Commission
de protection
du territoire agricole
Québec

# ACT RESPECTING THE PRESERVATION OF AGRICULTURAL LAND AND AGRICULTURAL ACTIVITIES

## The Amendments of June 21, 2001

November 2001

# FOREWORD

The *Act to amend the Act respecting the preservation of agricultural land and agricultural activities and other legislative provisions* (Bill 184) was adopted and assented to on June 21, 2001. On the same day, the Commission issued a bulletin to municipalities drawing attention to the new provision on acquired rights, seeing that it had an immediate effect on citizens' rights and the issuance of construction permits. The Commission also subsequently posted all the amendments to the *Act respecting the preservation of agricultural land and agricultural activities* on its Website at http://www.cptaq.gouv.qc.ca

We are aware that these amendments to the legislation the Commission administers are substantial and require further explanation, beyond these initial efforts, for the benefit of municipal and agricultural authorities, who are the ones most affected by many of the new provisions.

The purpose of this document is to discuss these amendments and highlight the ramifications.

In the discussion that follows, we have grouped the June 21 amendments into three (3) categories:

1. Decision-Making Criteria
2. Acquired Rights
3. Applications of a Collective Scope

# 1 DECISION-MAKING CRITERIA

In this section, we have grouped together decision-making criteria amendments that apply to all applications as well as those that apply more specifically to applications for exclusion and farm-based tourism projects. Changes related to applications of collective scope are discussed in a separate section.

## 1.1 New Decision-Making Criterion

Under the third paragraph of section 62 of the Act, the Commission must now also consider – in addition to the other criteria – the consequences of an authorization on the application of the minimum distance standards for odour management currently stipulated in the Environment Department guidelines (Guidelines for determining minimum distances to ensure odour management in rural areas) and intended to be eventually incorporated into municipal by-laws.

The third criterion in section 62 now reads as follows:

> **62.** The Commission may authorize, on such conditions as it may determine, the use, for purposes other than agriculture, the subdivision, the alienation, the inclusion or the exclusion of a lot or the cutting of maple trees.
> (...)
> (3) the consequences of an authorization on existing agricultural activities and their development, and on the possible agricultural use of neighbouring lots, **in particular having regard to the standards aimed at reducing the inconvenience caused by odours resulting from agricultural activities, originating from the exercise of the powers provided for in subparagraph 4 of the second paragraph of section 113 of the *Act respecting land use planning and development;***
> (...).

Obviously, the enforcement of minimum distance standards is not the responsibility of the Commission, but rather that of municipal officers when they are considering the issuance of a building construction permit for a building with a purpose other than agriculture or when issuing a certificate of compliance with odour management distance requirements to a producer applying for an authorization certificate from the Minister of the Environment. For the purposes of this criterion therefore, the local municipality must furnish all the necessary information regarding the minimum distance standards applicable to neighbouring farm producers when it transmits an application to the Commission, in addition to its obligation to transmit a resolution outlining its reasoned recommendation based on the Act's criteria as well as an opinion regarding the applicant's compliance. These obligations are stipulated in the Act as follows:

**58.1.** Upon receipt of the application, the clerk or secretary-treasurer of the local municipality shall advise the applicant and the Commission of the date of receipt. The local municipality shall examine the application and may, for that purpose, require such information and documents as it considers relevant.

The local municipality shall, within 45 days of receiving the application, transmit it to the Commission **furnishing all the information required by the Commission, in particular as regards the standards intended to reduce the inconvenience caused by odours resulting from agricultural activities established pursuant to the powers provided for in subparagraph 4 of the second paragraph of section 113 of the *Act respecting land use planning and development,*** and its recommendation, and transmit the assessment of an authorized officer as to whether the application is consistent with its zoning by-law and with the interim control measures, if any.

The local municipality shall also transmit to the applicant a copy of all the documents mentioned in the second paragraph.

