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**GLOBAL APPROACH
WITH RESPECT TO BUILDING NEW RESIDENCES
IN THE AGRICULTURAL ZONE**

Presentation of the dispositions of article 59 of the **Act respecting the preservation of agricultural land and agricultural activities** with regard to an application regarding this collective approach.

Document written for the intention of municipal authorities

February 2006

ARTICLE 59 OF THE ACT

The production of this document aims at explaining the global approach with respect to building new residences in the agricultural zone on which are based the dispositions of article 59 of the act. These dispositions allow regional characteristics of the agricultural zone to be taken into consideration while assuring a better protection of the agricultural land and agricultural activities.

PRESENTATION

The *Act respecting the preservation of agricultural land and agricultural activities* contains measures favouring the development of a global approach in managing the agricultural zone with respect to housing. The provisions of article 59 of the act gives regional and local municipalities an alternative way to manage residential use in the agricultural zone. Such an overall approach allows for better identification of long-term impacts on agriculture, while allowing the addition of new houses under certain circumstances. The basis of this approach is the regional master plan approved by the MAM and adopted by the RCM.

The first part of the document presents the goals and the dispositions of the act concerning the steps relating the overall approach for new residential use in the agricultural zone. General principles are enumerated as well as particularities associated with this type of application.

The second part regroups, on a more operational plan, the information needed by the Commission in the presentation of such an application under these provisions.

PLANNING AND MANAGING NEW RESIDENTIAL USES IN THE AGRICULTURAL ZONE

PERSPECTIVES AND FINALITIES

The procedure is essentially based on a overall reflection that include all the elements and facets of the agricultural zone. This procedure must translate a desire to manage the agricultural territory while giving priority to agriculture and agricultural activities. This approach should apply to all the agricultural zones of the RCM.

NOVEL APPROACH

An RCM may submit an application to the Commission to determine where and how (with respect to by-laws) new houses could be built in the agricultural zone.

A NEW WAY WHICH PROTECTS EVEN BETTER

To avoid any ambiguity, it is necessary to specify that it is not a second revision of the agricultural zone, nor a means to encourage the addition of residences without a link to agricultural activities in the agricultural zone. It is an exercise which allows the examination of the whole agricultural zone on the scale of the RCM, to identify its characteristics and establish clear rules for the building of new homes, taking into account the overall objective to preserve agricultural land and agricultural activities.

GENERAL PRINCIPALS APPLY BUT ARE ADAPTED TO EACH SECTOR

Regardless of the sector, the basic approach remains the same. Nevertheless, given the variations of different sectors that applications can potentially cover, the proposed means will take into account the regional particularities. Each situation will be evaluated according to these features.

The means and conditions can be modulated from one sector to another in order to protect the agricultural territory and agricultural activities:

- The identification of the sectors covered by the application and the future constructions must not in any case affect farms, woodlots or sugar bushes;
- The minimum size of each property (vacant lot) allowing new houses must be sufficient as to not destructure the agricultural territory;
- The Commission favours an analysis sector by sector while examining the application;
- The retained approach must favour consolidating existent farms, woodlots and sugar bushes rather than splitting existent lots.

THE END RESULT OF THE EXERCISE

Such an overall approach to residential land use in an agricultural zone (as opposed to case-by-case review) allows for better identification of long-term impacts on the agricultural territory. This in turn allows the creation of a management framework that is

much more consistent with and conducive to the sustainable operation of farms and agricultural activities. This approach is better for:

- The citizen: clear rules, immediately known, reduction of procedures;
- The farmer: clear rules that allows a certain security for investments in agriculture;
- The municipality and the RCM: an easier management, more consistent and more efficient that takes into account the regional characteristics;
- The Commission: the insurance of a better protection of the agricultural land and the agricultural activities.

DISPOSITIONS, CONDITIONS AND PROCEDURE

PURPOSE OF THE APPLICATION

The Act stipulates two situations in which section 59 applies.

First, the application can concern a destructured sector in the agricultural zone, i.e., a relatively small, clearly delimited sector that is already mostly occupied by residences. If approved, such an application allows municipal authorities to identify such sectors once and for all, while ensuring the continuation of agricultural activity around their perimeter.

