



Alberta's Agricultural Lands: A Policy Toolbox for Moving from Conversion to Conservation

Authored by Brenda Heelan Powell

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Environmental Law Centre

#410, 10115 – 100A Street Edmonton, AB T5J 2W2

Telephone: (780) 424-5099 Fax: (780) 424-5133

Toll-free: 1-800-661-4238

Email: elc@elc.ab.ca Website: www.elc.ab.ca

Blog: www.elc.ab.ca/blog/

Facebook: <http://www.facebook.com/environmentallawcentre>

Twitter: https://twitter.com/ELC_Alberta

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PART 1: RECOMMENDATIONS



Introduction

Recent history tells us that the current legislative and policy regime in Alberta is not working to conserve high valued agricultural lands in Alberta. What would effective legislation and policy look like? To be effective, agricultural land conservation legislation and policy needs to counteract the drivers of land conversion and foster effective incentives and support systems for maintaining the viability of agriculture on the land base.

Conserving Agricultural Lands, Sustaining Ecological Services

This report is focused on the land aspect of the above statement: *conserving the existing land base that supports agricultural activities*. In particular, this report focuses on conserving high quality agricultural lands which are those lands that - due to soil, erosion, water and climatic conditions – are most suited for crop production or grazing activities. One of the underlying drives to conserve existing agricultural lands is to avoid agricultural lands being converted to developed uses, pushing agricultural operations onto other landscapes and thereby impairing natural landscapes and accompanying biodiversity.

Once land is secured, then promoting or mandating sustainable and regenerative agricultural practices becomes paramount to sustain ecological services. It is important to acknowledge that the environmental impacts and benefits associated with agricultural lands varies with particular agricultural uses and practices. From a perspective of sustaining ecological services, not all agricultural activities are created equally and not all agricultural uses are necessarily beneficial. For example, grazing on endemic rangelands, cultivation, irrigation, and confined feeding operations all have distinct and variable impacts on the environment that must be part of the land conservation discussion.

Although this report is focused on tools for agricultural land conservation (what we refer to as land securement), where securement tools come with opportunities to mandate environmentally sustainable practices this is highlighted. A more detailed look at the tools to improve environmental sustainability of agricultural land use and to achieve environmental objectives is the subject for future research and analysis outside the scope of this project. However, clearly the scope and nature of how agricultural operations are undertaken should be part of the securement process. This includes implementing regulatory systems and programs that promote sustainable and regenerative agriculture thereby sustaining ecological processes.



A Note about the Federal Role

This project is focused on tools that can be adopted in Alberta for the conservation of agricultural lands. While the discussion, analysis, and recommendations made in this project are primarily focused on provincial actors (i.e., the provincial government and municipalities), this is not to suggest there is no role to be played by the federal government. It is more a reflection of the currently limited role assumed by the federal government with respect to agricultural lands. As noted in David Connell, *Farmland Protection: The Role of the Federal Government, Policy Brief* (November 2018), federal policy makes no reference to the importance of protecting Canada's agricultural lands as a resource for the agricultural industry.

While the federal government has released *Food Policy for Canada: Everyone at the Table* (2019), it is a very brief and high-level document, or as one commentator put it “pointless and underwhelming” – see Sylvain Charlebois, *Charlebois: Canada's first food policy is pointless and underwhelming* (June 21, 2019) Ottawa Citizen. The *Food Policy for Canada* identifies four key action areas:

- ensuring access to healthy food,
- making Canadian food the top choice (domestically and overseas),
- supporting food security in Northern and Indigenous communities, and
- reducing food waste.

One of the guiding principles of the *Food Policy* is sustainability which includes “fostering protection and conservation of the environment” (page 12). However, there is no express mention of conserving agricultural lands.

Currently, the federal government's biggest impact on agricultural lands conservation is via its taxation powers. The federal government has created income tax rules – such as capital gain exemptions and ecological gifts – which may be relevant to agricultural lands. See the relevant recommendations in this part and more discussion in [Part 3 of this report](#).



Agricultural fragmentation and loss of high value agricultural lands has been ongoing for decades in Alberta. There are economic, social, and environmental consequences associated with fragmentation and loss of agricultural lands including impacts on rural landscapes, local food production, loss of high-quality soil, and economic inefficiencies.¹ In terms of economic inefficiencies, urban encroachment onto agricultural lands:²

- imposes extra costs on farm businesses associated with urban-rural conflicts,
- impedes the ability to achieve economies of scale (inability to gain sufficient contiguous land),
- reduces incentives to invest due to uncertainty of continued farming, and
- results in inefficient allocation and subsidization of public utilities.

¹ Kimberly Good and Sue Michalsky, *Summary of Canadian experience with conservation easements and their potential application to agri-environmental policy* (Ottawa: Government of Canada, Agriculture and Agricultural-Food Canada, 2008) [Good and Michalsky].

² Darren Haarsma and Feng Qiu, *Assessing Neighbour and Population Growth Influences on Agricultural Land Conversion* (2017) 10 *Appl. Spatial Analysis* 21 (published online 6 November 2015).

Environmental consequences include loss of environmental amenities such as wildlife habitat and open space, air pollution, and traffic congestion.³ The loss of the open space provided by agricultural lands may result in food insecurity, reduced biodiversity, and negative public health impacts.⁴

While land use change patterns vary throughout Alberta, the loss and conversion of agricultural lands occurs as a result of (1) urban encroachment on farmland, (2) farmland conversion to non-agricultural production such as forests, and (3) farmland transition to natural landscapes.⁵ From an environmental perspective, these latter two conversions of agricultural lands can actually be beneficial as forests and natural landscapes provide benefits such as habitat and increased biodiversity.

Both land development and population growth have been demonstrated to contribute to conversion of agricultural lands and, furthermore, there are spillover effects where impacts on agricultural lands in one area “can be attributed to both neighbour conversion activities and neighbouring population growth.”⁶ This means that policy makers who consider “land use strategies in isolation from neighbours may make decisions with potentially adverse impacts”⁷ and that “policy makers at different geographic levels need to collaborate and coordinate with each other” to design and implement effective strategies.⁸

³ *Ibid.*

⁴ Qingmeng Tong and Feng Qiu, Population growth and land development: Investigating the bi-directional interactions (2020) 169 *Ecological Economics* 106505 [Tong and Qiu].

⁵ Harlan Wang, Feng Qiu and Xiaofeng Ruan, Loss or gain: A spatial regression analysis of switching land conversions between agriculture and natural land (2016) 221 *Agriculture, Ecosystems and Environment* 222 [Wang et al.].

⁶ Tong and Qiu, *supra.* note 4 at abstract.

⁷ Tong and Qiu, *supra.* note 4 at abstract.

⁸ Tong and Qiu, *supra.* note 4 at 8.

Another factor in the conversion of agricultural lands is increasing farmland prices.⁹In the face of increasing farmland values, new entrants may have difficulty acquiring farmland. Several factors “underlie the rising price of farmland, with economic, environmental and demographic factors being those cited most often”.¹⁰ It is reasonable to think that, particularly in the rural-urban interfaces, speculation on the promise of future development prospects drive up farmland prices.

The nature of losses of agricultural land in Alberta was reviewed and presented in late 2017 in the *Alberta Land Institute's Economic Evaluation of Farmland Conversion and Fragmentation in Alberta, Summary of Findings* (ALI Report).¹¹ The ALI Report found that there has been significant conversion of prime agricultural land into other uses. As outlined in the ALI Report, it was found that (among other things):

- Both farmland and natural areas in the Edmonton-Calgary Corridor have become significantly more fragmented between 1984 and 2013.
- While there was a small reduction in farmland fragmentation between 2000 and 2012 in the Edmonton-Calgary corridor, there was increased fragmentation around Edmonton, Calgary and Red Deer in that same time period.
- Most of the land converted into developed uses between 2000 and 2012 was of the highest levels of land suitability for agricultural purposes.

⁹ *Report of the Standing Senate Committee on Agriculture and Forestry, A Growing Concern: How to Keep Farmland in the Hands of Canadian Farmers* (Ottawa: Government of Canada, 2018).

¹⁰ *Ibid.* at 15.

¹¹ Alberta Land Institute, *Economic Evaluation of Farmland Conversion and Fragmentation in Alberta, Summary of Findings* (Edmonton: University of Alberta, 2017).

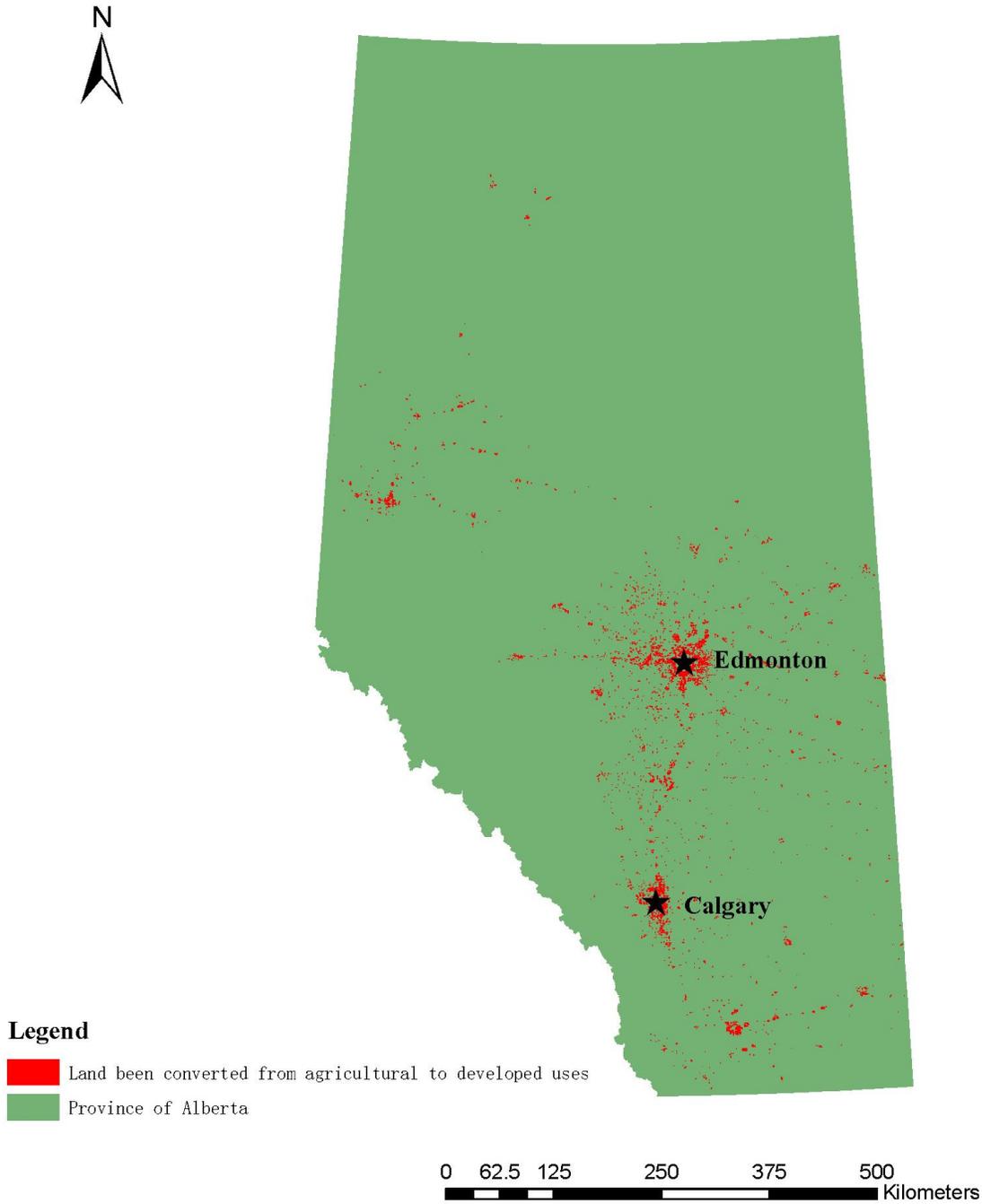
Wang and Qiu found that the Edmonton-Calgary corridor comprises about 6% of total area of province but about 25% of the most suitable land for agricultural uses.¹² They found that, between 2000 and 2012, about 62,500 hectares of land was converted in the Edmonton-Calgary corridor (of which 83% came from agricultural land).¹³



¹² Haoluan Wang and Feng Qiu, *Investigating the Impact of Agricultural Land Losses on Deforestation: Evidence from a Peri-Urban Area in Canada* (2017) 139 *Ecological Economics* 9 [Wang and Qiu].

¹³ *Ibid.*

Figure 1: Map illustrating conversion from agricultural uses to developed uses in Alberta (2000-2018).



Source: Map prepared by Ziwei Hu, University of Alberta Department of Resource Economics and Environmental Sociology, on the basis of boundaries provided by Open Government (Canada) and land use data provided by Agriculture and Agri-Food Canada Annual Crop Inventory for 2000 and 2018.

Fragmentation occurs when large contiguous pieces of agricultural lands are interrupted by developments leading to smaller contiguous areas for agricultural operations. As stated by Haarsma et al., “[f]ragmentation of the land base into smaller parcels (e.g. for acreages, transportation routes, energy/utility corridors, wellheads) is [a] significant challenge facing municipal authorities and the province’s agricultural sector”.¹⁴ Further, once fragmentation begins, policies tend to become less restrictive of alternative housing and business development.¹⁵ As the rural landscape becomes more fragmented, more conflicts between farms and new residents and bylaws that restrict conduct of normal agricultural operations arise. Additionally, there is decreased ability to achieve economies of scale due to lack of sufficient continuous parcels.¹⁶

As well, Haarsma et al. point out that when considering loss of agricultural lands, land quality is a “critical concern”¹⁷ and should be reported in addition to quantities of land being lost. Lost agricultural lands cannot simply be swapped out with other lands as the replacement lands may be lesser quality and this approach will do nothing to address fragmentation. Not to mention that swapping out lands for lost agricultural lands may have negative impacts on other important eco-scapes such as forests, grasslands, and other natural areas.¹⁸

¹⁴ Darren Haarsma et al., *Agricultural Land Conversion and Fragmentation in Alberta: A Review of Land Cover Patterns 2000-2012 and Land Use Policy* (Edmonton: Alberta Land Institute, 2014) [Haarsma et al.].

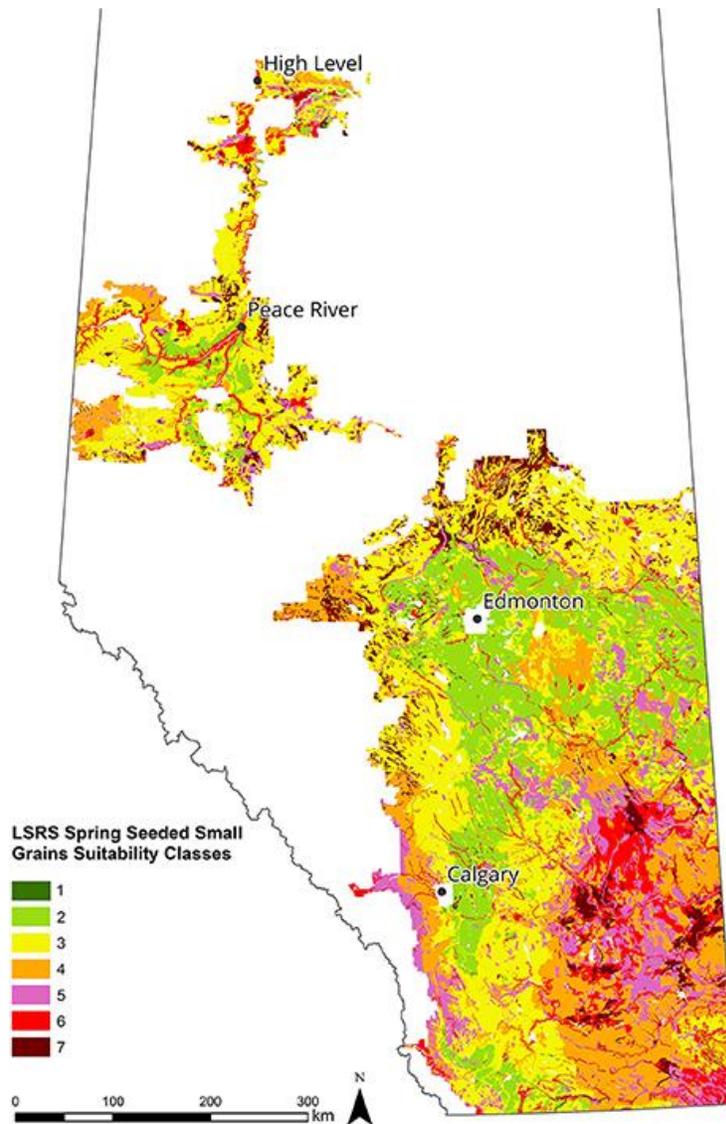
¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.* at 15.

¹⁸ Wang and Qiu, *supra.* note 12., found that urban encroachment on agricultural lands triggers conversion of forest to agriculture. Wang et al., *supra.* note 5 state in the abstract that “higher land suitability hinders the process of agricultural land abandonment, road density prohibits

Figure 2: Map illustrating agricultural land quality (Class 1 being highest suitability lands).



Source: Bock M, Gasser P-Y, Pettapiece WW, Brierley AJ, Bootsma A, Schut P, Neilsen D and Smith CAS (2018) The Land Suitability Rating System Is a Spatial Planning Tool to Assess Crop Suitability in Canada. *Front. Environ. Sci.* 6:77. doi: 10.3389/fenvs.2018.00077

agricultural land conversion to natural lands, the implementation of conservation sites protects land in its natural status, and land-use activities have strong neighbourhood effects on nearby regions".

A fairly recent survey by the Alberta Land Institute revealed that there was “considerable concern about the rapid expansion of the urban areas and the consequence loss of natural and agricultural land”.¹⁹ Survey respondents indicated that it was “most important to maintain agricultural land for production of food for the local market, followed by air quality, water purification, scenic beauty, and production of food for the global market”.²⁰

Despite recognition of the social, economic, and environmental importance of agricultural lands, they continue to be lost due to land use and development pressures that lead to conversion of agricultural lands. Historically in Alberta, land use development and planning regimes have not effectively countered conversion pressures on agricultural land. **How do we move from conversion to conservation and stop the loss of Alberta's agricultural lands?**

The Environmental Law Centre, drawing on lessons from other jurisdictions and factors that are at play in conversion of agricultural land, aims to provide a pathway for effective policy dialogue on the issue of conservation of agricultural lands. The first report generated as part of this project - [*Agricultural Lands Law and Policy in Alberta*](#) – was published in 2019.²¹ That report provided a primer on the laws and policies which apply to Alberta's agricultural lands from the perspectives of planning, development, and conservation; and canvassed existing legal tools relevant to conversion and conservation of agricultural lands in Alberta. A key highlight from that report is the fact that planning decisions and instruments, including regional planning under the *Alberta Land Stewardship Act* (ALSA) and municipal planning under the *Municipal Government Act* (MGA), have a significant impact upon agricultural

¹⁹ Alberta Land Institute, *Economic Evaluation of Farmland Conversion and Fragmentation in Alberta, Summary of Findings* (Edmonton: University of Alberta, 2017) at 4.

²⁰ *Ibid.* at 4.

²¹ Brenda Heelan Powell, *Agricultural Lands Law and Policy in Alberta* (Edmonton: Environmental Law Centre, 2019).

lands.²² While ALSA could be used to facilitate a comprehensive approach to agricultural land conservation using regional “zoning” and/or conservation directives to establish an agricultural reserve (greenbelt), much of the provincial regional planning is still incomplete and the two completed plans do not set aside agricultural reserves. Furthermore, in the absence of provincial direction under ALSA or stand-alone agricultural reserve legislation, the continued conversion and loss of agricultural lands falls squarely in the jurisdiction of municipalities. Under the MGA, municipalities have extensive planning and development powers, and therefore can take steps to control urban encroachment onto agricultural lands.

This report:

- looks at other jurisdictions for alternative approaches to minimizing agricultural land fragmentation and loss, and ensuring sustainable agriculture which could be adopted in Alberta,
- provides a gap analysis of Alberta's laws and policies to identify the legal challenges of moving from conversion to conservation of agricultural lands, and
- makes recommendations for legal and policy reform in Alberta.

This report is divided into 3 parts:

- [Part 1: Recommendations](#),
- [Part 2: The Primary Toolbox - Land Use Planning](#), and
- [Part 3: The Supplemental Toolbox - Incentives and Supports](#).

In addition, the [Appendix: Alberta's Toolbox at a Glance](#) provides an overview of Alberta's existing and potential tools for securing agricultural lands in chart form.

²² *Alberta Land Stewardship Act*, S.A. 2009, ch. A-26.8 [ALSA] and *Municipal Government Act*, R.S.A. 2000, ch. M-26 [MGA].

In the context of this report, the tools are identified and discussed for their effectiveness in conserving agricultural lands and keeping such lands in agricultural production. Many of the same tools can be used to direct the nature of agricultural activities (i.e., to promote or require certain agricultural operations be implemented as guided by environmental principles). While our focus in this report is on conserving agricultural lands, the environmental impacts of agricultural operations is a key consideration which should not be overlooked. Conservation in and of itself is important because keeping what we have prevents agricultural lands being converted to developed uses and driving agricultural operations onto other landscapes (thereby impairing natural landscapes and accompanying biodiversity). This does not mean, however, that existing agricultural operations do not need improvements to mitigate negative environmental impacts and to encourage environmental benefits.



The policy objectives of conserving agricultural land

Recent history tells us that the current legislative and policy regime in Alberta is not working to conserve high valued agricultural lands in Alberta. What would effective legislation and policy look like? To be effective, agricultural land conservation legislation and policy needs to counteract the drivers of land conversion and foster effective incentives and support systems for maintaining the viability of agriculture on the land base.

There are several policy objectives that should be reflected in how agricultural land is managed. These are:

1. conserving high quality soils for cultivation and conserving grasslands for grazing;
2. limiting the fragmentation of agricultural lands;
3. maintaining sufficient access to services to facilitate ongoing viability of agricultural operations;
4. establishing land use patterns that minimize conflicts with agricultural practices;
5. facilitating agricultural co-benefits, including environmental and social outcomes;
6. achieving administrative efficiency while maintaining municipal flexibility;
7. creating legal certainty; and
8. ensuring mechanisms for monitoring and enforcement.

An ideal legislative, policy and decision-making framework will address all of these objectives. Reaching these objectives will require a variety of tools, paramount among them is the ability to secure, on a long-term basis, the agricultural land base. Approaches to agricultural land conservation should require a system of land use that secures agricultural land uses and avoids conversion of high-quality soils and high-quality grasslands.

