.323 ss. 849-850.

Government Act explicitly states that an RGS should work towards “maintaining the integrity of a secure and productive resource base, including the agriculture land reserve.”

All regional district bylaws and official community plans of member municipalities must be consistent with an RGS. Municipalities adopt Regional Context Statement (RCS) in their official community plans (OCP) to bring the OCP into conformity with the RGS. All zoning and infrastructure decisions must be consistent with the RCS. RGSs and OCPs can contain strong policies of support for maintaining existing agricultural lands and the farm economy.

The first goal of the Capital Regional District RGS is to manage and balance growth by keeping urban settlement compact and by protecting the integrity of rural communities.¹² Policies that support this goal are locating 90 percent of new dwelling units within the regional urban containment boundary and servicing area, supporting farming within the agricultural land reserve (ALR), and buffering renewable resource lands.

2.4 Official Community Plans

An OCP is a statement of objectives and policies to guide land use management and planning over a five year period.¹³ It addresses development, servicing, transportation, environmental protection, the promotion of agriculture and other issues in a municipality or part of a regional district.

An OCP must include the amount and type of present and proposed agricultural land uses. It may contain policies of the local government respecting the maintenance and enhancement of farming on land in a farming area or in an area designated for agricultural use. Examples of OCP policies that address agriculture include:¹⁴

- Discourage applications for removal of land from the ALR by stating that such applications will not be supported except in unique circumstances where the quality of the land is unsuitable for agriculture;
- Provide for a full range of agricultural and complementary uses in the ALR and encourage value-added activities that can improve farm viability;
- Provide setbacks and buffers when developing land adjacent to the ALR to prevent conflicts and encroachment;
- Recognize and protect the needs and activities of farm operations when considering adjacent and nearby land uses;
- Plan for uses that are compatible with agriculture along the ALR boundary;
- Preserve contiguous areas of agricultural land and avoid severance by recreation, parks, and transportation and utility corridors; and
- Encourage partnerships with the agricultural community, senior governments and private enterprise to promote the development of the agricultural sector.

¹² Capital Regional District (2003). *Regional Growth Strategy* (Victoria: Capital Regional District). http://www.crd.bc.ca/reports/regionalplanning/generalreports/regionalgrowthstrate/regionalgrowthstrate/Regional_Growth_Strategy.pdf.

¹³ *Local Government Act*, *supra* note 9 ss. 875-884.

¹⁴ These were summarized from Barry Smith (1998). *Planning for Agriculture* http://www.alc.gov.bc.ca/publications/planning/pfa_main.htm and Deborah Curran (2005). *Protecting the Working Landscape of Agriculture: A Smart Growth Direction for Municipalities in British Columbia* (Vancouver: West Coast Environmental Law Association).

Local governments may also designate development permit areas for the protection of farming in the OCP (see Part 3 below for more detail), and agricultural area plans (see below).

OCPs do not authorize or approve activities. They are considered policy guidance. However, local government decisions to enact new bylaws or amend existing regulations and approval requirements must be consistent with the OCP.¹⁵ Courts have interpreted this consistency requirement to mean “not in direct conflict,” which sets a high standard for local government action to be contrary to an OCP.¹⁶

Local governments must also ensure that land use bylaws and plans, including OCPs, are consistent with the *Agricultural Land Commission Act*, regulations and orders of the Commission. An official community plan that deals with land in the ALR must be referred to the Commission for comment.¹⁷

2.5 Agricultural Area Plans

Local government agriculture plans, strategies and agricultural area plans are agriculture-specific local policies and recommendations for strengthening farming. These plans act as topic-specific or neighbourhood plans of the OCP and provide a high level of detail specific to the issues relevant to farming. Agricultural area plans can:¹⁸

- Report on the status of the agriculture industry and resource base within the plan boundary;
- Identify the opportunities and constraints facing agriculture;
- Identify the important ALR/urban interfaces and policies for buffering the ALR;
- Create land use designations and policies;
- Consider the interaction between agriculture, resource management and the protection of environmentally sensitive areas;
- Create policies and recommend action to deal with hydrology (water quantity and quality, drainage, flood prevention);
- Address transportation and servicing issues;
- Identify development permit areas and guidelines for urban development adjacent to agricultural land;
- Set targets for the cumulative impact of farm-related activities (residential, marketing, processing and agri-tourism) to ensure they do not undermine the productive capacity of the land;
- Specify economic development strategies to address challenges to agriculture and opportunities to develop a strong agricultural industry (e.g. using local markets to their fullest);
- Recommend priorities, actions, and participants to successfully achieve solutions;
- Promote agriculture by generating public awareness of its value in the region;
- Detail an implementation plan with specific staff, financial and community resource allocations;
- Establish a monitoring regime that measures ongoing progress towards plan implementation;
- Maintain an activity inventory of the agricultural sector in the community; and

¹⁵ *Local Government Act*, *supra* note 9 s.884.

¹⁶ See, for example, *Rogers v. Saanich* (1983), 22 M.P.L.R. 1 (B.C.S.C.) and *Brooks v. Courtenay (City)* (1991), 78 D.L.R. (4th) 662 (B.C.C.A.).

¹⁷ *Local Government Act*, *supra* note 9 s.882(3)(c).

¹⁸ Curran, *supra* note 12.

- Provide linkages to the OCP and recommend appropriate zoning bylaw amendments and the need for the development of a farm bylaw.

3. Agricultural Land

Land that is farmed is located within and outside of the Agricultural Land Reserve (ALR), a unique provincial zone for land containing Class 1-5 soils. In addition to local government jurisdiction, land within the ALR is subject to special regulations for its use and development, and local governments and landowners are precluded from hindering farm activities where a farmer uses normal farm practices. Specifically, local governments are prohibited from prosecuting farmers for normal farm practices that contravene bylaws dealing with nuisance, disturbance, and animals.¹⁹ See Part 4 for a discussion of the limitations on local government jurisdiction if normal farm practices are employed.

3.1 Agricultural Land Reserve

The ALR is a provincial agricultural land use zone within which the Agricultural Land Commission must provide permission for changes from farm uses. Approximately four percent of B.C. is included in the ALR, and landowners and governments must apply to the Commission to include or exclude land from the ALR.²⁰ A local government must not permit agricultural land to be used for a non-farm use unless where allowed by the *Agricultural Land Commission Act*, regulations, an order or permission from the Commission.²¹ Likewise, an approving officer, which is the local or provincial government official who approves subdivisions, must not approve the subdivision of agricultural land unless where allowed by the *Act*, regulations or order or permission of the Commission.²² The Commission may delegate its powers to decide non-farm use or subdivisions applications to a municipality, regional district or First Nation government.²³

The Commission also creates policies and issues orders to clarify its interpretation and application of the legislation. Policies exist for issues such as agri-tourism, additional residences, and subdivision approval by approving officers.²⁴

Finally, the Commission can have some jurisdiction over ALR lands that are part of treaty settlement lands acquired by First Nations through the B.C. treaty process.²⁵ Some restrictions that are akin to limitations on local government jurisdiction can apply to First Nations' governments, such as an inability to permit a non-farm use in the ALR.

3.2 Zoning

Zoning allows local governments to control the use of land, density or amount of the use, and the siting of development. Zoning bylaws also regulate the height of buildings, signage, and parking. If land is zoned for agriculture, use of the land is limited to agricultural activities whether or not it is in the ALR. However, local governments cannot allow non-farm uses in the ALR unless the *Agricultural Land Commission Act*, regulations, or orders of the Commission permit them.²⁶

¹⁹ *Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, c.131, s.2(3).

