THE FARMING PRACTICES PROTECTION STATUTES AMENDMENT ACT, 1999

STATUS

The Farming Practices Protection Statutes Amendment Act, 1999, (the Act) amends both the Agricultural Operation Practices Act (AOPA) and the Municipal Government Act (MGA). Amendments to the AOPA came into effect March 20, 2000. Amendments to the MGA will come into force on April 30, 2002. The purpose of this bulletin is to provide municipalities with some suggestions on approaches to implementing the MGA amendments.

ACTION REQUIRED BY YOUR MUNICIPALITY

The Act requires that, by April 30, 2002:

1. municipal development plans contain policies respecting the protection of agricultural operations including but not limited to the need for written notice to be provided to the owners of land situated adjacent to agricultural operations;

2. land use bylaws establish a method of providing written notice to owners of land situated adjacent to an agricultural operation; and

3. in preparing a new land use bylaw, a municipality must consider the protection of agricultural operations.

The Act does not differentiate between urban and rural municipalities. If agricultural operations are contained within your municipality or your residents may be affected by agricultural operations located in an adjacent municipality you should review your municipal development plan (if one has been adopted) and your land use bylaw to deal with these matters.

CONTENTS OF THIS BULLETIN

This bulletin discusses the meaning of key terms, possible approaches to giving notice, and possible approaches to developing other policies respecting the protection of agricultural operations in municipal development plans and land use.
bylaws. It is intended to only provide suggestions. Each municipality must determine a response appropriate to its circumstances.

ACTION TIMELINE

Municipalities are required to complete their review and adopt appropriate policies on or before April 30, 2002.

DEFINITION OF KEY TERMS

Agricultural Operation
A very broad definition of the term "agricultural operation" contained in the AOPA is now adopted in Part 17 of the MGA. Under this definition, "Agricultural operation" means an agricultural activity conducted on agricultural land for gain or reward or in the hope or expectation of gain or reward, and includes

(i) the cultivation of land,
(ii) the raising of livestock, including game-production animals within the meaning of the Livestock Industry Diversification Act and poultry,
(iii) the raising of fur-bearing animals, pheasants or fish,
(iv) the production of agricultural field crops,
(v) the production of fruit, vegetables, sod, trees, shrubs and other specialty horticultural crops,
(vi) the production of eggs and milk,
(vii) the production of honey,
(viii) the operation of agricultural machinery and equipment, including irrigation pumps, and
(ix) the application of fertilizers, manure, insecticides, pesticides, fungicides and herbicides, including application by ground and aerial spraying for agricultural purposes.
It should be noted that the inclusion of this definition in part 17 of the MGA does not affect the current efforts of the MLA Committee to establish a new definition of farming for assessment purposes.

**Adjacent**
A careful consideration of the term “adjacent” is important in crafting an effective response to the Act. Sections 653(4.4) and 692(7) of the MGA, define “adjacent land” narrowly to mean an abutting parcel of land. However, the term “adjacent” in the amendments is not defined. At common law “adjacent” means “nearby, or in the vicinity of”. Therefore, a broader interpretation of this word should be employed. For example, lands that are impacted by the odour of the spreading of manure could be regarded as “adjacent”, even if the location for spreading is some distance from the source of the manure. Furthermore, if significant odour is experienced on properties distant from the site of the spreading, those properties could also be considered adjacent the agricultural operation.

**NOTIFICATION OF OWNERS OF LAND ADJACENT TO AGRICULTURAL OPERATIONS**

The MGA amendments specifically require municipalities to establish in their land use bylaw “a method of providing written notification to owners of land situated adjacent to an agricultural operation” and to include policies respecting written notice in the municipal development plan. The following are some considerations in the development of a suitable notification policy.

**Developing the Policy**
The MGA currently requires municipalities to give notice of various planning applications and approvals (e.g., the issuance of a development permit, an amendment to the land use bylaw, or receipt of an application for subdivision). Notices to adjacent landowners under this Act could be viewed as additional to these current notice requirements.

In developing the notice policy, municipalities should not take a minimalist approach that seeks to satisfy the requirements of the legislation with the least effort. The approach should be a detailed review of existing practices and identification of appropriate changes to support the underlying policy rationale of the Act. Thus, for example, it may be appropriate to require developments that currently do not require a permit but which may have an impact on adjacent owners to now require a permit.

Three things must be taken into consideration when developing the notice policy.
1. there is a need to notify property owners of an adjacent agricultural operation;

2. the notice must be capable of notifying all adjacent landowners; and

3. the notice may need to be repeated on a regular basis to ensure that new adjacent property owners are notified.

Municipalities should review their current practice and requirements for planning notices to ensure that the overall provision of notice meets the requirements of both the MGA and the Act.

Content
Consideration should be given to incorporating in the notice the kinds of things that are a part of normal agricultural practice that would impact occupants of adjacent lands or use of adjacent lands. The notice might reference such matters as the creation of noise and dust from cultivation, applications of fertilizers and pesticides or herbicides, aerial spraying, extended hours of operation, and odour from the spreading of manure.