Choosing the Right Tools: Factors to Consider

There are a variety of regulatory and policy tools that have been used to conserve agricultural lands, with varying degrees of success. Land use planning tools are typically regulatory in nature and require compliance with the requirements set in legislation (although there may be discretion as to how these tools are applied at a provincial, regional, or local level). Land use planning can be used to protect agricultural lands and include tools such as agricultural reserves, urban growth boundaries, density requirements, and urban-rural buffer zones. Stewardship tools – such as tradable development credit schemes and conservation easements – can play a role in land use planning and implementation (as well as providing some level of compensation).

Land securement alone may not be sufficient on its own to ensure ongoing agricultural activities. Ray Tomalty notes that land protection measures should be accompanied by measures that support the economic viability of agriculture, observing that “[l]and-use plans and policies need to work in tandem with complementary tools and resources that protect farm operations and revitalize them where they are under pressure”.²³ Recognizing that simply

²³ Ray Tomalty, *Farmland at risk: How better land use planning could help ensure a healthy future for agriculture in the Greater Golden Horseshoe* (Toronto: Ontario Federation of Agriculture and Environmental Defence, 2015) [Tomalty] at 41-42. Also see Gottlieb, Paul D.; Schilling, Brian J.; Sullivan, Kevin; Esseks, J. Dixon; Lynch, Lori; and Duke, Joshua M., "Are Preserved Farms Actively Engaged in Agriculture and Conservation?" (2015). *Papers in Natural Resources*. 575. <http://digitalcommons.unl.edu/natrespapers/575>. Gottlieb et al. found that conservation programs in three states in the NE USA found that active farming (as reflected in ongoing investment) was supported by agriculture protection programming at various scales.

protecting agricultural lands does not necessarily ensure those lands are actively used for agricultural purposes, other tools and approaches may be used to improve the viability of agricultural operations.²⁴ Furthermore, a variety of tools and approaches may be used to achieve agricultural co-benefits including environmental and social outcomes (such as soil or grassland conservation).

To assist in understanding and analyzing the tools which can be used as incentives and supports for agricultural operations, they can be categorized as follows:

- **Financial inducement tools** which encourage keeping land in agricultural production. These may include voluntary agricultural districts, taxation measures, and payments for ecological goods and services.

A Note about Right to Farm

Right to farm legislation is a regulatory tool to protect generally accepted agricultural practices from common law nuisance claims.

In Alberta, Part 1 of the *Agricultural Operation Practices Act* (AOPA) modifies the common law nuisance rules with respect to agricultural operations. A person who carries on agricultural operations without contravening the relevant land use bylaw; the regulations or an approval, registration or authorization; or the generally accepted agricultural practice is not liable in an action for nuisance arising from the agricultural operation, and is not to be prevented from carrying on by an injunction or other court order.¹ If a person is aggrieved by odour, noise, dust, smoke or other disturbance associated with an agricultural operation, that person may apply to the Minister for a determination as to whether or not the disturbance results from a generally accepted agricultural practice. No action for nuisance may be commenced without first making such an application to the Minister at least 90 days prior. Such an application may trigger a practice review committee.

While right to farm legislation can enhance the viability of agricultural operations, given that a key element is limiting the application of nuisance principles, this may result in less accountability for agricultural operations (which can be particularly problematic for intensive operations). Further, while right to farm legislation can address conflicts between agricultural and non-agricultural activities, effective land use planning can go a long way to ensuring that such conflicts are avoided or minimized in the first place.

²⁴ See for instance CR-FAIR, *Policy Discussion Paper #1: Role of Local Government in Promoting Farmlands and Farm Viability* (Vancouver: Capital Region Food and Agricultural Initiatives Roundtable, 2013). It was found that the B.C. Agricultural Land Reserve has conserved agricultural lands but is only about 50% actively farmed.

- **Miscellaneous tools** that contribute to administrative support (e.g., agricultural development and liaison officers), funding (e.g., regional procurement, regional agricultural fund, farmland trust) and knowledge/industry development (e.g., agri-food parks, agri-tourism).

It should be noted that the above categorization is for the purposes of discussion in this report. A particular tool may fit comfortably into more than one category. For instance, stewardship tools play a role in land use planning and securing land for protection but also possess elements which make them financial inducement tools.

Land use planning is the key strategy for the protection of agricultural lands from development and fragmentation (i.e., the primary toolbox). The other tools are effectively an adjunct to encourage further conservation of agricultural lands and the continuation of agricultural activities on such lands (i.e., the supplemental toolbox). However, these tools lack the potential for a more cohesive approach that can be achieved with land use planning directed by clear policy requirements.

In determining which tools to choose, several characteristics should be identified and considered:

- Who is the decision-maker applying the tool, and what degree of local/regional autonomy and discretion is enabled/preserved?
 - Does the decision maker have a mandate and/or expertise related to agricultural land conservation?
- To what extent does the tool secure agricultural lands against future development and fragmentation? How secure is the land?
 - Is securement regulated or incentivized?
 - How restrictive and/or flexible is the tool?
 - Is the tool enforceable? And by whom?

- Can the tool be used to foster multiple policy objectives? (e.g., soil conservation, environmental goods and services, economic resilience, etc.).
- Who pays the costs of implementation and monitoring securement and any associated policies and programs?
- If compensation is offered in land use regulation, who is responsible for this compensation?

Each tool, and its implementation, relates to these characteristics in different ways. For instance, a province-wide agricultural reserve can do much to conserve agricultural lands but, at the same time, can reduce local autonomy in planning and development decisions. On the flip-side, a high level of local autonomy in land use planning and development decision-making without strong objectives and agricultural land assessment and planning processes can lead to increased fragmentation and loss of agricultural lands.



Recommendations

Objectives for preserving high valued agricultural lands have also been largely absent in provincial regulation and policy. This could be remedied with implementation of a comprehensive agricultural policy to direct planning tools, both regional and municipal, towards avoidance of agricultural land fragmentation and conversion. The Environmental Law Centre (ELC) recommends that the Province of Alberta and its municipalities adopt an outcome-based approach to land use planning in Alberta, wherein long-term targets for high valued soils and agricultural land are put in place and implemented through binding land use planning instruments.

The ELC's recommendations are separated into two sections: those within the primary toolbox of land use planning and those within the supplemental toolbox of incentives and supports.

1. The Primary Toolbox: Land Use Planning Recommendations

1.1. The Best Option for Effective Securement: Establish an Agricultural Reserve

The ELC's desktop review of systems for conserving agricultural land, set out in [Parts 2](#) and [3](#), indicated that provincial level agricultural reserve (a.k.a. greenbelt) legislation is the most effective approach to conserving agricultural land. This is in comparison to municipal planning tools and to experiences with market-based instruments that have seen extensive use in the United States. If the primary and overriding goal of policy is to secure agricultural lands in the long-term, then the agricultural reserve approach is likely to be the most effective.

An agricultural reserve allows for long-term protection and conservation of agricultural lands. Further, unlike stewardship tools and financial inducements, an agricultural reserve can be applied in a consistent manner over a large area

thus reducing opportunities for fragmentation. It is recommended that the agricultural reserve also identify urban-rural buffer areas which allow a broader range of activities associated with agricultural activities such as food processing, agricultural service businesses, and agricultural parks.

This approach requires:

1. Establish an agricultural reserve, along with a rural-urban buffer zone, using dedicated legislation. The primary purpose of this legislation will be to:
 - a. Establish an agricultural land with use restricted to agricultural activities (including ranching).
 - b. Establish a rural-urban buffer zone which will allow a broader range of activities associated with agricultural activities such as food processing, agricultural service businesses, and agricultural parks.
 - c. The legislation will need to provide clear definitions of what constitutes acceptable agricultural operations on agricultural reserve lands and in the rural-urban buffer. There will also need to be clear legislated goals and targets established (in terms of expected growth or loss of categories of land, agricultural operations, and so forth).
 - d. In addition, this legislation will provide legislated goals and targets, provide clear direction to municipalities, and establish an Agricultural Lands Commission or Tribunal.
2. Establish an Agricultural Lands Commission which will:
 - a. Engage in proactive planning for agricultural lands and fostering agricultural activities on a provincial level.
 - b. Provide oversight of the designated agricultural reserve and rural-urban buffer zone. This includes ensuring compliance and providing enforcement of the laws and policies for the agricultural reserve. As

- well, this includes monitoring and reporting on the status of agricultural lands and activities throughout the province.
- c. Approval of municipal and regional planning to ensure compliance with the agricultural reserve and rural-urban buffer zone requirements. To assist in this regard, Agricultural Liaison Officers should be established at the regional or municipal level.
 - d. Administer a provincial agricultural fund for the purposes of financial support to regulatory and voluntary programs. This can also be used to support necessary research to map and enforce key agricultural lands, as well as map the extent and location of agri-businesses.
3. Ensure that land use planning and decision-making comply with the requirements of the agricultural reserve and rural-urban buffer. This will be accomplished via oversight of the Commission in cooperation with Agricultural Liaison Officers.

1.2 The Next Best Option: Mandatory municipal assessment and conservation of agricultural lands using ALSA regional planning

Alberta's current approach to land use planning and decision-making is very decentralized with decisions made primarily at the municipal level with little provincial direction or oversight. In order to successfully conserve agricultural lands existing tools, such as regional planning under ALSA, must be used with increased intention. This could be achieved via development of binding agricultural sub-regional plans within the ALSA framework.

This approach requires:

1. A clear, legislated requirement for municipalities to protect agricultural lands in their land use planning and decision-making. This includes regulations defining and specifying the parameters to identify agricultural

lands for protection. Furthermore, regulations should require that such agricultural lands be made subject to zoning for exclusive agricultural use.

2. Regulations or policy should be used to set thresholds or minimum standards for agricultural lands. This should include standards pertaining to minimum parcel size, authorized uses, and agricultural use dwellings and buildings.
3. There should be requirements/targets set by regulation or policy pertaining to a variety of land use planning tools including:
 - a. urban growth boundaries,
 - b. buffer zones,
 - c. density regulations, and
 - d. urbanization targets which direct new developments to already urbanized areas prior rather than encouraging greenfield developments.
4. In addition, implement mechanisms to enable municipalities to benefit from land use and planning decisions which conserve agricultural lands above minimum requirements (e.g., additional tax revenue, stewardship units).

1.3 A Third Option: Municipal assessment and conservation of agricultural lands using inter-municipal planning under the MGA

While in theory all lands in Alberta should be subject to ALSA regional plans (which would enable agricultural sub-regional plans), the reality is that to date only 2 of 7 regional plans have been completed. In the absence of comprehensive planning at the regional or sub-regional level under ALSA, the tools under MGA which enable inter-municipal planning can be used to achieve a coordinated approach to agricultural land conservation across multiple municipalities.

The MGA provides three inter-municipal planning tools: growth plans prepared by growth management boards, inter-municipal development plans, and inter-municipal collaboration frameworks (see [Part 2](#)). Of these three, growth plans prepared by growth management boards are likely the best suited to address conservation of agricultural lands. A single growth management board encompasses several municipalities and can take steps to enforce the provisions of a growth plan. Furthermore, the growth plan must be approved by the Minister making it less amenable to frequent amendments as compared other forms of municipal plans.

However, this does not mean that a growth plan cannot be amended or fail to be strictly enforced. As such, it is recommended that additional securement of agricultural lands identified in a growth plan should be used to ensure long-term conservation (this could be achieved using conservation easements).

The regulations establishing the Edmonton Metropolitan Region Board and the Calgary Metropolitan Region Board both set out the objectives for growth plans and require that agricultural lands be identified and policies for conservation be adopted. However, there is no guidance or direction provided on the agricultural policies which must be developed by these growth management boards. As such, the approaches discussed in section 1.2 of this report also apply here.

1.4 Agricultural Impact Assessment & Land Use Planning

Regardless of which of the three above approaches is adopted, land use planning must be used in conjunction with agricultural impact assessment (AIA). AIA is a planning and decision-making tool designed to identify and address potential impacts of a proposed development on agricultural lands. Both municipal and provincial decision-makers (such as the Alberta Energy Regulator and the Alberta Utilities Commission) should adopt AIA to assist in reducing impacts of surrounding developments on existing agricultural lands.

2. The Supplemental Toolbox: Incentives and Supports

An important limitation to keep in mind with these supplemental tools is their piecemeal nature. In contrast to a comprehensive land use planning approach, supplemental tools cannot address fragmentation of agricultural lands. These tools may be employed in relatively small pockets scattered throughout the province. Furthermore, their use may not take into account the compatibility of surrounding land uses and development and therefore cannot address conflicting uses in a wholistic manner. Thus, supplemental tools are important enhancements and adjuncts to an overarching planning approach but cannot, in isolation, address the problems of agricultural land loss and fragmentation.

2.1 Enable full implementation of ALSA stewardship tools

For supplemental tools (which can be used to enhance an agricultural reserve, to implement agricultural land conservation objectives, or to improve agricultural operations) to be effective, there must be full implementation of the ALSA stewardship tools. This requires development of:

- Regulations and guidelines to create certainty around the use of TDC programs. These regulations should specify:
 - a. The necessary conditions for the realization, sale, assignment, and disposition of credits.
 - b. The nature of title restrictions necessary under a TDC program.
 - c. Express authority for municipalities to administer TDC programs.
 - d. Municipal administered TDC programs must be accompanied with a specific bylaw (which may require consequential amendments to statutory plans).
 - e. Clarify that credits may only be used in the municipality for which they were created.
- 2. Guidance for agricultural lands offsets and a no-net loss agricultural lands policy.

3. Regulations and guidance for stewardship units and a corresponding market.

At minimum, the above steps are required to implement the stewardship tools enabled by ALSA. Given the existing experience with the use of offsets in Alberta (in the context of wetlands), it may be that offsets accompanied by a “no net loss” policy for agricultural lands is the first priority. Such an approach would require offsets for development, therefore be non-voluntary and a potential source of funds. As such, it may prove more effective than a TDC scheme or stewardship units and market approach (which tend to be more voluntary in nature and require enough volume to create economic viability).

4. Further development of the ALSA stewardship tools should be complemented with the establishment of a provincial payment for EGS program (such as the province-wide ALUS program in PEI). This program could be administered by the Agricultural Lands Agency or an Agricultural Lands Trust (a non-governmental organization qualified to hold conservation easements under ALSA).

2.2 Taxation Measures

Tax systems may be modified as a supplemental tool to incentivize desired outcomes. Currently, agricultural lands are given favourable property tax treatment in Alberta (taxed at much lower rates than developed lands). However, other taxation measures can be implemented.

1. Impose a transfer tax or claw-back which penalizes the conversion of agricultural lands into developed uses. As an example, taxation systems can be designed to claw-back the benefits received from special capital gain and loss rules for qualified farm property under the *Income Tax Act* (ITA)²⁵ if conversion occurs within a specified number of years after transfer.

²⁵ *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) [ITA].

2. Extend tax benefits to value-added operations on agricultural lands. Value-added operations can include activities such as processing raw products into a finished product. If value-added operations are not captured by legislative definition of agricultural operations, then tax benefits may not apply.
3. Assess tax and zoning benefits for agro-parks which can concentrate and create synergies for agricultural and value-added businesses. These would be best located in a rural-urban buffer zone.
4. At the federal level, establish an agricultural lands gift program analogous to the Eco-Gifts program which targets gifts of lands with ecological significance. As with the Eco-Gifts program, the donation of agricultural lands (such as through a conservation easement for agriculture) would result in tax credits and reduced capital gains. This will require an amendment to the federal ITA.
5. At the federal level, clarification of the charitable purposes and activities that may be pursued by agricultural lands trusts.

It is important to remember that there is not one single tool which will address the problem of agricultural land loss and fragmentation, but rather a selection of tools. Based upon our review, the Environmental Law Centre finds that the most effective tool to conserve agricultural lands on a province-wide basis is via agricultural reserve (greenbelt) legislation. As an alternative to imposing an agricultural reserve, municipal assessment and conservation of agricultural lands could be mandated using existing land use planning under ALSA and the MGA. Supplemental tools – such as the ALSA stewardship tools and taxation measures – can augment but not replace comprehensive agricultural land use planning.

Figure 3: Illustration of agricultural lands policy development and implementation



There may be overlap in these tools. Land use planning tools can be used to identify and secure agricultural lands. The comprehensive approach of land use planning can be augmented with regulatory or voluntary securement tools and supplemental tools designed to foster agricultural operations.

PART 2: THE PRIMARY TOOLBOX – LAND USE PLANNING



Land use planning tools are typically regulatory in nature and require compliance with the requirements set in legislation (although there may be discretion as to how these tools are applied at a provincial, regional, or local level). Land use planning can be used to protect agricultural lands and include tools such as agricultural reserves, urban growth boundaries, density requirements, and urban-rural buffer zones. While stewardship tools – such as tradable development credit schemes and conservation easements – can play a role in land use planning and implementation (as well as providing some level of compensation), they are often applied through voluntary measures resulting in piecemeal uptake and conservation. In jurisdictions reviewed none of these voluntary approaches provided the level of conservation achieved with comprehensive agricultural land use planning.

What's in Alberta's Toolbox?

In Alberta, the primary pieces of land use planning legislation are the *Municipal Government Act* (MGA) at the municipal level and the *Alberta Land Stewardship Act* (ALSA) at the regional level.

1. Statutory plans and Land Use Bylaws under the Municipal Government Act

Much of Alberta's land use planning and decision-making occurs at the municipal level and is governed by Part 17 of the MGA. There are provisions within the MGA which enable inter-municipal coordination and regional growth boards (required for Edmonton and Calgary).

All municipal planning and development must comply with applicable regional plans developed pursuant to ALSA (discussed below).²⁶ If there is no regional

²⁶ MGA, s. 630.2.

plan applicable to the municipality, then compliance with the provincial *Land Use Policies* is required.²⁷ The *Land Use Policies* include a goal to “contribute to the maintenance and diversification of Alberta’s agricultural industry” and a policy encouraging municipalities “to limit fragmentation and premature conversion of agricultural lands”.²⁸ However, the *Land Use Policies* are very general, providing little direct guidance to municipalities.

A variety of municipal planning documents and instruments are required by the MGA. The types of mandatory statutory plans are:

- Municipal development plans (MDPs) which, among things, must contain policies respecting the protection of agricultural operations and address future land use within the municipality.²⁹
- Inter-municipal development plans (IDPs) are required where two or more municipalities that have common boundaries and are not part of a growth region (unless all agree a plan is not necessary or the Minister provides an exemption).³⁰ Municipalities that are not required to adopt an IDP may choose to do so. Among other things, IDPs address future land use and relevant environmental matters as considered necessary by the municipalities.

The other types of statutory plans, which are not mandatory, are area structure plans (ASPs) and area redevelopment plans (ARPs) which provide a framework for development or redevelopment within a defined area in the municipality.³¹

²⁷ Alberta Municipal Affairs, *Land Use Policies* (1996) O.I.C. 522/96 [*Land Use Policies*] and MGA, s. 622.

²⁸ *Land Use Policies*, s. 6.

²⁹ MGA, s. 632.

³⁰ *Ibid.*, ss. 631 to 631.1.

³¹ *Ibid.*, ss. 633 to 635.

In addition to statutory plans, each municipality may choose to adopt additional plans to address municipal planning matters (non-statutory plans).

Aside from the statutory plans, each municipality must pass a land use bylaw (LUB).³² LUBs regulate and control the development of land and buildings within a municipality. A key function of LUBs is to provide municipal zoning which sets permitted land uses within identified districts. When preparing an LUB, a municipality must “consider the protection of agricultural operations unless an ALSA requires agricultural operations to be protected or requires agricultural land or land for agricultural purposes to be protected, conserved or enhanced, in which case the municipality must comply with the ALSA regional plan”.³³

A question can arise as to whether a statutory plan is binding upon a municipality, in particular in allowing uses under the LUB. The general rule is that “where the MDP or ASP conflicts with a permitted use in the LUB, the statutory plan should be read down to allow the development in accordance with the permitted use”.³⁴ This is because “statutory plans are policy documents that set goals and outline proposals for future development; in contrast, the [LUB] is a regulatory document and the primary tool for implementing the plans”.³⁵ In other words, statutory plans are generally not binding on municipalities unless, perhaps, it uses mandatory and unequivocal language.³⁶ Where there is specific language in a statutory plan recent Alberta jurisprudence indicates that both the statutory plan and the land use bylaw must be complied with.³⁷

³² *Ibid.*, ss. 639 to 646.

³³ *Ibid.*, s. 639.1.

³⁴ *1479995 Alberta Ltd. V. Strathcona County (Subdivision Authority)*, 2019 ABMGB 30 (CanLii) at para. 51.

³⁵ *Ibid.* at para. 52.

³⁶ *Ibid.* at para. 54.

³⁷ *Mohr v Strathcona (County)*, 2020 ABCA 187 (CanLii), <https://canlii.ca/t/j6xd2>.

Furthermore, subdivision and development decisions made by a municipality may be appealed to a Subdivision and Development Appeal Board (SDAB) or Municipal Government Board (MGB) depending on the precise nature of the appeal.³⁸ In the course of such appeals, a SDAB or MGB is not required to adhere to municipal policies and plans (particularly if they are not within a statutory plan or LUB).³⁹

1.1 Growth Plans under the MGA

Parts 17.1 and 17.2 of the MGA are meant to facilitate and improve inter-municipal planning and cooperation. Part 17.1 enables the establishment of growth management boards. There are currently two established: the Edmonton Metropolitan Region Board (EMRB) and the Calgary Metropolitan Region Board (CMRB).⁴⁰ The mandate of each growth management board is set by regulation and includes ensuring environmentally responsible land use planning, growth management and efficient use of land.⁴¹ In carrying out their functions and exercising their jurisdiction, the EMRB and the CMRB must comply with applicable ALSA regional plans.⁴²

Both the EMRB and the CMRB must prepare a growth plan that, among other things, identifies agricultural lands and includes policies regarding the conservation of agricultural lands.⁴³ The growth plan regulations specifically require identification of agricultural lands and policies for their conservation which suggests that a growth plan can indeed identify agricultural lands for

³⁸ MGA, s. 678.

³⁹ *Ibid.*, s. 680. See also *Municipal Affairs, Subdivision and Development Appeal Board (SDAB), 2014 Training Manual, 6th ed.* (Edmonton: Government of Alberta, 2015).

⁴⁰ *Edmonton Metropolitan Region Board Regulation*, A.R. 189/2017 [EMRB Reg.] and *Calgary Metropolitan Region Board Regulation*, A.R. 190/2017 [CMRB Reg.].

⁴¹ EMRB Reg., s. 3 and CMRB Reg., s. 3.

⁴² MGA, s. 708.06.