²⁰ *Agricultural Land Commission Act*, *supra* note 3 s.30.

²¹ *Ibid*, ss.18, 20 and 25.

²² *Ibid*, s.18.

²³ *Ibid*, s. 26

²⁴ http://www.alc.gov.bc.ca/legislation/legislation_main.htm

²⁵ *Agricultural Land Commission Amendment Act*, S.B.C. 2004, c.32.

²⁶ *Agricultural Land Commission Act*, *supra* note 3 s.18.

Additional provincial regulations curtail and enable local government jurisdiction over land uses in the ALR. They allow land uses and activities in the ALR with restrictions, and may also enable local governments to regulate and prohibit these farm activities and uses.²⁷ The most important restrictions on zoning are found in the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* where section 2 designates certain uses as farm uses that can be regulated but not prohibited by local government. These include farm retail sales, wineries, cideries and ancillary uses, greenhouses, on-farm processing, storage and application of fertilizers, intensive agriculture, mushroom farming and seasonal agri-tourism (but not accommodation). Section 3 allows certain land uses that cannot be prohibited by local government, such as ecological land reserves

Zoning provisions that support agriculture and the ALR include:²⁸

- Large minimum lot sizes and as few zones as possible for farmland within and outside of the ALR;
- Contiguous areas of agricultural land where other uses do not interfere with the practice of farming;
- Suitable commercial land to accommodate the agricultural service industry in farming communities;
- Regulation of accessory and non-farm uses on agriculture land and in the ALR (such as maximum lot coverage and the appropriate siting of buildings, driveways and parking lots close to access roads);
- Edge planning techniques such as buffering and setbacks;
- Specifying the type of farm and residential uses, buildings or structures;
- Rainwater management and drainage;
- Direct farm marketing & other agri-tourism activities;
- Form and character of buildings to protect rural quality (such as the height of buildings); and
- Off street loading and parking.

Finally, if the provincial government designates a local government by regulation, that local government is prohibited from using zoning to restrict the use of ALR land for a farm business.²⁹ The provincial government must approve the zoning bylaws of these designated local governments. The provincial government has not designated the Capital Regional District or any member municipalities under these provisions, therefore local governments in the CRD can still use their full suite of zoning powers to support and shape agriculture businesses.³⁰

3.3 Subdivision

Approving officers may decline an application for subdivision based on the impact of the subdivision on agriculture if the anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm.³¹ If the land is within the ALR, approval of the Commission is required. An approving officer may also decline an application for subdivision

²⁷ *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, B.C. Reg. No. 171/2002, s. 3(1).

²⁸ Curran, *supra* note 12.

²⁹ *Local Government Act*, *supra* note 9 ss. 903(5) and 918.

³⁰ Right to Farm Regulation, B.C. Reg 261/97.

³¹ *Land Title Act*, R.S.B.C. 1996, c.250, s.86(1)(c)(x).

if road allowances shown on a subdivision plan would unreasonably or unnecessarily increase access to land in the ALR.³²

It is important to note that a local government is not required to rezone a property to enable subdivision when the Commission has approved a subdivision of land in the ALR.

3.4 Farmland Outside of the Agricultural Land Reserve

Local government zoning and subdivision authority applies to farmland that is not contained within the ALR. The additional restrictions found in the *Agricultural Land Commission Act*, regulations and Commission orders do not apply.

3.5 Development Permit Areas for the Protection of Farming

A local government may designate development permit areas for the protection of farming (DPA) within which landowners must obtain a permit before subdividing, altering the land or constructing or altering a building.³³ The permits contain conditions on how development will occur based on guidelines that set out the pro-farming objectives desired. These DPAs often affect land adjacent to farmland that is designated for development to ensure adequate buffering between the farm and urban uses. Guidelines often include requirements for:³⁴

- screening;
- landscaping;
- fencing;
- setback of buildings from agricultural land
- open space uses adjacent to farming
- sensitive handling of walkways and trails in buffer strips;
- specifying water retention capacity and limits on total impervious surfaces to prevent flooding of agricultural land by suburban development;
- prohibiting road endings adjacent to farmland; and
- minimizing pedestrian and vehicle traffic near the ALR.

3.6 Edge Planning

Edge planning refers to a bundle of strategies local governments use to plan adjacent to farmland.³⁵ Edge planning areas may be subject to specific DPAs, zoning bylaws, subdivision and development control bylaws, OCP policies and covenants to ensure urban-side buffers. Zoning bylaws may site farm uses away from urbanizing areas, and farm bylaws for designated local government can establish farm management standards for certain types of farm activities.

³² *Ibid*, s.86(1)(c)(xi).

³³ *Local Government Act*, *supra* note 9, ss. 919.1-920.

³⁴ Curran, *supra* note 12. See also the Agricultural Land Commission's *Landscaped Buffer Specifications*.

³⁵ Ministry of Agriculture and Lands (2008). Guide to Edge Planning
http://www.agf.gov.bc.ca/resmgmt/sf/publications/823100-2_Guide_to_Edge_Planning.pdf

3.7 Covenants

Section 219 of the *Land Title Act* enables a municipality, regional district or approved organization to register a covenant on the title to land to protect characteristics of farmland. Covenants may restrict the use of land or buildings, subdivision, building, or altering the land. Covenants that prohibit the use of agricultural land for farm purposes have no effect until approved by the Commission.³⁶

3.8 Land Cost

The purchase and sale of farmland in B.C. takes place in an international land market. B.C. continues to experience population growth, particularly to the two percent of the province in which farms generate 85 percent of farm gate receipts (the Lower Mainland, Southern Vancouver Island and the Okanagan). Farmland in the ALR is subject to land speculation for urban and residential purposes, in part because the *Agricultural Land Commission Act* provides for excluding land from the ALR for non-farm uses.³⁷

³⁶ *Agricultural Land Commission Act*, *supra* note 3, s.22

³⁷ *Ibid*, ss.29-30. For a discussion of the land market value impacts of this possibility of exclusion, see Alison Eagle, Tracy Stobbe, Cornelis van Kooten and Geerte Cotteleer (2008). *Agricultural Land Values – Can Productive Agriculture Survive Development Pressures in British Columbia?* (Edmonton: Agricultural Policy Research Networks Policy Brief FLP #501). www.farmlevel.re.ualberta.ca.

4. Farm Activities

Farm activities refers to farm practices and other activities on farmland. Local government zoning and the *Farm Practices Protection (Right to Farm) Act* and regulations applies both to farmland in the ALR and outside the ALR where zoning permits farm uses to enable and regulate activities on agricultural land.³⁸

4.1 Farm Practices Overview & Nuisance

Working in tandem with the ALR is the *Farm Practices Protection (Right to Farm) Act*, which exempts farm operations (activities) from local government bylaws that address nuisance concerns. It provides that a farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation as long as the farm operation is conducted using normal farm practices on land in the ALR or where local government zoning allows. The farm practice must not be conducted in contravention of the *Health Act*, *Integrated Pest Management Act*, *Environmental Management Act*, the regulations under those Acts or any valid land use regulation.

For land in the ALR, a farmer does not contravene the following municipal bylaws by conducting a farm operation:

- firecrackers, fireworks and explosives;
- weapons other than firearms;
- nuisances, disturbances and other situations;
- animals;
- firearms.

