

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

Overall, Alberta’s legislative framework for protecting farmland is **weak**. The framework is designed to accommodate flexibility; however, it does so without adequately addressing the other principles and without providing mechanisms to protect farmland. The provincial statement of public interest to support the agricultural industry provides only a low level of stability. Furthermore, as of May, 2015, the status of the land use planning framework in Alberta is in flux as a result of a major change in government. The future policy direction for agricultural land-use planning remains to be seen, thereby contributing to uncertainty. This uncertainty will subside as the policy directions of the new government become clearer. A profile of the provincial legislative framework is provided at the end.

### Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
<b>Alberta</b>	**	**	*	*

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

#### Maximise stability

Alberta provides only policy direction for province-wide agricultural land use planning; it does not protect farmland through legislation. Primary responsibility rests with local governments, which has responsibility for local planning and development under the *Municipal Government Act* (P.17s.622) (MGA, 1995; currently under review). Under the MGA (s.632(3)(f)), a Municipal Development Plan (MDP), which is the comprehensive plan for municipalities to address land use and future growth, must contain policies respecting the protection of agricultural operations.

The province provides direction to municipal governments through the 1996 Provincial *Land Use Policies* (PLUPs), which enunciates the Province’s perspective on a wide range of planning and resource management matters. Under s.6.1 of the PLUPs, which applies to agricultural land, the stated goal is to “contribute to the maintenance and diversification of Alberta’s agricultural industry.” The policies to achieve this goal include encouraging municipalities to identify lands on which agriculture and associated activities should be a primary land use; limit the fragmentation of agricultural land and premature conversion to other uses; where possible, direct non-agricultural development to areas where such development will not constrain agricultural activities; and to minimise conflicts between intensive agriculture and incompatible land uses. However, the terms of PLUPs, as it is widely known, is written using relatively weak language. Most notably, the Policy (s.1.2) states,

The *Land Use Policies* focus on matters of public policy, not matters of law. They provide a framework for statutory plans, land use bylaws, and planning decisions. The *Land Use Policies*

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<sup>1</sup> Based on materials from: Benoit, Aimee, Tom Johnston, Jana Mackenzie, and David. J. Connell (2015). “Agricultural Land Use Planning in Canada: Case Study of Rocky View County, Alberta.” Lethbridge, AB: University of Lethbridge.

should be interpreted as a guide to more specific policy and action, and are not intended to be the basis of legal challenges.

Neither the 1996 Policy Statement nor the MGA contain provisions stipulating or even making possible provincial approval of statutory plans.

In 2008, the Province introduced the Land-use Framework (LUF), an approach to regional planning given legal effect through the Alberta Land Stewardship Act (ALS Act) in 2009. The aim of the LUF is to manage the cumulative effects of recent unprecedented growth in the province and to help achieve long-term economic, social, and environmental goals for land and natural resources. The ALS Act establishes province-wide initiatives, mechanisms and instruments to support or enhance protecting agricultural land through conservation and stewardship strategies, and through policies to prevent the fragmentation and conversion of agricultural land. It also provides for a stronger level of provincial oversight through the creation of seven statutory regional land-use plans, which must be accounted for in local level decisions. Two of these regional plans have now been released, including the South Saskatchewan Regional Plan (Government of Alberta, 2014), which covers much of southern Alberta. Planning and development decisions are still made at the municipal level; however local policies are now required to align with the regional plan to achieve regional outcomes. Thus the LUF introduces a more coherent planning hierarchy and a more centralised way of managing and monitoring both public and private land use, thereby adding to stability.

One area of the framework that has had stronger provincial oversight and a higher level of stability since 2002 is confined feeding operations (CFOs), which are exempt from municipal planning approval. To help site large-scale intensive livestock operations and to minimize conflicts between these operations and other non-agricultural land uses, the province introduced the Agricultural Operations Practices Act (AOPA) in 2001. Under the current system, the Natural Resources Conservation Board is responsible for approving, subject to among other things an approved manure management plan, and monitoring CFOs; the AOPA also sets minimum distance separation zones and serves as Alberta's right-to-farm legislation. Because primary responsibility for CFOs rests with the NRCB, which follows a process supported by strong and clear regulations, and which places tight constraints around the appeal process, this aspect of the legislative framework is much more stable and less subject to political influence than others.

#### Integrate public priorities across jurisdictions

Several elements of the legislative framework provide mechanisms to integrate public priorities across jurisdictions. Part 17 of the MGA delegates responsibility for land use planning to municipal governments, which includes s.622(3), which states that every statutory plan and land use bylaw "must be consistent with the [provincial] land use policies." In carrying out their planning efforts, a municipality is required, at a minimum, to include direction on agricultural land in their MDP or bylaws.

In the pursuit of a higher level of cooperation and coordination, the *Land Use Policies* documents states that it is important that planning efforts of provincial and municipal governments complement each other and use consistent approaches. In this context, "It is expected that all municipalities will implement these policies in the course of carrying out their planning responsibilities" (s1.0). Correspondingly, under Implementation (s1.1), "Each municipality is expected to incorporate the *Land Use Policies* into its planning documents and planning practices."

The LUF provides another mechanism for vertical integration. The ALS Act states that a regional plan may include or adopt statements of provincial policy (s.9) and that a regional plan may provide rules of application and interpretation that specify which parts are enforceable or a statement of policy or direction that is not intended to have binding legal effect (s.13). Section 20(b) states that local

government bodies must comply with the regional plan. Thus, the regional plans authorised by the ALSA are legally binding on private lands and every land use authority in the province.