⁴³ EMRB Reg., s. 9 and CMRB Reg., s. 9.

conservation.⁴⁴ Once a growth plan is in place, each participating municipality must not:

- undertake a public work, improvement, structure or other thing;
- adopt a statutory plan;
- make a bylaw or pass a resolution; or
- enter into a municipal agreement

that is inconsistent with an applicable growth plan.⁴⁵ To take effect a growth plan must be approved by the Minister of Municipal Affairs.⁴⁶

The growth management board can take steps, including seeking an injunction from the Court of Queen's Bench, to require compliance with the growth plan.⁴⁷ In the case of an inconsistency between the growth plan and a municipal statutory plan, bylaw, resolution or municipal agreement, the growth plan prevails.⁴⁸ Furthermore, existing statutory plans and bylaws must be amended to conform with the growth plan.⁴⁹ If the growth plan conflicts or is inconsistent with an ALSA regional plan, the regional plan prevails.⁵⁰ Regulations provide that

⁴⁴ EMRB Reg., s. 9 and CMRB Reg., s. 9.

⁴⁵ MGA, s. 708.12.

⁴⁶ *Ibid.*, s.708.1. The ERMB Growth Plan was approved in 2017. A Regional Agricultural Master Plan may also be subject to approval, in which case it would appear to have the same binding nature on participating municipalities.

⁴⁷ *Ibid.*, s. 708.12.

⁴⁸ *Ibid.*, s. 708.13

⁴⁹ *Ibid.*, s. 708.14.

⁵⁰ *Ibid.*, s. 708.15.

ERMB and CMRB must review the growth plan every 10 years or earlier as determined by the relevant Board.⁵¹

1.2 Inter-municipal Collaboration Frameworks

Part 17.2 requires the development of inter-municipal collaboration frameworks by municipalities that have common boundaries unless those municipalities are members of the same growth region or the Minister provides an exemption. If municipalities are part of the same growth region or do not have common boundaries, they may choose to develop an inter-municipal collaboration framework. The framework “must describe services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.”⁵²

The framework itself must “establish the process for resolving disputes that occur while the framework is in effect” that is to be used for alleged contraventions and for interpretation and implementation of the framework.⁵³ Further, a municipality may apply to the court for an order directing compliance with the outcome of a dispute resolution process.⁵⁴

The framework must be reviewed at least every 5 years.⁵⁵ The MGA also sets out where arbitration may be used by the municipalities or the Minister in certain instances, including where there is a failure of the municipalities to come to a framework or the dispute resolution process has been unsuccessful.⁵⁶

⁵¹ EMRB Reg., s. 7 and CMRB Reg., s. 7.

⁵² MGA, s. 708.29.

⁵³ *Ibid.*, s. 708.29(3.1).

⁵⁴ *Ibid.*, s. 708.291.

⁵⁵ *Ibid.*, s. 708.32.

⁵⁶ *Ibid.*, ss. 708.34 to 708.43.

While the MGA provisions on inter-municipal collaboration are relatively recent (from 2017), it is noteworthy that supporting regulations were repealed effective January 1, 2020.⁵⁷ However, despite this repeal, where required by the MGA, inter-municipal collaboration frameworks are to be completed by April 1, 2021.⁵⁸ At the time of the repeal of the regulations, additional amendments were made to the MGA.

1.3 Agricultural Lands and Land Use Planning under the MGA

Ultimately, municipal planning documents do not secure agricultural lands on the longer term. While municipal planning could be designed in a way to conserve agricultural lands within the municipality, there is no clear or absolute requirement to do so. Furthermore, with the current decentralized approach to municipal planning, there is a significant measure of municipal and regional autonomy to management development with little provincial oversight.

With the exception of growth plans which require Ministerial approval, there is no provincial approval of municipal planning documents. In addition, municipal planning documents – such as MDPs – tend to be high level and merely directional. Although statutory plans could be written prescriptively (i.e., to be binding), it remains that they are easily modified and not subject to provincial oversight. Similarly, land use bylaws (while binding) are easily amended and not subject to provincial oversight.

⁵⁷ The *Intermunicipal Collaboration Framework Regulation* was repealed via the *Intermunicipal Collaboration Framework Repeal Regulation*, A.R. 188/2019. For a summary of changes proposed in 2019, see Rural Municipalities of Alberta, *Bulletin: Government of Alberta proposes changes to ICF and IDP process* (November 21, 2019) available at <https://rmaalberta.com/wp-content/uploads/2019/11/19-11-21-Government-of-Alberta-Proposes-Changes-to-ICF-and-IDP-Process.pdf>.

⁵⁸ Ministerial Order No. MSD:019/20 which amends the April 1, 2020 deadline imposed by MGA s. 708.28.

Furthermore, municipal planning may be disrupted by other decision-makers (the Alberta Energy Regulator, the Alberta Utilities Commission, and the Natural Resources Conservation Board) under section 619 of the MGA which provides that a decision by any of these decision-makers has priority over municipal planning and development decisions.

2. Regional Planning and Stewardship under ALSA

The ALSA is comprised of two main components: regional planning and stewardship tools. While ALSA stewardship tools are not a form of regional planning, they may be used to implement regional plans and, in some cases, are deployed through regional plans. Stewardship tools also have the potential to be used outside the context of regional planning and, in the case of conservation easements, often are. For this reason, the ALSA stewardship tools are discussed as part of the land use planning toolbox while recognizing that they also fit into the supplemental toolbox.

2.1 Regional Planning

For regional planning purposes, the province is divided into seven regions based around major watersheds for regional planning purposes. To date, over ten years since enactment of ALSA, only two regional plans are complete (the *Lower Athabasca Regional Plan* and the *South Saskatchewan Regional Plan*) and a third is underway (the *North Saskatchewan Regional Plan*).⁵⁹ Regional

⁵⁹ Government of Alberta, *Lower Athabasca Regional Plan: 2012-2022* (Edmonton: Government of Alberta, 2012) available at <https://open.alberta.ca/dataset/37eab675-19fe-43fd-aff-001e2c0be67f/resource/a063e2df-f5a6-4bbd-978c-165cc25148a2/download/5866779-2012-08-lower-athabasca-regional-plan-2012-2022.pdf>; and Government of Alberta, *South Saskatchewan Regional Plan: 2014-2024*, amended May 2018 (Edmonton: Government of Alberta, 2018) available at <https://open.alberta.ca/dataset/460ac866-4416-4d77-a25a-a02fab85a6ec/resource/8261ce03-aa0f-4621-8e2d-c610a72ac37c/download/south-saskatchewan-regional-plan-2014-2024-february-2017.pdf>. See Government of Alberta website at <https://www.alberta.ca/north-saskatchewan-regional-planning.aspx>.

planning is provincially regulated with regional plans and associated regulations going through Cabinet.

Once a regional plan is in place, provincial and municipal decision-makers must abide by the regional plan.⁶⁰ Some aspects of a regional plan are binding and regulatory in nature whereas other aspects are policy statements and provide guidance (the distinction is indicated in the regional plan).⁶¹ ALSA provides that a regional plan may manage the surface or subsurface of land and any natural resource and set thresholds for achieving or maintaining an objective for the region.⁶²

In practice, regional plans typically have an introduction which sets out the purpose of the regional plan and indicates how it will inform land use decisions, a strategic plan component which include the vision and outcomes for the region, an implementation plan which includes regional objectives, strategies, and actions to be undertaken, and regulatory details. Generally, with the exception of the regulatory details, the regional plan provisions are not strictly legally binding on the Crown or others. Rather, the introduction, strategic plan and implementation plan provide guidance which is intended to be followed by provincial and municipal decision-makers.

In terms of land use planning, the ALSA holds promise for conservation of agricultural lands via regional plan “zoning” and conservation directives.

⁶⁰ ALSA, s. 15 provides that if a regional plan is not in place, then a municipality must abide by the provincial *Land Use Policies* which include a goal to “contribute to the maintenance and diversification of Alberta's agricultural industry and a policy encouraging municipalities to limit fragmentation and premature conversion of agricultural lands” (section 6.1).

⁶¹ ALSA, s. 13.

⁶² *Ibid.*, ss. 8 and 9.

2.1.1 Regional Plan "Zoning"

Under ALSA, it is possible that "zoning" could be established by a regional plan since a regional plan may "manage the surface or subsurface of land and any natural resource"⁶³ and may specify that contravention of identified regional plan provisions is an offence.⁶⁴ In the event that "a restriction, limitation or requirements regarding a land area or subsisting land use, or both" affects a title holder (which includes a landowner), that person may apply for a variance.⁶⁵

This means that regional plan "zoning" could conceivably be used to restrict activities, development, or other uses of land within the region. This could be used to establish an agricultural zone in which only agricultural activities are permitted (as a kind of agricultural reserve/greenbelt). Given the provision in ALSA for variance, non-conforming uses may still be determined to be allowed (much like typical agricultural reserve/greenbelt legislation which allows applications for exceptions).

However, in the two completed regional plans to date, there is no such "zoning" in place. While both LARP and SSRP require municipalities to assess and identify areas where agricultural activities are a priority, there is no express direction for municipalities to protect such lands. The extent and tools used to protect and conserve agricultural lands are left to municipal discretion.

Regional plans could direct municipalities to undertake an assessment of agricultural lands, identify lands to be designated as agricultural districts for the duration of the regional plan and prescribe that each municipality within a region must ensure their bylaws "conserve" agricultural lands. The regional plan (or subregional plans) could also set out enforcement provisions and definitions

⁶³ *Ibid.*, s. 9(2)(g).

⁶⁴ *Ibid.*, s. 9(3)(a).

⁶⁵ *Ibid.*, s. 15.1.

that would bind municipalities (although these would have to be consistent with municipal jurisdiction and authority as defined in the MGA).

2.1.2 Conservation Directives

Conservation directives are another land use planning tool available under ALSA.⁶⁶ A conservation directive may be declared in a regional plan to “permanently protect, conserve, manage and enhance environmental, natural scenic, esthetic or agricultural values”.⁶⁷ A conservation directive must describe its precise nature, its intended purpose, and the protection, conservation, management, or enhancement that is its subject. Under ALSA, a person has the right to apply for compensation for loss of market value as a result of the conservation directive. No conservation directives have been issued to date.

Unlike other stewardship tools in ALSA (to be discussed later), conservation directives are not voluntary. Once imposed, compliance with a conservation directive is required. However, it is conceivable that conservation directives could be negotiated between the government and a landowner and, effectively, become voluntary.⁶⁸ Conservation directives can be used in concert with other land conservation and protection tools, and can be applied to public or private lands. Conservation directives have an inherent flexibility which could protect and conserve “working landscapes”. From a landowner perspective, imposition of a conservation directive creates an express opportunity to seek compensation which does not exist with other types of land use restrictions. The compensation aspect of conservation directives is likely to be a major barrier to their use unless there are specific policy and regulatory tools adopted to generate funds to pay for conservation directives.

⁶⁶ Sarah Palmer, Adam Driedzic and Jason Unger, *Conservation Directives: Alberta's Unknown and Untested Conservation Tool* (Edmonton: Environmental Law Centre, 2015) [Palmer et al.].

⁶⁷ ALSA, ss. 36 to 44.

⁶⁸ This idea is explored in Palmer et al., *supra*. note 66.

2.2 ALSA Stewardship Tools

Aside from conservation directives, ALSA provides tools that may be used outside the context of a regional plan. These include conservation easements for agricultural lands, conservation offsets, transfer of development credit schemes, and stewardship units. With the exception of conservation easements, these stewardship tools have little to no use due to a lack of supporting regulation and policy.

2.2.1 Conservation Easements for Agricultural Lands

Conservation easements for the protection, conservation and enhancement of agricultural land or land for agricultural purposes are permitted under ALSA.⁶⁹ To date, conservation easements are the one well-developed and already usable stewardship tool under ALSA. Although it is noted that there is relatively less experience with conservation easements for agricultural lands as compared to conservation easement for conservation purposes.

A conservation easement is a contract between a private landowner, and a qualified private land conservation organization or a government agency.⁷⁰ With a conservation easement, the landowner agrees to certain restrictions in order to protect an identified conservation value. Restrictions may include allowing only agricultural activities to continue on the land. A conservation easement is registered on the land title, and therefore provides notice and binds all future purchasers of the land. The terms of the conservation easement are enforced by the easement holder (i.e., the land conservation organization, local government, or government agency).

⁶⁹ ALSA, ss. 28 to 35.

⁷⁰ Cindy Chiasson et al., *Conservation Easements for Agriculture in Alberta: A Report on a Proposed Policy Direction* (Edmonton: Environmental Law Centre and Miistakis Institute, 2012).

Given that conservation easements are registered on title and are not readily removed, they provide good protection even as land ownership changes hands. There is significant flexibility as to the terms of a conservation easement in terms of activities allowed or not allowed on the lands, and the length of the conservation easement (may be a limited number of years or in perpetuity). Easements may also be framed to outline the types of management actions that must take place and can be used to foster ecological and hydrological benefits. However, despite these benefits, research in the United States has found that while agricultural easements can be used to secure land it may not result in the most strategic agricultural lands being protected and that other tools must accompany these easements.⁷¹

Conservation easements may be used alone or in conjunction with other tools like offsets and tradable development credits. They can also be used in concert with zoning and growth boundary approaches.

Compensation for conservation easements varies based on how the easements are engaged. When easements are used as part of tradable development credit or offset schemes, then compensation is typically central to the effectiveness of those tools. In the case of voluntary easements, these may include payments or may be gifted.

Tax related benefits may arise where an easement is gifted to a qualified organization under the federal EcoGifts program (although this is limited because the federal EcoGifts program is focused on ecological conservation

⁷¹ David M. Stoms et al., Strategic targeting of agricultural conservation easements as a growth management tool. *Land Use Policy* (2009) 26(4) *Land Use Policy* 1149 [Stoms]. Also see Tom Daniels and Lauren Payne-Rile "Preserving large farming landscapes: the case of Lancaster County, Pennsylvania (201) *Journal of Agriculture, Food Systems and Community Development*" 7(3), 67-81 which concludes that "agricultural zoning, growth boundaries and the acquisition of conservation easements- can work together in a farmland preservation package of approaches" at 79.

and not the conservation of agricultural lands which means cultivated lands are unlikely to qualify). Gifts of easements may also qualify for donation tax receipts in some instances; however, there is a need for additional clarity as to whether agricultural land conservation is considered a “community benefit” attracting a charitable purpose designation under federal tax law.

2.2.2 Conservation Offsets

Conservation offsets can be used as a mandatory regulatory tool or as a financial inducement to conservation. In the face of a legislated “no net loss” approach to agricultural lands, any conversion of agricultural lands would require an offset to compensate for that loss.⁷² It is important to note that offsets are low on the mitigation hierarchy meaning that steps to avoid, minimize and remediate losses should be taken (in that order) prior to considering offsets.⁷³ The problem of agricultural land loss and fragmentation cannot be effectively addressed by allowing loss of high quality lands and replacement with lesser quality or marginal agricultural lands (not to mention that this approach can impact on other landscapes).

The no net loss requirement could be set on a provincial basis by the provincial government or on a more local/regional scale by one or more municipal governments. Such a requirement would need to address issues of land quality and suitability for particular agricultural operations (e.g., crops, grazing etc.) in addition to simple quantity. Achieving no net loss is not as simple as replacing an

⁷² Similar approaches have been used in Alberta with respect to wetlands. See Environment and Sustainable Resource Development, *Alberta Wetland Policy* (Edmonton: Government of Alberta, 2013) which adopts a mitigation hierarchy and requires offsetting any unavoidable losses of wetlands. See also Dave Poulton, *Alberta's New Wetland Policy as a Conservation Offset System* (September 25, 2013) available at <https://ablawg.ca/2013/09/25/albertas-new-wetland-policy-as-a-conservation-offset-system/>.

⁷³ There is a tremendous body of work addressing the mitigation hierarchy, see for example William S. Arlidge et al., “A Global Mitigation Hierarchy for Nature Conservation” (2018) 68(5) *BioScience* 336.

acre of agricultural land with any other acre of land. In Wheatland County, twenty-three factors – such as riparian areas, native grasslands, and wetlands – were used to identify and prioritize agricultural lands for the purposes of agricultural and environmental programming.⁷⁴ A similar approach might be useful to appropriately weigh the loss and offset agricultural lands.

It is essential that the duration of any offset must meet or exceed the duration of the impacts being offset. For agricultural lands lost due to conversion to urban or semi-urban environments this will often be in perpetuity. Penalties would need to be in place to address failures to sufficiently offset losses of agricultural lands.

While ALSA enables the use of conservation offsets, there is a lack of guidance or detail regarding their use. ALSA provides that regulations may be made to “counterbalance the effect of an activity”; however, there are no supporting regulations or policies in place.⁷⁵ ALSA also enable other tools – stewardship units and conservation easements – which could operate to implement conservation offsets. Stewardship units, and an accompanying market, could enable sale and purchase of units to offset agricultural land losses. Conservation easements could be used as a compliance and enforcement tool for offsets.

While it is outside the scope of this report, it is noteworthy that there is a tremendous body of work dealing with offsets.⁷⁶ Offsets can raise a variety of issues such as additionality (i.e., the value being credited must be for something

⁷⁴ Personal communication from Sarah Schumacher, Agriculture Conservation Coordinator, Wheatland County.

⁷⁵ ALSA, s. 47

⁷⁶ See for instance: David Poulton, *Biodiversity Offsets: A Primer for Canada* (Ottawa: Sustainable Prosperity and the Institute of the Environment, 2014), available at <https://ssrn.com/abstract=2797391>; and David Poulton, *Biodiversity and Conservation Offsets: A Guide for Albertans*, CIRL Occasional Paper No. 48 (Calgary: Canadian Institute of Resources Law, 2015), available at <http://dx.doi.org/10.2139/ssrn.2797396>. See also IUCN, The Biodiversity Consultancy and Durrell Institute of Conservation & Ecology, *Global Inventory of Biodiversity Offset Policies Portal* at <https://portals.iucn.org/offsetpolicy/>.

that would not otherwise exist), stacking (recognizing the multiple values attached to one unit of land), and leakage (i.e., the harm simply being transferred from one area to another). Careful design will be necessary to address issues of additionally, stacking, and leakage. Furthermore, it must be recognized that one unit of land is not simply interchangeable with another (soil and climate differences abound). Ultimately, conversion of prime agricultural lands into developed uses, offset by conversion of marginal lands into agricultural uses would not result in a sustainable approach to maintaining our agricultural lands (and would likely result in loss of forested/natural areas).

2.2.3 Transfer of Development Credit Schemes

The concept behind transfer of development credit (TDC) schemes is using transferable units to direct development away from conservation areas (sending areas) and concentrate development in other areas (receiving areas). Essentially, TDC schemes are a compensation tool which must be used in conjunction with other tools that secure land, typically easements.

While TDC schemes are expressly permitted by ALSA, there are currently no relevant regulations or guidelines in place to facilitate their adoption and implementation.⁷⁷ The basic components of a TDC scheme are outlined in ALSA:⁷⁸

- A designated conservation area which can be for the protection, conservation and enhancement of agricultural land or land for agricultural purposes (a.k.a. the sending area).
- The identification of a development area (a.k.a. the receiving area).

⁷⁷ ALSA, ss. 48 to 50.

⁷⁸ *Ibid.*, s. 49.

- Delineation of the attributes of development credits, and terms and conditions under which development credits may be realized or used.

A TDC scheme also typically has an administrator or oversight body to develop and administer the scheme. A TDC scheme may be established by a regional plan or, with Cabinet approval, by a municipality.⁷⁹ Once established or approved, the TDC scheme is implemented via municipal bylaw. A TDC scheme must work in concert with other tools – such as conservation easements – which operate to secure the conserved area.

A TDC scheme provides municipalities with a flexible tool that can be used to implement local planning and development goals (i.e., municipal planning drives the conservation and development decisions around agricultural lands). Using a TDC scheme, a municipality can encourage conservation of agricultural lands in the urban fringes. Under such a scheme, an owner of agricultural lands in the sending area can realize stewardship units by agreeing to not to convert the land to other uses, those stewardship units can then be sold to a developer, and the municipality can permit that developer to use land in the receiving area more intensively than would otherwise be allowed. This offers some level of compensation to a landowner who conserves identified values. It is key that a municipality set strict density standards to drive the need for credits, otherwise conservation goals may not be met. TDC programs are voluntary and are reliant on the economics of densifying and therefore run the risk of not being an effective means of preserving agricultural lands or preventing fragmentation.

⁷⁹ *Ibid.*, s. 48. For previously existing TDC programs this requirement for Cabinet approval is not required. See *Keller v. Municipal District of Bighorn No. 8*, 2010 ABQB 362 (CanLII), <http://canlii.ca/t/29zpb>.

2.2.4 Stewardship Units and Exchange

Stewardship units and the potential for an exchange (i.e., a market) are enabled by ALSA.⁸⁰ Currently, there are no supporting regulations or guidelines for the use of stewardship units in Alberta and there is no formal exchange established.

The precise role for stewardship units and the exchange are currently unclear given the lack of direction in ALSA, and the lack of supporting regulations and guidelines. Stewardship units and the exchange could play a role in conservation offset and TDC schemes (providing both the unit and the market). Likely, these could also be used in concert with conservation easements as a tool for compliance and enforcement. There may be other roles for stewardship units and the exchange in established regulatory processes, such as requiring stewardship units as part of municipal permits, but without further provincial guidance the role of these tools is very unclear.

These tools have the potential, albeit theoretical, to provide compensation for landowners for their conservation of agricultural lands. There is some relevant experience in Alberta with the Alberta Emissions Offset Registry which deals in greenhouse gas emissions credits.⁸¹ Ultimately, more regulation and guidance is needed to support these tools. In addition, to be effective tools, there must be accompanying specific policy outcomes or objectives established.⁸²

⁸⁰ *Ibid.*, ss. 45 to 47.

⁸¹ See the Alberta Emissions Offset Registry website at https://www.csaregistries.ca/albertacarbonregistries/eor_about.cfm.

⁸² Alberta Innovates and Ecosystem Services and Biodiversity Network, *Creating Ecosystem Services and Biodiversity Markets in Alberta* (Edmonton: Alberta Innovates and Ecosystem Services and Biodiversity Network, 2016) [Alberta Innovates].

Consideration needs to be given as to how to value multiple benefits that may be generated by a specific site.⁸³

2.3 Compensation and Land Use Planning under ALSA

There are some provisions in ALSA which directly address compensation:

- If a regional plan is to expressly reference and affect a statutory consent (i.e., a Crown lease, license, approval and so forth),⁸⁴ then notice must be given to the statutory consent holder including any proposed compensation. Compensation will typically be payable where the law that gave rise to the authorization provides for compensation.
- If a conservation directive is imposed on land, then compensation in accordance with the ALSA regulations is payable.⁸⁵
- A fee simple landowner or freehold mineral owner is entitled to apply to government for compensation for a compensable taking in situations where they would be legally eligible for compensation.⁸⁶ The statute expressly excludes the ability to apply for compensation as a result of municipal planning decisions.⁸⁷

⁸³ *Ibid.*

⁸⁴ ALSA, ss. 2(1) and 11(2)(c).