Since the municipal officers must transmit new information to the Commission, they must have a means of obtaining it from the producers in question. A separate amendment, in the form of an addition to section 98.1, stipulates that for the purposes of the provision on minimum separating distances, among other things, "**a municipality may request, in writing, the operator of an agricultural operation to transmit to the municipality any information within the time it fixes**." This new provision also stipulates that should the operator fail to provide this information, the municipal inspector may "**collect any information or determine any fact necessary to enforce a separation distance requirement. For these purposes, the municipal inspector may be assisted by an agronomist, a veterinarian, a professional technologist or a land surveyor**."

The application form will be changed to provide specific space for additional information the Commission requires to take into consideration distance requirements, in addition to the other criteria, when examining an application for authorization.

## 1.2 Application for Exclusion and Consideration of Appropriate Available Areas

Since the coming into force of "Bill 23" amendments in June 1997, an applicant who is seeking to introduce a new use of land for purposes other than agriculture must first demonstrate to the Commission (section 61.1) that there is no other appropriate available space elsewhere (defined in the Act as, objectively, "a vacant area of land on which the intended use is allowed by the applicable municipal zoning by-law and by the interim control measures, if any;"). For its part, the municipality must provide the Commission with information on the matter as required under section 58.2 of the Act. Should such an appropriate available space exist outside the agricultural zone elsewhere in the territory of the local municipality and be suitable for the purposes for which the application is made, the Commission may reject the application on that sole ground.

Under a “Bill 184” amendment to section 65.1 (June 2001), the same approach now applies to applications for exclusion, requiring any municipality, Regional County Municipality (RCM) or metropolitan community applying for the exclusion of an agricultural zone lot to also demonstrate that there are no appropriate available areas outside the municipality’s agricultural zone for the purposes for which the application is made. Like in the case of individual applications, the Commission may also reject an application for exclusion on the sole ground that such areas exist outside the agricultural zone of the municipality in question.[1]

In a way, this clarification of this section of the Act reinforces the idea, already present since 1997 in section 65.1, that the exclusion being sought must meet a need that warrants encroachment on agricultural land.

Similarly, Parliament wanted to prevent situations in the future where exclusion orders issued by the Commission are incorporated late into developments plans or are abandoned, notably because of the lack of subsequent government approval of the development plan. An amendment to section 67 of the Act now requires that where an RCM or metropolitan community is required to amend its development plan to give effect to an application for exclusion, such an amendment must be adopted and come into force within twenty-four (24) months of the date of the decision.

### 1.3 Farm Tourism

When examining an application concerning a farm tourism activity (to be defined by regulation), the requirement to demonstrate the nonexistence of an appropriate available area outside the municipality’s agricultural zone (section 61.1) does not apply. However, even though this new measure certainly signals openness to this type of activity, authorization must still be sought from the Commission, which must evaluate the project based on all the criteria in section 62. Promoters are also required to ensure that their proposed farm tourism projects will have no negative impact on the preservation of agricultural land and agricultural activities.

[1] Obviously, all the other decision-making criteria continue to apply, notably the search for alternative sites with a lesser impact, even outside the territory of the municipality in question, especially when the application concerns a lot situated in a census agglomeration or census metropolitan community (section 62, paragraph 5).

# 2 ACQUIRED RIGHTS

Under the *Act to amend the Act respecting the preservation of agricultural land and agricultural activities,* assented to on June 21, 2001, the National Assembly significantly changed the acquired rights system as we have known it since the initial law was passed in 1978.

As of June 21, 2001, it is no longer possible to introduce a second main use for a purpose other than agriculture within the area for which acquired rights exist, or convert the existing use into another use for a purpose other than agriculture, without the authorization of the Commission.

These issues are usually complex and require a case-by-case determination. Indeed, it was not until 1989, eleven (11) years after the law came into effect, that the Supreme Court of Canada made a definitive ruling on issues surrounding the interpretation of acquired rights along the lines of the Commission's position. In this section, we have sketched out an interpretation that in our view is consistent with Parliament's intentions and the lessons to be drawn from recent rulings by higher courts that have examined similar issues in municipal law.

