



## INFORMATION BULLETIN 08

### REQUEST FOR RECONSIDERATION

March 12, 2020

This information advisory is intended to provide guidance and to assist in interpreting the *Agricultural Land Commission Act (ALCA)* in relation to section 33 of the ALCA regarding a request for reconsideration. The ALCA will govern if this advisory contains inconsistencies with legislation.

This information advisory is directed only to interpret the ALCA. All other applicable laws, regulations and bylaws related to a request for reconsideration must also be complied with.

A glossary of defined terms is provided at the end of this bulletin.

## 1. RECENT CHANGES TO STATUTE AND REGULATIONS

Effective March 12, 2020, the ALCA has been amended. Though many concepts contained in the ALCA remain unchanged from the past, changes have been made to the request for reconsideration process.

The following is a summary of the changes to the request for reconsideration process resulting from the March 12, 2020 amendments:

- i. **Decision-Maker:** A request for reconsideration submitted to the Commission must go to the decision-making body that made the original decision (i.e. the Executive Committee or the Panel), who will decide if the request meets section 33(2)(c) of the ALCA (see below).
- ii. **One Request:** A request for reconsideration of a decision made after March 12, 2020 cannot be accepted if the decision was the subject of a previous request. If a subsequent request for reconsideration is submitted to the ALC by a **Person Affected**, the requester will be advised by ALC staff if it can be accepted. See [ALC Policy P-08 Request for Reconsideration](#).
- iii. **Reconsideration Request Criteria:** For decisions made after March 12, 2020, when considering the above, the Commission can only reconsider a decision if the decision-making body determines that:
  - (a) New evidence has become available that was not available at the time of the original decision that could not have been obtained earlier through the exercise of due diligence; ALCA: s. 33(2)(c)(i); or
  - (b) Evidence demonstrating that either all or part of the original decision was based on evidence that was incorrect or was false; ALCA: s. 33(2)(c)(ii).

- iv. **Time Limit:** While **Bill 15-2019** contemplates a new 90 day time limit for the submission of a request for reconsideration once a decision has been released, implementation of **Bill 15-2019** is being phased and this condition will take effect at a later date to be determined by the Provincial Government. For this reason, an affected person will have one year, as established by [ALC Policy P-08 Request for Reconsideration](#), or until such time as section 33(2)(a) in **Bill 15-2019** takes effect, whichever date is sooner, to make a request for reconsideration.
- v. **Section 6(2) ALCA:** If a request for reconsideration meets the criteria outlined in s. 33(2) of the ALCA, then the decision makers must apply s. 6(2) of the ALCA when reconsidering the original decision in accordance with s.39(3)(a) of the ALCA.

## 2. DECISIONS MADE AFTER MARCH 12, 2020

For decisions made after March 12, 2020, the Commission can only reconsider a decision if the decision-making body determines that the request meets the above criteria.

## 3. DECISIONS MADE BEFORE MARCH 12, 2020

For decisions made before March 12, 2020, the following will apply;

- i. **Decision-Maker:** The request for reconsideration will be sent to the original decision-making body; which may be the Executive Committee or a Panel.
- ii. **Reconsideration Request Criteria:** For decisions made prior to March 12, 2020, the Commission can only reconsider a decision if the original decision-making body determines that the request meets the criteria for reconsideration as described in s. 33(1) of the Agricultural Land Commission Act as it was before March 12th, 2020.
  - i. **Time Limit:** For all decisions made prior to March 12, 2020, an applicant or **Person Affected** will have one year from the release of the decision to submit a request for reconsideration, as established by [ALC Policy P-08 Request for Reconsideration](#).
  - ii. **Section 6(2) ALCA:** If a request for reconsideration meets the criteria in s. 33(1) of the ALCA as it was before March 12th, 2020, then the decision makers must apply s. 6(2) of the ALCA when reconsidering the original decision in accordance with s.39(3)(a) of the ALCA.

## 4. GLOSSARY

The following key definitions are relevant to this information advisory:

“**Bill 15-2019**” means the Agricultural Land Commission Amendment Act, 2019

“**decision-maker**” means either the Commission, or a Panel, in relation to a decision made by the Commission or a Panel: ALCA s.33(1)

“**Person Affected**”, for the purpose of s. 33(2) of the ALCA, means any of the following as per [ALC Policy P-08 Request for Reconsideration](#):

- (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.