⁸⁵ ALSA, s. 36 and *Alberta Land Stewardship Regulation*, A.R. 179/201 [Alberta Land Stewardship Reg.], Part 3, Division 1.

⁸⁶ ALSA, s. 19 and *Alberta Land Stewardship Reg.*, Part 3, Division 2.

⁸⁷ ALSA at s.19.1(9).

This last category of compensation is somewhat unclear.⁸⁸ Given the provisions in ALSA and the caselaw, it is likely that a right to compensation for a “compensable taking” will only arise in the case land use is sterilized as a result of regional planning.⁸⁹

2.4 Agricultural Lands and Land Use Planning under ALSA

Regional planning *could be* a powerful tool to achieve long-term security against future development and fragmentation of agricultural lands.

Regional plans potentially could impose binding agricultural zones to effectively create an agricultural reserve/greenbelt. This “zoning” could set clear requirements for municipalities while allowing some clearly defined municipal discretion to address local concerns yet allow integration across jurisdictions (along with requiring coordination of infrastructure amongst jurisdictions). To date, in the 2 of 7 regional plans which have been completed, this approach has not been adopted. This seems to be a reflection of governmental hesitancy

⁸⁸ALSA defines a compensable taking as the “diminution or abrogation of a property right, title or interest giving rise to compensation in law or equity” (section 19.1). In other words, a compensable taking is one that is recognized as compensable at law (a rather circular definition). Canadian law has long recognized that regulations may limit the use of land without compensation (unless statute expressly provides compensation is payable). See *Hartel Holdings Ltd. v Calgary*, [1984] 1 S.C.R. 337 [Hartel decision] and *Canadian Pacific Railway v Vancouver (City)*, [2006] 1 S.C.R. 227 [CPR decision]. The one exception to this is the case of *de facto* expropriation. There is a significant amount of caselaw pondering the line between regulations restricting land use and *de facto* expropriation. The Supreme Court of Canada has indicated that a *de facto* taking at common-law requires two elements to be met: “(1) an acquisition of a beneficial interest in the property or flowing from it, and (2) removal of all reasonable uses of the property” (see CPR Decision at para. 227). So, unless the restrictions on the owner’s rights are so drastic as to amount to an effective taking of the land within the meaning of the *Expropriation Act*, there is no common-law right to compensation for regulation of land. For more discussion, see Brenda Heelan Powell, *Environmental Rights in Alberta: The Interaction of Environmental Rights & Property Rights* (Edmonton: 2018, Environmental Law Centre).

⁸⁹ For more discussion, see Eran Kaplinsky and David Percy, *A Guide to Property Rights in Alberta* (Edmonton: University of Alberta, Alberta Land Institute, 2015) [Kaplinsky and Percy] at 25.

to use such an approach in regional planning rather than a reflection of lack of regulatory authority to do so.

Other ALSA tools - conservation directives and conservation offsets - could be implemented to secure agricultural lands on a long-term basis. However, to date, this has not been the approach. In part, this may arise from lack of statutory clarity which may invite litigation on matters of compensation. However, there are other hurdles to the use of these tools.

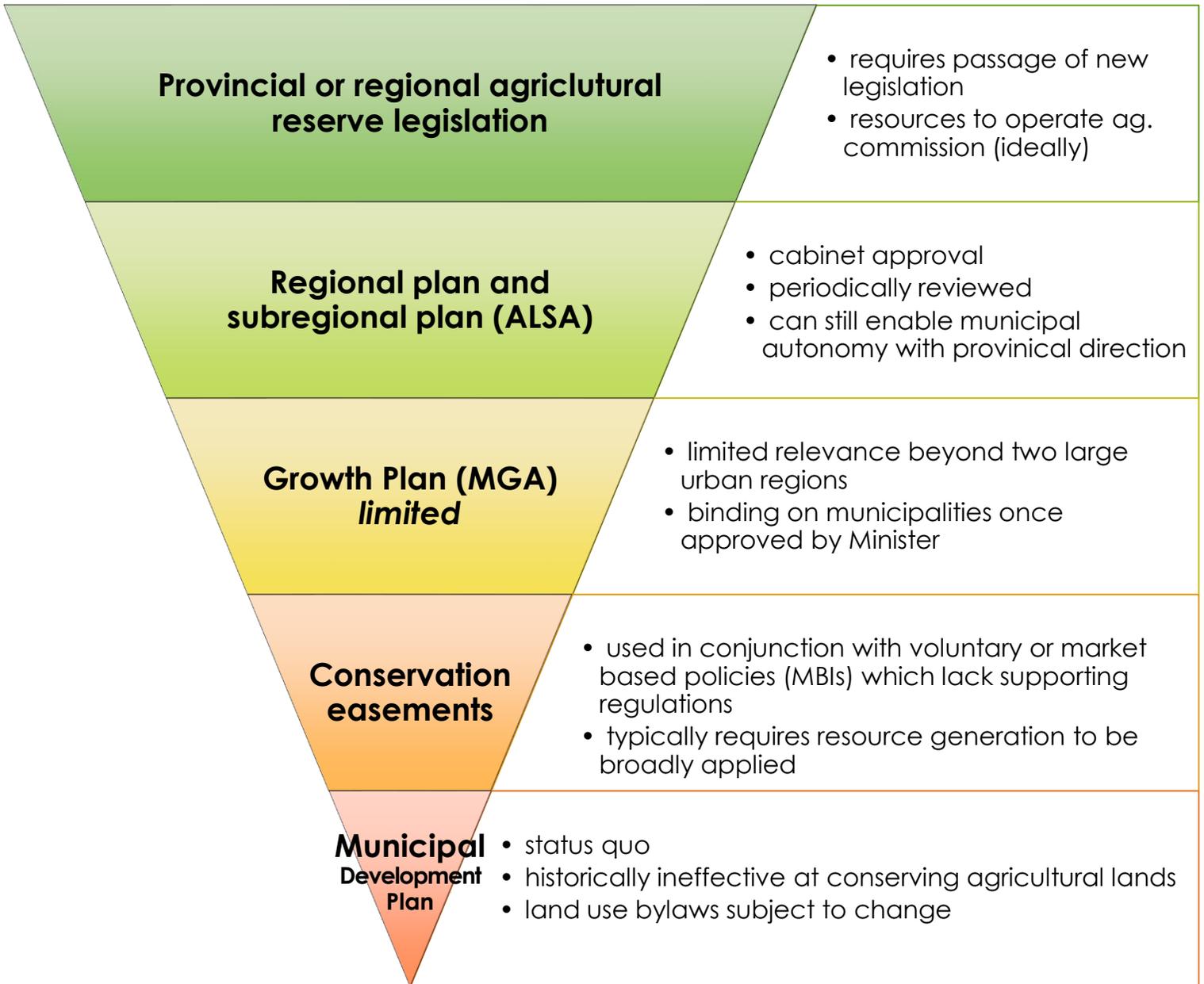
Insofar as conservation directives are intended to be permanent and require compensation, there may be hesitancy to use conservation directives. Another barrier to their use is a lack of supporting policy direction for their use (although there are compensation regulations⁹⁰ in place for conservation directives).

A significant barrier to the use of conservation offsets is the lack of supporting regulation, policy, and guidelines for conservation offsets. These must be put into place prior to conservation offsets being a practical tool for conservation of agricultural lands.

Individual landowners may resent the imposition of restrictions on use of their lands (even in the face of compensation); municipalities may resent the restrictions on their planning decision-making options. Given that regional plans require provincial Cabinet approval, such concerns may present a barrier to implementation.

⁹⁰ *Alberta Land Stewardship Reg.*

Figure 4: Relative agricultural land securement potential across policy approaches



Expanding the Toolbox: Lessons from Other Jurisdictions and the Literature

Loss of agricultural land is not unique to Alberta or Canada. For instance, according to the Natural Resources Inventory in the United States there has been a loss of approximately 54 million acres between 1982 and 2015.⁹¹ The common issue of agricultural land loss has given rise to numerous policy and program responses in Canada and elsewhere. This report focuses on notable agricultural land conservation approaches in select jurisdictions (rather than attempting an exhaustive survey of policies and programs worldwide).

1. Provincial Agricultural Reserves: The Greenbelt Approach

Several Canadian provinces – British Columbia, Ontario, and Quebec – have implemented agricultural reserves as a tool to conserve agricultural lands. Agricultural reserves are imposed via provincial legislation and restrict activities within designated areas. Typically, activities and development not consistent with the agricultural reserve designation requires special permission from a governing body to remove the land from the agricultural reserve.

1.1 British Columbia

In British Columbia, the Agricultural Land Reserve (ALR) is established under the *Agricultural Land Commission Act (ALC Act)*, the *Agricultural Land Reserve General Regulation (ALR General Reg.)* and the *Agricultural Land Reserve Use*

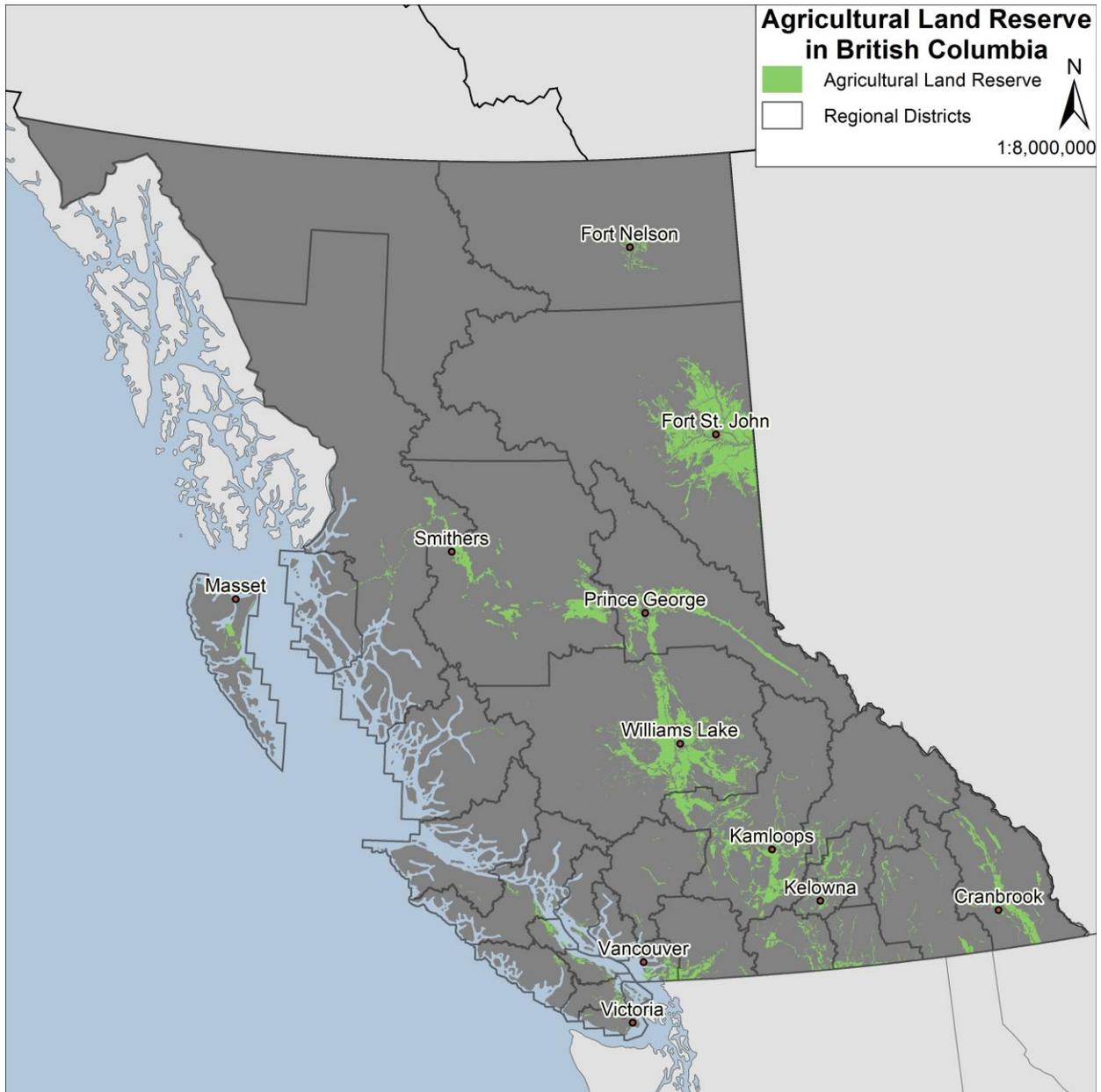
⁹¹ U.S. Department of Agriculture, *Summary Report: 2015 National Resources Inventory*, (Washington, D.C.: Natural Resources Conservation Service, Washington, DC, and Center for Survey Statistics and Methodology, Iowa State University, Ames, Iowa, 2018).

Regulation (ALR Use Reg.).⁹² On March 12, 2020, an Order-in-Council renamed the previous *Agricultural Land Reserve General Regulation* as the *Agricultural Land Reserve Transitional Regulation* which was repealed on September 30, 2020 and replaced with the new ALR General Reg. When referencing the ALR General Reg., unless otherwise indicated, this paper will be referring to the new version which came into effect on September 30, 2020.



⁹² *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 [ALC Act]; *Agricultural Land Reserve General Regulation*, O.I.C. 131 [ALR General Reg.]; and *Agricultural Land Reserve Use Regulation*, B.C. Reg. 30/2019 [ALR Use Reg.].

Figure 5: Agricultural Land Reserve, B.C.



Source: <https://www.alc.gov.bc.ca/alc/content/alr-maps/maps-and-gis>

The ALC Act establishes the Agricultural Land Commission which has the purposes of preserving the ALR, encouraging farming in the ALR, and encouraging decision-makers to enable and accommodate farm use and compatible uses of land within the ALR.⁹³ The Agricultural Land Commission may designate land as agricultural land for inclusion in the ALR.⁹⁴ Land may also be included in the ALR by the Agricultural Land Commission on application by a landowner, local government, or First Nation government.⁹⁵ Once designated, agricultural land remains in the ALR unless excluded in accordance with the Act.⁹⁶

The ALR Use Reg sets out permitted farm and non-farm uses. Farm use is defined as use of agricultural land for farming land, plant, mushrooms, truffles or animals, a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*, or a purpose designated by regulation.⁹⁷ It is permissible to use agricultural lands for parks, ecological reserves, wildlife management areas, reserves, recreation sites, or areas established to protect the environment pursuant to a variety of provincial legislation.⁹⁸

One critique of the approach in British Columbia is that the ALR is seen as a limitation to the uptake of conservation easements.⁹⁹ Because conservation easements may not allow cultivation or other forms of agriculture, the Agricultural Lands Commission has tended to not allow conservation easements (although interestingly, 70.5% of applications to remove land for development

⁹³ ALC Act, s. 6.

⁹⁴ *Ibid.*, s. 15.

⁹⁵ *Ibid.*, s. 17.

⁹⁶ *Ibid.*, s. 17.1.

⁹⁷ *Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, ch. 131; and ALC Act, s. 1.

⁹⁸ ALR Use Reg., s. 16.

⁹⁹ Good and Michalsky, *supra*. note 1.

purposes were allowed).¹⁰⁰ In theory, the ALR should not conflict with conservation easements and, in fact, could be complimentary.¹⁰¹ Even for lands within the ALR, a conservation easement may be desirable to protect particular environmental attributes of the land which might otherwise be lost (because, even if the land continues to be used for agricultural purposes, practices could change and have a negative impact on those environmental attributes).

Others have noted that, despite the ALR, there continues to be loss and alienation of agricultural lands.¹⁰² As found by the Auditor General of British Columbia, there has been almost no change in the total area in the ALR (approximately 4.7 million hectares) but the amount of prime agricultural land has decreased overall.¹⁰³ This is due to lost higher quality agricultural lands in the south being replaced with lands in the north.¹⁰⁴ As a result of ALC decisions to remove land from the ALR or to allow non-farm uses, losses in the south range from 4% to 15%.¹⁰⁵ As a whole, prime agricultural lands within the ALR have

¹⁰⁰ *Ibid.* See also Barry E. Smith, *A Work in Progress – The British Columbia Farmland Preservation Program* (Vancouver: Agricultural Land Commission, 2012) wherein it was noted that between 1981 and 2000, there was high propensity to approve applications for subdivision and non-farm use (71% approval) and that 60% of all land exclusions occurred within the first 10 years of the ALR being established.

¹⁰¹ Good and Michalsky, *supra.* note 1.

¹⁰² David J. Connell, *Farmland Protection: Strengthening B.C.'s Legislation, Policy Brief* (January 2018) available at <http://www.aglup.org/publications.html>.

¹⁰³ Auditor General of British Columbia, *Audit of the Agricultural Land Commission* (Vancouver: Auditor General of British Columbia, 2010) [BC Auditor General 2010]. Also see Agricultural Land Commission website at <https://www.alc.gov.bc.ca/alc/content/alr-maps/alr-history>.

¹⁰⁴ Denver V. Nixon and Lenore Newman, "The efficacy and politics of farmland preservation through the land use regulation: Changes in southwest British Columbia's Agricultural Land Reserve" (2016) 59 *Land Use Policy* 227 [Nixon and Newman].

¹⁰⁵ BC Auditor General 2010, *supra.* note 103 at exhibits 2 and 5.

decreased by almost 15,000 hectares from the time of establishment through to 2008.¹⁰⁶

The Advisory Committee for Revitalizing the ALR and ALC reported to the British Columbia Minister of Agriculture on its findings and recommendations for both the ALR and ALC.¹⁰⁷ As part of its report, the Advisory Committee recommended that the ALC should be focused on protection and encouragement of agricultural use of land, not be a “rationing board tasked with regulating the slow release of agricultural land from the reserve or conversion of the land base to support non-farm uses”.¹⁰⁸

As well, the Advisory Committee found that better tools are needed to ensure that local government bylaws are consistent with the ALR.¹⁰⁹ They found that ALR regulations are:

permissive in nature which means they do not list all of the agricultural uses that can take place in the ALR that are farming-specific. However, they do set out additional uses that may take place in the ALR under certain conditions.¹¹⁰

A result of this regulatory structure is that it is open to self-interpretation by landowners and local governments, and as such many additional (non-farm) uses may take place in the ALR without notification to the ALC. While local governments are required to forward official community plans to the ALC for

¹⁰⁶ *Ibid.* at exhibits 3 and 4.

¹⁰⁷ BC Minister of Agriculture's Advisory Committee for Revitalizing the Agricultural Land Reserve and the Agricultural Land Commission, *Revitalizing the Agricultural Land Reserve and the Agricultural Land Commission, Final Committee Report to the Minister of Agriculture: Recommendations for Revitalization* (Vancouver: Government of British Columbia, 2018).

¹⁰⁸ *Ibid.* at 17.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* at 31.

comment prior to approval, the same is not true for local bylaws that may impact on the ALR. In reality the Act is primarily implemented through local zoning bylaw. As such, the advisory committee recommended that the ALC review local government zoning bylaws and that a template ALR Zone be created for adoption by local governments to avoid conflict of local government by-laws with the ALR requirements.¹¹¹ In the absence of ALC review of local government zoning by-laws, there is not enough oversight to prevent potential conflicts with the ALR requirements.

Despite these shortcomings, British Columbia's "ALR has succeeded in protecting much of the region's agricultural lands".¹¹² Nixon and Newman note that development in greenfield lands in Vancouver is less than in Toronto and Calgary, and this may be (in part) due to the ALR.¹¹³ They conclude that, in terms of conserving agricultural lands, there is not really "a viable option aside from land-use regulation".¹¹⁴

1.2 Ontario

Ontario established its agricultural zone with *The Greenbelt Act, 2005* (the *Greenbelt Act*).¹¹⁵ The *Greenbelt Act* works in conjunction with the *Niagara Escarpment Planning and Development Act* (NEPDA) and the *Oak Ridges Moraine Conservation Act, 2001* (ORMCA).¹¹⁶ Both the NEPDA and the ORMCA are concerned with protection of ecological integrity of the relevant areas (i.e., not focused on preservation of agricultural lands per se). The *Greenbelt Act* is

¹¹¹ *Ibid.*

¹¹² Nixon and Newman, *supra*. note 104 at 238.

¹¹³ *Ibid.*

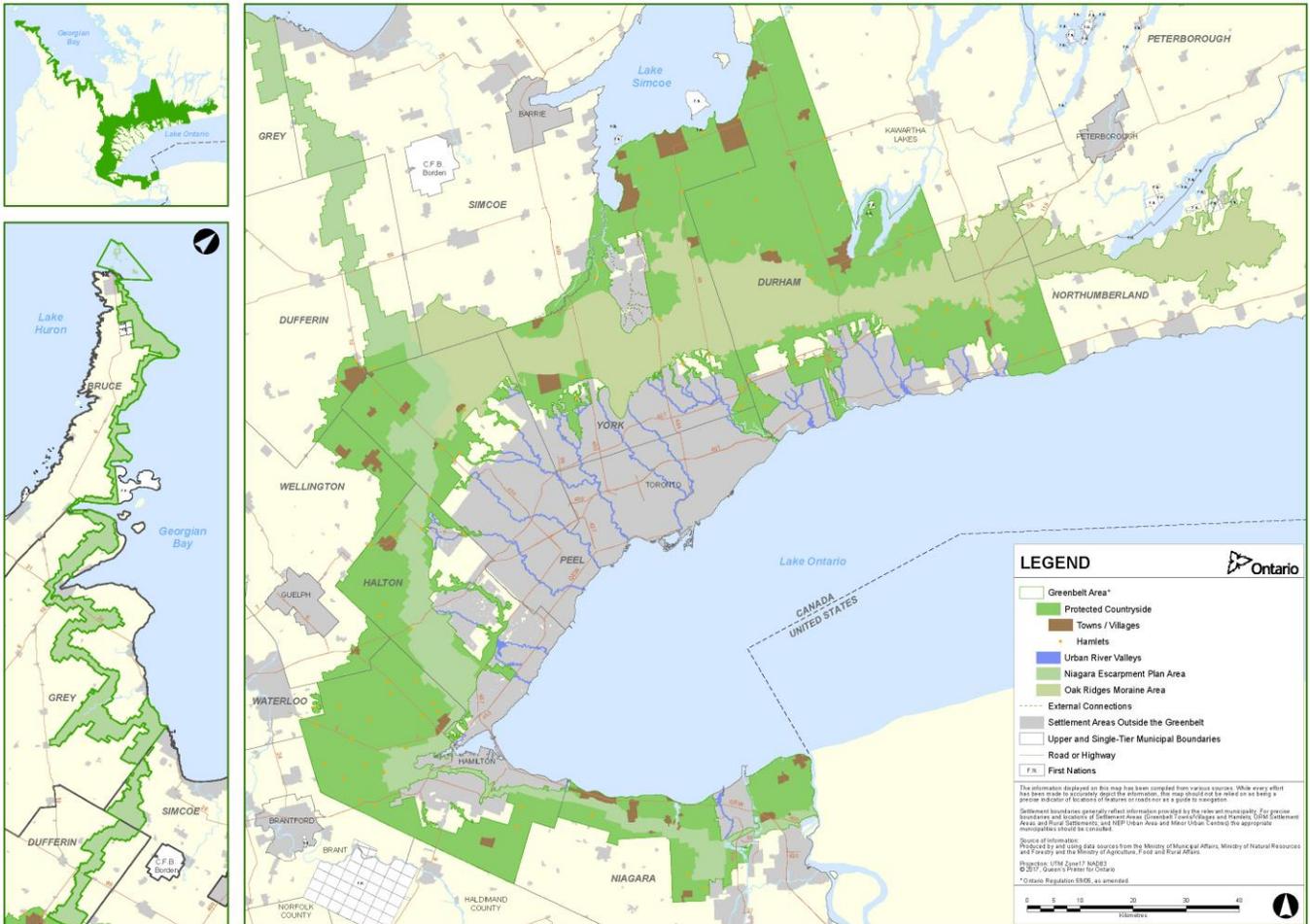
¹¹⁴ *Ibid.* at 238.