## 2.1 Why the Changes?

Until last June 20, an acquired right on a lot allowed the owner to add to or change existing uses. Such additions or changes, introduced without assessment of their desirability by the Commission in terms of consequences on the preservation of agricultural land and agricultural activities, have often added to constraints on agricultural activity and disrupted the homogeneity of agricultural zones.

For example, residences could be turned into businesses, old sandpit sites into residential developments, a second residence constructed next to the one conferring rights, etc. In many cases, these actions that could be carried out without possibility for the Commission to pronounce on their desirability in view of legislated criteria had negative consequences for the preservation of agricultural land and agricultural activities.

That is why Parliament intervened last June to shift the emphasis to the protection of the existing use and remove the possibility of converting that use or adding a new main use – which reflects what an acquired right really is.

Indeed, the very essence of an acquired right is the protection of an existing nonagricultural use that would now be illegal were it not for the simple reason that the nonagricultural use was existing and legal at the time the law was amended. By definition therefore, the system is meant to protect uses that have become nonconforming but legal, i.e., uses that would otherwise be prohibited in an agricultural zone without Commission authorization.

## 2.2 The Rights Maintained

Before even discussing the scope of the changes to the conditions governing the exercise of acquired rights, it seems worthwhile to reiterate that a person can still continue using an agricultural zone lot for nonagricultural purposes so long as that use, for whatever purpose, was legal prior to June 20, 2001.

Thus, a residence on an agricultural zone lot that existed legally on November 9, 1978 (in a territory to which the law applied as of that date) can, after June 20, 2001, continue to be used for the non-agricultural purposes for which it was constructed.

In concrete terms then, the lot can continue to be used for residential purposes if that was the case on June 20, 2001, or for any other purpose for which it was used on that date in compliance with municipal by-laws, even if different from the initial residential use (e.g., a residence existing on November 9, 1978, that was subsequently transformed into a business establishment and used as such, in compliance with municipal by-laws, as at June 20, 2001 – in which case, it is that subsequent business use that can continue).

Furthermore, the use existing on June 20, 2001 can be expanded up to a maximum of half a hectare for a residence (by adding accessories like a swimming pool, garage, etc.) or up to a maximum of one hectare for an existing business or industry.[2]

The acquired rights system still allows a person to alienate separately from the rest of the property that portion of the land in respect of which the right exists. A residence or business can thus be portioned off, up to a maximum of a half-hectare or one hectare respectively, from a larger piece of land.

Lastly, the provisions governing the extinguishment[3] of acquired rights as well as those governing the exercise of acquired rights related to adjacent public infrastructures (section 105) or in respect of expropriation by a public body (section 104) have remained unchanged.

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[2] The right to expand only applies to the same lot or the contiguous lot owned by the same person at the time the provisions became applicable to the lot in question and the maximum allowable increase (half a hectare or one hectare) depends on the initial use that generated the acquired right at the time the Act became applicable to the lot, not the use existing, if different, on June 20, 2001.

[3] An acquired right is extinguished if that part of the surface in respect of which the right exists is left in fallow for over a year (e.g., following the removal or destruction of the building that housed the legal nonconforming use).

## 2.3 The Changes

### 2.3.1 The New Law

Section 101.1 has been added to the Act and came into force on June 21, 2001. It reads as follows:

> **101.1. Notwithstanding section 101, no person may, as of 21 June 2001, add a new main use for a purpose other than agriculture in the area for which that right exists or convert the existing use into another use for a purpose other than agriculture, without the authorization of the Commission**.[4]

### 2.3.2 The Scope of this Amendment

The restrictions introduced by the amendment cover two (2) things: the addition of a new main use and the alteration of the existing nonagricultural use.

a) Addition of a new main use prohibited

As of June 21, 2001, this provision prohibits the addition on the lot protected by an acquired right a new nonagricultural use that is separate from what existed on June 20, 2001.