Likewise, for land in the ALR a farmer does not contravene the following regional district bylaws by conducting a farm operation:

- animal control authority;
- noise control;
- nuisance and disturbances;
- fireworks.

Therefore, while local governments can regulate against nuisances and noise, when they are created by a farm operation in the ALR using normal farm practices the nuisance or noise is not a contravention of the local government bylaw. It is important to note that this exemption from the application of bylaws is only for nuisance-related effects of farm practices. Agricultural land is not exempt from land use regulation as discussed in section 3.2 (zoning).

Activities on farmland may require senior government permits, for example under the provincial *Water Act* and federal *Fisheries Act* if working in and about streams. Under the *Health Act*, farm practices must not result in a health hazard.

³⁸ *Farm Practices Protection (Right to Farm) Act*, *supra* note 17 s.2(2).

4.2 Animals

The federal *Health of Animals Act* addresses the control of diseases and toxic substances. The Health of Animals Regulation creates standards for the humane treatment of animals. In partnership with the agricultural industry and humane societies, the federal government has developed numerous Codes of Practice for the Care and Handling of Farm Animals.

The provincial *Prevention of Cruelty to Animals Act* creates offences for the mistreatment of animals and authorizes the enforcement of the Act by the British Columbia Society for the Prevention of Cruelty to Animals. The *Livestock Act* defines Livestock Districts (areas where livestock may be at large) and Pound Districts (areas where livestock at large are subject to capture) and the conditions of capture, liability and trespass. The *Trespass Act* requires the owners in rural areas to construct and maintain fences between properties, unless otherwise agreed upon.

Local governments may enact animal control bylaws addressing licensing and seizure if at large.³⁹

4.3 Agritourism

Local governments may regulate or prohibit agri-tourism accommodation but may only regulate other agri-tourism activities.⁴⁰

Agri-tourism activities that do not involve accommodation are an allowable farm use that local governments may regulate but not prohibit if they meets the following criteria: (1) the land must be assessed as a farm; (2) the activity must be temporary and seasonal; and (3) the activity must be secondary to the farming activity, relate to the principle farm use, and promote or market farm products produced on the farm.⁴¹ Agri-tourism uses that do not meet these criteria require the approval of the Agricultural Land Commission. In general, wineries, cideries and farm retail sales are not required to be temporary or seasonal. Local governments may only prohibit non-accommodation agri-tourism uses by a section 917 farm bylaw approved by the Minister of Agriculture and Lands (see below).

Local governments may regulate and prohibit agri-tourism accommodation. The agri-tourism accommodation must be (1) connected to the principle use of the property as an assessed farm; (2) ten or fewer sleeping units (including bed and breakfast rooms); and (3) less than 5% of the total parcel area that is developed for this accommodation (including buildings, landscaping, driveways and parking). Accommodation that does not meet these conditions requires approval from the Agricultural Land Commission, and any applicable zoning bylaw must specifically permit agri-tourism accommodation uses.

Local governments also regulate agri-tourism through zoning, and include requirements for:⁴²

- maximum building area or site coverage;
- setbacks;

³⁹ *Community Charter*, S.B.C. 2003, c.26, ss.47-49 (for municipalities); *Local Government Act*, *supra* note 9, ss.702.1-707.1 (regional districts).

⁴⁰ *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, *supra* note 25.

⁴¹ *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, *ibid* s.2(2-5).

⁴² Curran, *supra* note 12.

- signage;
- parking;
- maximum number of guest bedrooms and guests;
- food service to guests only;
- prohibition on cooking facilities in guest bedrooms;
- maximum size of guest bedrooms;
- maximum length of stay;
- owner residing in dwelling and operating;
- business licence;
- servicing requirements (water, electrical, liquid waste);
- landscape screening; and
- the meaning of ‘temporary’ and ‘seasonal.’

4.4 Farm Bylaws

Under sections 917 and 918 of the *Local Government Act*, designated local governments may enact farm bylaws that address:⁴³

- the conduct of farm operations as part of a farm business;
- the types of buildings, structures, facilities, machinery and equipment that are required for conducting farm operation;
- the siting of stored materials, waste facilities and stationary equipment; and
- Prohibiting specified farm operations.

However, farm bylaws may only be adopted with the approval of the Minister of Agriculture, and only in an area declared by regulation. To date, the Ministry has not designated any local governments in the Capital Regional for this purpose.⁴⁴

4.5 Buildings

The *National Farm Building Code of Canada* establishes minimum standards for farm buildings. The *BC Building Code* requires all farm buildings within municipalities to conform to the national code.

Local governments can regulate the siting and, for non-farm buildings, the size of buildings through zoning. Local governments also have concurrent jurisdiction for buildings under section 9 of the *Community Charter*. They may enact bylaws regulating buildings with the approval of the Minister, under the authority of a regulation, or by agreement with the provincial government.

4.6 Placement of Fill

The Agricultural Land Reserve Use, Subdivision and Procedure Regulation under the *Agricultural Land Reserve Act* contains a scheme for the placement of fill on land in the ALR. For land that is not in the ALR, local government soil deposit and removal bylaws may apply.

⁴³ *Local Government Act*, *supra* note 9 ss. 917 and 918.

⁴⁴ Right to Farm Regulation, *supra* note 28.

4.7 Feeds & Seeds

The federal government regulates the standards and sale of feed and seeds. Federal legislation includes:

- *Seeds Act* – regulating the testing, inspection, quality and sale of seeds;
- *Canadian Wheat Board Act* – regulating the marketing and transport of grain;
- *Feeds Act* – addressing the quality and sale of animal feeds;

The testing, registration and licensing for use of genetically modified organisms are the responsibility of the federal government.⁴⁵

4.8 Transportation

The provincial *Motor Vehicle Act*, *Commercial Transport Act* and *Transportation Act* and regulations regulate trucks, tractors and other farm equipment on public roads.

4.9 Waste Management

The *Environmental Management Act* regulates the storage, handling and disposal of wastes in B.C. Farmers do not require a permit for agricultural wastes handled according to the Agricultural Waste Control Regulation and the Code of Agricultural Practice for Waste Management. Wastes from the on-farm processing, handling and sale of farm products are not considered agricultural wastes and are subject to different regulations under the *Environmental Management Act*.

Other regulations under the *Environmental Management Act* include:

- Open Burning Smoke Control Regulation – creating minimum standards for open burning;
- Hazardous Waste Regulation – regulating the handling and disposal of hazardous wastes such as containers with pesticide waste;
- Spill Reporting Regulation – requiring reporting spillage of certain quantities substances including pesticide waste.

Local governments may also regulate, under fire protection services, open burning.

4.10 Composting

The *Agricultural Waste Control Regulation* of the *Environmental Management Act* and *Health Act* regulates agricultural waste compost production through the Code of Agricultural Practice for Waste Management that is embedded in the regulation. Farmers may compost without a permit when operating according to the Code. Non-agricultural composting operations are subject to the *Organic Matter Recycling Regulation* and may require permits under the *Environmental Management Act* and from the Commission. The *Mushroom Composting Pollution Prevention Regulation* of the *Environmental Management Act* regulates mushroom media production facilities.⁴⁶

⁴⁵ Government of Canada – Canadian Food Inspection Agency – Biotechnology Regulation at the CFIA
<http://www.inspection.gc.ca/english/sci/biotech/reg/rege.shtml>

⁴⁶ B.C. Reg. 413/98.