¹¹⁵ *The Greenbelt Act, 2005*, S.O. 2005, c. 1 [Greenbelt Act].

¹¹⁶ *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2 [NEPDA]; and *Oak Ridges Moraine Conservation Act, 2001*, S.O. 2001, c. 31 [ORMCA].

meant to primarily establish protected countryside with a focus on agricultural lands.¹¹⁷ Together, the areas protected by these three Acts form the Greenbelt Area as per the *Designation of the Greenbelt Area Regulation*.¹¹⁸

Figure 6: Greenbelt, Ontario



greenbelt
 PLAN 2017
 Schedule 1:
 Greenbelt Area

Source: <http://www.mah.gov.on.ca/AssetFactory.aspx?did=17124>

¹¹⁷ Aside from protected countryside, there are also lands designated as Urban River Valley lands and as Parkway Belt West (the latter are subject to the *Parkway Belt West Plan*).

¹¹⁸ *Designation of the Greenbelt Area Regulation*, O.R. 59/05.

Under the *Greenbelt Act*, development and implementation of the *Greenbelt Plan* was enabled with numerous objectives including:¹¹⁹

- Establish a network of countryside and open space areas to support the Oak Ridges Moraine and the Niagara Escarpment.
- Sustain the countryside, rural and small towns and contribute to the economic viability of farming communities.
- Conserve agricultural land as a commercial source of food and employment.
- Promote linkages between ecosystems and provincial parks or public lands.
- Control urbanization of the lands to which the Greenbelt Plan applies.

Local planning and development decision-making is required to conform with the *Greenbelt Plan*.¹²⁰ If there is a conflict between the *Greenbelt Plan* and an official plan, a zoning bylaw or a policy statement under the *Planning Act*, the *Greenbelt Plan* prevails.¹²¹ In the case of a conflict between the *Greenbelt Plan* and the plan under either the NEPDA or the ORMCA, then the plan under the NEPDA or the ORMCA prevails.¹²² The NEPDA is enforced by the Niagara Escarpment Commission, a statutory body created by the NEPDA, which considers development permits and land use proposals, policy items and

¹¹⁹ Government of Ontario, *Greenbelt Plan (2017)*. Approved by the Lieutenant Governor in Council, Order in Council No 1025/2017, as an amendment to the Greenbelt Plan effective July 1, 2017. The Greenbelt Plan was prepared and approved under the *Greenbelt Act, 2005* and took effect on December 16, 2004 [*Greenbelt Plan*]; and *Greenbelt Act*, s. 5.

¹²⁰ *Ibid.*, s. 7. Effectively, the same applies to each of the plans made under the NEPDA (s. 13) and the ORMCA (s. 7).

¹²¹ *Planning Act*, S.O. 2005, c. 1 [*Planning Act*]; and *Greenbelt Act*, s. 8.

¹²² *Greenbelt Act*, s. 8(2).

amendments to the *Niagara Escarpment Plan*. Other planning, including the *Greenbelt Plan* and the plans developed under the ORMCA, is implemented and enforced by municipalities under the *Planning Act* (although the provincial government prepares provincial plans and makes policy decisions).

The *Greenbelt Plan* forms the “cornerstone of Ontario's Greater Golden Horseshoe Growth Plan (Growth Plan) which is an overarching strategy that provides clarity and certainty about urban structure, where and how future growth should be accommodated and what must be protected for future generations”.¹²³ The *Greenbelt Plan* distinguishes between several land designations:

- Oak Ridges Moraine Area (subject to the ORMCA and section 3.3 (and in some cases the entirety except section 6) of the *Greenbelt Plan*);
- Niagara Escarpment Plan Area (subject to the NEPDA and section 3.3 of the *Greenbelt Plan*);
- Parkway Belt West Plan Area (subject to the Parkway Belt West Plan and sections 3.2 and 3.3 of the *Greenbelt Plan*);
- Protected Countryside Area (subject to the entirety of the *Greenbelt Plan* except section 6); and
- Urban River Valley Area (subject to section 6 of the *Greenbelt Plan*).

Section 3.2 deals with the natural system within the greenbelt (i.e., natural heritage, hydrologic and/or landform features). Section 3.3 deals with parkland, open space, and trails within the greenbelt. Section 6 deals with the urban river valley area. General policies for the protected countryside are found in section 4 of the *Greenbelt Plan*.

¹²³ *Greenbelt Plan*, s.1.

Within the protected countryside areas, there are three types of geographic-specific policies: agricultural system, natural system, and settlement areas.¹²⁴ Agriculture is the predominant land use in the greenbelt and any non-agricultural uses are intended to accommodate a range of commercial, industrial, and institutional uses serving the rural resource and agricultural sectors. Other non-agricultural uses can be support of recreation and tourism activities. The *Greenbelt Plan* sets out policies for non-agricultural uses in section 4.1. Agricultural uses include the growing of crops (including nursery, biomass, and horticultural crops); raising of animals for food, fur or fibre; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures.¹²⁵

As in British Columbia, the agricultural reserve in Ontario appears to be effectively conserving agricultural lands. Preliminary research by Wan and Singer, looking at the Halton, Peel and York regions in Ontario, has shown a trend to lower loss of agricultural lands within the greenbelt as compared to outside the greenbelt.¹²⁶ The green belt was subjected to “land loss” of 32 ha after 2005 and 947 ha before 2005 compared to 11,172 ha outside the greenbelt after 2005 and 10,261.5 ha before 2005.¹²⁷

¹²⁴ *Ibid.*, s.3.

¹²⁵ *Ibid.*, s. 7.

¹²⁶ Xiaoyuan Wan and Rachel Singer, *Power in Policy: Measuring Farmland Loss in Ontario and Testing the Strength of the Greenbelt Act* (Rural Symposium, March 2019), available at <https://journal.lib.uoguelph.ca/index.php/ruralReview/article/view/6012/5687>.

¹²⁷ *Ibid.*

under the *Act respecting the Preservation of Agricultural Land and Agricultural Activities* (LPTAA) which allows for designation of agricultural reserve lands.¹³⁰ The LPTAA also establishes the Commission de protection du territoire agricole du Quebec (CPTAQ).

The LPTAA states that the object of the agricultural land reserve regime is “to secure a lasting territorial basis for the practice of agriculture, and to promote, in keeping with the concept of sustainable development, the preservation and development of agricultural activities and enterprises in the agricultural zones established by the regime”.¹³¹ With respect to land within an agricultural region, land use planning and development decisions must be made so as “to promote priority for the use of land for agricultural activities”.¹³²

Once a “designated agricultural region”¹³³ is established, land within that region cannot be used for non-agricultural purposes without authorization of the CPTAQ.¹³⁴ In addition, land within an agricultural reserve may not be subdivided (s.28), a lot may not be alienated by sale or donation while retaining a right of property on a contiguous lot (s.29), or have topsoil removed (s.70) without the authorization of the CPTAQ. As well, cutting maple trees in a sugar bush and using a sugar bush for any purpose other than maple production (s.27) is not allowed without the authorization of the CPTAQ. The LPTAA provides that contravention of the act is an offence which is punishable by fines.¹³⁵

¹³⁰ *Act respecting the Preservation of Agricultural Land and Agricultural Activities*, CQLR 1996, ch. P-41.1 [LPTAA].

¹³¹ LPTAA, s. 1.1.

¹³² *Ibid.*, s. 79.1.

¹³³ *Ibid.*, s.22.

¹³⁴ *Ibid.*, s. 26. It should be noted that there are some limited exceptions to the restricted land uses set out in the Act or its regulations.

¹³⁵ *Ibid.*, ss. 87 to 91.

The LPTAA provides an extensive list of factors which must, can and cannot be considered by the CPTAQ in the case an exemption from these restrictions on agricultural reserve lands is sought. Factors that must be considered include matters such as the soil capability of the lot and neighbouring lots, possible agricultural uses of the lot, and the consequences on existing agricultural uses (including on neighbouring lots).¹³⁶ Factors that can, but do not have to be considered are "a statement transmitted by a regional county municipality or a community indicating that the application is inconsistent with the objectives of the RCM land use and development plan and the provisions of the complementary document or with the metropolitan land use and development plan; and the consequences of a refusal for the applicant."¹³⁷ The factors which the CPTAQ cannot consider include the fact that the object of the application has been wholly or partly achieved, and the possible consequences of the decision on an offence already committed.¹³⁸

Provincial agricultural reserves - as found in British Columbia, Ontario, and Quebec - have several characteristics which make them an effective tool for securing agricultural lands against conversion. Agricultural reserves provide:

- Legislative certainty and stability. The agricultural reserve is established with legislation clearly restricting land uses within the reserve and limitations on removing land from the reserve.
- Specialized decision-making with respect to removing lands from reserves for non-agricultural purposes. activities and development not consistent with the agricultural reserve designation requires special

¹³⁶ *Ibid*, s. 62.

¹³⁷ *Ibid*, s. 62.

¹³⁸ *Ibid*, s. 61.1.

permission from a governing body to remove the land from the agricultural reserve.

2. Province/State Level Planning, Objective Setting and Decision-Making

Although it is not without its critics, Oregon's approach to protecting agricultural lands from development is often cited as an "exemplar".¹³⁹ Key to the Oregon approach is legislated, coordinated planning throughout the state with state level oversight. Decision-making at a regional (district) or local level is circumscribed by state level binding guidelines and goals. Oregon's land use planning approach is backed by a long-standing state policy to protect farmland (adopted in 1973).¹⁴⁰ The policy states:

The Legislative Assembly finds and declares that:

- (1)** Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.
- (2)** The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

¹³⁹ Jeffrey Kline, *Predicted Future Forest – and Farmland Development in Western Oregon With and Without Land Use Zoning in Effect*, Research Note PNW-RN-548 (Washington, D.C.: United States Department of Agriculture, 2005) at 2 [Kline USDA]. See also Jeffrey D. Kline, "Forest and Farmland Conservation Effects of Oregon's (USA) Land-Use Planning Program" (2005) 35(4) *Environmental Management* 368 [Kline 2005].

¹⁴⁰ Oregon Revised Statutes [ORS], §215.243.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 § 1]

This policy is implemented via the Statewide Planning Program overseen by the Land Conservation and Development Commission. The Commission is established by the *Comprehensive Land Use Planning Statute*.¹⁴¹ The statute provides for coordinated land use planning throughout the state. In particular, there is a requirement for coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. The comprehensive plans must:¹⁴²

- be adopted by the appropriate governing body at the local and state levels;
- are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;
- shall be the basis for more specific rules and land use regulations which implement the policies expressed through comprehensive plans;

¹⁴¹ *Ibid*, § 197

¹⁴² *Ibid*, § 197.010.

- shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and
- shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.

Guiding principles for the land use program are expressed in the statute and include providing a healthy environment, sustaining a prosperous economy, ensuring a desirable quality of life, and equitable allocation of the benefits and burdens of land use planning.¹⁴³

The statute requires the adoption of binding goals and guidelines by the Commission (and the State Department of Land Conservation and Development) which are to be used by state agencies, local governments and special districts in preparing, adopting, amending and implementation comprehensive plans.¹⁴⁴ The third goal pertains to agricultural lands, requiring counties to inventory and to conserve and maintain such lands through farm zoning.¹⁴⁵ There are administrative rules which define and specify identification parameters for agricultural lands.¹⁴⁶ Agricultural lands must be identified and be made subject to zoning for exclusive farm use in accordance with the administrative rules.¹⁴⁷ This includes rules pertaining to minimum parcel size,

¹⁴³ *Ibid*, §197.010.

¹⁴⁴ *Ibid*, §197.225 and §197.250.

¹⁴⁵ See Oregon's Statewide Planning Goals & Guidelines, Goal 3: Agricultural Lands at <https://www.oregon.gov/lcd/OP/Documents/goal3.pdf>. See also ORS, §§215.203 to 215.327, and Oregon Administrative Rules [OAR] Ch. 660, Division 33.

¹⁴⁶ OAR, Ch. 660, Division 33.

¹⁴⁷ *Ibid*, §§ 90 to 140.

standards for authorized uses, and farm-use dwellings.¹⁴⁸ As stated on the Department of Land Conservation and Development's website, a "local government writing or revising a comprehensive plan needs to refer to these state regulations to develop a plan that protects farms and complies with law and rule".¹⁴⁹

Urban growth boundaries form part of Oregon's extensive state-wide planning approach. The state requires that all local governments be able to demonstrate that its comprehensive plan provided enough buildable lands within the urban growth boundary to meet estimated housing needs for 20 years.¹⁵⁰ The approval of the Land Conservation and Development Commission is required for amendments to the urban growth boundary that will add more than 50 acres in the case of a city with a population of 2,500 or more, or more than 100 acres in the case of a metropolitan service district.¹⁵¹

Oregon's approach is often cited as an "exemplary approach to protecting forest and farm lands from development".¹⁵² As stated by Gosnell et al., while it's difficult to establish a causal relationship between land use planning and land use change given the many factors involved, there is sufficient evidence to suggest that Oregon's approach to land use planning is "contributing a

¹⁴⁸ Authorized uses available in table form at https://www.oregon.gov/lcd/LAR/Documents/div033_use-table.pdf.

¹⁴⁹ Department of Land Conservation and Development website at <https://www.oregon.gov/lcd/FF/Pages/index.aspx>. State regulations referenced are Statewide Planning Goal 3 - Agricultural Lands, ORS Ch.197 (Comprehensive Land Use Planning), ORS Ch.215 (County Planning, Zoning and Housing Codes), and OAR Ch. 660, Division 33 (Agricultural Land).

¹⁵⁰ ORS §§197.296 and 197.766.

¹⁵¹ *Ibid* §197.626.

¹⁵² Kline USDA, *supra*. note 152 and Kline 2005, *supra*. note 152.

measurable degree of protection to forest and farm land in the state".¹⁵³ Kline notes that Oregon's land use law "not intended to stop development, but, rather, to facilitate the orderly and efficient development of rural lands while protecting forest and farmlands".¹⁵⁴ Development of farmlands is still allowed within urban growth boundaries, as well farmland owners are permitted to construct residences and other buildings within farm zones (subject to certain restrictions).

However, despite this positive assessment, it should be noted that Oregon's approach is not without its critics. In looking at Oregon's land use regulation, which they described as "among the most stringent in the United States",¹⁵⁵ Hascic and Wu conducted an economic analysis which showed that the government overregulates land (from the perspective of the landowner). By looking at 6 regulations (exclusive farm use zoning, forest zoning, UGB designation, residential density zoning, commercial zoning, and industrial zoning), Hascic and Wu developed a framework to measure the costs of regulations versus the value of individual exemptions under the regulations, and found that the cost of regulation to be lower than the value of individual exemptions (i.e., overregulation). They did note, however, that this "does not necessarily mean that governments overregulate from the perspective of society because land use regulations may generate public goods such as flood control, wildlife habitat, and water quality protection".¹⁵⁶

¹⁵³ Hannah Gosnell et al., "Is Oregon's land use planning program conserving forest and farm land? A review of the evidence" (2011) 28 Land Use Policy 185 at 185. See also Kline 2005, *supra*. note 139.

¹⁵⁴ Kline 2005 at *supra*. note 139 at 379.

¹⁵⁵ Ivan Hascic and Junjie Wu, "The Cost of Land Use Regulation versus the Value of Individual Exemption: Oregon Ballot Measures 37 and 49" (2012) 30(2) Contemporary Economic Policy 195 at 195.

¹⁵⁶ *Ibid.* at 212.

Another commentator – Bernasek - argues that the centralized approach taken by Oregon causes unnecessary conflict and confusion (one size does not fit all).¹⁵⁷ He argues that, while statewide goals should be kept, each region should be allowed to interpret the goals and implement rules for their own specific region. Bernasek also argues that Oregon must address property owners' concerns over loss of property rights using a compensation program to keep vitally important lands used in the manner for which they are zoned.¹⁵⁸ If compensation not possible, then landowners should be allowed to use land in the manner that was allowable when they acquired the land. As well, Bernasek argues the overall costs of regulatory compliance should be reduced to allow agricultural operators to make a reasonable return (otherwise there is pressure to do something else with the land).¹⁵⁹

Despite these critiques, the centralized planning approach taken in Oregon has several characteristics which have made it successful:

- Clear, legislated policy objectives accompanied by binding planning goals.
- The use of urban growth boundaries, the amendment of which are subject to oversight of an independent decision-maker.
- An independent decision-maker with oversight regarding local planning and the requirements for protecting agricultural lands.

¹⁵⁷ Tim Bernasek, "Oregon Agriculture and Land-Use Planning" (2006) 36 Environmental Law 165.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

3. Urban Growth Boundaries

Urban growth boundaries are designed to limit or control urban expansion into surrounding agricultural areas.¹⁶⁰ These typically work most effectively in conjunction with other tools that limit development outside the boundary such as agricultural reserves, limits on lot creation, or inter-jurisdictional agreements.¹⁶¹ Examples of urban growth boundaries can be seen in British Columbia and Ontario.

3.1 British Columbia

In British Columbia, the *Metro Vancouver 2040 Regional Growth Strategy (Growth Strategy)* adopts an urban containment boundary which is “intended to establish a stable, long-term regionally defined area for urban development”.¹⁶² Among other things, the urban containment boundary is meant to “reinforce the protection of agricultural...areas” and “provide predictability for locating urban uses”.¹⁶³ The *Growth Strategy* distinguishes generally between urban land use designations and non-urban land use designations. Non-urban designations include rural, agricultural, and conservation and recreation designations. Rural areas allow low density residential development, small scale industrial, commercial, and institutional uses, and agricultural uses. Agricultural areas are primarily for agricultural uses and meant to reinforce provincial and regional objectives to protect the agricultural land base. The *Growth Strategy* expressly sets out several strategies that are directed at protecting agricultural land. These strategies include

¹⁶⁰ Government of Alberta, *Efficient Use of Land Implementation Tools Compendium* (Edmonton: Government of Alberta, 2014).

¹⁶¹ *Ibid.*

¹⁶² Greater Vancouver Regional District Board, *Metro Vancouver 2040: Shaping our Future, Regional Growth Strategy* adopted July 29, (2011, Bylaw No. 1136, 2010 [Growth Strategy] at 8.

¹⁶³ *Ibid.* at 8.

collaboration with the ALC to protect the region's agricultural land base and to not amend the Agricultural or Rural land use designation of site if it is part of the ALR. The *Growth Strategy* requests that the ALC consult with Metro Vancouver to ensure consistency between the strategy and ALC decisions and policies with respect to ALR exclusion, inclusion, and non-farm use applications.

Any proposed amendments to the urban containment boundary or amendment of agricultural land use designations require an affirmative 2/3 weighted vote of the Metro Vancouver Board and a regional public hearing.¹⁶⁴ However, if a site is contiguous with or within the urban containment boundary and not within the agricultural reserve, amendment from an agricultural or rural designation to an industrial land designation only requires an affirmative 50% plus 1 weighted vote of the Metro Vancouver Board (and no regional public hearing is required). Under the *Growth Strategy*, lands not within the ALR can be designated as agricultural lands. On the other hand, as discussed previously, the permissive nature of the ALR regulations means that municipalities within Metro Vancouver could potentially approve non-farm uses for lands within the ALR (albeit with the appropriate vote described above).

3.2 Ontario

The framework for land use planning in Ontario is set out in the *Planning Act*. One of the guiding interests of the Act is the protection of province's agricultural resources.¹⁶⁵ Under the Act, municipalities are required to develop official plans which must set out "goals, objectives and policies to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality".¹⁶⁶ As well, the official plan must outline the procedures for proposed amendments to the official plan, zoning bylaws and

¹⁶⁴ *Ibid.* at 60-61 (Part F, Section 6.4).

¹⁶⁵ *Planning Act*, s. 2(b).

¹⁶⁶ *Ibid.*, s. 16(1)(a).

plans of subdivision.¹⁶⁷ Municipal land use decisions and planning must conform with the official plan.¹⁶⁸ Amendment and repeal of an official plan is permitted (no sooner than 2 years after the plan comes into effect) and requires at least one public meeting.¹⁶⁹ The official plan must not conflict with provincial plans or provincial policy.¹⁷⁰

Application of the *Municipal Act, 2001* results in three types of municipal structure in the province: upper-tier, lower-tier, and single-tier structures.¹⁷¹ Upper-tier municipalities are effectively regional municipalities comprised of two or more lower-tier municipalities. Single-tier municipalities do not form part of an upper-tier municipality (among others, Toronto¹⁷² and Ottawa). Official plans are made by all three tiers of municipalities, the official plans of lower-tier municipalities are approved by the upper-tier municipalities whereas the Minister of Municipal Affairs and Housing approves official plans of upper- and single-tier municipalities.¹⁷³

The *Planning Act* provides that the land use planning system is to be led by provincial policy and enables the Minister of Municipal Affairs and Housing to issue provincial policy statements, the current one being the *Provincial Policy Statement, 2020*.¹⁷⁴ Section 2.3 of the *Provincial Policy Statement, 2020* directly addresses agriculture and provides that “prime agricultural areas shall be

¹⁶⁷ *Ibid.*, s. 16(1)(b).

¹⁶⁸ *Ibid.*, s. 24.

¹⁶⁹ *Ibid.*, ss. 17, 21 and 22.

¹⁷⁰ *Ibid.*, s. 3(5).