For example, you cannot establish a second residence or a business within the half-hectare protected by acquired residential rights by constructing a new building separate from the current residence or converting part of the residence into business premises.

b) Changing existing nonagricultural use prohibited

Acquired rights now apply only to nonagricultural uses that existed legally on June 20, 2001.

In practice therefore, a lot that was being used for residential purposes on that date may not be used for any other purpose (besides agriculture). Similarly, if the nonagricultural use consisted of a woodworking shop, for example, only that use may continue and the shop cannot be converted into a different commercial, industrial, or institutional facility.

It is therefore the use existing on June 20, 2001, that is protected and the premises may be enlarged, renovated, or sold separately from the rest of the land, but may not be altered without Commission authorization.

Until recently, there was an ongoing municipal law debate on whether an existing legal, nonconforming use could be converted into another use of the same municipal by-law category. This debate ended with a recent Supreme Court of Canada ruling

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[4] However, if prior to June 21, 2001, the municipality had received an application for a construction permit submitted with a view to introducing a new main use or converting the existing use, the proposed new use or conversion may go ahead in compliance with municipal by-laws.

reiterating that "the category approach is erroneous on principle and that the protected acquired rights can only, properly, be linked to the existing situation."[5]

In our view, the principles set out in the Supreme Court ruling apply to section 101.1 of the Act.

c) Accessory use allowed

Since the Act prohibits the introduction of any new main use or the alteration of the existing use, one must ask whether any uses that are incidental to the use existing on June 20, 2001, are allowed.

The answer is that they are, but you must bear in mind the narrow sense in which the word "incidental" must be construed. For example, it excludes any separate use, even of secondary importance to the main use of the building (e.g., a hairdressing salon in a residence). It must be understood that a use is only truly incidental to the main use, as opposed to a separate use of lesser importance, if for all practical purposes it is complementary to the main use and dependent on it (as opposed to two autonomous uses).

As a recent Québec Court of Appeal ruling on a municipal zoning case explains, "any additional use or construction subsidiary or incidental to an existing use or installation can only be authorized by exception, for obvious reasons of convenience and accommodation. It must be a use or construction that is essential to the main use or installation and constitutes a normal if not mandatory extension thereof. (...) Without this exception that has the effect of incidentally allowing otherwise nonconforming uses or installations, the very existence and viability of the main use or installation would be compromised."[6] [TRANSLATION]

It is therefore clear that to respect Parliament's intention to prohibit, unless authorized by the Commission, the introduction of a new non-agricultural use that may give rise to a different set of constraints on agricultural activity, the only possible interpretation is that only new uses directly related to the existing use are allowed.

In short, determining if a proposed new use constitutes an alteration of the protected use, i.e., the use existing on June 20, 2001, requires proper characterization of that protected use based on information obtained notably from the user in order to ensure that only that use will be maintained and even intensified to the point of adding activities that are secondary or closely related to it.

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[5] Saint-Romuald (City) v. Olivier et al., 27-09-2001.

[6] Corporation du Cimetière Mont-Marie et al. v. Ville de Lévis, 07-08-2001.

## 2.4 Illustration with Examples

The following questions and answers illustrate some of the most common situations you will encounter. If in doubt, contact the Commission for additional clarifications.

**Q** May I add a garden shed, a garage for my car, or other home accessories on the land around my residence protected by acquired rights?

**A** Yes, since this does not involve adding new main uses or changing the current residential use of the land.

**Q** If a municipal by-law allows a change of use within the same group or category of uses, can this change be made without the Commission's authorization?

**A** No. Given the diverse nature of applicable municipal by-laws (and therefore the possibility that uses that may be quite diverse or cause varying constraints on the preservation of agricultural land and agricultural activities may be allowed on a given lot by zoning by-laws), new uses may otherwise be introduced with negative consequences on agricultural land and agricultural activity. Since the Act takes precedence, only the existing use may continue without Commission authorization.

