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What Can and Should Local Governments do to

Protect and Enhance Local Agriculture?

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

June 11, 2009

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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 from 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.

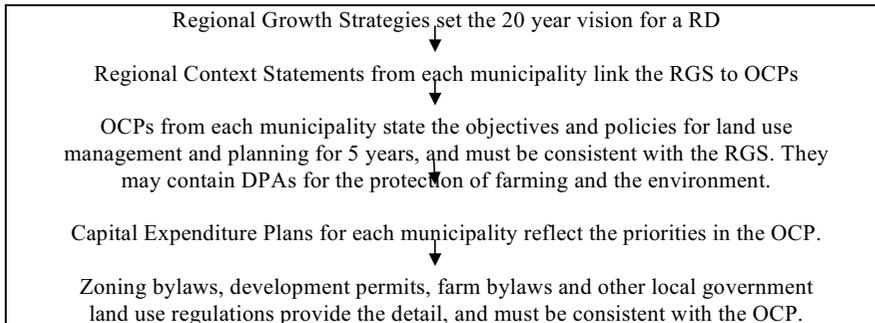
1.3 Local Government Powers

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>