¹⁷¹ *Municipal Act, 2001*, S.O. 2001, c. 25 [*Municipal Act, 2001*].

¹⁷² Toronto is created by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A.

¹⁷³ *Planning Act*, s. 17.

¹⁷⁴ Ontario, Provincial Policy Statement, 2020 under the Planning Act (May 1, 2020) O.I.C. 229/2020 [*Provincial Policy Statement*].

protected for long-term use for agriculture”.¹⁷⁵ In prime agricultural areas, the permitted uses and activities are agricultural uses, agriculture-related uses and on-farm diversified uses.¹⁷⁶ Other matters relating to agricultural lands that are addressed include lot creation and adjustments, removal of land from prime agricultural areas, and non-agricultural uses in prime agricultural areas.

In Ontario, the *Greater Golden Horseshoe Plan* (the GGH Plan)- made pursuant to the *Places to Grow Act, 2005* and the *Growth Plan Areas Regulation* - is a provincial plan.¹⁷⁷ Each municipality with the GGH Plan area must amend its official plan to conform with the GGH Plan and the Minister may take action to ensure conformity is achieved.¹⁷⁸ As stated in the GGH Plan, “[a]ll decisions made on or after May 16, 2019 in respect of the exercise of any authority that affects a planning matter will conform with this Plan, subject to any legislative or regulatory provisions providing otherwise”.¹⁷⁹ The GGH Plan identifies urban growth centres and addresses settlement area boundary expansions.

Moving from the provincial level to a regional level (a.k.a. upper-tier municipal level), as an example, the Region of Waterloo’s *Regional Official Plan, 2031* addresses conservation of agricultural lands.¹⁸⁰ The *Regional Official Plan, 2031* adopts a countryside line which “represents the long-term boundary between

¹⁷⁵ *Ibid.*, s. 2.3.1.

¹⁷⁶ *Ibid.*, s. 2.3.3.1.

¹⁷⁷ Ontario, *A Place to Grow: Growth plan for the Greater Golden Horseshoe (May 2019)*. Approved by the Lieutenant Governor in Council, Order in Council No 641/2019. The Growth Plan for the Greater Golden Horseshoe 2019 was prepared and approved under the *Places to Grow Act, 2005* to take effect on May 16, 2019 [GGH Plan]; *Places to Grow Act, 2005*, S.O. 2005, c. 13 [*Places to Grow Act*]; and *Growth Plan Areas Regulation*, O.R. 416/05.

¹⁷⁸ *Places to Grow Act*, ss. 12 and 13.

¹⁷⁹ GGH Plan at 6.

¹⁸⁰ Region of Waterloo, *Regional Official Plan, 2031* (as approved, with modifications, by the Ontario Municipal Board on June 18, 2015) [*Regional Official Plan, 2031*].

the existing Urban Area/Township Urban Areas and the countryside".¹⁸¹ The countryside line is considered a permanent boundary where it coincides with a protected countryside designation (i.e. permanently protected environmental features and agricultural lands). Further growth and development is meant to be primarily concentrated within the urban areas and through reorganization of existing built-up areas. The *Regional Official Plan* sets clear conditions for expansions of the urban boundaries.¹⁸²

Urban growth boundaries can be used as an effective tool for alleviation of urban sprawl pressures and mitigation of land speculation for development purposes.

4. Density Requirements

Density requirements are designed to focus development into existing urban areas to minimize expansion into surrounding rural areas. Much like an urban growth boundary, this tool does not offer strong protection against conversion of agricultural lands but rather slows urban sprawl by focussing development into existing urban area (as opposed to expanding outward).

In Ontario, as an example, the GGH Plan sets minimum intensification and density targets. As stated in the GGH Plan:

Better use of land and infrastructure can be made by directing growth to settlement areas and prioritizing intensification, with a focus on strategic growth areas, including urban growth centres and major transit station areas, as well as brownfield sites and greyfields.

...

¹⁸¹ *Ibid.*, at 12-13.

¹⁸² *Ibid.* at 2.B.3 to 2.B.8.

Building more compact greenfield communities reduces the rate at which land is consumed. Communities in larger urban centres need to grow at transit-supportive densities, with walkable street configurations. Compact built form and intensification efforts go together with more effective transit and active transportation networks and are fundamental to where and how we grow.¹⁸³

The GGH Plan sets targets for minimum intensification of delineated built-up areas (varies with municipalities but for many of them 50% of annual residential development must occur within the delineated built-up area). In addition, areas designated as urban growth centres must meet density targets (again, these vary with municipalities but range from 150 to 400 residents and jobs combined per hectare).

Moving from the provincial level to the regional level, the Region of Waterloo's *Regional Official Plan* sets out both built boundaries and urban area boundaries.¹⁸⁴ The built boundary represents urban areas that are already developed and are subject to re-urbanization targets. Lands outside the built boundary but within the urban boundary are considered urban or township designated greenfield areas which have specific policies and density targets guiding development.¹⁸⁵ One target requires the area municipalities to establish policies requiring that a minimum of 45% of all new residential development occurs within the built-up area annually.¹⁸⁶

In the United States, Washington State has adopted innovative approaches to zoning agricultural lands. The *Growth Management Act*, in addition to restricting

¹⁸³ GGH Plan at 2.1.

¹⁸⁴ *Regional Official Plan, 2031*.

¹⁸⁵ *Ibid.* at 2.C, 2.D.1, and 2.D.16 to 2.D.20.

¹⁸⁶ *Ibid.* at 2.C.2.

or prohibiting non-farm uses, provides several approaches to controlling density within agricultural zones.¹⁸⁷ These are:¹⁸⁸

- cluster zoning which directs development onto one portion of land with the remainder left in agricultural use;
- large lot zoning which sets a minimum lot size to achieve a successful farming operation;
- quarter zoning which allows one dwelling on a one-acre minimum lot for each 1/16 of a section of land; and
- sliding scale zoning which allows the number of lots for single-family residential purposes with minimum lot sizes of one acre to increase inversely as the size of total averages increases.

In addition to these innovative approaches to managing rural density, the *Growth Management Act* sets out numerous planning goals including encouraging development in existing urban areas, reducing sprawl, retaining open space, and protecting the environment.¹⁸⁹ One planning goal is to encourage the “conservation of ... productive agricultural lands, and discourage incompatible uses”.¹⁹⁰

¹⁸⁷ *Growth Management Act*, RCW., ch. 36.70A [*Growth Management Act*].

¹⁸⁸ *Ibid.*, §§ 36.70A.177 and 36.70A.090.

¹⁸⁹ *Ibid.*, § 36.70A.020.

¹⁹⁰ *Ibid.*, § 36.70A.020(8).

In comparing the approaches taken in Washington State and Oregon, Lettman et al. note that Oregon's approach is more centralized.¹⁹¹ The framework in Washington State provides direction to local governments but allows flexibility regarding the specific content of comprehensive plans and implementation of development regulations. Municipal land use planning is assumed to be valid unless successfully challenged. Oregon, in contrast, has one board and one state agency that guides, reviews, and monitors land use planning throughout the state according to statute and rules. While both states have experienced ongoing conversion to more developed uses, Washington has experienced greater loss compared to Oregon.

5. Urban-Rural Buffers

Urban-rural buffers are a tool designed to reduce conflicts at the urban fringe thereby increasing the viability of agricultural operations. This tool is not really designed to achieve direct conservation but may incidentally assist in doing so.

The importance of urban-rural buffers to reduce conflicts between agricultural and non-agricultural land uses has been highlighted by Tomalty.¹⁹² Speaking in the context of Ontario, he recommends that the GGH Plan should require landscape design and buffering between agricultural and non-agricultural land uses. His suggested model is British Columbia's *Guide to Edge Planning*:

¹⁹¹ Gary J. Lettman et al., *Land Use Change on Non-Federal Land in Oregon and Washington: 2018 Updates* (Salem: US Forest Service and Oregon Department of Forestry, 2018); and Gary J. Lettman et al., *Land Use Change on Non-Federal Land in Oregon and Washington* (Salem: US Forest Service and Oregon Department of Forestry, 2013) from a series of papers in US Forest Service Project available at <https://www.fs.usda.gov/pnw/projects/development-zone-land-use-change-nonfederal-land-oregon-and-washington>. For Oregon's approach, see pages 66 to 71 of this paper.

¹⁹² Tomalty, *supra*. note 23.

Promoting Compatibility Along Agricultural-Urban Edges (Guide to Edge Planning).¹⁹³

The *Guide to Edge Planning* addresses planning on the ALR boundary. Edge planning is meant to use “buffering, sensitive subdivision design and management of certain farm practices to minimize nuisance”.¹⁹⁴ The guide, developed by the provincial government, is designed to guide individual municipalities in edge planning (as they are best suited to such planning). Guidance is provided on matters such as density, road, and lot patterns; site and building design and layout (including setbacks and vegetated buffers); open space and landscape design; storm and ground water management; design of urban-side buffers; and farm-side edge planning tools.

Condon et al. proposed a structured approach to the urban-rural interface in British Columbia with the concept of municipal enabled agriculture (MEA).¹⁹⁵ This concept was introduced “at a summit of invited regional leaders representing various sectors and interests by a former premier of the Province of British Columbia”¹⁹⁶ with the intent that it complement the existing ALR. The idea behind MEA is a “structured approach that can respond substantively to the economic challenges that will increasingly beset BC (food security defined in

¹⁹³ Ministry of Agriculture, *Guide to Edge Planning: Promoting Compatibility Along Agricultural-Urban Edges* (Abbotsford, BC: British Columbia Ministry of Agriculture, 2015) available at https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/strengthening-farming/planning-for-agriculture/823100-3_edge_guide_2015.pdf [*Guide to Edge Planning*].

¹⁹⁴ *Ibid.* at 3.

¹⁹⁵ Patrick M. Condon et al., “Agriculture on the edge: strategies to abate urban encroachment onto agricultural lands by promoting viable human-scale agriculture as an integral element of urbanization” (2010) 8(1&2) *International Journal of Agricultural Sustainability* 104 at 105.

¹⁹⁶ *Ibid.* at 105.

terms of supply, and food sovereignty defined in terms of control)".¹⁹⁷ At the time of its introduction, MEA proved to be controversial.

Condon et al.'s concept of MEA included a suggestion that up to a 500m planning zone at the interface of the urban and agricultural lands be established. This zone would be for both agricultural and urban uses with the latter limited to 100-200m. Two thirds of the land would be restricted to agricultural uses in perpetuity. The agricultural uses in this new planning zone would be labour-intensive, focus on high value crops and value-added products, and be aimed at local markets. It was suggested that the agricultural land could be placed into municipal ownership and leased back to farmers on favourable terms. The urban uses within this new planning zone would be restricted to medium to high density residential uses.

6. Voluntary Agricultural Land Conservation Agreements (Districts)

There is a distinction between agricultural zoning and agricultural districts.¹⁹⁸ A key distinction is that agricultural zoning is imposed by provincial legislation or by municipal bylaws whereas agricultural districts are voluntary in nature (even if the mechanism is enabled by law).

It should be noted that some municipalities may refer to their municipal zones as "districts" and the MGA references "districts" in the context of permissible uses of

¹⁹⁷ *Ibid.* at 113.

¹⁹⁸ Elisa Pasteur, "Preservation of Agricultural Lands through Land Use Planning Tools and Techniques" (2004) 44 *Nat. Resources J.* 1 [Pasteur]. Agricultural districts are also known as agricultural reserves, security areas, incentive areas, development areas or protection areas, and in some cases agricultural zoning is called districting: see Daniel Hellersteine et al., *Farmland Protection: The Role of Public Preferences for Rural Amenities, Agricultural Economic Report 815* (Washington, D.C.: Economic Research Service, USDA, 2002).

land in land use bylaws (something that is typically referred to as zoning).¹⁹⁹ For the purposes of this report, where “zones” are referenced it refers to municipal land use restrictions set by bylaw whereas “districts” refer to voluntary restrictions adopted by landowners as a means to protect their agricultural lands.

Agricultural zoning, as a tool, only addresses acceptable and non-acceptable land uses within a designated zone. Districts can encompass a wider range of tools which include land use policies, taxing mechanisms, conservation techniques, as well as zoning.²⁰⁰ Districts have voluntary enrollment, provide multiple benefits to farmers, are flexible and local in nature, and can protect large blocks of land.²⁰¹ However, sanctions for withdrawing from an agricultural district are typically minimal and ultimately may not deter conversion.²⁰² Agricultural district programs can be strengthened by developing strong incentives and penalties, combining with other conservation programs, and developing flexibility to allow change as agriculture transforms to meet economic challenges.²⁰³

Agricultural districts are widely used in North Carolina as a tool to conserve farmland. Voluntary agricultural districts are enabled by the state's legislation entitled *The Agricultural Development and Farmland Preservation Enabling Act*.²⁰⁴ The Act allows counties or cities to adopt ordinances which provide for voluntary agricultural districts.²⁰⁵ In order to qualify for the agricultural district, the farmland must be subject to a conservation agreement for a period of at least

¹⁹⁹ MGA, s. 640(2).

²⁰⁰ Pasteur, *supra*. note 198.

²⁰¹ *Ibid*.

²⁰² *Ibid*.

²⁰³ *Ibid*.

²⁰⁴ North Carolina General Statutes, Chapter 106, Article 61 [*Agricultural Development and Farmland Preservation Enabling Act*].

²⁰⁵ *Ibid*. § 106-736.

10 years; however, the landowner may revoke the conservation agreement with written notice (which results in loss of qualifying farm status).²⁰⁶ The stated purpose of agricultural districts is to “increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms”.²⁰⁷ The advantage of being in a voluntary agricultural district is that a county or city may choose to hold all water and sewer assessments for utilities in abeyance until improvements on the farmland property are connected to the utility for which the assessment was made.²⁰⁸

The county or city ordinance that established a voluntary agricultural district must also establish an agricultural advisory board which may be granted authority to review and make recommendations for establishment and modification of the agricultural district, to hold public hearings on public projects likely to impact agricultural operations, and to advise the county or city on programs, projects or issues affecting the agricultural economy.²⁰⁹

In addition to voluntary agricultural districts, a North Carolinian county or city may pass an ordinance to establish an enhanced voluntary agricultural district.²¹⁰ The purpose of an enhanced voluntary agricultural district is to “allow a county or a city to provide additional benefits to farmland beyond that available in a voluntary agricultural district”.²¹¹ In an enhanced voluntary agricultural district, the landowner must enter into an irrevocable conservation agreement with a county or city for a period of at least 10 years which, unless

²⁰⁶ *Ibid.* §106-737.1.

²⁰⁷ *Ibid.* §106-738 (b).

²⁰⁸ *Ibid.* §106-742.

²⁰⁹ *Ibid.* §106-739.

²¹⁰ *Ibid.* §106-743.1.

²¹¹ *Ibid.* §106-743.1(b).

notice of termination is provided, automatically renews for a term of 3 years.²¹² Land subject to such a conservation agreement may receive up to 25% of its gross sales from the sale of non-farm products and still qualify as a bona fide farm that is exempt from county zoning regulations.²¹³ In an enhanced voluntary agricultural district, a county or city may choose to hold all utility assessments for utilities in abeyance until improvements on the farmland property are connected to the utility for which the assessment was made.²¹⁴

The State of New York also has long-standing use of agricultural districts (over 210 agricultural districts in 53 of 62 counties).²¹⁵ The New York Constitution requires the State Legislature to provide for agricultural land protection.²¹⁶ This has been done via the *Agricultural Districts Law*.²¹⁷

In New York, agricultural districts are locally approved and state certified, and a landowner can voluntarily seek enrollment. Being in an agricultural district does not restrict use of the land in perpetuity rather it is meant to provide benefits which maintain agriculture as a viable economic activity. Being within an agricultural district confers a variety of benefits:²¹⁸

- obligation of State agencies to encourage the maintenance of viable farming in agricultural districts;

²¹² *Ibid.* §106.743.2.

²¹³ *Ibid.* §106-743.4.

²¹⁴ *Ibid.* §106-743.5.

²¹⁵ Jeff Kehoe, *Agricultural Districts Law: A Current Summary* (New York: New York State, Department of Agriculture and Markets, n/d) available at <https://agriculture.ny.gov/system/files/documents/2020/01/summary-agrdistrict-law.pdf> [Kehoe].

²¹⁶ *New York State Constitution*, Art. XIV, §4.

²¹⁷ NY Agri & Mkts L, §§ 305, 305-A, 305-B, 305-C and 308 (2016) [*Agricultural Districts Law*].

²¹⁸ Paraphrasing Kehoe, *supra.* note 215.

- limitations on expropriation or other public acquisition, and on the advance of public funding for certain construction activities;
- limitations on the power to impose assessments, levies and fees in certain areas;
- avoid unreasonable restrictions in the regulation of farm operations in enacting and administering comprehensive plans, local laws, ordinances, rules and regulations;
- applications for certain planning and zoning actions impacting a designated farm operation within an agricultural district (or on lands within 500 feet of such farm operations) must include an agricultural data statement designed to allow evaluation of possible impacts on farm operations by the review agency.²¹⁹

The *Agricultural Districts Law* also contains “right to farm” provisions which limit potential nuisance actions arising from sound agricultural practices.²²⁰ As noted by Nolan and Solloway in 1997, the *Agricultural Districts Law* is the most substantial farmland protection legislation in New York.²²¹ They note that, aside from the establishment of agricultural districts, there have not been significant efforts by counties in New York to conserve agricultural lands.²²² Having said this, as of January 2019, more than nine million acres were within agricultural districts (about 25% of the total land mass of the state).²²³

²¹⁹ *Agricultural Districts Law*, §305-B.

²²⁰ *Ibid.*, §308.

²²¹ Sean F. Nolan and Cozata Solloway, “Preserving Our Heritage: Tools to Cultivate Agricultural Preservation in New York State” (1997) 17(2) *Pace Law Review* 591.

²²² *Ibid.*

²²³ Department of Agriculture and Markets, *New York State Advisory Council on Agriculture and Farmland Protection Program, 2017-2018 Biennial Report* (New York: New York State, Department of Agriculture and Markets, 2019).

7. Amenity Bonus/TDR/TDC programs

Transfer of Development Credits programs (TDC programs) enable landowners in a designated sending area to sell the development value of their land to developers (as credits), the developers in turn can use those credits to develop land in receiving areas. The sending areas are comprised of lands with relatively high conservation value whereas the receiving areas are more appropriate for development. Development is directed away from the sending areas and intensified in the receiving areas.

As mentioned, Alberta currently has legislation enabling TDC schemes (found in ALSA). An example of an Alberta TDC program, implemented in conjunction with conservation easements, is found in the Glenbow Ranch Area Structure Plan (Glenbow Ranch ASP).²²⁴ As explained in the Glenbow Ranch ASP:

Conservation Areas are assigned development credits that can be sold and transferred to TDC Build Area landowners. This gives landowners within the TDC Build Area the ability to develop at a higher density than would normally be allowed, through the purchase of development credits.²²⁵

The TDC program requires, upon the sale or transfer of a development credit, that a conservation easement be placed on the parcel of land from which the credit was transferred. The requirements of the TDC program are set out in detail including identification of the sending (conservation) and receiving (build) areas, the method to calculate development credits, the base density and TDC density of the various build areas, and the conservation easement requirements. The conservation easements must be made in perpetuity and contain the minimum restrictions outlined in the Glenbow Ranch ASP.

²²⁴ Rocky View County, Area Structure Plan, Glenbow Ranch (approved July 25, 2017, Bylaw C-7667-2017, amended April 24, 2018 by MGB Order 024/18) [Glenbow Ranch ASP].

²²⁵ *Ibid.*, at Schedule A, page 33.

In the United States, TDC programs are referred to as Transfer of Development Rights programs (TDR programs). However, the TDC language is considered more appropriate in Canada due to our differing constitutional and common law legal regimes related to land. Unlike in the United States, Canadian landowners have no development rights *per se* and there is no right to compensation for decreased value due to regulations or zoning restrictions being placed on land.²²⁶

Nevertheless, the United States' experience with TDR programs remains instructive for the development of TDC programs in Canada. In some instances, TDC/TDR programs are referred to as amenity bonuses.²²⁷

For example, Snohomish County in Washington State has a well-developed TDR program. This program is underpinned by the Washington State *Growth Management Act* which explicitly recognizes and encourages the use of TDR programs. County specific regulations for the TDR program are found in the Snohomish County Code.²²⁸ The regulations set out the purposes for which a TDR program may be established which includes to help conserve commercial farmlands by reducing residential development within such areas. As well, the regulations set requirements for a variety of matters such as:

- determination of the number of certified development rights that a sending is eligible to transfer;
- qualification of sending and receiving sites;
- issuance of TDR certificates;

²²⁶ Deborah Curran and Tracy Stobbe, *Local Government Policy Options to Protect Agricultural Land and Improve the Viability of Farming in Metro Vancouver* (Vancouver: Metro Vancouver, 2010) [Curran and Stobe]. See also CPR decision and Hartel decision, both *supra*. note 88.

²²⁷ Curran and Stobbe, *ibid.* at 38 to 40.

²²⁸ SCC, ch. 30.35A, Transfer of Development Rights.

- conveyance of TDR certificates and recording of conservation easements;
- applying certified development rights to receiving sites and determining the extent of increased development allowed;
- purchasing, holding, and selling of certified development rights by the county; and
- inter-local agreements allowing the use of TDR certificates within incorporated receiving areas.

The issuance of a TDR certificate is dependent upon acceptance of a conservation easement by the program director.²²⁹ The conservation easement must prohibit subdivision of the sending site and construction of any dwelling unit (except for accessory apartments, farm worker dwellings and temporary dwellings that are subordinate to existing dwelling units). As well, the conservation easement must not allow boundary adjustment to the sending site. The conservation easement runs with the land in perpetuity.

In Oregon, there have been temporary TDC program provisions incorporated into State legislation with respect to specific resort sites.²³⁰ As well, temporary provisions have been enacted to support a pilot TDR program relating to forest lands.²³¹

A review in 2002 of several counties in the northeastern USA identified that of three strategies – TDRs, purchase of development rights, or clustering

²²⁹ *Ibid.*, §30.35A.060.

²³⁰ Oregon Laws 2009, ch. 636 at §§2 to 5.

²³¹ *Ibid.* at §§6 to 8.

development to conserve high valued land - TDRs were the most effective at maintaining the agricultural land base.²³²

8. Agricultural Impact Assessments

An agricultural impact assessment process (AIA) is a planning and decision-making tool designed to identify and address potential impacts of a proposed development on agricultural lands. This can assist in reducing impacts of surrounding developments on existing agricultural lands (but does nothing to expressly conserve the land or remove development pressures).