**Q** If the protected use of my lot ceased as the result of a fire nine (9) months earlier, can I reconstruct and resume the same use?

**A** Yes, since you have twelve (12) months to rebuild (section 102), subject to the stricter municipal standards (it is always the more restrictive of the standard in the Act and the one in the municipal by-law that prevails).

**Q** I own a lot with acquired residential rights and would like to transfer a vacant portion of my half-hectare to my neighbour who wants to expand his own residence and construct a swimming pool and other accessory facilities. Can I do so without Commission authorization?

**A** Yes, because the lot is protected by acquired rights. In this case, the vendor is allowed to use the portion of land he wants to sell for his own residential accessories and so the neighbour can do the same thing, so long as the project is completed within twelve months of the sale, as the acquired right will extinguish if the alienated plot remains undeveloped for over a year.

Note, however, that the alienated plot must be used for the same purposes it was used for before alienation. Thus, you cannot acquire a piece of land used for residential purposes to expand your business parking lot.

**Q** May I set up a professional office, hairdressing salon, or a country-style dining facility for tourists in my residence?

**A** No. When activities are of a scale that they are considered uses in and of themselves (according to the zoning by-law or for the purposes of property assessment, insurance, etc.), they are deemed separate from the residential use and you are therefore prohibited from adding them to the residential use or altering the residential use in whole or in part to introduce them without Commission authorization.

**Q** I legally transformed a section of my residential building into a business facility (jewelry retail) and so had a mixed use building on my lot on June 20, 2001. May I relocate the business to a separate building on the same lot?

**A** Yes, if the new building is located within the half-hectare area protected by your residential use acquired rights.

**Q** I have a single-family residence protected by acquired rights and I would like to expand it by adding a rental unit. May I do so without Commission authorization?

**A** No, since the second unit constitutes a second use, separate from the single-family residence protected by acquired rights.

**Q** My residence existed at the time the Act came into force and I subsequently converted it into a business facility and was using it for those purposes on June 20, 2001. I want to sell the business together with one hectare of land on the grounds that it is used as a commercial property. Is Commission authorization required?

**A** Yes. The owner can sell the property but only with half a hectare of land. The business facility was set up on a protected residential site that may not be expanded beyond a half-hectare. In this case, it was the residence that gave rise to the acquired rights, not the business. Moreover, the future owner must keep the business use that existed on June 20, 2001. Any change, including reverting to the original residential use, requires Commission authorization.

## 2.5 Application for Authorization

Like all the other restricted actions stipulated in the *Act respecting the preservation of agricultural land and agricultural activities,* the addition of a new use or conversion of an existing use requires an application to the Commission for authorization. The Commission then applies the criteria set out in the Act to assess the impact of the proposed new or expanded use on the preservation of agricultural land and agricultural activities.

For the addition of a new use for purposes other than agriculture, the Commission will examine the application as if it were a new derogation, without regard to any rights that may be exercised without Commission authorization – i.e., without regard to the possibility of perpetuating an existing use protected by acquired rights. In other words, not only will the existence of acquired rights confer no additional advantage in obtaining authorization for a new use, but the applicant must first demonstrate that there are no appropriate available areas elsewhere in the municipality's nonagricultural zone for the proposed project (section 61.1).

For the conversion of an existing nonagricultural use, the Commission is aware that in exercising its supervisory power under the new Act, it must take into account the current situation of the agricultural zone. Therefore, its role will generally be to ensure that any proposed nonagricultural use will not bring about additional constraints, although in special circumstances an application to convert an existing use may be rejected solely to prevent the continuation of an intolerable situation with respect to the preservation of agricultural land and agricultural activities.