Local governments may regulate but not prohibit except by bylaw under section 917 of the *Local Government Act*.⁴⁷

- the production, storage and application of compost from agricultural wastes produced on the farm for farm purposes in compliance with the Agricultural Waste Control Regulation;
- the application of compost and biosolids produced and applied in compliance with the Organic Matter Recycling Regulation;
- the production, storage and application of Class A compost in compliance with the Organic Matter Recycling Regulation, if all the compost produced is used on the farm.

The production, storage and application of Class A compost in compliance with the Organic Matter Recycling Regulation, if at least 50 percent of the compost measured by volume is used on the farm, is permitted in the ALR unless otherwise prohibited by local government bylaw.⁴⁸

The federal *Fertilizers Act* regulates the quality and nutrient analysis of compost sold or given away as fertilizers.

4.11 Agricultural Advisory Committees

Local governments, with the support of the Ministry of Agriculture and Lands, establish Agricultural Advisory Committees to provide a formal way local governments can consult with the agricultural community and assess the impacts of local government action. Agricultural Advisory Committees often steer the development of agricultural area plans, make recommendations on bylaw amendments, and comment on applications for subdivision.

⁴⁷ Agricultural Land Reserve Use, Subdivision and Procedure Regulation, *supra* note 25, s.2(2)(k-m).

⁴⁸ Agricultural Land Reserve Use, Subdivision and Procedure Regulation, *supra* note 25, s.3(p).

5. Crop Productivity

Crop productivity refers to the soil and crop inputs designed to increase productivity, specifically fertilizers and chemical pest controls. Wildlife are also included in this section because they can have a significant impact on crop productivity. The discussion of nuisance concerns (odour, noise, and dust) contained in Section 4.1 applies to the farming activities in this section.

5.1 Fertilization

The federal government, through the Canadian Food Inspection Agency, has jurisdiction for the registration, monitoring and testing of fertilizers. Its activities include:⁴⁹

- registering fertilizers, fertilizers/pesticides, and supplements;
- reviewing product safety, efficacy, and labelling;
- monitoring for active ingredients and contaminants;
- monitoring releases of proposed new products for research purposes;
- testing for contaminants including heavy metals, pesticides and pathogens such as salmonella; and
- dealing with import and export of fertilizers.

The federal *Fertilizer Act* and regulations require that all regulated fertilizers and supplement products be effective and safe for humans, plants, animals and the environment.⁵⁰ They must also be properly labeled.

Provincial legislation and regulations govern pollution prevention, waste management, the handling of organic matter, and the use of manure or compost. The *Environmental Management Act* addresses pollution control in general, and topic-specific regulations establish procedures and standards. These include:

- *Agricultural Waste Control Regulation* – allowing a person carrying out an agricultural operation to operate without a waste permit when storing and using manure according to the Code of Agricultural Practice for Waste Management, and requiring that agricultural products such as fertilizers must be managed, used and stored in a manner that prevents the escape of agricultural waste that causes pollution; and
- *Organic Matter Recycling Regulation* – regulating the composting and beneficial use of organic matter, and exempting the composting of agricultural waste in accordance with Part 5 of the Code of Agricultural Practice for Waste Management, but not exempting the use of waste derived from non-agricultural operations.

Voluntary and mandatory (by regulation) codes of practice dictate the use of different substances. These include:

- *Code of Practice for the Use of Reclaimed Water*

⁴⁹ Canadian Food Inspection Agency: Fertilizers <http://www.inspection.gc.ca/english/plaveg/fereng/ferenge.shtml>.

⁵⁰ R.S.C. 1985, C.F-10.

- *Code of Agricultural Practice for Waste Management*

The Agricultural Land Reserve Use, Subdivision and Procedure Regulation of the *Agricultural Land Commission Act* enables local governments to regulate but not prohibit (except by a bylaw under s.917 of the *Local Government Act*).⁵¹

- the storage and application of fertilizers, mulches and soil conditioners;
- the application of soil amendments collected, stored and handled in compliance with the *Agricultural Waste Control Regulation*, B.C. Reg. 131/92;
- the production, storage and application of compost from agricultural wastes produced on the farm for farm purposes in compliance with the *Agricultural Waste Control Regulation*, B.C. Reg. 131/92;
- the application of compost and biosolids produced and applied in compliance with the *Organic Matter Recycling Regulation*, B.C. Reg. 18/2002;
- the production, storage and application of Class A compost in compliance with the *Organic Matter Recycling Regulation*, B.C. Reg. 18/2002, if all the compost produced is used on the farm.

5.2 Pest & Weed Control

Pesticides must be registered by Health Canada for their specific use. Both the crop and the pest they are to be used on must appear on the pesticide label. Newly registered minor uses are an exception. Federal regulation includes:

- *Pesticide Control Products Act* and regulations - regulating all aspects of pesticide sale, transport, storage and use to ensure the safety, effectiveness and value of pest control products used in Canada;
- *Plant Protection Act* - preventing the import, export and spread of pests, to provide for their control and eradication, and for the certification of plants and other things;
- *National Farm Building Code of Canada* – outlining general requirements for pesticide storage in buildings;
- *Fisheries Act* – protecting fish and fish habitat by prohibiting the discharge of deleterious substances (i.e pesticides) into waters frequented by fish;
- *Migratory Birds Convention Act* – creating an offence to release substances that may harm migratory birds;
- *Transportation of Dangerous Goods Act*- regulates the transport of all dangerous goods

Provincial regulation of pest and weed control products relates to their application, use, disposal and impact on the environment, including:

- *Integrated Pest Management Act* and regulation – establishing a regime for the licensing, use, handling, release, transport, storage, disposal and sale of pesticides.
- *Hazardous Waste Regulation* of the *Environmental Management Act* – establishing standards for handling and disposal of hazardous waste such as waste pest control product containers and wastes containing pest control products;

⁵¹ *Supra* note 25 s.2.

- *Spill Reporting Regulation* of the *Environmental Management Act* – requiring the reporting of spills of more than five kilograms of waste containing a pest control product;
- *BC Fire Code* – governing the storage of hazardous materials;
- *Weed Control Act* – requiring occupiers of land to control noxious weeds; and
- *Occupational Health and Safety Regulation* of the *Workers Compensation Act* – outlining practices to ensure worker safety in the labeling, storage, mixing and use of pesticides.

Municipalities may enact watercourse protection bylaws that regulate, prohibit and impose requirements in relation to polluting a watercourse, stream, creek, ditch or drain.⁵² However, it is not clear whether more stringent municipal watercourse protection standards would prevail over federal, provincial or agricultural codes of practice for pesticide use. Under the same regulation municipalities may enact pesticide control bylaws for the use of cosmetic pesticides on residential properties.⁵³ However, those bylaws may not exercise this authority in relation to the application of pesticides for the management of pests that impact agriculture, on the residential areas of farms, to buildings or inside buildings, and on land used for agriculture.⁵⁴

Local governments also have some authority under the provincial *Weed Control Act* to deal with noxious weeds.

5.3 Wildlife

The provincial *Wildlife Act* regulates hunting and identifies species at risk. It is an offence to kill defined wildlife without a permit. However, a person who kills or wounds wildlife for the protection of life or property and who reports this activity does not commit an offence.

Municipalities may regulate, prohibit and impose requirements by bylaw to control designated wildlife species and regarding the feeding or attracting of dangerous wildlife.⁵⁵ A wildlife bylaw cannot apply to a person engaged in hunting or trapping in accordance with the *Wildlife Act*, and a farm operation, as defined in the *Farm Practices Protection (Right to Farm) Act*.