The second situation specified in the Act concerns sectors identified in the master development plan of the RCM that can accommodate new residences on vacant lots having a sufficient size without destructuring the sector of agricultural zone under review.

WHO CAN SUBMIT AN APPLICATION?

Only an RCM can submit an application of collective nature.

WHEN?

An application of collective approach seeking to identify agricultural zone sectors that can accommodate residences in pre-established areas can only be submitted once the master land use planning and development plan incorporating government orientations on the preservation of agricultural land and agricultural activities is in force. An application for destructured areas can be proposed and does not have to be identified in the development plan.

WHO CAN INTERVENE IN THE PROCESS?

Only the organizations identified in the Act can intervene on an application of the RCM, the certified association (UPA), and the local municipality concerned.

NECESSARY CONSENSUS

Provisions of the act requires that the RCM ,UPA and the local municipality, as well as the Commission must agree before the Commission renders a favourable decision. For this reason, the Commission plans to establish a flexible procedure to encourage the dialogue and interaction required to reach the consensus the Act seeks to achieve.

DECISION – MAKING CRITERIA

In deciding on either one or the other of the two types of the two possible applications stipulated in the Act, the Commission will take into account the general objective to protect agricultural land and agricultural activities within the context of regional characteristics. The Commission will base its decision on the criteria set out in section 62 of the Act. In addition to these criteria, the Commission must also be satisfied that the authorization being sought reflects an overall view of the agricultural zone and is in keeping with the concept of sustainable development of the agricultural zone.

WHEN AN AUTHORIZATION COMES INTO EFFECT

Should the Commission partially or completely approve an application, the decision will take effect only once a planning by-law by municipality comes into effect that introduces the conditions specified in the decision as mandatory standards. Thereafter, a resident seeking to construct a new residence in the area designated in the decision does not need to submit an individual application or a declaration. As of this date, on the other hand, an application to introduce a new residential use elsewhere or under different conditions that is said in the decision of the Commission would be inadmissible.

PROCEDURES AS TO HOW TO MAKE AN APPLICATION FOR THIS GLOBAL APPROACH

OVERALL VIEW OF THE AGRICULTURAL ZONE

The application must reflect an overall view of the agricultural zone and be in keeping with the concept of sustainable development of agricultural activities. To this end, the RCM must outline the approach, measures, and means adopted to manage the entire agricultural zone.

To illustrate this overall view and the approach it has selected, an RCM may, for example, present a general plan along with local sectors with common characteristics of the agricultural zone. Once identified, by-laws and objectives for each sector could then be determined.

HOW TO PREPARE AN APPLICATION

Where an application concerns lots of sizes sufficient to construct a residence without destructuring the agricultural zone, these sectors must be identified in the master development plan. If the application is for a destructured sector, it does not have to be identify in the master development plan but must be well defined.

Since the agreement of all the authorities involved is required for the Commission to render a favourable decision, it is recommended that the RCM work with its municipal and agricultural partners before submitting its application. This approach will facilitate the presentation of the application and accelerate its evaluation by the Commission.

MANAGEMENT OF NEW RESIDENTIAL USES

More specifically, the RCM must demonstrate how it plans to manage new residential uses throughout its entire agricultural zone. It must present the normative approach (by-laws) adopted for the sectors covered by the application and the balance of the agricultural zone.

Since the application will also be evaluated according to the criteria set out in section 62 of the Act, it would be advisable for the RCM to provide the information required to establish a general portrait of the entire agricultural zone. The revised master development plan is obviously a very valuable source of information.