Frequency and Coverage
The amendments do not specify the timing or frequency for notice. One approach might be to give a general notice at frequent intervals through a newspaper ad or included with general mailings to all landowners such as the tax notice. Another approach may be to develop (possibly in cooperation with other municipalities) a "code of the west" brochure similar to a number of counties in the U.S. (See County News Online at http://www.naco.org/pubs/cnews/97-03-03/code.html or http://www.co.gunnison.co.us/Planning/codeofwest.html). This brochure would be available in the municipal office and from realtors to give to potential newcomers to the area. An option of notifying individual owners in relation to individual agricultural operations will likely prove to be very difficult to implement.

Ideally, notice would be provided to persons prior to their buying property and moving into an agricultural area. Municipalities do not currently have the tools to fully implement such an approach. A partial effort in this direction might be to require developers to post an appropriate notice at the entrance to new residential subdivisions.

Where municipalities abut, consideration should be given to coordinating notice with municipal neighbours to ensure adequate coverage of all affected landowners.
Freedom of Information and Protection of Privacy

Care must be taken if using information from other information sources such as the assessment roll, that the provisions of the Freedom of Information and Protection of Privacy Act are respected.

Responsibility

While the legislation requires municipalities to establish the means of giving notice it does not preclude other parties from being enlisted in the actual giving of the notice. Municipalities should take care to ensure that if another party is giving the notice, it must be assured that the party has carried out its obligation.

OTHER POLICIES RESPECTING THE PROTECTION OF AGRICULTURAL OPERATIONS

The Act requires all municipalities to include policies respecting the protection of agricultural operations in the municipal development plan and to consider the protection of agricultural operations when preparing a new land use bylaw. Many rural municipalities address the protection of agricultural land in their municipal development plans and bylaws. It will be necessary for these municipalities to review their documents to ensure the requirements of the Act are met, especially since the Act uses the term "agricultural operations" and not "agricultural land". Even in an urbanized or non-agricultural municipality, the existence of an agricultural operation in the vicinity of the boundary would generate a need to consider plan revisions.

A process of careful preparation and adoption of policies and procedures is suggested to demonstrate that the municipality is diligent in fulfilling its responsibilities of protecting agricultural operations and communicating with adjacent landowners.

Municipal Development Plan

The form of each municipality's protection is left to the discretion of the municipality. As with any planning policy development, a consultative approach will generate a response that reflects local interests and priorities. Amongst other things the policies will need to consider:

1. the overall purpose of the Act, which is to minimize the potential for nuisance claims arising between agricultural operators and adjacent landowners affected by their operation;
2. the characteristics, quality and importance of agricultural operations across the municipality, keeping in mind the broad definition of the term “agricultural operations”, the need for a relatively broad interpretation of the term “adjacent”, and the potential for changes in operations over time due to innovation and market conditions; and

3. the need for other land uses and development within the municipality and in the vicinity of other municipal boundaries.

While agricultural operations are to be protected, this is not to the exclusion of providing for other land uses. The purpose section of part 17 of the MGA and the provincial Land Use Policies recognize the need for municipalities to accommodate a diversity of land uses and human needs. However, it may be necessary to make greater efforts to explain why agriculture is not a priority in certain situations.

One approach might be to require applicants for a development permit, land use bylaw reclassification or subdivision approval to include a statement in their application that assesses the expected impact of their proposal on adjacent agricultural operations. The municipal plan and land use bylaw would require the approving authority and any appeal board to explain how it has treated the “impact” information.

**Land Use Bylaw Preparation**

The Act requires municipalities to consider the protection of agricultural operations “upon the preparation of a land use bylaw”. The form of that protection arising from the bylaw is at the discretion of the municipality. However, the recommendations of the above section regarding municipal development plans are relevant to the extent that the resulting policies may be implemented by a land use bylaw.

As this requirement of the MGA amendments only applies when a land use bylaw is prepared, it does not apply to an amendment to an existing land use bylaw. However, the new requirement for land use bylaws to provide a method of giving written notice to owners of land adjacent to an agricultural operation will necessitate a review of the land use bylaw prior to April 30, 2002, in any event. Municipalities may want to widen that review of their bylaw to consider all the provisions that relate to or may affect agricultural operations. Points that should be considered are:

1. whether the bylaw clearly establishes the district(s) in which agricultural operations are permitted or discretionary uses;
2. whether there are circumstances in which an applicant for development should be required to identify and address the potential impacts of their development on agricultural operations in the vicinity;

3. whether additional types of agricultural operations should be subject to the requirement for issuance of a development permit, to trigger notice requirements; and

4. whether permitted and discretionary use provisions should be adjusted to change notice requirements and also to reduce the potential for conflict between agricultural operations and non-agricultural land uses.

SUMMARY

Both municipal development plans and land use bylaws must contain policies respecting the provision of notice to owners of land adjacent to agricultural operations. Whatever notice policy and delivery method is developed, the municipality must determine that it has ensured that the notices contain the appropriate information and are delivered to all adjacent landowners. Other policies protecting agricultural operations must be included in municipal development plans and considered when preparing a new land use bylaw.

ASSISTANCE

The above information was developed with the assistance of Parkland Community Planning Services in consultation with Brownlee Fryett. The information is provided to assist municipalities in responding to the Act. Each municipality is responsible for assessing its own situation and needs in determining an appropriate response. For additional information please contact the Planning and Coordination Unit, Alberta Municipal Affairs at (780) 427-2225.