Finally, municipalities may regulate and prohibit with respect to the discharge of firearms under section 8 of the *Community Charter*.

5.4 Organic Certification

The B.C. *Agri-Food Choice and Quality Act* requires individuals in the food or agriculture industry to be certified according to specified standards if they produce and market agri-food products according to certain practices, such as organic production.⁵⁶ These certified persons may advertise the agri-food products as meeting the specified standards. The Act prohibits

⁵² *Community Charter*, *supra* note 37 ss.8(3)(j), 9 and Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation, B.C. Reg. 144/2004.

⁵³ *Ibid.*

⁵⁴ Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation, B.C. Reg. 144/2004, s.2(2).

⁵⁵ *Community Charter*, *supra* note 37 ss.8(3)(k), 9 and Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation, B.C. Reg. 144/2004.

⁵⁶ S.B.C. 2000, c.20. See also the Organic Agricultural Products Certification Regulation, B.C. Reg. 200/93 and Government of B.C. Infobasket – Organics

<http://infobasket.gov.bc.ca/portal/server.pt?space=CommunityPage&cached=true&parentname=CommunityPage&parentid=1&control=SetCommunity&CommunityID=299&PageID=0>.

anyone from using prescribed terms, such as organic, unless he or she is certified and complies with the prescribed quality and production standards.

6. Water Management

Water management refers to rainwater management and drainage, as well as water supply for agricultural uses such as irrigation and processing. Under the *Water Act*, the provincial government asserts jurisdiction over all surface and ground water in the province.⁵⁷ Existing water rights may be subject to unresolved aboriginal rights and title to water.⁵⁸ In addition to the few existing treaties with First Nations in B.C., the aboriginal rights and title of those First Nations that choose not to negotiate treaties continue to exist and may entitle indigenous communities to specific quantities and quality of water at certain times of year, such as base flows to sustain fish populations.⁵⁹

6.1 Rainwater (Stormwater) Management & Drainage

Rainwater management and drainage is regulated by local governments.⁶⁰ Local governments can require property owners to install drainage systems, and they provide the service of regional or municipal rainwater management through ditches and pipes. The construction and maintenance, for the purpose of drainage or irrigation or to combat the threat of flooding, of dikes, pumphouses, and ancillary works is permitted in the ALR unless otherwise prohibited by local government bylaw.⁶¹ Some agricultural operations may require rainwater management plans and permits under the *Environmental Management Act* and regulation for, for example, runoff from livestock areas.

Local governments may require the control of rainwater runoff from upslope non-agricultural parcels to prevent flooding and increased flows to lowland agricultural land.

The installation of a drainage system may require permits under the *Fisheries Act* if discharge is into a fish-bearing stream. Any works in and about streams requires a permit from the Ministry of Environment under the *Water Act*.⁶²

6.2 Water Supply

Surface water in B.C. is regulated through the *Water Act* licensing system. A farmer must hold a licence for irrigation or other purposes to use water for farming. Older licences take priority over newer licences, reflecting the “first in time, first in right” principle. British Columbia is the only

⁵⁷ R.S.B.C. 1996, c.483.

⁵⁸ This issue is explained in Nowlan, Linda. (2004). Customary Water Laws and Practices in Canada, (Food and Agriculture Organization: Rome, Italy) <http://www.fao.org/legal/advserv/waternews.htm>.
<http://www.fao.org/legal/advserv/faoiucncs/canada.pdf>.

⁵⁹ *Constitution Act, 1982* s.35.

⁶⁰ Municipal jurisdiction for regulating rainwater management and drainage is found in the *Community Charter*, *supra* note 37 s.69 (drainage) and the *Local Government Act*, *supra* note 9 s.907 (impermeable surfaces). Regional district jurisdiction is found in the *Local Government Act* ss. 540-542 (drainage) and s.907 (impermeable surfaces). The authority for providing the service of rainwater management (e.g. ditches and pipes) flows from their service provision authorities (s.8(2) *Community Charter* and s.796 *Local Government Act*).

⁶¹ Agricultural Land Reserve Use, Subdivision and Procedure Regulation, *supra* note 25, s.3(1)(n).

⁶² *Supra* note 55, s.9. See the Ministry of Agriculture and Lands’ Drainage Management Guide for comprehensive information on this topic
http://www.al.gov.bc.ca/resmgmt/EnviroFarmPlanning/EFP_Drainage_Mgmt_Guide/Drainage_Mgmt_Guide_toc.htm.

province in Canada that does not regulate the use of groundwater.⁶³ At present all landowners' quantity of water use is unregulated. Water storage reservoirs involving a dam must also be licensed under the *Water Act*.

Part 4 of the *Water Act* enables the Minister of the Environment to designate an area for the purpose of developing a water management plan if the plan can assist in addressing or preventing conflicts between water users, conflicts between water users and instream flow requirements, or risks to water quality.⁶⁴ Plans can take into account fish, fish habitat, instream flows, and ground water. Those responsible for preparing the plan have considerable powers to evaluate the state of a watershed or region. They may order licensees to provide information, and undertake investigations, tests and surveys. If the Provincial Government approves a plan, the government may then enact a regulation requiring that staff making decisions about water under the *Water Act* or other legislation must consider the plan, and restricting new or amended licences or other authorizations.⁶⁵ To date the only legislated water management planning process has been in the rural Langley area of the Lower Mainland where the District of Langley led the process.

Part 5 of the *Water Act* and the *Groundwater Protection Regulation* (GWPR) address the registration and licensing of well drillers, and the safety of wells. Anyone who drills or alters (including decommissioning) a well must be a qualified professional, such as an engineer, or a qualified well driller, and must follow procedures established by the regulations. The provincial government has made a commitment in the new *Living Water Smart* strategy to regulate groundwater use in priority areas and large groundwater withdrawals by 2012.

The *Fisheries Act* requires a fish guard or screen on water intakes and ditches used for irrigation and other purposes to prevent fish from entering into the water intake or ditch.⁶⁶

Local Governments may provide the service of water purveyor for regional or municipal water supply systems.⁶⁷ They establish the rate per unit of water. The Capital Regional District supplies bulk water to municipalities who retail it to customers.⁶⁸ Agricultural consumers pay the agricultural water rate for water consumed through an agriculture only connection or where consumption is in excess of 455 cubic meters through an agriculture/residential connection on agricultural property.⁶⁹

Finally, surface water collection for farm use or domestic use, water well drillings, connection of water lines, access to water well sites and required rights of way or easements is permitted in the ALR.⁷⁰

⁶³ Specifically, section 1.1 of the *Water Act* directs that the sections of the *Water Act* dealing with licensing do not apply to groundwater unless enabled by regulation.

⁶⁴ *Supra* note 55, ss.62-67.

⁶⁵ *Ibid* at ss.64-65.

⁶⁶ R.S.C. 1985 C. F-14 s.30.

⁶⁷ *Community Charter*, *supra* note 37 at s.8(2) and the *Local Government Act*, *supra* note 9 at s.796.

⁶⁸ Capital Region Water Supply and Sooke Hills Protection Act, S.B.C. 1997, c.5; Capital Region Water Supply and Sooke Hills Protection Regulation, B.C. Reg. 284/97.

⁶⁹ Capital Regional District Bylaw No. 2570. Water Supply Local Service Area Fee and Charge Bylaw No. 1, 1997 http://www.crd.bc.ca/bylaws/water/_bl25709999/BL25709999.pdf.

