

 <p>Agricultural Land Commission Act</p>	<p style="text-align: right;">Policy PD-01 December 4, 2014</p> <p style="text-align: center;">AGRICULTURAL LAND COMMISSION PRACTICE DIRECTIVE APPEALS UNDER SECTION 55 OF THE <i>AGRICULTURAL LAND COMMISSION ACT</i></p>
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BACKGROUND

This Practice Directive is issued under sections 12 and 13 of the [Administrative Tribunals Act](#) and pursuant to section 37(3) of [Agricultural Land Reserve Use, Subdivision and Procedure Regulation](#).

Appeals under section 55 of the [Agricultural Land Commission Act](#) are subject to legislation including:

- the *Agricultural Land Commission Act*;
- the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*;
- applicable sections of the *Administrative Tribunals Act*; and
- the *British Columbia Interpretation Act*.

This Practice Directive provides further guidance with regard to appeals under section 55 of the *Agricultural Land Commission Act*.

PRACTICE DIRECTIVE

Definitions

1. In this Practice Directive:

“**Act**” means the *Agricultural Land Commission Act*;

“**appeal**” means an appeal under section 55 of the Act;

“**appellant**” means the person(s) who initiates an appeal by serving the Commission with a notice of appeal;

“**business day**” means a day other than a Saturday, Sunday, or statutory holiday in British Columbia;

“**day**” means a day, whether it is a business day or is not a business day;

“**Regulation**”; means the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*; and

“**Commission**” means the Provincial Agricultural Land Commission.

Commission not bound

2. The Commission is not bound by this Practice Directive in the exercise of its powers or the performance of its duties.

Scope of Practice Directive

3. This Practice Directive applies on an appeal and does not apply to matters other than an appeal.

Notice of appeal

4. (1) An appeal is commenced when an appellant serves a notice of appeal on the Commission.
- (2) The appellant is responsible for ensuring that the notice of appeal is served on the Commission in time and includes all required information.
- (3) There is an apparent discrepancy between the deadline for serving the notice of appeal specified in the *Administrative Tribunals Act* and the deadline for serving the notice of appeal specified in the Regulation. Pending any future amendment which addresses this issue, the Commission will usually resolve this issue by extending the time for which the *Administrative Tribunals Act* provides to serve a notice of appeal to not more than 60 days after the determination, decision, or penalty is personally served on the subject of the determination, decision, order or penalty.
- (4) The appellant must send a copy of the notice of appeal to each other party. Party is defined in paragraph 12(1) below.

Appeal does not operate as a stay

5. The commencement of an appeal does not operate as a stay or suspend the operation of the determination, decision, order or penalty being appealed unless the Commission orders otherwise.

Providing specified documents to the Commission

6. Where an enactment or order requires or permits filing of a document with the Commission, serving a document on the Commission, delivering a document to the Commission, or sending a document to the Commission, on an appeal any of the preceding may be accomplished as follows:
 - a. by personal service upon the Commission. Personal service is defined in paragraph 8 below;
 - b. by mailing the document by ordinary mail or by registered mail to #133 – 4940 Canada Way, Burnaby, British Columbia, V5G 4K6. Where a notice of appeal is mailed by ordinary mail or registered mail to the Commission, the date of filing with and service upon the Commission is deemed to be the date of actual receipt of the notice of appeal by the Commission; or
 - c. in any other way if the Commission or Commission staff have advised that service will be accepted in that other way.

Providing specified documents to a party or intervener

7. Where an enactment or order requires or permits serving a document on a party or intervener, delivering a document to a party or intervener, or sending a document to a party or intervener, on an appeal any of the preceding may be accomplished as follows:

