

 <p>Agricultural Land Commission Act</p>	<p>REQUEST FOR RECONSIDERATION</p>	<p>Policy P-08</p> <p>Amended October 2021 October 2016</p>
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1. This policy/bylaw is intended to assist the Provincial Agricultural Land Commission (the "Commission") in the management of the processing of requests for reconsideration under section 33 of the *Agricultural Land Commission Act* (the "Act") so as to effectively use the Commission's resources. This policy/bylaw will set guidelines for when a reconsideration may be brought and to assist in interpreting the conditions set out in section 33 of the Act for reconsiderations.
2. Section 33 of the Act provides as follows:
 - (1) In this section:

"decision" means a decision made under this Act with respect to an application;

"decision maker" means the following, as applicable:

 - (a) the commission, in relation to a decision made by the commission;
 - (b) a panel, in relation to a decision made by the panel;
 - (c) a first nation government or an authority, in relation to a decision made by the first nation government or the authority under an agreement entered into under section 26 (1).
 - (2) On the written request of a person affected by a decision, or on a decision maker's own initiative, the decision maker may reconsider the decision maker's decision, and may confirm, reverse or vary the decision, if
 - (a) [Not in force.]
 - (b) no previous request has been made, if reconsideration is on request and not on the decision maker's own initiative, and
 - (c) the decision maker determines that
 - (i) evidence has become available that was not available at the time of the original decision and could not have been available had the person affected by the decision exercised due diligence, or

- (ii) all or part of the original decision was based on incorrect or false information.
- (3) The decision maker must give notice of an intention to reconsider a decision to any person that the decision maker considers is affected by the reconsideration.
- 3. Subject to exceptional circumstances as determined by the Commission from time to time, the following provisions apply to requests for reconsideration from a person affected or on the Commission's own initiative under section 33 of the Act:
 - (a) a request for reconsideration may not be made and the Commission will not reconsider a decision on its own initiative more than one year after the date of the letter from the Commission to the applicant or the applicant's agent transmitting the Commission's original decision. The Commission will advise in writing the applicant or the applicant's agent of the one year deadline at the time the original decision is transmitted to the applicant or the applicant's agent. For the purpose of this policy/bylaw "applicant's agent" means the person shown as agent on the Commission's application form;
 - (b) a request for reconsideration may not be made and the Commission will not reconsider a decision on its own initiative, despite paragraph (a) above, if the lands, or any part thereof, subject to the original decision, are at any time after the original decision by the Commission sold or otherwise alienated or disposed. For greater certainty, "alienated or disposed" includes the granting of a lease, license, other right of occupation or interest in the lands;
 - (c) paragraphs (a) and (b) apply to all decisions of the Commission whether made before, on or after the date of this policy/bylaw.
- 4. In determining whether to reconsider a decision under section 33 (2)(c)(i) of the Act, in respect of evidence not available at the time of the original decision that has become available, and subject to exceptional circumstances as determined by the Commission from time to time, the following will apply:
 - (a) a new or revised proposal, absent any new evidence that meets the requirements of paragraph (b) below, will not be reconsidered by the Commission;
 - (b) new evidence to qualify under section 33(2)(c)(i) of the Act must be:

- (i) brought forward by the applicant or other person affected at the earliest practical opportunity as determined by the Commission,
 - (ii) evidence that was not available at the time of the original decision and that could not have been obtained earlier through the exercise of reasonable diligence, and
 - (iii) must be, in the opinion of the Commission, relevant and have a reasonable probability that it will have a material and determining effect on the original decision;
 - (c) a request for reconsideration may not be made and the Commission will not reconsider a decision on its own initiative if the primary focus of the request or the reconsideration by the Commission on its own initiative is to have the Commission “re-weigh” or reconsider evidence previously submitted to the Commission in the original decision or to reargue the original decision.
5. Subject to exceptional circumstances as determined by the Commission from time to time, in determining whether to reconsider a decision under section 33(2)(c)(ii) of the Act where all or part of the original decision was based on evidence that was in error or was false, the Commission will not reconsider unless the error or falsity was significant or material enough such that there would be a reasonable probability that the error or falsity will have a material and determining effect on the original decision.
6. For the purposes of section 33 of the Act and this policy/bylaw, a “person affected” or a “person that the Commission considers is affected”, means any of the following:
- (a) an applicant, that is a person who makes an application;
 - (b) a local government;
 - (c) a first nation government;
 - (d) an owner of the land;
 - (e) a person who is the owner or tenant of land;
 - (i) that shares a common boundary with the land that is the subject of the reconsideration, or

- (ii) that is separated from the land that is the subject of the reconsideration by a public road right of way, or
 - (iii) that is, in the opinion of the Commission, otherwise in the immediate vicinity of the land that is the subject of the reconsideration;
- (f) such other persons that, in the opinion of the Commission, have a personal interest not a mere public interest in the subject of the original decision. A “public interest” is an interest that a person has as a member of the public at large or a large class of persons, such as taxpayers, who will not be affected differently than any other member of the public or class of persons.