# 3 APPLICATIONS OF A COLLECTIVE SCOPE

## 3.1 Characteristics

### An Overall Approach

Despite changes to the provisions on collective scope applications (section 59), the objectives of the approach remain the same as when this new mechanism was first introduced in 1996. The approach is still based on a formula that considers the agricultural zone as a whole in order to identify its characteristics and establish clear rules for the introduction of new residential land uses, taking into account the objective to preserve agricultural land and agricultural activities. 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 agricultural land. This in turn allows the creation of a management framework that is much more consistent with and conducive to the sustainable operation of business and agricultural activities.

Thus, an RCM or a metropolitan community may submit an application identifying areas where new uses of land for residential purposes may be introduced in an agricultural zone as well as stipulating conditions under which this may be done. For such an application to be approved, the municipality, the Union des producteurs agricoles (UPA), and the Commission must agree with the RCM or the metropolitan community. If such agreement is reached and the Commission approves the application, the conditions stipulated and agricultural zone areas identified in the application must be incorporated as mandatory standards into the land use planning by-law. This way, the rules of the game are clear to everyone.

### Purpose of the Application

The Act stipulates two situations in which section 59 applies.

First, the application can concern a destructured tract of land in the agricultural zone, i.e., a relatively small, clearly delimited area that is already mostly occupied by nonagricultural uses. If approved, such an application allows authorities to delimit such tracts once and for all while ensuring the continuation of agricultural activity around their perimeter, filling the vacant lots interspersed among those in use, and streamlining procedures for citizens.

The second situation specified in the Act concerns agricultural zone sectors identified in the development plan that can accommodate new residences on lots having an area sufficient to avoid destructuring the agricultural zone. Essentially, this second category is aimed at agriculture-related residences. For example, the Act (section 31.1) already allows a person who owns a stretch of land forming a single unit of at least 100 hectares to erect one residence on the property. Thus after analyzing the area, it could be agreed and concluded that for a sector previously identified in the planning and development plan, a different property size should apply. This in a way is an adaptation of section 31.1 to regional particularities.

### Who Can Submit an Application?

Prior to the amendments, the Act identified the local municipality as the applicant, but now only an RCM or a metropolitan community can submit an application of collective scope.[7] This amendment is to encourage a broader-based perspective and ensure that the characteristics of the agricultural zone are considered on the appropriate scale.

### When?

An application of collective scope seeking to identify agricultural zone sectors that can accommodate residences in pre-established areas can only be submitted as of the effective date of the first land use planning and development plan incorporating government orientations on the preservation of agricultural land and agricultural activities. Furthermore, even if the plan has come into force but a revision or amendment of it is pending, the application can only be submitted after the consultation period provided for in the *Act respecting land use planning and development*.[8]

### Who Can Intervene in the Process?

Only the organizations identified in the Act can intervene on an application of collective scope, namely the RCM or metropolitan community, the certified association (UPA), and the local municipality concerned.[9]

### Necessary Consensus

In the old system, an application could only be considered if accompanied by favourable assessments from the certified association (UPA) and the RCM. The new system still requires the backing of competent authorities, but this support is no longer a prerequisite for considering the application but rather a precondition for a decision by the Commission. 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 pronouncing on either one of the two types of applications of collective scope stipulated in the Act, the Commission will take into account the general objective of protecting agricultural land and agricultural activities within the context of regional characteristics. The Commission will be guided in its assessment by 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.

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7 The Commission must also seek the opinion of the Montréal Metropolitan Community or the Québec Metropolitan Community (in existence as of January 1, 2002) if an application of collective scope involves their respective territories. Once the metropolitan land use planning and development plans come into force, only the metropolitan community will be allowed to submit an application of collective scope for its territory.

8 An application to identify a destructured tract of land can be submitted at any time, since these tracts do not have to be identified in land use planning and development plans.

9 The owners of affected lots can intervene at other stages: at the time the development plan is being amended or revised if necessary or during the adoption of the land use planning and development by-law that is required if the Commission's decision is favourable.