Looking at the Ontario context, Tomalty has recommended that agricultural impact assessments (AIAs) be required as part of the development application process on a province-wide basis.²³³ Indeed, use of AIAs has been adopted as a regulatory tool in some jurisdictions.

For example, in Ontario, the *Halton Regional Official Plan* requires AIAs.²³⁴ Details of the AIA process are found in the *Agricultural Impact Assessment (AIA) Guidelines*.²³⁵ An AIA must:

- identify possible adverse impacts on agriculture;

²³² Elizabeth Brabec and Chip Smith, "Agricultural land fragmentation: the spatial effects of three land protection strategies in the eastern United States" (2002) 58 *Landscape and Urban Planning* 255, available at https://www.researchgate.net/profile/Elizabeth_Brabec/publication/223756891_Agricultural_Land_Fragmentation_The_Spatial_Effects_of_Three_Land_Protection_Strategies_in_the_Eastern_United_States/links/579b35a008ae7b940a8c9e51/Agricultural-Land-Fragmentation-The-Spatial-Effects-of-Three-Land-Protection-Strategies-in-the-Eastern-United-States.pdf.

²³³ Tomalty, *supra*. note 23.

²³⁴ *Halton Region Official Plan, Official Plan for the Halton Planning Area, Regional Municipality of Halton* (Office Consolidation, June 19, 2018) at s. 101 [*Halton Region Official Plan*].

²³⁵ Halton Region, *Agricultural Impact Assessment (AIA) Guidelines, Regional Official Plan Guidelines* (Oakville, ON: 2014, Halton Region).

- identify additional restrictions that may impact abutting agricultural operations as a result of the development (e.g., changes in MDS that would restrict expansion of an abutting agricultural operation);
- identify and evaluate locational options for the proposed development and demonstrate that the proposed location is the preferred option in terms of minimizing the impact on agriculture;
- identify methods of removing or reducing any adverse impacts resulting from the development; and
- address whether or not it is appropriate to provide “warning clauses” for the development, noting the presence of surrounding agricultural operations and if so, to make recommendations in that regard.²³⁶

An AIA may be required for a variety of applications, including those to amend Regional or Local Official Plans, to amend zoning, for subdivision, or for site plan approval. Where a development is proposed in or within 1 km of agricultural lands, then an AIA should be undertaken. While use of an AIA is not a tool that directly addresses the conservation and fragmentation of agricultural lands, it can assist in addressing impacts from planning and development decisions.

²³⁶ *Ibid.*

PART 3: THE SUPPLEMENTAL TOOLBOX – INCENTIVES & SUPPORTS



Supplemental tools include various financial inducements to keep land in agricultural use, and tools which contribute in other ways to the viability of agricultural operations. An important limitation to keep in mind with these supplemental tools is their piecemeal nature. In contrast to a comprehensive land use planning approach, supplemental tools cannot address fragmentation of agricultural lands. These tools may be employed in relatively small pockets scattered throughout the province. Furthermore, their use may not take into account the compatibility of surrounding land uses and development and therefore cannot address conflicting uses in a wholistic manner. Thus, supplemental tools are important enhancements and adjuncts to an overarching planning approach but cannot, in isolation, address the problems of agricultural land loss and fragmentation.

What's in Alberta's Toolbox?

1. Financial Inducements

1.1 Federal Taxation

The federal *Income Tax Act* (ITA) can be used to foster agricultural production. It should be noted that this report does not analyze all implications of the ITA on agricultural lands. There are some federal taxation tools relating to drought and excessive moisture, and farm equipment which are designed to facilitate agricultural operations. Other provisions are directly relevant to agricultural lands: special capital gain and loss rules for “qualified farm property” and the ecological gifts program.

Qualified farm property includes, among other things, the lands used for carrying on active farming.²³⁷ Special capital gain and loss rules apply to the

²³⁷ Qualified farming property is defined in ITA, s. 110.6. Farming is defined in ITA, s. 248.

sale or transfer of qualified farm property.²³⁸ For a capital gain on the sale of qualified farm property, there is a corresponding capital gain deduction (i.e., there is an exemption to offset at least some of the capital gain). Further, in the event a qualified farm property is transferred to a child, spouse or common-law partner, no capital gains are realized or taxable until that child, spouse or common-law partner later disposes of the land.²³⁹ The rules around determining whether agricultural lands are considered to be qualified farm property to which the capital gains exemptions apply are complex and often require considerable advance planning.²⁴⁰

The capital gain and loss rules around qualified farm property benefit those who keep agricultural lands in active production. However, it appears once a transfer has occurred, the lands could be converted to non-agricultural uses with no negative tax consequences.

1.2 Municipal Taxation

Municipalities have taxation powers under the MGA. Particularly relevant to agricultural lands are municipal property taxes which are applied to farm residences, farm buildings and the farmland itself. Some farm property, such as growing crops, are not assessed or taxed.²⁴¹ Most farm residences and buildings are assessable but not taxable.²⁴²

²³⁸ ITA, s. 110.6.

²³⁹ BDO, *Tax Bulletin: Tax Planning for Canadian Farmers* (March 2017), online: [https://www.bdo.ca/getattachment/Insights/Tax/Tax-Articles/Tax-Planning-for-Canadian-Farmers/Tax-Planning-for-Canadian-Farmers_unsecured-\(3\).pdf.aspx/](https://www.bdo.ca/getattachment/Insights/Tax/Tax-Articles/Tax-Planning-for-Canadian-Farmers/Tax-Planning-for-Canadian-Farmers_unsecured-(3).pdf.aspx/).

²⁴⁰ Marie Good, Dean Gallimore and Colin Miller, *Tax Management Strategies for Farmers*, 2nd ed. (Edmonton: Alberta Agriculture and Rural Development, 2011).

²⁴¹ MGA, s. 298(1)(w) exempts growing crops from municipal taxation.

²⁴² *Matters relating to Assessment and Taxation Regulation*, A.R. 203/2017.

Farmland itself is considered “regulated property” which means its assessed value for taxation purposes is set by the government on the basis of productive value (unlike most property which is assessed using market values).²⁴³ In assessing farmland, a local assessor must follow the *Alberta Farm Land Assessment Guidelines* which creates four categories of farmland: dry arable land, dry pasture land, irrigated arable land, and wood lots.²⁴⁴ Once farmland is no longer used for agricultural purposes, it is assessed at market value.

Given that assessed value of farmland is based on the category and area of the farmland, municipal property taxation may operate to inadvertently benefit more intensive agricultural operations such as confined feeding operations, greenhouses, and mushroom farms.²⁴⁵ This is because intensive agricultural operations typically have a smaller land base (and therefore lower property taxes) despite a comparable income. Municipalities could choose to impose business taxes on certain agricultural operations to offset additional costs caused by such intensive operations (this has been done by the City of Lethbridge for intensive livestock operations).²⁴⁶

Given the existing preferential tax treatment of agricultural lands, municipalities may be incentivized to allow development of agricultural lands (more developed lands create a larger municipal tax base). On the other hand, the preferential tax treatment may encourage individual landowners to maintain

²⁴³ Municipal Affairs, *Guide to Property Assessment and Taxation in Alberta* (Edmonton: Government of Alberta, 2018).

²⁴⁴ *2018 Alberta Farm Land Assessment Minister's Guidelines*, Ministerial Order MAG:020/18.

²⁴⁵ Municipal Affairs, *MGA Review Discussion Paper: Farm Property Assessment and Taxation* (Edmonton: Government of Alberta, 2013).

²⁴⁶ John Groenewegan, *Agricultural Property Tax Concessions and Government Transfers to Agriculture* (Ottawa: Government of Canada, Agriculture and Agricultural-Food Canada, 2000). The County of Lethbridge's business tax for intensive livestock operations assesses operations using a storage capacity approach (i.e., the number of animals) and was upheld in *Van Raay Paskal Farms Ltd. v Lethbridge (County)*, 2019 ABCA 19 (CanLii), leave denied 2019 CanLII 73204 (SCC).

land as agricultural lands (at least until the benefits of development outweigh the tax benefits).

1.3 Payment for Ecological Goods and Services

Ecological goods and services (EGS) are “the economic and social benefits derived, directly and indirectly, from the natural environment or Natural Capital, such as clean air, healthy soil, biodiversity, and water quality and quantity”.²⁴⁷ Regulation can be, and often is, put into place to prevent the diminution or loss of EGS. However, regulation is not always sufficient to protect EGS or does not enhance protection of EGS (i.e., it will set a minimum standard rather than encouraging practices which enhance EGS). Furthermore, the loss of EGS is often not included in land use valuation and management decisions which leads to an undervaluation of EGS in current markets.²⁴⁸ Payment for EGS allows landowners to realize a financial benefit for adopting management or operational practices that support EGS.

There are several examples of payment for EGS programs in Alberta, particularly in association with ALUS Canada. ALUS Canada (originally an acronym for Alternative Land Use Services) channels funding from individuals, governments, foundations, and corporations to support farmers and ranchers that are stewards of working landscapes (in Alberta and other parts of Canada).²⁴⁹ ALUS Canada funds projects undertaken by farmers and ranchers to maintain and enhance EGS on their agricultural lands. For instance, a participant in Vermillion River has provided nesting areas for mallard ducks, fenced and enhanced

²⁴⁷ Kimberly Good, *Alberta Ecological Goods and Services Program Scan and Recommendations for Alberta NAWMP* (Calgary: Miistakis Institute, 2009) at 4.

²⁴⁸ *Ibid.*

²⁴⁹ See the ALUS Canada website at <https://alus.ca/what-we-do/>.

several wetlands, and restored native prairie on his agricultural lands.²⁵⁰ Other projects dealing with water protection have been established in Red Deer County.

ALUS Canada provides annual payments to its participants to ensure ongoing stewardship of each project. In Wheatland County, the ALUS program compensates producers based upon the type of agricultural lands involved in the project:

- Irrigated Cropland \$75.00/Acre
- Cropland (including hayland) \$65.00/Acre
- Seasonal Wetland in Cropland \$50.00/Acre
- Seasonal Wetland in Pasture \$25.00/Acre
- Permanent Wetland \$20.00/Acre
- Pasture \$40.00/Acre²⁵¹

Qualifying projects in Wheatland County can involve activities such as riparian protection, reclaiming marginal or saline soils, eco-buffers, wetland projects, and pollinator projects.

Payments for EGS can provide funding to agricultural operators and landowners, incentivizing protection and conservation of agricultural lands and adoption of beneficial management practices. However, a primary concern with payment for EGS programs is the requirement for funding. As well, these types of programs run contrary to the polluter pays principle which holds that

²⁵⁰ See the ALUS Canada website, Vermilion River Participant Trent Selte at https://alus.ca/alus_project/stewardship-ethic-helping-ducks/.

²⁵¹ See Wheatland County website at <https://www.wheatlandcounty.ca/living-in-wheatland-county/agricultural-services/opportunities-for-funding>.

polluters should pay to pollute rather than potential polluters being paid to not pollute.

2. Other Tools

2.1 Certification and Labelling Schemes

Certification is a “procedure by which a third party gives written assurance that a product, process or service is in conformity with certain standards”.²⁵² It provides a consumer assurance that certain standards have been met by the supplier/producer. Labelling consists of a label or symbol that indicates compliance with certain standards has been verified.²⁵³ Standards may be set by governments, by the relevant industry, by buyers’ groups, by trade unions, by non-governmental organizations, or by some coalition of these groups.²⁵⁴

Certification and labelling programs may or may not have legislative underpinning. For instance, in Alberta, relatively recent legislative changes require that products sold or labelled as organic must be certified through a third-party certification body.²⁵⁵ Another program undertaken in Alberta– the *Certified Sustainable Beef Framework* – is established by an industry group called the Canadian Roundtable for Sustainable Beef.²⁵⁶ The *Certified Sustainable Beef Framework* provides a “tool to certify farms, ranches and processing facilities

²⁵² Cora Dankers, *Environmental and Social Standards, Certification and Labelling for Cash Crops* (Rome: Food and Agriculture Organization of the United Nations, 2003) at 8.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ *Supporting Alberta's Local Food Sector Act*, S.A. 2018, ch. S-23.3 at ss. 8 and 9, and *Safe Food for Canadians Regulations*, SOR/2018-108 at Part 13.

²⁵⁶ See the Certified Sustainable Beef Roundtable Framework website at <https://www.crsbcertified.ca>.

against sustainability standards, supports retail and foodservice companies to meet sustainable sourcing commitments".²⁵⁷

These programs can encourage and incentivize voluntary adoption of sustainable agricultural practices. However, given that these programs are often voluntary, there may be limited adoption. Further, success of certification and labelling programs may require a supporting legislative and regulatory framework to be developed (which takes resources). A certification and labelling program established by industry may not necessarily achieve stated environmental outcomes (i.e., may be too lenient).

Expanding the Toolbox: Lessons from Other Jurisdictions and the Literature

1. Financial Inducements

Financial inducements are used to encourage or reward keeping land in agricultural use. These tools may have a regulatory underpinning, that is, the tools are enabled or implemented by legislation. But, at their core, these tools are essentially voluntary or are designed to encourage (but not require) certain outcomes.

1.1 Expanding Federal Taxation Programs to Agricultural Lands

Currently, under the federal *Income Tax Act*, there is provision for the ecological gifts program which is designed to encourage conservation of lands via creating tax benefits for land donations.²⁵⁸ An ecological gift is a gift of land

²⁵⁷ See the Canadian Roundtable for Sustainable Beef website at <https://crsb.ca>.

²⁵⁸ ITA, s. 118.1. See also Canadian Wildlife Service, *The Ecological Gifts Handbook: A legacy for tomorrow – a tax break for today* (Ottawa: Government of Canada, 2011).

(which can include attaching a conservation easement), the conservation and protection of which is important to Canada's environmental heritage.

Given the ecological focus of the ecological gifts program, most cultivated agricultural lands typically do not qualify for the program.²⁵⁹ Accordingly, it has been recommended by some that a program like the Ecological Gifts program be developed specifically for agricultural lands.²⁶⁰ Under such a program, a donation of cultivated lands to an eligible recipient (which could include placing a conservation easement for agriculture on the lands) would result in a charitable tax credit (in the same way as under the Ecological Gifts program). Such a program could better encourage donations of agricultural lands for long-term conservation.

Coinciding with the development of agricultural gifts program, there should be clarification on the status of farmland trusts to accept, hold and manage donations of agricultural lands which remain working landscapes. Only registered charities, registered Canadian municipalities, and limited categories of other organizations can provide charitable receipts for a donation.²⁶¹ There is a somewhat limited number of "charitable purposes" for which a charity can be established:

- the relief of poverty,
- the advancement of education,
- the advancement of religion, and
- certain other purposes beneficial to the community (not falling into any the above categories) which the law considers to be charitable.²⁶²

²⁵⁹ Good and Michalsky, *supra*. note 1.

²⁶⁰ *Ibid.*

²⁶¹ ITA, ss. 149.1, 149.2, and 248.

²⁶² A.Y.S.A. *Amateur Youth Soccer Association v. Canada (Revenue Agency)*, [2007] 3 S.C.R. 217 at para. 26.

In *Policy Statement CSP-A18 (September 3, 2003)*, organizations established to promote agriculture generally (i.e., not to further interests of persons engaged in agriculture) can qualify under the last category of charitable purposes. The holding of land on its own may not be viewed as serving a community benefit without additional aspects of education and agricultural promotion. Insofar as conserving land reflects a commercial purpose, that of maintaining the business of farming, there may be challenges in conserving agricultural lands.²⁶³

Additional clarity as to whether accepting, holding, and managing agricultural lands is an acceptable activity under this category of charitable purpose is required. Clarification of the charitable status and activities of agricultural land trusts would assist in establishing dedicated agricultural land trusts in Alberta.

1.2 Elimination of Taxation and Zoning Restrictions for on-farm, value-added enterprises

While there are typically reduced property taxes for agricultural lands and associated buildings, the same may not hold true for on-farm, value-added enterprises. Tomalty has suggested that there should be relaxation of taxation and zoning restrictions for on-farm value-added enterprises.²⁶⁴

The rationale is that the economic viability of farms can be enhanced with diversification into value-added operations and, as such, zoning and taxation should not operate against such activities.²⁶⁵

Curran and Stobbe have suggested that "agricultural enterprise zones" should be established to stimulate business activity and job creation.²⁶⁶ These

²⁶³ See *Hutterian Brethren Church of Wilson v. Canada*, 1979 CanLII 2504 (FCA), <http://canlii.ca/t/gc7zw>.

²⁶⁴ Tomalty, *supra*. note 23.

²⁶⁵ *Ibid*.

²⁶⁶ Curran and Stobbe, *supra*. note 226 at 36 to 38.

agricultural enterprise zones would provide dedicated locations for agriculture-related businesses and incentivize development of processing facilities, product storage and farm service business. Effectively, agriculture enterprise zones would be unique zoning designations overlain with tax exemptions.

1.3 Financial Disincentives: Transfer Taxes, Development Impact Fees, and other Land Conversion Fees

Taxation mechanisms – such as transfer taxes, development impact fees or other land conversion fees – can be used to penalize the conversion of agricultural lands. For example, New York State penalizes the conversion of agricultural lands by clawing back the benefits received from lower agricultural tax assessments. State legislation provides that:

If land is converted within 8 years from the time an agricultural assessment was last received, the conversion subjects the land to payments in compensation for the prior benefits of agricultural assessments in the amount equal to five times the taxes saved in the last year in which the land benefited from the agricultural assessment plus interest of six percent per year compounded annually for each year in which the agricultural assessment was granted, not exceeding 5 years.²⁶⁷

There are some exceptions made to the penalty including land conversions due to oil, gas or wind exploration or extraction; an expropriation or other involuntary taking; or conveyance of a conservation easement which prohibits agricultural operations for watershed protection by the City of New York to the Department of Environmental Conservation.

²⁶⁷ *Agricultural Districts Law*, §306.

1.4 Payments for Ecological Goods and Services

These programs reward farmers for ecological goods and services (EGS) arising from maintaining land in agriculture production.²⁶⁸ As expressed by Roy et al.:

Agriculture is deeply intertwined with EGS. Agriculture is both a provider and beneficiary of EGS. The viability of agriculture depends on ecosystem processes such as soil formation, climate regulation and precipitation. Farmland also provides value to society such as fish and wildlife habitat, scenic views, and purification of air and water through natural processes. As a provider of EGS, agriculture endows us with commodities such as food, fibre and fuel. In contrast to agricultural commodities, environmental stewardship services are often undersupplied by farmers due to absent or weak pricing signals (Mann and Wüstemann, 2008).

The challenge for agriculture and EGS is that producers benefit only from selling commodities such as food and fibre, while EGS such as wildlife habitat and purification of water and air are public benefits. Because these are positive environmental externalities, producers generally do not receive compensation for the enhancement of these EGS. This creates a policy gap to be addressed by governments. Addressing this gap involves gaining an understanding of public demands for ecosystem services and how this differs from the level EGS farmers are willing to provide under existing policy, regulatory and market environments.²⁶⁹

While the ALUS Canada approach has been used throughout Canada, including in Alberta (as previously discussed), Prince Edward Island is unique in that it has a province-wide ALUS Program which allows any agricultural

²⁶⁸ Tomalty, *supra*. note 23.

²⁶⁹ Dimple Roy, Henry David Venezia and Matthew McCandless, *Ecological Goods and Services: A review of best practice in policy and programing* (Winnipeg, MN: International Institute for Sustainable Development, 2011) at 6 [Roy et al.].

landowner to apply for “financial assistance to implement beneficial management practices (BMPs) or remove environmentally sensitive land from agricultural production”.²⁷⁰ The program is co-managed by ALUS Canada and the provincial government as part of the Canadian Agricultural Partnership Program. The *Alternative Land Use Services Program Guidelines* provides details on eligible applicants, activities, and expenses.²⁷¹ Eligible activities include:

- Retirement of sensitive land via expanding buffer zones, establishing non-regulated grassed headlands, and retiring high-sloped land.
- Placing land into soil conservation structures (diversion terraces, farmable berms, and grassed waterways).
- Natural hollows left as permanent grass.
- Maintaining livestock fencing adjacent to watercourses and wetlands.
- Delayed hay cutting of long-term forage fields.

Regulated buffer zones and grassed headlands are not eligible. Different activities attract different ALUS payments (ranging from \$62/hectare for delayed haying to \$250/hectare for land under conservation structures). Additional funding may be provided for projects which have “demonstrable links to increasing public trust”.²⁷²

As Poulton et al. point out, the development of an EGS market will be facilitated by standard EGS credits which are “ecologically valid, recognized as satisfaction of environmental liabilities, amenable to exclusive ownership,

²⁷⁰ Prince Edward Island Alternative Land Use Services (ALUS) Program website at <https://www.princeedwardisland.ca/en/service/alternative-land-use-services-alus-program>.

²⁷¹ Prince Edward Island Agriculture and Land, *Alternative Land Use Services Program Guidelines* (August 2019).

²⁷² *Ibid.* at 3.

transferable and fungible".²⁷³ It may also be beneficial to develop regional EGS schemes for a more comprehensive approach. To date, with the exception of PEI's program, there is little Canadian experience "using regional environmental priorities to guide EGS program design, as has been demonstrated [elsewhere]".²⁷⁴

Aside from a lack of regional approaches to using EGS schemes, these schemes can also suffer from lack of continuity. Continued funding is required to support these schemes which, particularly in the longer term, can be problematic. As a result, there may be difficulty in achieving long term conservation of agricultural lands using an EGS scheme.

1.5 Cross Compliance Programs

Cross-compliance is a policy tool which ties participation in agricultural subsidy programs to compliance with environmental, animal welfare and food safety standards.²⁷⁵ This tool is used in European Union under the Common Agricultural Policy (CAP), the main objectives of which are to improve agricultural productivity, ensure a stable supply of affordable food, and provide a reasonable living for farmers.²⁷⁶ Under the CAP, subsidies are withheld from farms

²⁷³ David W. Poulton et al., *The Application of Property Rights in Ecosystem Service Markets* (Edmonton: Alberta Land Institute, 2019). See also Timm Kroeber and Frank Casey, "An assessment of market-based approaches to providing ecosystem services on agricultural lands" (2007) ECOLEC-02907 which notes the lack of "low-cost measurability and valuation" of ecosystem services.

²⁷⁴ Roy et al., *supra*. note 269 at 3.

²⁷⁵ Meri Juntti, "Implementing Cross Compliance for Agriculture in the EU: Relational Agency, Power and Act in Different Socio-Material Contexts" (2012) 52(3) *Sociologia Ruralis* 294 [Juntti].