This portrait should cover the following topics:

- Biophysical Characteristics
(Soil potential, topography, forest cover, etc.)
- Land Use
(Nature and location of agricultural and non-agricultural uses)
- Location of Agricultural Operations
(Type and size of farms, bush lots, vacant lots, etc.)
- Surrounding Areas
(Composition and use of areas bordering the sectors under study)
- The Separating Distances (between a house and a building housing farm animals) in the RCM by-laws

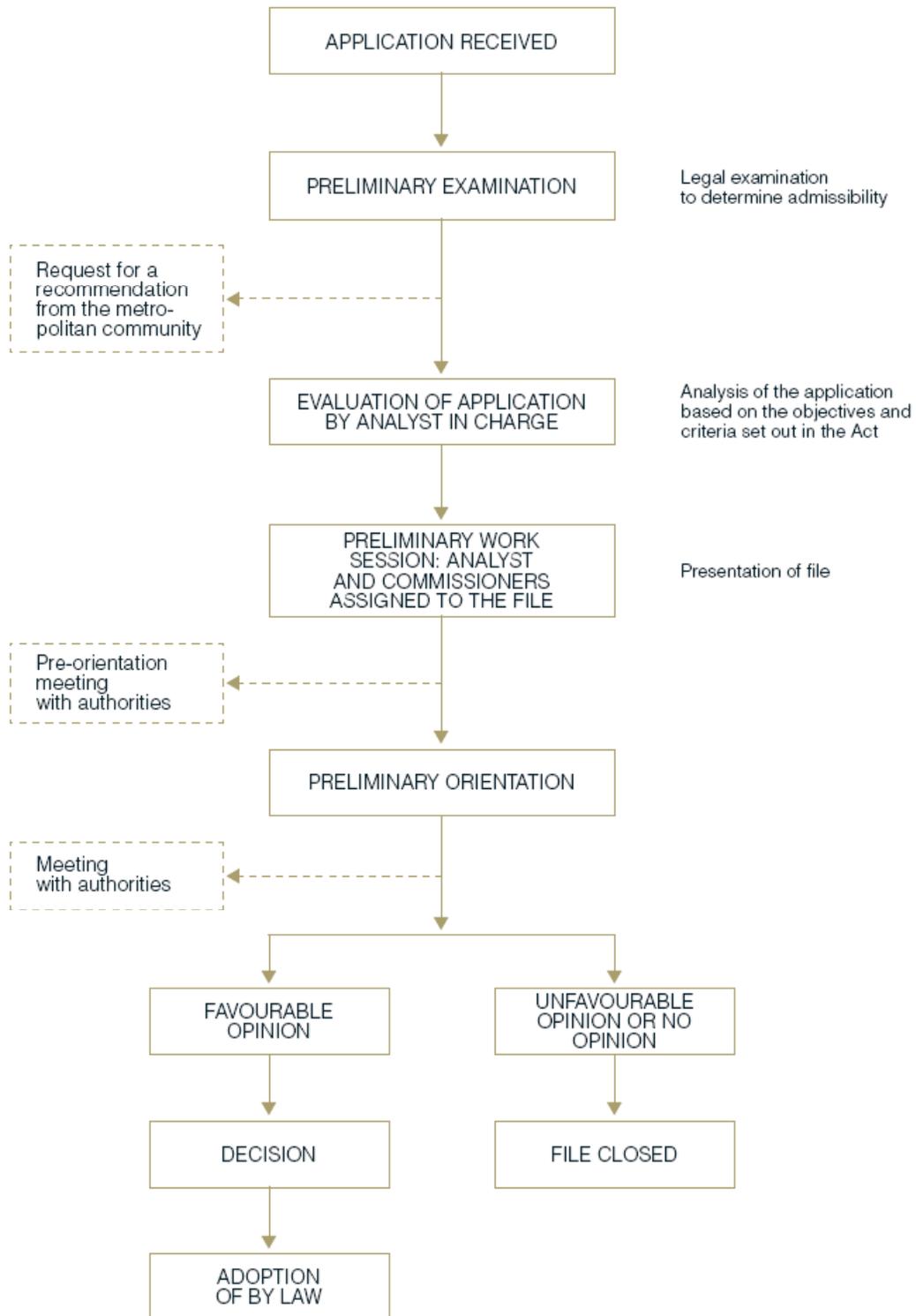
LOCATION OF THE SECTOR(S) COVERED BY THE APPLICATION

Using a map drawn to an appropriate scale, clearly identify the sector or sectors covered by the application. In all cases, the map must provide not only an overall view of the situation but also a clear identification of the targeted sectors. Furthermore, it is necessary to underline that the Commission has the essential tools to receive and deal with numeric maps and documents.