Where the application concerns the identification of an area sufficient to accommodate a residence without destructuring the agricultural zone (and therefore essentially tied to resource exploitation), section 61.1 applies as an additional condition to ensure that it does not entail the urban-style construction of houses to "settle" territory in a rural area.

Where the application concerns a destructured tract of land, however, the Commission does not have to take the provisions of section 61.1 into consideration.

**Coming Into Force of the Decision**

Should the Commission partially or completely approve an application of collective scope, the decision will take effect only once a planning by-law 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 in a sector covered by the decision that does not conform with the standards prescribed in the planning by-law would not be considered.

**Deferral of Individual Applications**

When examining an application of collective scope, i.e., once it is entered in its register, the Commission may suspend for a period of six (6) months the examination of any individual application concerning a new land use for residential purposes in the agricultural zone covered by the application of collective scope. This is to prevent any interference in the examination of the collective application.

## 3.2 How to Prepare an Application

An application of collective scope can provide an opportunity to solve the problem of both destructured tracts and sectors identified in the development plan.

Where an application concerns lots of an area sufficient to construct a residence without destructuring agricultural land, the lots must be delimited by sector. Since these sectors must be identified on the development plan, the first step in such cases therefore is to work on identification in the plan of those sectors to be submitted to the authorities for discussion.

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

The guidelines that follow are intended as a general blueprint that a given RCM can use to prepare and submit an application of collective scope. Given the varying characteristics and sizes of the areas that applications can potentially cover, a rigid application framework would not be useful here. The approach suggested in the guidelines constitutes but one method; the Commission is open to any other approach if it also allows the production and consideration of the information required to process this type of application.

1. 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 in keeping with the new system of preservation of agricultural land and agricultural activities. This exposé must notably specify how the approach advocated will protect agricultural resources and activities.

   To illustrate this overall view and the approach it has selected, an RCM may, for example, present a general plan on which subsections with representative characteristics of the agricultural zone are identified. Once identified, management orientations and objectives of each subsection could then be determined.

2. 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 thus present the normative approach adopted for new residences in the entire agricultural zone. This way, the sectors for which Commission authorization is being sought can be put into perspective. This demonstration will allow the Commission to evaluate the management of the proposed residential use against the objectives of the Act.

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

   This portrait could cover the following topics:

   - Biophysical Characteristics
     (Soil potential, topography, forest cover, etc.)

   - Land Use
     (Nature and location of agricultural and nonagricultural uses)

   - Location of Agricultural Operations
     (Type of operations, size, etc.)

   - Land Structure
     (Stage of land subdivision)

   - Surrounding Areas
     (Composition and use of areas bordering the sectors under study)

   - Applicable Separating Distance Requirements

   These topics are intended to serve as a guide. It is up to each RCM to adopt an approach for presenting this information in the way it deems appropriate. Obviously, an application concerning a destructured tract of land will not require the same level of detail.

3. Description of the Proposed Standards

   A single application can cover one or more sectors of the agricultural zone. It is possible for proposed new residence standards to vary from sector to sector or within the same sector. In such a case, it is preferable to identify each sector or area separately, specifying the standards proposed for it.

