



## STRENGTHENING FARMING PROGRAM FACTSHEET

# Right to Farm

## Information for Local Government Planning Staff

APRIL 2020

### B.C.'S RIGHT TO FARM SUITE OF LEGISLATION

includes the *Farm Practices Protection (Right to Farm) Act* (FPPA), sections of the *Local Government Act* (LGA), and sections of the *Land Title Act* (LTA). This provincial legislation provides local governments with the ability to develop plans, bylaws and policies that support and encourage agriculture, while reducing potential conflicts with nearby non-farming residents. This factsheet is divided into four main sections:

1. **The Farm Practices Protection (Right to Farm) Act**
2. **Resolving Farm Complaints: Informally and Formally**
3. **Planning for Agriculture: The Role of Local Governments**
4. **Local Government Tools for Farm Policy and Land Use Planning**



### 1. The Farm Practices Protection (Right to Farm) Act

**FARMERS HAVE A RIGHT TO FARM** in B.C.'s farming areas, on land in the Agricultural Land Reserve (ALR), in areas where land is zoned by local governments for farm use, or in licensed aquaculture areas. The *Farm Practices Protection (Right to Farm) Act* (FPPA) protects "normal farm practices" within these areas of the province. The protection provided by the FPPA, however, specifically relates to nuisances such as odour, noise, dust, or other disturbances, as well as certain local government bylaws. It does not provide protection from local zoning bylaws (see sections 3 and 4 of this document for more details) or provincial environmental and public health regulations. The FPPA provides a fair and balanced process for resolving conflicts that arise from nuisances associated with B.C. farm operations. Formal complaints are heard by the British Columbia Farm Industry Review Board (BCFIRB), an independent administrative tribunal.

#### How does the FPPA and the Ministry's Strengthening Farming Program benefit farmers and residents who live near farms?

- » Protects farmers who use 'normal farm practices';
- » Provides both informal and formal processes to resolve complaints about farm practices; and
- » Supports local governments to include farming in land use planning decisions.

**NORMAL FARM PRACTICES** are defined in the FPPA and mean a practice that is conducted by a farm business in a manner consistent with (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and (b) any standards prescribed by the Lieutenant Governor in Council, and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b). When it comes to a specific farm operation's practices, however, only BCFIRB can make the determination of whether or not they are 'normal farm practices'.

The FPPA protects 'normal farm practices', and as stated above, applies to farm operations conducted as part of a farm business. This includes operations that grow, produce, raise or keep animals or plants, and the processing or marketing of farm products. In addition, the FPPA applies to activities involved in carrying on a farm business such as clearing land, using machinery, applying fertilizer to soil, and controlling pests. When farm practices are contested, it is BCFIRB that decides on a case-by-case basis what is considered a 'normal farm practice'.

Provided that a farmer uses 'normal farm practices', adheres to the other legislation listed in the FPPA (the *Environmental Management Act*, *Integrated Pest Management Act*, and *Public Health Act*), and does so in a farming area as identified in the FPPA, the farmer is not liable to any injunction or court order related to a nuisance associated with the operation of the farm. In addition, farmers who meet these criteria do not contravene certain local government bylaws related to animal control, noise and other disturbances, if they are associated with the farm operation as part of a farm business.



## **NOT ALL FARM PRACTICES ARE PROTECTED**

A farmer not using 'normal farm practices' can be ordered by BCFIRB to stop or modify unacceptable farm practices. Farmers who refuse to do so would not be protected from nuisance lawsuits or the enforcement of a local government's nuisance bylaws.

## **GUIDELINES FOR FARM PRACTICES**

Ministry of Agriculture staff and industry specialists have developed a series of operational guidelines for farm practices across the province. The Ministry's [Farm Practices Reference Guide](#) describes current practices used by farmers in B.C. and includes over 60 factsheets on various farm activities, commodities and farm nuisances. Local government staff are encouraged to review the factsheets for commodities and issues associated with their jurisdiction.



## 2. Resolving Farm Complaints: Informally and Formally

**WHILE STRONG LOCAL GOVERNMENT AGRICULTURAL AREA PLANNING** can significantly reduce the number of complaints associated with farm practices, complaints sometimes still occur. Non-farming residents may have concerns about farm practices that create dust, odour, noise or other disturbances (e.g. noise from bird control devices or farm machinery, or odour from manure management activities). When complaints do arise, there are both informal and formal approaches towards a mutually beneficial resolution.

**INFORMAL RESOLUTION: REGIONAL MINISTRY STAFF** are committed to finding quick, efficient and reasonable solutions to farm practice complaints and concerns. Ministry staff are experienced in explaining which farm practices are typical of a particular farming operation and can often informally resolve farm practice complaints and concerns to the satisfaction of all parties involved. Ministry staff may draw on additional resources such as other farmers and/or ranchers in the region who are familiar with the farm practice in question, and who can provide insight into whether a farm practice should be considered 'typical' for that type of farming operation. If a farm practice is determined to be atypical by Ministry staff, the farmer responsible for the nuisance will be encouraged to change their practices causing concern. Attempts to resolve concerns at this local 'neighbour' level are highly encouraged as the informal approach offers a low-cost, efficient alternative to the formal BCFIRB complaint process.