ADDITIONAL INFORMATION

RCM is encouraged to include any other information it deems useful to help the Commission better understand its territory and facilitate examination of the application. The Commission invites the professionals of the RCM to contact the analyst responsible for its region to obtain useful advice and expertise to prepare your application.

COMMISSION APPLICATION PROCESSING FLOWCHART



CERTAIN RELEVANT PROVISIONS OF THE ACT

ACT RESPECTING THE PRESERVATION OF AGRICULTURAL LAND AND AGRICULTURAL ACTIVITIES

59. A regional county municipality or a community may apply to the Commission to determine in which cases and under which conditions new uses of land for residential purposes may be introduced in an agricultural zone.

In addition to the regional county municipality or the community, the local municipality concerned and the certified association are interested persons in relation to the application. A copy of the application must be sent to them by the regional county municipality or the community making the application.

The application must concern:

1. a destructured tract of land in the agricultural zone; or
2. lots having an area sufficient to avoid destructuring the agricultural zone, situated in sectors identified in the development plan or in a draft amendment or revision of such a plan.

The application must contain the information required by the Commission, including the information required for the purposes of sections 61.1 and 62.

However, an application that relates to a draft amendment or revision of the development plan may be made only after the consultation period provided for in the second paragraph of section 53.5 or, where applicable, the second paragraph of section 56.6 of the Act respecting land use planning and development.

The Commission shall enter every admissible application in the general register and inform the interested persons.

For the purposes of this section, Municipalité de Baie-James is deemed to be a regional county municipality.

- 59.2 In examining the application, the Commission, in addition to taking into consideration the criteria set out in section 62, must be satisfied that the conditional authorization applied for reflects an overall view of the agricultural zone and is in keeping with the concept of sustainable development of agricultural activities.

- 59.3 From the date of entry in the general register of an application under section 59, the Commission may suspend the examination of any individual application concerning a new land use for residential purposes in the agricultural zone for which the application of collective scope has been made, for a period of six months or until the date of any decision it may make within that time.
- 59.4 A favourable decision of the Commission concerning an application of collective scope shall take effect only from the coming into force of the planning by-law of the local municipality concerned that introduces the conditions specified in the decision as mandatory standards.
- 61.1.1. Section 61.1 does not apply to an application under section 59 concerning a destructured tract of land nor to an application relating to a farm-based tourism activity as determined by regulation under section 80.
- 62.6. However, to render a decision on an application filed under section 59, the Commission must have received a favourable opinion from the interested persons within the meaning of that section.

TRANSITIONAL PROVISIONS OF THE ACT RESPECTING THE PRESERVATION OF AGRICULTURAL LAND AND AGRICULTURAL ACTIVITIES

Under one of the transitional provisions of this Act, an application of collective scope concerning agricultural zone sectors that can accommodate residences on lots sufficient to avoid destructuring the agricultural zone may only be submitted as of the date of the coming into force of the first development plan that incorporates government orientations on the preservation of agricultural land and agricultural activities.

This provision reads as follows:

36. A regional county municipality may avail itself of subparagraph 2 of the third paragraph of section 59, enacted by section 3 of this Act, only from the date of coming into force of the first development plan taking into account the guidelines relating to the objectives set out in subparagraph 2.1 of the first paragraph of section 5 of the Act respecting land use planning and development.

CONCLUSION

In keeping with the commitments made in its Service Statement to Citizens, the Commission is available to properly inform the public about the acts it enforces.

To this end, you can contact us by phone, by mail, or in person at one of our offices and address your inquiry either to the officer you usually deal with (your region's analyst) or the Service d'information de la Commission, which can be reached at one of the following two locations:

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Phone: (418) 643-3314 or 1 800 667-5294
Fax 1 (418) 643-2261

25, boulevard La Fayette, 3 étage, Longueuil (Québec) J4K 5C7
Phone: (450) 442-7100 or 1 800 361-2090
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In addition, you can at any time obtain general information by visiting our Website at <http://www.cptaq.gouv.qc.ca>