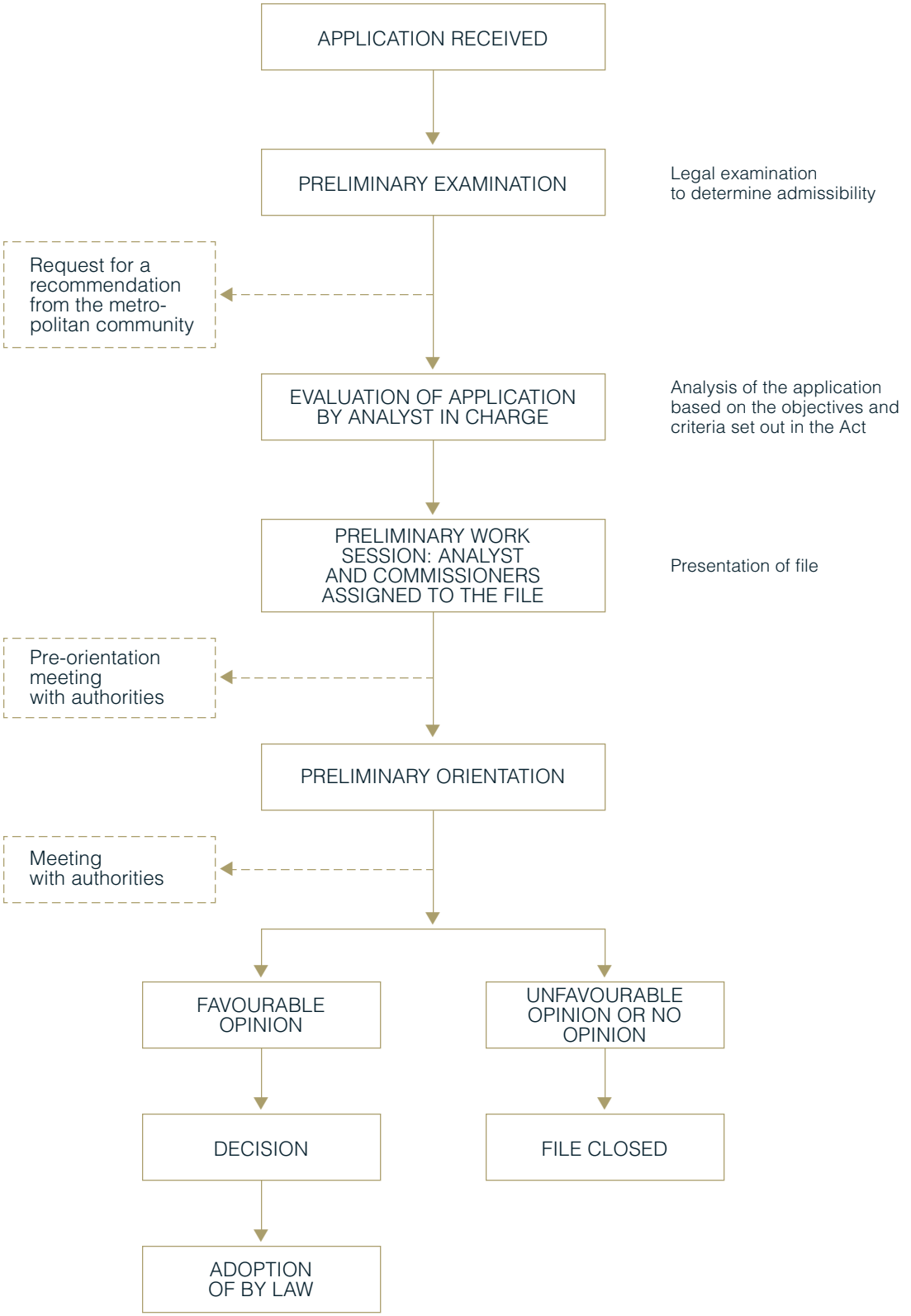
4. Location of the Sector(s) Covered by the Application

   Using a map drawn to an appropriate scale, clearly identify the sector or sectors covered by the application. If circumstances dictate – given the size, number, or dispersion of the sectors – more than one map may be required. In all cases, the map must provide not only an overall view of the situation but also a clear demarcation of the targeted sectors. Thus, for irregularly shaped sectors, it would be advisable to provide sufficient information to properly identify the area affected.

5. Additional Information

   RCMs and metropolitan communities are encouraged to include any other information they deem useful to help the Commission better understand their territories and facilitate examination of the application.

## 3.3 Commission Application Processing Flowchart



## 3.4 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 eager to properly inform the public about the laws 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 (an investigator or 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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In addition, you can at any time obtain general information by visiting our Website at http://www.cptaq.gouv.qc.ca