⁷⁰ The Agricultural Land Reserve Use, Subdivision and Procedure Regulation, *supra* note 25 s.4(i).

7. Processing Infrastructure

Processing infrastructure is enabled as a land use under zoning (for land not in the ALR) and by the Agricultural Land Reserve Use, Subdivision and Procedure Regulation. The processing of agricultural products is permitted on land in the ALR. Local governments may regulate but not prohibit except by bylaw under section 917 of the *Local Government Act* storage, packaging, product preparation or processing of farm products, if at least 50 percent of the farm product being processed is produced on the farm or is feed required for farm production purposes on the farm.⁷¹

Standards for the processing of farm products are both federal and provincial jurisdiction. Federally, the following legislation addresses processing:

- *Canada Agricultural Products Act* – creates national standards and grades of agricultural products. It requires, under the Fresh Fruits and Vegetables Products Regulation that products be prepared in a sanitary manner such as using potable water in the final rinse of produce and cleaning equipment regularly. Other regulations address specific sectors, such as egg, dairy, honey, livestock and poultry carcass grading, maple products, organic products. The Processed Products Regulations creates processing requirements;
- *Consumer Packaging and Labelling Act* – establishing basic labeling requirements for a broad range of prepackaged consumer products;
- *Food and Drugs Act* – addresses the sale and marketing of food

Provincially, the following legislation addresses processing:

- *Agricultural Produce Grading Act* – creating a framework for quality control standards;
- *British Columbia Wine Act* – creating standards for wines produced from grapes grown in B.C.;
- *Food Products Standards Act* – establishing quality and ingredient standards for processed foods;
- *Meat Inspection Act* – regulating the slaughter of animals and the sale of meat and meat byproducts;
- *Natural Products Marketing (BC) Act* – controlling the production, transportation, packaging, storage and marketing of natural products in the province.

⁷¹ *Ibid*, s.2.

8. Marketing

The federal *Canada Agricultural Products Act* regulates the marketing of agricultural products in import, export and interprovincial trade and provides for national standards and grades of agricultural products, for their inspection and grading, for the registration of establishments and for standards governing establishments.⁷²

The *Natural Products Marketing (BC) Act* and regulations provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in B.C., including prohibitions, enablement of marketing boards, and licensing. It regulates eight agricultural commodities through marketing schemes, being broiler hatching eggs, chickens, cranberries, eggs, hogs, milk, turkeys and vegetables. The *Agricultural Produce Grading Act* requires that products grown, slaughtered, produced, kept, sold or offered for sale or consumption in B.C. must be graded, marked and packed according to the Act and regulations. It also provides for systems of licensing.⁷³ Under the *Liquor Control and Licensing Act* and regulations, farm wineries must obtain a special license to serve or sell wine to consumers. The licence specifies hours of operation, marketing and control of the establishment. It is an offence to sell or offer for sale an agri-food product that uses a prescribed word, such as organic, unless the persons marketing the product, the processor and the farmer are certified under the *Agri-Food Choice and Quality Act*.⁷⁴

The marketing of agricultural products is permitted on land in the ALR. Local governments may regulate but not prohibit except by bylaw under section 917 of the *Local Government Act*.⁷⁵

- Farm retail sales if (i) all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or (ii) at least 50 percent of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 square metres;
- A British Columbia licensed winery or cidery and an ancillary use if the wine or cider produced and offered for sale is made from farm product and (i) at least 50 percent of that farm product is grown on the farm on which the winery or cidery is located, or (ii) the farm that grows the farm products used to produce wine or cider is more than 2 hectares in area, and, unless otherwise authorized by the commission, at least 50 percent of the total farm product for processing is provided under a minimum 3-year contract from a farm in British Columbia. For the purposes of this allowed use, "ancillary use" means any of the following activities carried on at a British Columbia licensed winery or cidery: processing, storage and retail sales; tours; or a food and beverage service lounge, if the area does not exceed 125 square metres indoors and 125 square metres outdoors;
- Storage, packing, product preparation or processing of farm products, if at least 50 percent of the farm product being stored, packed, prepared or processed is produced on the farm or is feed required for farm production purposes on the farm.

⁷² R.S.C. 1985, c. 20 (4th Supp.).

⁷³ R.S.B.C. 1996, c.11.

⁷⁴ *Supra* note 54, s.3(3).

⁷⁵ Agricultural Land Reserve Use, Subdivision and Procedure Regulation, *supra* note 25, s.2.

Local governments have further jurisdiction to regulate marketing activities through zoning and noise control bylaws. Zoning can set standards for parking, offstreet loading, the size and siting of buildings, drainage, site coverage, and impermeable surfaces. Local governments may prohibit marketing uses on land that is not in the ALR. Other bylaws that may affect marketing agricultural products include:⁷⁶

- Business licence bylaws that regulate the hours of operation of the business and impose conditions for special events;
- Noise control bylaws; and
- Sign bylaws.

⁷⁶ For example, municipalities have the ability to regulate businesses under section 8(6) of the *Community Charter* and licence businesses under s.15, *supra* note 37. Noise bylaws are enabled under ss.8(3)(h) and 64, and sign bylaws under s.8(4).

9. Farm Workers

Issues that implicate farm workers include labour standards, and the transportation and accommodation of farm employees.

9.1 Labour Standards

The federal government is responsible for immigration and under the Migrant Farm Labour Program enables farm workers to work in Canada.

The provincial government has jurisdiction over occupational health and safety and administers a comprehensive work safe program through the *Workers Compensation Act* and regulations.⁷⁷ The Occupational Health and Safety Regulation contains extensive standards for air quality, equipment safety, and a variety of other workplace factors and activities.⁷⁸ Part 28 of the Regulation specifically addresses standards for agriculture, such as for:

- Cold storage rooms;
- Bridges and culverts;
- Barriers for manure pits;
- Instruction of seasonal, temporary and other workers;
- Animal handling;
- Drinking water;
- Hazardous substances;
- Personal protective equipment; and
- Equipment, such as signs and procedures for equipment guarding, hay & round balers, orchard ladders, small cranes, tractors, use of seat belts, mobile elevating work platforms, and transportation of workers.

9.2 Transportation

The Employment Standards Regulation of the *Employment Standards Act* requires all farm labour contractor vehicles transporting employees to post a safety notice about driver licensing, seating and seat belt use that must be posted where all occupants can see it.⁷⁹

Despite other occupational health and safety requirements, a worker may be transported on farm land on mobile equipment not designed for the transportation of workers if the worker is safely seated and the equipment is not operated at more than 10 km/h.⁸⁰ A worker must not ride on a tongue or drawbar connected to equipment in tandem, or a bucket, forks or other equipment that pose a risk of injury to the worker.

Other provincial legislation that implicates the operation of farms includes:

⁷⁷ R.S.B.C. 1996, c.492.

⁷⁸ Occupational Health and Safety Regulation, B.C. Reg. 296/97.

⁷⁹ R.S.B.C. 1996, c.113; Employment Standards Regulation, B.C. Reg. 396/95.

⁸⁰ Occupational Health and Safety Regulation, *supra* note 76 s.28.50.

- *Commercial Transport Act* – requiring the registration and licensing of commercial vehicles;
- *Transportation Act* – prohibiting unauthorized use of roads;
- *Motor Vehicle Act and Regulations* – establishing licensing for operating a motor vehicle and tractors that are towing implements on public roads;
- *Integrated Pest Management Act* – regulating the transportation of pesticides; and
- *Transport of Dangerous Goods Act* – regulating the transport of dangerous goods.