²⁷⁶ European Commission, *The European Union Explained: Agriculture* (Luxembourg: Publications Office of the European Union, 2017).

that do not comply with require environmental, animal welfare and food safety standards.²⁷⁷

The underpinning of the CAP is found in the *Treaty on the Functioning of the European Union* and several regulations.²⁷⁸ For instance, EU Regulation 1307/2013 includes rules for payments to farmers who observe agricultural practices beneficial to the climate and environment. Agricultural practices considered beneficial to the climate and environment are crop diversification, maintaining existing permanent grassland, and having ecological focus area on the agricultural area (lands lying fallow, terraces, landscape features, buffer strips, and others), as well as organic farming.

The only cross-compliance program found in Canada is Quebec's Programme d'assurance stabilisation du revenu agricole (ASRA program).²⁷⁹ The ASRA program provides insurance to protect against market and production cost fluctuations in several sectors:

- Cereal and canola (oats, wheat for human and for animal consumption and barley),
- Cow calves,
- Feeder cattle and slaughter cattle,
- Grain-fed calves,
- Hogs,
- Lambs, and
- Piglets.

²⁷⁷ Juntti, *supra*. note 275.

²⁷⁸ *Treaty on the Functioning of the European Union* 2012/C 326/01: Title III, Art. 38 to 44. Regulations include *Rules for direct payments to farmers*, EU regulation 1307/2013; *Common organization of agricultural products markets*, EU regulation 1308/2013; *Support for rural development*, EU regulation 1305/2013; and *Financing, management and monitoring of the CAP*, EU regulation 1306/2013.

²⁷⁹ James Rude et al., *Linking Environmental Goals with Business Risk Management Programs in Canadian Agriculture* (Edmonton: Alberta Land Institute, 2016) [Rude et al.].

Participation in the ASRA program requires a commitment to use farming methods that comply with standards in *Guide to Farming Standards Approved by La Financiere agricole du Québec: Potatoes, Cereals, Emerging Crops, Grain Corn and Oilseeds* (2020).

As well, due to phosphorus concerns, hog farmers are subject to caps on the number of hogs and must submit phosphorus reports (validated by an agronomist) which certify that the farm has enough land and/or contractual arrangements to safely dispose of all manure generated.²⁸⁰ In the first year of non-compliance, payments under the ASRA program are reduced by 25%; in the second year of non-compliance, all benefits are lost.²⁸¹

Currently, agricultural income stability programs in Canada (such as AgriInvest, AgriStability, AgriInsure and AgriRecovery) are not tied to environmental performance.²⁸² It has been suggested that programs - including income stabilization programs - that focus on production levels, inputs or crops can have negative environmental impacts and should be "greened" using cross-compliance programs to lead to less harmful impacts.²⁸³

2. Other Mechanisms

Aside from regulatory tools and financial inducements, other mechanisms can be used to incentivize and support agricultural operations. In doing so, this can

²⁸⁰ Bruno Larue, *Agricultural Systems, Land Use Practices and Water in Quebec* (Ottawa: Canadian Agri-Food Policy Institute, 2019).

²⁸¹ Rude et al., *supra*. note 279.

²⁸² James Rude, *Business Risk Management Programs and the Environment* (Ottawa: The Canadian Agri-Food Policy Institute, 2018).

²⁸³ Denis Boutin, *Reconciling Farm Support and Environmental Protection: Trends and Prospects*, presented at the Sixth Biennial Conference of the Canadian Society for Ecological Economics, York University, Toronto, October 27-29, 2005.

indirectly assist with conservation of agricultural lands (although these are not really directed toward that goal).

2.1 Agricultural Development Offices and Liaison Officers

Agricultural development offices and liaison officers are administrative tools to assist farmers. A regional or local development office could provide assistance for activities ranging from business planning to cropping practices.²⁸⁴

Agricultural liaison officers are senior municipal officials who:

- advise municipal council on agricultural matters;
- promote agricultural economic developments;
- provide awareness training for other municipal officials;
- help farmers and food industry entrepreneurs to navigate approval processes; and
- provide feedback to regulatory authorities on ways to improve review and approval procedures.²⁸⁵

An important role of an agricultural liaison officer would be advising municipal council on planning and regulatory matters related to agriculture.²⁸⁶

An example is found in the Halton Region, Ontario. One of the roles of the Agricultural Liaison Officer of the Halton Region is to administer the Agricultural Community Development Fund which is used to support and develop the local agricultural community and industry.²⁸⁷ As well, the Agricultural Liaison Officer played a role in the development of the Rural Agricultural Strategy for the

²⁸⁴ Curran and Stobbe, *supra*. note 226.

²⁸⁵ Tomalty, *supra*. note 23.

²⁸⁶ *Ibid*.

²⁸⁷ Halton Region website at <https://halton.ca>.

region.²⁸⁸ One of the underlying principles of the Rural Agricultural Strategy is “permanent protection of contiguous prime agricultural land”.²⁸⁹

Another possible administrative approach is to create a municipal agricultural advisory committee.²⁹⁰ Such committees provide advice to municipal staff and council on agricultural land use and farm-related issues.

2.2 Agri-Tourism

Agri-tourism is suggested by Curran and Stobbe as a potential value-added opportunity on agricultural lands.²⁹¹ Such activities can promote local agricultural products and provide an educational function. Agri-tourism can act as a complement to regional and food system planning, and targets a growth area in agriculture.²⁹²

2.3 Agro-Food Parks

Agro-food parks are collaborative collections of companies, knowledge institutions and associations. These are designed to stimulate product development and innovation. Examples of agro-food parks can be found in Denmark and the Netherlands.

Denmark's agro-food park was established in 2009 in an urban-rural fringe area.²⁹³ It is comprised of a mix of companies, knowledge institutions and

²⁸⁸ Margaret Walton, *Halton Region Rural Agricultural Strategy Background Report* (Bracebridge, ON: Planscape, 2016). Also see Halton Region, *Halton Region Rural Agricultural Strategy* (Oakville, ON: 2016, Halton Region) [Halton Ag. Strategy].

²⁸⁹ Halton Ag. Strategy, *ibid.* at 5.

²⁹⁰ Tomalty, *supra.* note 23.

²⁹¹ Deborah Curran and Tracy Stobbe, *supra.* note 226.

²⁹² *Ibid.*

²⁹³ Agro-Food Park website at <https://agrofoodpark.com>.

associations. It is designed to be a hub for Danish food innovation to accelerate food research and growth of the Danish food and agriculture sector.

In the Netherlands, the Food Valley program “aims to stimulate the innovative power of the Dutch Agri-food cluster through stimulating the connection and collaboration between companies, knowledge institutes and governments”.²⁹⁴ The Food Valley program conducts a variety of activities such as stimulating product development, initiating international trading missions, and developing collaboration programs and support.

A similar concept can be found in Canada with the Protein Industries Supercluster that is supported by the federal government.²⁹⁵ This program is designed to use plant genomics and novel processing techniques to increase the value of key Canadian crops to make Canada a leading source of plant proteins. This program has a multitude of participants drawn from the food industry, non-profits, and universities.

2.4 Regional Procurement Policies

Curran and Stobbe have suggested that regional procurement policies can be used to stimulate local agricultural products for food and landscape materials.²⁹⁶ Rather than the traditional focus on cost and quality, purchasing priorities are shifted to local agricultural products for food and landscaping.²⁹⁷

²⁹⁴ European Commission website at <https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/organisation/food-valley>. See also the Food Valley website at <http://www.foodvalley.nl/>.

²⁹⁵ Government of Canada's website at <https://www.ic.gc.ca/eic/site/093.nsf/eng/00008.html>. See also the Protein Industries Canada website at <https://www.proteinindustriescanada.ca/>.

²⁹⁶ Curran and Stobbe, *supra*. note 226.

²⁹⁷ *Ibid.*

2.5 Regional Farmland Trust

As explained by Curran and Stobbe, farmland trusts are “typically non-governmental organizations that carry out a range of land protection activities, including protecting farmland from development”.²⁹⁸ Farmland trusts, often in conjunction with local governments, contribute to the purchase of lands, which often are held as local or regional parkland.²⁹⁹ The operations of farmland trusts may follow different models such as purchase of conservation easements, amenity bonuses/TDC/TDR programs, payments for EGS, or outright purchase of land with leases to farmers.³⁰⁰

In reviewing farmland trusts in the British Columbia context, Gorsuch and Scott note that the ALR is not permanent (as it is a form of zoning which could be amended) and, as such, farmland trusts can play a role.³⁰¹ A farmland trust can ensure permanent protection and ensure that the land is maintained in active production.³⁰² Farmland trusts are able to conserve farmland, assist farmers with affordable land access and keep farmland in ecologically sustainable local food production.³⁰³

²⁹⁸ *Ibid* at 42.

²⁹⁹ *Ibid*.

³⁰⁰ *Ibid*.

³⁰¹ Wanda Gorsuch and Ramona Scott, *A review of Farmland Trusts: Communities Supporting Farmland, Farming, and Farmers* (Victoria: The Land Conservancy of British Columbia, 2010).

³⁰² *Ibid*.

³⁰³ *Ibid*.

2.6 Regional Agricultural Fund

A regional agricultural fund can be established using property taxes or levies to carry out farmland and ecological conservation activities.³⁰⁴ According to Curran and Stobbe, a regional agricultural fund can be used to:

- acquire no subdivide and other pro-agriculture covenants registered on the title to land, either by paying an owner to register the covenant or purchasing land outright, registering the covenant and retaining or reselling it;
- purchase agricultural land and resell it at below market value with covenants and other legal restrictions that require it to be sold at less than market value in perpetuity;
- purchase agricultural land that can be leased out at market or subsidized rates to new farmers;
- support farming organizations to undertake local activities;
- support local government extension-type activities; and
- support local government or non-governmental agricultural programs.³⁰⁵

A similar approach has been taken in New York State on a state-level. Legislation entitled *Agricultural and Farmland Protection Programs* enables the establishment of a state agricultural and farmland protection program.³⁰⁶ This program is designed to provide financial and technical assistance to counties,

³⁰⁴ Curran and Stobbe, *supra*. note 226.

³⁰⁵ *Ibid.* at 41.

³⁰⁶ *Agricultural Districts Law*.

municipalities, soil and water conservation districts, and not-for-profit conservation organizations.

Another example is North Carolina's *The Agricultural Development and Farmland Preservation Enabling Act* which enables the purchase of agricultural conservation easements by a county.³⁰⁷ It also establishes the North Carolina Agricultural Development and Farmland Preservation Trust Fund for such purchases.³⁰⁸

³⁰⁷ *The Agricultural Development and Farmland Preservation Enabling Act*.

³⁰⁸ *Ibid.*, §106-744.

APPENDIX: ALBERTA'S TOOLBOX AT A GLANCE



Statutory Plans and Land Use Bylaws under MGA

Decision-maker?	Municipality has authority to act in accordance with the MGA, subject to applicable land use policies or regional plans. There are provisions enabling inter-municipal cooperation and regional growth boards.
Securement against fragmentation/loss?	Municipal planning documents do not secure agricultural lands on the longer term. While municipal planning could be designed in a way to conserve agricultural lands within the municipality, there is no clear or absolute requirement to do so. Furthermore, with the current approach to municipal planning, there is a significant measure of municipal and regional autonomy to manage development. Municipal planning documents – such as MDPs – are high level, directional and are easily modified. Similarly, land use bylaws (while binding) are easily amended.
Compensation contemplated?	No
Mandatory or incentivizing?	Mandatory
Benefits	<p>Significant local autonomy (subject to compliance with applicable regional plan or land use policies). There are provisions for inter-municipal coordination and regional growth boards which can address agricultural lands on a larger basis.</p> <p>Existing MGA provisions would allow the use of tools such as urban growth boundaries, rural-urban buffers, tradable development credit programs, density requirements, and municipal zoning for agricultural lands.</p>
Deficiencies	<p>Municipal authorities are not currently guided by provincial policy objectives or rules, or by a specific agricultural mandate.</p> <p>Securement of land base is relatively short term and easily altered by local officials.</p> <p>Amendments to statutory plans are easily accomplished, so not truly binding.</p> <p>Municipal planning may be disrupted by other decision-makers (the Alberta Energy Regulator, the Alberta Utilities Commission and the Natural Resources Conservation Board) under section 619 of the MGA which provides that a decision by any of these decision-makers has priority over municipal planning and development decisions.</p> <p>There is a lack of enforcement mechanisms. Municipalities make, amend, and implement planning and development decisions with no provincial oversight and very limited avenues for appeal by interested parties.</p>

Regional Planning	
Decision-maker?	Regional planning occurs at the provincial level (although with input from stakeholders including municipalities). Once a regional plan is in place, provincial and municipal decision-makers must abide by the regional plan. Some aspects of a regional plan are binding and regulatory in nature whereas other aspects are policy statements and merely provide guidance.
Securement against fragmentation/loss?	Regional planning <i>could be</i> a powerful tool to achieve long-term security against future development and fragmentation of agricultural lands. In particular, regional plans may be able to impose binding agricultural zones to effectively create an agricultural reserve/greenbelt. Furthermore, conservation directives and conservation offsets could be implemented to secure agricultural lands on a long-term basis. However, to date, this has not been the approach.
Compensation contemplated?	In some circumstances, compensation will be payable. If a regional plan is to expressly reference and affect a statutory consent (i.e., a Crown lease, license, approval and so forth), ³⁰⁹ then notice must be given to the statutory consent holder including any proposed compensation. Compensation will typically be payable where the law that gave rise to the authorization provides for compensation. If a conservation directive is imposed on land, then compensation in accordance with the regulations is payable. ³¹⁰ A fee simple landowner or freehold mineral owner is entitled to apply to government for compensation for a compensable taking. ³¹¹ Given the provisions in ALSA and the caselaw, it is likely that a right to compensation for a "compensable taking" will only arise in the case land use is sterilized as a result of regional planning. ³¹²

³⁰⁹ ALSA, ss. 2(1) and 11.

³¹⁰ ALSA, s. 36 and Alberta Land Stewardship Reg., Part 3, Division 1.

³¹¹ For more discussion, see note 88.

³¹² For more discussion, see Kaplinsky and Percy, *supra*. note 89 at 25.

Regional Planning	
Mandatory or incentivizing?	Mandatory.
Benefits	<p>Mandatory, requires compliance by provincial decision-makers and local authorities.</p> <p>May be possible to use regional plans to establish agricultural “zoning” (a.k.a. agricultural reserve or greenbelt). Regional plan “zoning” could set clear requirements for municipalities while allowing some clearly defined municipal discretion to address local concerns.</p> <p>There are express provisions for compensation related to conservation directives.</p> <p>Regional plans are periodically reviewed (every 10 years).</p> <p>Integration across jurisdictions is possible, along with requiring coordination of infrastructure amongst jurisdictions.</p>
Deficiencies	<p>May lead to litigation around compensation.</p> <p>There is a lack of supporting regulation, policy, and guidelines for conservation offsets. Similarly, while there are compensation regulations³¹³ in place for conservation directives, there is a lack of supporting policy direction for their use.</p> <p>With regional planning, there will be a loss of some local autonomy which may mean some local knowledge and experience is overlooked.</p> <p>Individual landowners may resent the imposition of restrictions on use of their lands (even in the face of compensation); municipalities may resent the restrictions on their planning decision-making options. Given that regional plans require provincial Cabinet approval, such concerns may present a barrier to implementation.</p>

³¹³ Alberta Land Stewardship Reg.

Stewardship Tools under the ALSA: Conservation Easements

Decision-maker?	A conservation easement is a contract between a private landowner, and a qualified private land conservation organization or a government agency (including a municipality).
Securement against fragmentation/loss?	Excellent securement, runs with the land thereby binding future owners. Easements are enforced by those who hold the easement or another delegated qualified organization
Compensation contemplated?	<p>Conservation easements may be used or in conjunction with other tools like offsets and TDC programs. Compensation will depend on how the conservation easements are engaged. Compensation is part of TDC programs, offset schemes and some organizations may offer to pay for the granting of an easement.</p> <p>Further tax related benefits may arise where an easement is gifted to a qualified organization under the federal EcoGifts program (although this is limited). Gifts of easements may also qualify for donation tax receipts in some instances; however, there is a need for additional clarity as to whether agricultural land conservation is considered a "community benefit" attracting a charitable purpose designation.</p>
Mandatory or incentivizing?	Incentivizing
Benefits	<p>There is significant flexibility as to the terms of a conservation easement in terms of activities allowed or not allowed on the lands, and the length of the conservation easement (may be a limited number of years or in perpetuity). Easements may also be framed to outline the types of management actions that must take place, resulting in collateral ecological and hydrological benefits.</p> <p>Given that conservation easements are registered on title and are not readily removed, they provide good protection even as land ownership changes hands.</p> <p>There is significant experience with conservation easements in Alberta (although less so for conservation easements for agricultural lands).</p> <p>Easements held by a qualified organization that is an independent non-profit organization are less open to political change and therefore easements held by these charities may be more secure than easements granted to municipalities or government departments.</p>

Stewardship Tools under the ALSA: Conservation Easements

Deficiencies

Research in the United States has found that while agricultural easements can be used to secure land it may not result in coverage of the most strategic agricultural lands being protected.³¹⁴

The federal EcoGifts program is focused on ecological conservation and not the conservation of agricultural lands which means agricultural lands may not qualify for the EcoGifts program (as they lack sufficient ecological conservation values).

As well, while some land trusts will provide compensation for conservation easements, funding is always limited and there are no land trusts in Alberta which focus solely on agricultural lands.

There is good experience with conservation easements in Alberta, however there is less experience with conservation easements for agricultural lands. As such, conservation easements for agricultural lands would benefit from additional governmental guidance on their use and role in conservation of agricultural lands.

³¹⁴ Stoms, *supra*. note 71.

Stewardship Tools under the ALSA: TDC Schemes

Decision-maker?	Authority is established by regional plan or municipality (subject to Cabinet approval).
Securement against fragmentation/loss?	Does not secure land in itself, must be used in conjunction with other tools.
Compensation contemplated?	It is a compensation tool. Allows a landowner to earn credits for conserving lands which can be sold.
Mandatory or incentivizing?	Incentivizing.
Benefits	Flexible tool that can be used by municipalities to implement local planning and development goals (i.e., municipal planning drives the conservation and development decisions around agricultural lands). Offer some level of compensation to a landowner who conserves identified values.
Deficiencies	Must be integrated into a regional plan or receive Cabinet approval, this might act as a barrier to the adoption of such schemes. Currently, no relevant regulations or guidelines in place to facilitate the adoption and implementation of TDC schemes. A municipality must set strict density standards to drive the need for credits, otherwise conservation goals may not be met.

Stewardship Tools under the ALSA: Stewardship Units and Exchange

Decision-maker?	There is a lack of supporting regulations or guidelines, making it difficult to answer this question.
Securement against fragmentation/loss?	There is a lack of supporting regulations or guidelines, making it difficult to answer this question. Likely would operate in conjunction with other tools for securement (such as conservation easements).
Compensation contemplated?	This is a tool for compensation.
Mandatory or incentivizing?	Incentivizing.
Benefits	Potential, albeit theoretical, to provide compensation for landowners for their conservation of agricultural lands. Some relevant experience in Alberta with the Alberta Emissions Offset Registry which deals in greenhouse gas emissions credits.
Deficiencies	To date, there are no regulations or guidelines in place for the use of stewardship units. There is significant lack of clarity around their use. There is no market in place, regulations and policy are needed. In order to be effective tools, there must be accompanying specific policy outcomes or objectives established. ³¹⁵ Consideration will need to be given as to how to value multiple benefits that may be generated by a specific site. ³¹⁶

³¹⁵ Alberta Innovates, *supra*. note 82.

³¹⁶ *Ibid.*

Land Use Planning Tools: Existing		
Tool	Primary Use	What we need to make it work or to work better in Alberta?
MGA: municipal planning and development	planning	Need strong provincial direction and oversight
ALSA: regional planning "zoning"	securement	Use regional plans to establish agricultural reserves
ALSA: regional planning conservation directives	securement	Consider allowing use of conservation directives other than through a regional plan (to make a more flexible tool)
ALSA: conservation offsets	planning	Set "no net loss" of agricultural lands to create imperative for offsets
ALSA: stewardship tools conservation easements	securement	Create certainty around conservation easements for agriculture with policy and guidelines
ALSA: stewardship tools TDC schemes	compensation	Create certainty with regulations and guidelines
ALSA: stewardship tools stewardship credits	compensation	Need regulation, policy, and guidelines. Province to lead development of a market/exchange

Land Use Planning Tools: Expanded		
Tool	Primary Use	What we need to make it work or to work better in Alberta?
Agricultural reserves/greenbelt	securement	Use regional plans or dedicated legislation to establish agricultural reserve
Centralized Planning and Decision-Making	planning	Administrative body to provide provincial guidance re: strong provincial policy and oversight
Urban Growth Boundaries	planning	Expressly require as part of municipal planning via MGA or provincial policy
Density Requirements	planning	Expressly require as part of municipal planning via MGA or provincial policy
Urban-Rural Buffers	planning	Expressly require as part of municipal planning via MGA or provincial policy
Voluntary Agricultural Districts	compensation	This could be an alternative to agricultural reserves (but less effective) or an adjunct
Agricultural Impact Assessments	planning	Expressly require as part of municipal planning via MGA or provincial policy

Tools to Incentivize and Support: Existing		
Tool	Primary Use	What we need to make it work or to work better in Alberta?
Financial Inducements: Federal Taxation	incentivize	Create an Agricultural Gifts program (akin to EcoGifts) Clarify charitable purposes and activities re: Agricultural Land Trusts
Financial Inducements: Payments for Ecological Goods and Services	incentivize	Province wide program supported by sustainable, long-term funding
Other tools: Certification and Labelling Schemes	support	Explore benefits of provincial programs (as opposed to industry designed programs)

Tools to Incentivize and Support: Expanded

Tool	Primary Use	What we need to make it work or to work better in Alberta?
Financial Inducements: Elimination of Taxation and Zoning restrictions for value-added enterprises	incentivize	Expand categories of agricultural lands for taxation purposes Municipal zoning (LUB) can address value-added enterprises
Financial Inducements: Transfer Taxes, Development Impact Fees, and other Land Conversion Fees	incentivize	Provincial legislation to enable or to amend MGA to give power to municipalities (may be a combination) Amend ITA with respect to qualified farm property capital gain and loss rules to enable a claw-back
Other tools: Agricultural Development Offices and Liaison Officers	support	This goes hand in hand with administrative body (above)
Other tools: Agri-Tourism	support	Address in inter-municipal/regional planning
Other tools: Argo-Food Parks	support	Address in inter-municipal/regional planning
Other tools: Regional Procurement Policies	support	Address in inter-municipal/regional planning
Other tools: Regional Farmland Trust	incentivize	Create an Agricultural Gifts program (akin to EcoGifts) Clarify charitable purposes and activities re: Agricultural Land Trusts
Other tools: Regional Agricultural Fund	compensation	This goes hand in hand with administrative body (above) and regional agricultural trust (above)