- a. by personal service upon the party or intervener. Personal service is defined in paragraph 8 below;
- b. by mailing the document by ordinary mail or registered mail to the address for delivery provided by the party or intervener. Where the document is sent by ordinary mail, the document is deemed to be served or delivered on the fifth day after the day it is mailed, unless that day is not a business day, in which case the document is deemed to be served or delivered on the next day that is a business day;
- c. if the address for delivery provided by the party or intervener includes a facsimile number, by faxing the document to that facsimile number. Where the document is faxed, the document is deemed to be served or delivered on the day after it was sent, unless that day is not a business day, in which case the document is deemed to be served or delivered on the next day that is a business day;
- d. if the address for delivery provided by the party or intervener includes an email address, by emailing the document to that email address. Where the document is emailed, the document is deemed to be served or delivered on the day after it was sent, unless that day is not a business day, in which case the document is deemed to be served or delivered on the next day that is a business day; or
- e. if the party or intervener has not provided an address for delivery and if the service, delivery or sending obligation rests with the Commission, by:
 - i. mailing the document by ordinary mail or registered mail to the last known address of the party. Where the document is sent by ordinary mail, the document is deemed to be served or delivered on the fifth day after the day it is mailed, unless that day is not a business day, in which case the document is deemed to be served or delivered on the next day that is a business day;
 - ii. faxing the document to the last known facsimile number of the party. Where the document is faxed, the document is deemed to be served or delivered on the day after it was sent, unless that day is not a business day, in which case the document is deemed to be served or delivered on the next day that is a business day;
 - iii. emailing the document to the last known email address of the party. Where the document is emailed, the document is deemed to be served or delivered on the day after it was sent, unless that day is not a business day, in which case the document is deemed to be served or delivered on the next day that is a business day; or
 - iv. if the Commission makes an order permitting service, delivery or sending by an alternative method, in accordance with that order.

Personal service

8. Personal service may be effected as follows:
 - a. a document may be personally served on the Commission by leaving a copy with a member of Commission staff at the Commission's office;
 - b. a document may be personally served on an individual by leaving a copy of the document with him or her;

- c. a document may be personally served on a corporation, not including the Commission but including a municipality or regional district, by doing one of the following, as applicable:
 - i. leaving a copy of the document with any director, president, mayor, or other senior or chief officer, liquidator, or receiver manager of the corporation;
 - ii. delivering the document to the delivery address, or by mailing it by registered mail to the mailing address, shown for the registered office of the corporation in the corporate register;
 - iii. leaving a copy of the document with the city clerk or municipal clerk; or
 - iv. leaving a copy of the document with the manager, cashier, superintendent, treasurer, secretary, clerk or agent of the corporation or of any branch or agency of the corporation in British Columbia;

and, for purposes of subparagraph (iv), if the chief place of business of the corporation is outside British Columbia, every person who, within British Columbia, transacts or carries on any of the business of, or any business for, that corporation is deemed to be an agent of the corporation; or
- d. a document may be personally served on any person by any other means permitted by the Supreme Court Civil Rules.

Address for delivery

- 9. (1) The notice of appeal must contain the appellant's address for delivery, and other parties or interveners must provide an address for delivery as specified in paragraphs 12 and 16.
- (2) An address for delivery must include a mailing address and may also include a facsimile number and/or an email address.
- (3) If a party or intervener is represented by a lawyer, the address for delivery may be the mailing address of the lawyer, and may also include a facsimile number and/or an email address for the lawyer.

Acknowledgement of receipt of notice of appeal

- 10. Commission staff, on behalf of the Commission, will acknowledge receipt of a notice of appeal by sending the appellant written confirmation of receipt at the appellant's address for delivery. The confirmation of receipt will usually be sent to the appellant within 10 business days after the Commission receives the notice of appeal.

Usual time period for completing an appeal

- 11. The usual time period for completing an appeal is within 6 months from the date the acknowledgement of receipt of notice of appeal is sent. The appeal is completed when the Commission serves the final decision on the appeal upon the parties and interveners.

Parties to the appeal

12. (1) The parties to the appeal include the following:
- a. the appellant; and
 - b. any other person who is the subject of the determination, decision or order under appeal.
- (2) The Commission has discretion, on application or on its own motion, to order the addition of a party.
- (3) A party wishing to participate in an appeal must file with the Commission and deliver to all other parties a document providing the party's address for delivery.

Notification by Commission

13. (1) Commission staff may send notification of an appeal, along with copies of the notice of appeal and the confirmation of receipt, to any person. The notification will usually be sent within 10 business days after the Commission receives the notice of appeal.
- (2) The notification may be sent to the party's or person's last known address, facsimile number, or email address.
- (3) The Commission has discretion, on application or on its own motion, to notify additional persons at any time.

Decisions accessible to the public

14. (1) All Commission decisions on the appeal, including procedural decisions, will be made available for viewing by the public at the Commission's office.
- (2) The Commission's final decision on the appeal will be posted online at the Commission's website. Other Commission decisions may also, but need not, be posted online.