British Columbia Transit provides public transportation in over 50 communities throughout the province, except in Metro Vancouver.⁸¹ It manages and operates the Victoria Regional Transit System. Funding for transit is cost-shared between BC Transit and local governments. Conventional transit buses service most urbanized regions. Paratransit (minibuses and vans) can be used in rural and suburban areas for flexible routes schedules (certain times of day or times of year), and may be appropriate for making farms more accessible to farm workers by public transit.

9.3 Accommodation

One secondary suite within a single family dwelling and one manufactured home for use by the owner's immediate family are allowed on each parcel in the ALR unless prohibited by local government bylaw.⁸² Unless permitted by the *Agricultural Land Commission Act*, the regulations or an order of the Commission, a local government may not approve more than one residence on a parcel in the ALR unless the additional residence is necessary for farm use.⁸³ The *Act* and regulation do not establish a limit on the number of additional residences for farm help per parcel, but all residences must be necessary for farm use.

Under their zoning power local governments have significant powers to regulate the siting, size and dimensions of farm buildings, and their location on the land. For example, zoning bylaws address the siting, such as distance from lot lines, and size of accommodation for farm workers.⁸⁴

⁸¹ *British Columbia Transit Act*, R.S.B.C. 1996, c.38. See also sections 7 to 9.1 of the British Columbia Transit Regulation, B.C. Reg. 30/91.

⁸² The Agricultural Land Reserve Use, Subdivision and Procedure Regulation, *supra* note 25 s.3(1)(b).

⁸³ *Supra* note 2, s.18.

⁸⁴ See, for example, the Corporation of Delta's A1 Zone – Agriculture at <http://www.deltaviews.com/contentengine/launch.asp?ID=11402>.

10. Property Assessment

The provincial *Assessment Act* and regulations establish the regime for assessing the value of farmland for property tax purposes.⁸⁵ The B.C. Assessment Authority administers the assessment of property. A farm is all or part of a parcel used for primary agricultural production, a farmer's dwelling, or horse training and boarding when operated with horse rearing.⁸⁶ All farm structures, including the farmer's dwelling, will be classified as residential.

Assessment in the farm class results in lower property taxes. Owners must apply to the B.C. Assessment Authority for classification in the farm class.⁸⁷ Unused land in the ALR may qualify for farm class if part of the parcel is farmed and the owner certifies that the unused area is being held for primary agricultural production.⁸⁸ For property not in the ALR, the unused area will be classified according to the zoning and use.

This split assessment approach has many implications, one of them being a significant tax cost for farmers who maintain biodiversity values, such as woodlands, on their properties. In recent years many owners have had the woodland portion of the property taxed at a residential rate, the property value assessment for which takes into account the value of the standing timber for commercial purposes. The resulting property tax, while pro-agriculture, can be a deterrent to integrating biodiversity values across the agricultural landscape.

Local governments establish the property tax rate for land based on a percentage of the assessed value of the land and improvements.⁸⁹

⁸⁵ R.S.B.C. 1996, c.20.

⁸⁶ Standards for the Classification of Land as Farm, B.C. Reg. 411/95.

⁸⁷ Application for Farm Classification Regulation, B.C. Reg. 153/96.

⁸⁸ Standards for the Classification of Land as Farm, B.C. Reg. 411/95, s.4(3)(b) and Certification of Purpose of Land Within the Agricultural Land Reserve, B.C. Reg. 154/96.

⁸⁹ For example, see the *Community Charter*, *supra* note 37 s.197 and the *Local Government Act*, *supra* note 9 at s.808.

11. Greenhouse Gas Reduction

11.1 British Columbia Agriculture Plan

Growing a Healthy Future for B.C. Families specifically addresses decreasing greenhouse gas emissions in the farm sector through climate change mitigation. Part II addresses meeting environmental and climate challenges, with the goal of the agricultural sector contributing to provincial greenhouse gas emission reduction targets through shifts in farm practices, development of new local markets and the advancement of new technologies. Strategies 5-7 include climate action components:

- Implement initiatives to improve environmental management in the agriculture and agri-food sectors (with a focus of building on the Environmental Farm Plans program);
- Implement approaches for farmers to receive benefits for ecological goods and services;
- Address climate change and reduction of greenhouse gas emissions from food production and processing.

11.2 Greenhouse Gas Reduction Legislation

The suite of provincial greenhouse gas reduction legislation may apply to aspects of the farming industry. The legislation includes:

- *Greenhouse Gas Reductions Targets Act 2007* – committing British Columbia to reduce GHG emissions by 33 percent from 2007 levels by 2020 and 80 percent by 2050. This law also commits B.C. to a carbon neutral government for 2010 and applies to all public sector organizations. It does not currently apply to local governments, but they may be included by regulation;⁹⁰
- *Carbon Tax Act 2008* – charging a fee for greenhouse gas emissions from fossil fuels (\$10 per ton of carbon dioxide, increasing to \$30 per ton by 2012);⁹¹
- *Greenhouse Gas Reduction (Cap & Trade) Act 2008* – establishing the Western Climate Initiative to develop a cap and trade system for regulated operators (large industrial emitters);⁹²
- *Greenhouse Gas Reduction (Vehicle Emissions Standards) Act* – enabling the provincial government to adopt California vehicle emissions standards;⁹³
- *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act 2008* – allowing the provincial government to regulate specific greenhouse gas emissions.⁹⁴

⁹⁰ S.B.C. 2007, c.42.

⁹¹ S.B.C. 2008, c.40.

⁹² S.B.C. 2008, c.32.

⁹³ S.B.C. 2008, c.21.

⁹⁴ S.B.C. 2008, c.20.

11.3 Smart Growth

Local governments have a variety of opportunities to support the reduction of greenhouse gas emissions from the farming sector through the use of smart growth land use principles. These include appropriate zoning that allows farm sector businesses to be close to farmland, containing urban areas, and enabling local food marketing activities such as farmers markets.

12. Ecological Goods & Services

In addition to the legislation that has been discussed in this report, this section outlines some additional legislation and ways that local governments can support farmers to continue to supply ecological goods and services. While the Agricultural Land Commission's guidelines for approving conservation covenants in the ALR support some limitation of farm activities for environmental values, the Commission's practice is not to approve the registration of conservation covenants on land in the ALR if they have the potential to limit farm practices.⁹⁵

12.1 Development Permit Areas For Protection of the Environment

A local government may designate development permit areas for the protection of the environment (DPA) within which landowners must obtain a permit before subdividing, altering the land or constructing or altering a building.⁹⁶ The permits contain conditions on how development will occur based on guidelines that set out the pro-environment objectives desired. While DPA designations cannot be used to prohibit farming, they can influence how and where non-farming activities occur on the designated property. In addition, development permits cannot vary the use of the land i.e. prohibit or restrict to such an extent that it amounts to a prohibition of the farm use on land in the ALR or zoned for farming.

The *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* sets out additional details for local government regulation of activities on agricultural land in the ALR.⁹⁷ For example, local governments may regulate land development works such as draining and clearing if they are required for the farm use.

12.2 Watercourses and Riparian Areas

The federal *Fisheries Act* prohibits the deposit of deleterious substances in water frequented by fish, and the harmful alteration, disruption or destruction of fish habitat without a permit.⁹⁸ The *Migratory Birds Convention Act* makes it an offence to release substances that may harm migratory birds.