**FORMAL RESOLUTION: THE B.C. FARM INDUSTRY REVIEW BOARD (BCFIRB)** is the administrative tribunal established to provide a fair and equitable process for resolving farm practices disputes out of court. If a person aggrieved by a farm practice is unsatisfied with the outcome of the informal Ministry staff resolution process, they can file a complaint directly with BCFIRB. Complaints must be made in writing and are accompanied by a filing fee.

### Who is on the Board?

BCFIRB is made up of part-time members appointed by the Lieutenant General in Council (the Board), who are also supported by BCFIRB staff. Members and staff have skills and expertise in food production, marketing, processing, consumer representation, land use planning, animal welfare, and facilitation and mediation. BCFIRB's other responsibilities involve agricultural regulated marketing and BCSPCA animal custody decisions.

*Contact information for the Ministry of Agriculture and BCFIRB can be found on the last page of this factsheet.*



**THE COUNTRYSIDE AND YOU** is a great resource for residents living in farming areas. This informative Ministry publication helps clarify the activities that people may expect when living near farming operations in B.C.

### FILING A FORMAL COMPLAINT: THE BCFIRB PROCESS

#### Step 1: File a Farm Practice Complaint

Any persons aggrieved by odour, noise, dust or other disturbance arising from a farm operation conducted as part of a farm business as defined by the FPPA can file a complaint with BCFIRB.

#### Step 2: Early Dispute Resolution

The Board may initially try to resolve a complaint through a settlement process involving mediation, facilitation or other dispute resolution processes. If the complaint was first handled by the Ministry at the 'neighbour' level, the information collected by the Ministry may be requested by the Board. At an early stage, the Board may also dismiss a complaint for a variety of reasons, including if it is seen as frivolous, vexatious, or beyond their scope of responsibility.

#### Step 3: The Formal Farm Practices Complaint Hearing

If a settlement is not reached, the BCFIRB Chair will establish a panel of BCFIRB members to hear the complaint in a formal hearing.

#### Step 4: The Farm Practice Complaint Decision

After hearing the evidence and arguments from the parties involved (the complainant, the farmer), witnesses (knowledgeable persons, industry representatives, etc.), a panel of BCFIRB members will decide whether the complainant is aggrieved and whether the farm practices are 'normal farm practices'. Decisions of the Board can be appealed to the Supreme Court of British Columbia on a question of law or jurisdiction.

### 3. Planning for Agriculture: The Role of Local Governments

**LOCAL GOVERNMENTS PLAY A CRITICAL ROLE** in developing a fair and supportive regulatory climate for agriculture and aquaculture. In addition to the *Farm Practices Protection (Right to Farm) Act* (FPPA), there are several other relevant acts for local governments to consider when planning for agriculture, including the *Local Government Act* (LGA), the *Land Title Act* (LTA), as well as the *Agricultural Land Commission Act* (ALCA).

**THE LOCAL GOVERNMENT ACT (LGA)** provides local governments with the authority to establish bylaws to regulate uses and activities within their jurisdictions. There are some restrictions on this authority however, with regards to farm operations. Understanding the LGA, and how it can impact a local government's ability to regulate farming, is key to land use planning for agriculture.

Sections of the LGA that address agriculture include official community plans, zoning, nuisance regulations (*Community Charter* for municipalities), the removal and deposit of soil, weed and pest control, water use and drainage. For example, given that the LGA establishes a local government's authority to create bylaws that regulate uses within an established zone (s.479), local governments are encouraged (but not required) to adopt bylaws consistent with the agricultural bylaw standards that the Minister of Agriculture has developed (s.551), commonly referred to as the Minister's Bylaw Standards. The Standards developed to date can be found in the [Guide for Bylaw Development in Farming Areas](#) and the [Guide to Edge Planning](#) (see section 4 for more detail). Importantly as well, Section 555 establishes that 'intensive agriculture', as defined, is a permitted use of land in the ALR, even when a local government bylaw prohibits that use in a zoning bylaw.

Section 481 places restrictions on local governments' ability to either prohibit or restrict the use of land for a farm business in a farming area using its zoning powers without the prior approval of the Minister of Agriculture. Section 552 provides special rules for local governments to create bylaws regarding the conduct of farm operations, buildings and structures on farm operations, sizes and types of farms, and/or physical areas where farming operations may be situated. Local governments must, however, become Right to Farm 'regulated' under Section 553 and require approval of these bylaws from the Minister responsible for the FPPA (Minister of Agriculture). These specific bylaws related to farm practices in farming areas are called Farm Bylaws, and local governments interested in becoming regulated are invited to contact Ministry staff.