Although the legislative framework includes mechanisms for integrating priorities, there are no specific requirements for protecting farmland. For example, the South Saskatchewan Regional Plan (SSRP) includes no legally binding regulations for agricultural land protection and is thus considerably watered down from the original intent of the LUF. Furthermore, municipal plans and planning decisions are not reviewed, approved, or monitored by the Province.

#### Minimise uncertainty

Although the Province does not provide province-wide regulation for farmland protection, one aim of the LUF is to minimise uncertainty by giving better direction and leadership by the Province to lower jurisdictions. A stated purpose is to “provide for the co-ordination of decisions by decision-makers concerning land, species, human settlement, natural resources and the environment” (s.1(2)(c)). In this regard, the PLUPs provide policy direction and the regional plans are the primary mechanism. At the same time, agricultural land use planning is left to municipal governments, with little oversight. This approach has created significant differences among municipalities regarding the level of protection for farmland adopted through planning efforts. This inconsistency contributes to uncertainty.

Significant efforts have been made to minimise uncertainty with the establishment of province-wide regulations focused primarily on manure management in 2002. The rationale for these changes was grounded in the view that a growing number of municipalities were adopting planning policies and regulations that were regarded in some quarters as restricting expansion of the intensive livestock feeding sector. At the same time, the development control authority for livestock feeding operations was transferred from municipalities to the Natural Resources Conservation Board (NRCB), a quasi-judicial board. Oversight responsibility for confined feeding operations (CFOs), which falls under the Agricultural Practices Operations Act (AOPA), was assigned to the NRBC at the same time.

The highly contentious issue of landowners’ property rights in the province contributes to uncertainty. Because of strong public opposition, the Government amended the ALS Act in 2011 to allow for greater compensation to landowners (see Section 19.1) and initiated a Property Rights Task Force that same year. In its report the task force noted that “rather than establishing greater certainty about how land and resources are managed, the new legislation and processes have generated confusion and concern” (Government of Alberta, 2012, p.15).

Some further uncertainty exists at the provincial level because the legislative framework lacks a certain level of horizontal integration; as the SSRP notes, planning and decision-making in Alberta are carried out under various provincial legislation and policies, applied by a range of decision-makers.

#### Accommodate flexibility

An over-riding principle of Alberta’s legislative framework, through policy direction rather than legislation, is to give municipal governments a high level of flexibility in order to accommodate local interests and priorities. This principle is clearly evident in the PLUP policy; it assigns to municipalities the responsibility to “interpret and apply the Land Use Policies” in a “locally meaningful and appropriated fashion” (s1.2). The question is whether this has been accomplished without contributing to uncertainty and the extent to which farmland protection has been strengthened. The lack of farmland protection in the SSRD and differences among MDPs indicates that the level of flexibility undermines the competing aim for coordination and consistency. Land uses set out in municipal planning policies are often discretionary and open to interpretation by local development authorities and councils.

Legislative Framework for Alberta

	<b>POLICY</b>	<b>LEGISLATION</b>	<b>GOVERNANCE</b>
<b>PROVINCIAL</b>	<p><b>Land Use Framework</b> (2008)</p> <p>Growing Forward 2 (2013)</p> <p>Moving Alberta Forward (2011)</p>	<p><i>Municipal Government Act (1994; rev. 2000)</i></p> <p><b>Land Use Policies</b> (1996)</p> <p><i>Alberta Land Stewardship Act (2009)</i></p> <p><i>Irrigation Districts Act (2000)</i></p> <p><i>Agricultural Operation Practices Act (rev. 2002)</i></p> <p><i>Agricultural Service Board Act (2000)</i></p>	<p>Alberta Economic Development Authority</p> <p><i>National Resources Conservation Board</i></p>
<b>REQUIRED INTEGRATION</b>	<p>PLUP (1.1): Each municipality is expected to incorporate the <i>Land Use Policies</i> into its planning documents and planning practices.</p> <p>ALSA</p> <p>s.9 Implementing regional plans (2) ... a regional plan may (a) include or adopt statements of provincial policy for one, all or some planning regions to inform, guide or direct</p> <p>s.13 Legal nature of regional plans (2.1)... a regional plan may provide rules of application and interpretation, including specifying which parts of the regional plan are enforceable as law and which parts of the regional plan are statements of public policy or a direction of the Government that is not intended to have binding legal effect.</p> <p>s.20 Local government bodies (2) Every local government body affected by the regional plan must, within the time set in or under, or in accordance with, the regional plan,</p> <p>(a) make any necessary changes or implement new initiatives to comply with the regional plan, and</p> <p>(b) file a statutory declaration with the secretariat that the review required by this section is complete and that the local government body is in compliance with the regional plan.</p> <p>MGA Part 17 622(3) Land use policies</p> <p>Every statutory plan, land use bylaw and action undertaken pursuant to this Part... must be consistent with the land use policies.</p>		
<b>REGIONAL</b>		<b>Regional Plan (LUF)</b>	Regional Planning Commissions
<b>LOCAL</b>		<p><i>Municipal Development Plan</i></p> <p><b>Zoning Bylaw</b></p>	<p>Agricultural Service Board</p> <p>Subdivision and Development Appeal Board</p>

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

**Enforceable policy, regulations pursuant to acts [bold]**

Aspirational policy at all levels [plain text]