Provincially, under the *Environmental Management Act*, Agricultural Waste Control Regulation a waste storage facility must be located at least 15 metres from a watercourse and 30 metres from a domestic water source. It also prohibits the application of agricultural waste to land if runoff or the escape of the waste would result in pollution of a watercourse or groundwater. Livestock can have access to watercourses as long as their waste does not cause pollution. Seasonal feeding areas must be at least 30 metres from a high tide watermark or watercourse unless written permission obtained from a director and must be distributed throughout an area to ensure that no accumulation of manure causes pollution.

The Riparian Areas Regulation under the *Fish Protection Act* establishes a process for assessing and mitigating the effects of development in riparian areas in some regions in B.C., including the Capital

⁹⁵ Agricultural Land Commission (2003). Guidelines for Conservation Covenants in the ALR http://www.alc.gov.bc.ca/legislation/policies/Guidelines_convenants_Dec03.pdf

⁹⁶ *Local Government Act*, supra note 9 ss. 919.1-920.

⁹⁷ *Supra* note 26 ss. 2 and 3.

⁹⁸ R.S.C. 1985 C. F- 14 ss.36(3) and 35.

Region.⁹⁹ It applies to residential, commercial and industrial development, but not currently to farming activities. The provincial government does apply it to non-farm activities, including the construction of residences, on farmland.¹⁰⁰

Municipalities may enact watercourse protection bylaws to control activities and substances in and around riparian areas, and local government may enact floodplain bylaws addressing development in floodplains.

12.3 Environmental Farm Plan

Since 2003 the B.C. Environmental Farm Plan Program has worked with farmers to adopt best management practices to become better stewards of the land. A partnership between Agriculture and Agri-food Canada, the B.C. Ministry of Agriculture and Lands and the B.C. Agriculture Council, one of the main activities of the Program is to support farmers to develop environmental farm plans to identify environmental strengths and risks on their farms. These plans may include an action plan to reduce the risks.

The Environmental Farm Plan Program has many publications available to farmers, which include:

- [Reference Guide](#)
- [Drainage Management Guide](#)
- [Grazing Management Guide](#)
- [Irrigation System Assessment Guide](#)
- [Nutrient Management Reference Guide](#)
- [Riparian Management Field Workbook](#)
- [EFP Program Brochure](#)
- [Beneficial Management Practices Application](#)
- [Independent EFP Application](#)
- [Contingency Plan Template for On-Farm Planning](#)

12.4 Other

The Land Conservancy's Conservation Partners program aims to protect and enhance sensitive habitat on agricultural lands by providing recognition, incentives and assistance to farmers who commit to conserving this natural habitat. The farmers receive the ability to use the conservation partners label for marketing purposes.

Finally, local governments can enact tree cutting bylaws to address the rate and composition of tree cutting.

⁹⁹ B.C. Reg. 376/2004.

¹⁰⁰ Schedule to the Riparian Areas Regulation, *ibid*

http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/assessment_methods.pdf

Appendix A – Legislation and Regulations

Federal

Canada Agricultural Products Act, R.S.C. 1985, C.20 (4th Supp.)
<http://laws.justice.gc.ca/en/C-0.4/index.html>

Consumer Packaging and Labelling Act, R.S.C. 1985, C.C-38
<http://laws.justice.gc.ca/en/C-38/>

Feeds Act, S.C. 1985, C.F-9
<http://laws.justice.gc.ca/en/showtdm/cs/F-9>

Fertilizers Act, R.S.C. 1985, C.F-10
<http://laws.justice.gc.ca/en/showtdm/cs/F-10>

Fisheries Act, R.S.C. 1985, C.F-14
<http://laws.justice.gc.ca/en/F-14/>

Food and Drugs Act, R.S.C. 1985, C.F-27
<http://laws.justice.gc.ca/en/F-27/>

Health of Animals Act, R.S.C. 1990, C.21
<http://laws.justice.gc.ca/en/showtdm/cs/H-3.3>

Immigration and Refugee Protection Act, S.C. 2001, C. 27
<http://laws.justice.gc.ca/en/I-2.5/>

Migratory Birds Convention Act, 1994, S.C. 1994, C.22
<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>

Pest Control Products Act, S.C. 2002, C.28
<http://laws.justice.gc.ca/en/showtdm/cs/P-9.01>

Plant Protection Act, S.C. 1990, C.22
<http://laws.justice.gc.ca/en/showtdm/cs/P-14.8>

Processed Products Regulations, C.R.C., c.291
<http://laws.justice.gc.ca/en/showtdm/cr/C.R.C.-c.291//?showtoc=&instrumentnumber=C.R.C.-c.291>

Seeds Act, R.S.C. 1985, C.S-8
<http://laws.justice.gc.ca/en/showtdm/cs/S-8>

Transportation of Dangerous Goods Act, S.C. 1992 C.34
<http://laws.justice.gc.ca/en/T-19.01/>

Provincial¹⁰¹

Agricultural Land Commission Act, SBC 2002, c.36

Agricultural Land Commission Amendment Act, S.B.C. 2004, c.32

Agricultural Land Reserve Use, Subdivision and Procedure Regulation, B.C. Reg. No. 171/2002

Agricultural Produce Grading Act, R.S.B.C. 1996, c.11

Agri-Food Choice and Quality Act, S.B.C. 2000, c.20

British Columbia Transit Act, R.S.B.C. 1996, c.38

British Columbia Transit Regulation, B.C. Reg. 30/91.

British Columbia Wine Act, R.S.B.C. 1996, c.39

Commercial Transport Act, R.S.B.C. 1996, c.58

Community Charter, S.B.C. 2003, c.26

Employment Standards Act, R.S.B.C. 1996, c.113

Employment Standards Regulation, B.C. Reg. 396/95

Environmental Management Act, S.B.C. 2003, c.53

Agricultural Waste Control Regulation, B.C. Reg. 131/92

Hazardous Waste Regulation, B.C. Reg. 63/88

Municipal Sewage Regulation, B.C. Reg. 121/99

Mushroom Composting Pollution Prevention Regulation, B.C. Reg. 413/98

Open Burning Smoke Control Regulation, B.C. Reg. 145/93

Organic Matter Recycling Regulation, B.C. Reg. 18/2002

Spill Reporting Regulation, B.C. Reg. 263/90

Farm Practices Protection (Right to Farm) Act, R.S.B.C. 1996, c.131

Right to Farm Regulation, B.C. Reg. 261/97

Fish Protection Act, S.B.C. 1997, c.21

Riparian Areas Regulation, B.C. Reg. 376/2004

Food Products Standards Act, R.S.B.C. 1996, c.153

Food Safety Act, S.B.C. 2002, c.28

Meat Inspection Regulation, B.C. Reg. 349/2004

Health Act, S.B.C.

¹⁰¹ The Government of British Columbia will make all provincial laws available online as of January 1 2009 at www.bclaws.ca. The links to the legislation in this report requires updating after that date.

Integrated Pest Management Act, S.B.C. 2003, c.58

Land Title Act, R.S.B.C. 1996, c.250

Livestock Act, R.S.B.C. 1996, c. 270

Local Government Act, R.S.B.C. 1996, c.323

Motor Vehicle Act, R.S.B.C. 1996, c.319

Natural Products Marketing (BC) Act, R.S.B.C. 1996, c.330

Organic Agricultural Products Certification Regulation, B.C. Reg. 200/93

Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c.372

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