#### IMPORTANT NOTE

While local governments may adopt Farm Bylaws under Section 552, they must become 'regulated' under Section 553 to do so, and must obtain approval of the bylaws from the Minister of Agriculture. Those regulated local governments also cannot restrict or prohibit agriculture using their zoning powers under Section 481(2) without the prior approval of the Minister of Agriculture.

**SECTION 86 OF THE LAND TITLE ACT (LTA)** is another important land use planning tool for local governments to consider when supporting farming. Under Sections 86(1)(c) (x) and 86(1)(c)(xi), the LTA enables a subdivision approving officer to refuse a subdivision proposal on land within the ALR if they consider the subdivision will unreasonably interfere with farm operations. For example, the approving officer may require adequate buffering of farmland from the subdivision or the removal of unnecessary roads directed at the ALR. Local government staff and subdivision approving officers are encouraged to learn more on the Ministry's webpages and read the Ministry's [Subdivision for Agriculture – A Guide for Approving Officers publication](#).

**THE AGRICULTURAL LAND COMMISSION ACT (ALCA)** establishes the Agricultural Land Commission (ALC) and provincial Agricultural Land Reserve (ALR). The ALC is an independent administrative tribunal responsible for administering the ALCA. The Ministry's Strengthening Farming Program staff work in tandem with ALC staff and the ALCA to implement the Right to Farm suite of legislation and to support local governments when planning for agriculture. Agri-teams consisting of three or more Ministry and ALC staff in their regions throughout B.C. can provide direct assistance to local governments and other stakeholders concerning agricultural land.



## 4. Local Government Tools for Farm Policy and Land Use Planning

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**LAND USE PLANNING TOOLS** are available to local governments to help reduce complaints associated with farm practices from non-farm residents, encourage land use compatibility and support farm business operations.

These tools include:

### MINISTER'S BYLAW STANDARDS

The Ministry's [Guide for Bylaw Development in Farming Areas](#) provides standards for local governments developing and amending bylaws affecting farming areas. This guide also provides general information for handling other planning issues involving agriculture. The Ministry's Strengthening Farming Program regularly updates these Minister's Bylaw Standards and when necessary, creates new standards. Ministry staff are available to answer questions about whether local government bylaws are consistent with the standards or to suggest edits to new or existing bylaws.

### GUIDE TO EDGE PLANNING

The Ministry's [Guide to Edge Planning](#) helps to promote compatibility between farmers and their neighbours. The boundary along the ALR provides an opportunity for local governments to apply land management techniques that reduce potential conflicts between various land uses. The edge planning guidelines support local governments by highlighting tools to improve the urban/agricultural interface.

### AGRICULTURAL AREA PLANS

A local government [Agricultural Area Plan](#) (AAP) focuses on a community's farming areas to identify opportunities to strengthen farming, discover practical solutions to issues and ultimately, to contribute to agriculture and the community's long-term sustainability. These community plans are often referred to as an Agricultural Area Plan or Agricultural Area Strategy.

### AGRICULTURAL ADVISORY COMMITTEES

Local government [Agricultural Advisory Committees \(AACs\)](#) are an effective way for local governments to connect with their farming and ranching communities. An AAC is appointed and functions similarly to other advisory committees of municipal councils or regional boards. A key asset is that members are predominantly drawn from the farming and ranching community, and the focus of the committee is on agricultural issues. Ministry of Agriculture and ALC staff may attend these meetings or sit as non-voting members on the committees, and can be a valuable source of information.

### AGRICULTURAL LAND USE INVENTORIES

[Agricultural Land Use Inventories \(ALUIs\)](#) are a powerful Ministry GIS mapping tool that can significantly contribute to local government land use planning for agriculture. Developed in partnership with local governments, Ministry spatial data specialists use a robust methodology to record and analyze a region's 'snapshot in time' of existing agricultural land use and land cover. ALUIs have already been completed for the majority of the province, and several areas have had updated surveys completed. Local governments looking for ALUI information in their community or for those seeking specific analytics to assist in their land use planning for agriculture initiatives are welcome to contact Ministry staff for assistance.

For more information on these planning tools, visit the Strengthening Farming Program webpages or contact the Ministry directly.

### Contacts

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Thank you for taking the time to learn more about the Right to Farm Suite of Legislation. If you require more information, please contact:

#### B.C. MINISTRY OF AGRICULTURE

(Informal farm practice complaints and general land use planning for agriculture assistance)

#### AgriService BC

1-888-221-7141 | [AgriServiceBC@gov.bc.ca](mailto:AgriServiceBC@gov.bc.ca)

[www.gov.bc.ca/agri](http://www.gov.bc.ca/agri)

#### AGRICULTURAL LAND COMMISSION

(Inquiries about the ALC Act and ALR Regulations)

604-660-7000

Toll free through ServiceBC: 1-800-663-7867

[www.alc.gov.bc.ca](http://www.alc.gov.bc.ca)

#### B.C. FARM INDUSTRY REVIEW BOARD

(Formal farm practice complaints)

250-356-8945 | [firb@gov.bc.ca](mailto:firb@gov.bc.ca)

[BCFIRB webpage](#)