Application to intervene

15. (1) The Commission may allow a person to intervene on an appeal if the Commission is satisfied that:
- a. the person can make a valuable contribution or bring a valuable perspective to the appeal; and
 - b. the potential benefits of the intervention outweigh any prejudice to the parties caused by the intervention.
- (2) The Commission may set deadlines by which a person interested in becoming an intervener in an appeal must file with the Commission and deliver to all parties an application for intervener status.
- (3) Subject to any order the Commission makes regarding the deadline for party submissions on an application to intervene, each party must file any submissions responding to an application to intervene with the Commission and deliver copies to the person applying to intervene and to all other parties within 10 business days of the date the application to intervene was filed with the Commission.

Interveners

16. An intervener is not a party to the appeal. An intervener must file with the Commission and deliver to all parties and interveners a document providing the intervener's address for delivery. The Commission may limit the participation of an intervener. Further, if two or more applicants for intervener status have the same or substantially similar views or expertise, the Commission may require them to file joint submissions.

Timeline for submissions and evidence

17. The Commission may make an order regarding the filing of evidence and submissions and the deadlines for those filings.

Form of appeal hearing

18. The Commission may hold any combination of written, electronic and oral hearings, including in-person, video and telephone hearings.

Written hearings

19. Where the Commission determines to hold a written hearing:

Submissions and evidence of party

(1) Subject to any order the Commission makes regarding the filing of submissions and evidence and the deadline for those filings, each party and intervener must file and serve on all other parties and interveners by the deadline for submissions and evidence each of the following documents:

- a. a written submission including:
 - i. the party's or intervener's position on the appeal;
 - ii. a statement of the relevant facts; and
 - iii. the party's or intervener's arguments;
- b. a document list including a brief description and the date of each document the party or intervener submits for the Commission's consideration on the appeal; and
- c. copies of each document the party or intervener submits for the Commission's consideration on the appeal.

Deadline for submissions and evidence

(2) The Commission will usually send a notice of hearing to the parties and interveners at least 21 days before the date of the deadline for submissions and evidence. The notice of hearing will normally include:

- a. information as to the form of appeal hearing; and
- b. the deadline for submissions and evidence.

Oral hearings

20. Where the Commission determines to hold an oral hearing, including an in-person hearing, a video hearing or a telephone hearing:

Submissions and evidence of party

(1) Subject to any order the Commission makes regarding the filing of submissions and evidence and the deadline for those filings, each party must file and serve on all other parties and interveners at least 14 days before the date of the appeal hearing each of the following documents:

- a. a written submission including:
 - i. the party's position on the appeal;
 - ii. a brief summary of the relevant facts; and
 - iii. a brief summary of the party's arguments;
- b. a witness list including:
 - i. the names of any persons the party may ask to give evidence at the appeal hearing; and
 - ii. a brief summary of the anticipated evidence of each of the persons named on the witness list;
- c. a document list including a brief description and the date of each document the party may refer to at the appeal hearing; and
- d. copies of each document the party may refer to at the appeal hearing.

Submissions and evidence of intervener

(2) Subject to any order the Commission makes regarding the filing of submissions and evidence and the deadline for those filings, each intervener must file and serve on all other parties and interveners at least 14 days before the date of the appeal hearing such elements in (a), (b), (c) and (d) above as are applicable to it, depending on the scope of participation that the Commission permits.

Notice of hearing

(3) The Commission will usually send a notice of hearing to the parties and interveners at least 30 days before the date of the appeal hearing. The notice of hearing will normally include:

- a. information as to the form of appeal hearing; and
- b. the location, date and time of the appeal hearing.

Commission documents on appeal

21. Subject to any order the Commission makes regarding documents to be considered on the appeal, Commission staff will usually send to the parties and interveners at least 30 days before the date of the appeal hearing the following:
- a. copies of the documentary evidence that was before the decision-maker who made the decision under appeal; or
 - b. information on how to access copies of that evidence.

Date of final decision

22. The Commission's final decision on the appeal will usually be made within 45 business days after the hearing of the appeal is completed. The Commission may make a final decision on the appeal with written reasons to follow.

Reasons for final decision

23. The Commission must give written reasons for its final decision on the appeal. The Commission's reasons will usually be released within 45 business days after the hearing of the appeal is completed.

Notice of final decision

24. The Commission must serve upon each party and intervener a copy of the final decision on the appeal. Where the Commission is of the opinion that because there are so many parties to an appeal or for any other reason that it is impracticable to send its final decision to each party, the Commission may give reasonable notice of its decision by public advertisement or otherwise as the Commission directs.